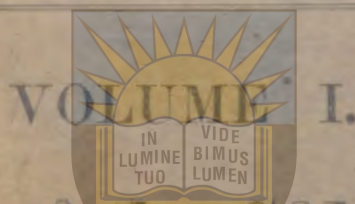


1926

W. J. Melish

SOUTH AFRICA.

South African Native Affairs Commission
1903-5.



VOLUME I.

REPORT of the COMMISSION

University of Fort Hare
Together in Excellence

AND APPENDICES A AND B.

Presented to His Excellency the High Commissioner and the Governments
of the Colonies and Territories in British South Africa.



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GENERAL LIST OF CONTENTS OF THE FIVE VOLUMES.

Volume I.

- Summary of Contents of Report of the Commission.
Report of the Commission.
Annexures to Report of the Commission (with Maps).
Appendix A to Report of the Commission, being a Comparative Digest of Laws affecting Natives, by Mr. Advocate McGregor.
Appendix A (*continued*) to Report of the Commission, being a Summary of the foregoing Digest of Laws affecting Natives, by Mr. Advocate McGregor.
Appendix B to Report of the Commission, being the Minutes of Proceedings of the Commission.
Appendix B (*continued*) to Report of the Commission, being a Schedule of Recorded Voting on the Report.

Volume II.

- Appendix C to Report of the Commission, being the Minutes of Evidence taken in the Cape Colony and the Transkeian Territories.

Volume III.

- Appendix C (*continued*) to Report of the Commission, being the Minutes of Evidence taken in the Colony of Natal.

Volume IV.

- Appendix C (*continued*) to Report of the Commission, being the Minutes of Evidence taken in Rhodesia, the Bechuanaland Protectorate, British Bechuanaland (Cape Colony), the Orange River Colony, Basutoland, the Transvaal Colony, and again in the Cape Colony.

Volume V.

- Appendix C (*continued*) to Report of the Commission, being an Index (in two parts) to the Minutes of Evidence.
Appendix C (*continued*) to Report of the Commission, being Annexures to the Minutes of Evidence.
Appendix D to Report of the Commission, being Written Replies to Questions circulated.
Appendix E to Report of the Commission, being Additional Memoranda submitted to the Commission by Witnesses.

E R R A T A .

REPORT, PAGE 40, PARAGRAPH 210 :—

LINE 2.—*For* “ definition : delimitation and reservation ”
Read “ definition, delimitation and reservation ”

ANNEXURE No. 6, PAGE 26 :—

LINE 10.—*For* “ Maggs, C., Assistant Secretary, Native Affairs.”
Read “ Maggs, C., Agent for Land Companies.”

LINE 11.—*For* “ Marwick, J. S., Agent for Land Companies.”
Read “ Marwick, J. S., Assistant Secretary, Native Affairs Department.”

APPENDIX A (COMPARATIVE DIGEST OF LAWS AFFECTING NATIVES) :—

PAGE A 1, PARAGRAPH 3, LINE 6 :—

For “ Previous ”
Read “ Precious ”

PAGE A 4, CHAPTER “ NATIVE LAW,” LINE 2 :—

For “ See also Acts 1, 1901 ; 1894.”
Read “ See also Acts 1, 1901 ; 13, 1894.”

PAGE A 13, SECTION (f), LINE 2 :—

For “ the licence is on ”
Read “ the licence is one ”

PAGE A 21, SECOND PARAGRAPH, LINE 3 :—

For “ operating of Native Law,”
Read “ operation of Native Law,”

PAGE A 43, HEADING OF CHAPTER :—

For “ LABOUR AGENTS ”—LABOUR DISTRICTS’ LABOUR TAX.
Read LABOUR AGENTS—LABOUR DISTRICTS—LABOUR TAX.

PAGE A 48, SECTION 18, LINE 2 :—

For “ of the informer.”
Read “ to the informer.”

PAGE A 52, SECTION (e), SECOND PARAGRAPH, LAST LINE :—

For “ ler.”
Read “ lex.”

PAGE A 57, SECTION (b), SUB-SECTION IV, LINE 2 :—

For “ purchase on receipt ”
Read “ purchase or receipt ”

PAGE A 64, SECTION 3, SUB-SECTION I :—

Delete LINE 4, *reading* “ father, or of relatives on the father’s side, provided that any native may dispose of his estate by ”

PAGE A 67, SECTION I, SUB-SECTION (b), PARAGRAPH 2, LINE 3 :—

For “ apprenticed ”
Read “ apprenticed ”

PAGE A 72, LINE 10 :—

For “ bolt ”
Read “ belt ”

REPORT

SOUTH AFRICAN NATIVE AFFAIRS COMMISSION

SUMMARY OF CONTENTS

CONTENTS

OF

VOLUME I.



University of Fort Hare

Together in Excellence

	PAGES.
1. Summary of Contents of Report of the Commission	1-4
2. Report of the Commission	1-98
3. Annexures to Report of the Commission, numbered 1 to 9 (with Maps)	1-28
4. Appendix A to Report of the Commission, being a Comparative Digest of Laws affecting Natives, by Mr. Advocate McGregor	A1-A72
5. Appendix A (<i>continued</i>) to Report of the Commission, being a Summary of the foregoing Digest of Laws affecting Natives, by Mr. Advocate McGregor	Ai-Axxix
6. Appendix B to Report of the Commission, being the Minutes of the Proceedings of the Commission	B1-B44
7. Appendix B (<i>continued</i>) to Report of the Commission, being a Schedule of Recorded Voting on the Report	Bi-Bxxxvi

REPORT

OF THE

SOUTH AFRICAN NATIVE AFFAIRS COMMISSION.

SUMMARY OF CONTENTS.

PARAS.	SUBJECTS.	PAGE
PREFACE.		
1-2	Terms of Reference, Scope of Enquiry	1
3-4	Mode of Enquiry	2
5	Submission of Interim Reports	2
6	Where Sitzings held	2
7-9	Evidence and Written Replies	2
10	Visits and Inspections	2
11	Reason for delay in issue of Report	2
HISTORICAL.		
12	Prelude	3
13-18	Cape Colony	3
19-24	Natal	4
25-27	Orange River Colony	5
28-32	Transvaal	6
33-35	Swaziland	7
36-42	Basutoland	7
43-48	Southern Rhodesia	8
49	Bechuanaland Protectorate	9
TERMS OF REFERENCE.		
50-57	INTRODUCTORY	10
58-74	DEFINITION OF "NATIVE"	11
LAND TENURE.		
75-77	General...	13
78-90	Cape Colony	14
91-111	Natal	18
112-116	Orange River Colony	21
117-127	Transvaal	22
128-139	S. Rhodesia	23
140-141	Basutoland	25
142	Bechuanaland Protectorate	25
143-146	(A) Communal Occupation	26
147	Resolution of the Commission in regard thereto	26
148	Special views of certain Members of the Commission thereon	26

PARAS.	SUBJECTS.	PAGE
LAND TENURE.—Continued.		
149-155	(B) Individual Tenure... ..	27
156-164	Recommendations of the Commission in regard thereto, with conditions	28
165-166	Special views of certain Members of the Commission thereon	30
167-180	(C) Squatting	30
181	Resolutions of the Commission in regard thereto	32
182-183	Comments of the Commission upon foregoing Resolutions ...	33
184-192	(D) Purchase and Leasing	33
193-197	Resolutions of the Commission in regard thereto and comments thereon	35
198-199	Special views of certain Members of the Commission thereon	36
200-205	(E) Vesting of Appropriated Land in Trust... ..	37
206	Table showing Area of and Population in Native Reserves ...	39
207-209	Recommendations of the Commission in regard to Location Reserves and Lands held in Trust	39
210-211	Special views of certain Members of the Commission thereon...	40
TRIBAL SYSTEM, NATIVE LAW AND CUSTOM, ADMINISTRATION.		
212-217	Tribal Organization	41
218-230	Present Systems of Native Administration	42
231-233	Native Law	44
234-236	Communal Responsibility	44
237	Devolution of Property	45
238-239	Status of the Native Woman	45
240	Liability for Payment of Debts	45
241	Resolution of the Commission in regard to Succession and Inheritance in Intestate Estates	46
242	Appearance of Lawyers in Native Cases	46
243	Compulsory Registration of Births and Deaths	46
244	Insufficiency of Magistrates and Native Commissioners ...	46
245	Periodical Meetings of Representatives of each Colony and Possession	46
246-253	Urban Locations for Natives	46
254-255	Resolutions of the Commission in regard thereto	48
256-259	Appeal Courts	48
260	Resolution of the Commission in regard thereto	49
261-263	Native Jurymen and Assessors, and Resolution of the Commission in regard to the former ...	50
264	Pass Laws and Travelling	50
265-268	Resolutions and Suggestions of the Commission in regard thereto	50
269-275	FAMILY LIFE AND HABITS	51
276-277	Resolutions of the Commission in regard thereto	53

PARAS.	SUBJECTS.	PAGE
	FAMILY LIFE AND HABITS.—Continued.	
278-280	Reformatory Institutions, and Resolution of the Commission in regard thereto	54
281	Resolution of the Commission in regard to the use of Government Savings Banks	54
282-288	CHRISTIANITY AND MORALS	55
289	Resolution of the Commission in regard to the civilizing power of Christianity	56
	MARRIAGE BY NATIVE CUSTOM.	
290-296	Polygamy	56
297-298	Resolutions and recommendations of the Commission in regard thereto	57
299	Special views of certain Members of the Commission thereon...	58
300-307	Ukulobola	58
308	Resolutions of the Commission in regard thereto	60
309-311	MARRIAGE BY CHRISTIAN RITES AND BY CIVIL MARRIAGE OFFICERS	60
312	Effect of legal recognition in Natal of Native marriage ...	61
313-315	Effect of Christian marriage upon Succession and Inheritance ...	61
316	Emancipation of the Native Woman	62
317	Resolutions of the Commission in regard to Christian or Civil Marriage	62
318	Special views of certain Members of the Commission thereon ...	62
319-320	THE CHURCH SEPARATIST MOVEMENT	63
321	Resolutions of the Commission in regard thereto	64
322	NATIVE PRESS	65
323	Resolution of the Commission in regard thereto	65
324	NATIVE POLITICAL ASSOCIATIONS	66
325	Resolution of the Commission in regard thereto	66
	EDUCATION.	
326-331	General	66
332	Table of Statistical information in regard thereto	68
333-341	Public Expenditure, and Contributions by Natives	70
342	Resolutions of the Commission in regard thereto	72
343-345	Industrial Training and Instruction in Manual Work	72
346	Curriculum and Language Medium	73
347	Higher Education and Training of Native Teachers	73
	LIQUOR.	
348-351	Total Prohibition	74
352-353	Illicit Trade	75
354	Resolutions of the Commission in regard thereto	75
355	Resolution of the Commission in regard to Beer Drinks and Sale of Kafir Beer	75

PARAS.	SUBJECTS.	PAGE
	LIQUOR.—Continued.	
356	Kafir Beer as preventive of disease	75
	LABOUR.	
357-360	Demand and Supply	76
361-364	Table of Statistical information in regard thereto, with comments thereupon	76
365	Average period of continuous labour	78
366-367	Number of workers at any one time	78
368	The Shortfall	79
369-372	Economics and Imported labour	79
373-376	Labour difficulties and reasons for their existence	80
377	Importation of Foreign labour found necessary	81
378-379	Practicability of increasing supply from local sources. Wages of labour	81
380-381	Compulsory measures deprecated	81
382	Suggestions to meet Agricultural labour difficulties	82
383	Recommendations of the Commission in regard to the stimulation of Industry	82
384	Female domestic service	83
385	Locations for continuous workers	83
386	Further recommendations of certain Members of the Commission in regard to the stimulation of Industry	83
	TAXATION.	
387-388	Want of reliable data	84
389-390	Indirect. —Basutoland and Bechuanaland Protectorate	84
391-394	Natal	85
395	Transkeian Territories	85
396	Orange River Colony	85
397-398	Rhodesia	86
399-401	General	86
402-403	Direct. —Statistics	86
404-405	Cost of Administration of Natives	87
406-408	Recommendations of the Commission in regard thereto	87
409	Local Taxation for beneficial purposes	88
410-418	Occupation of land by Natives: Rent Charges by the State. Views of (1) a minority and (2) a majority of the Commission thereon	88
419	Views of certain Members of the Commission in regard to Taxation generally	90
	REPRESENTATION.	
420-421	How Natives' interests safeguarded under Tribal System	90
422-428	How Natives' interests now safeguarded in different countries	91
429	Franchise Conditions in Cape Colony, Rhodesia, and Natal	92
430	Statistics relating to Voters in those countries	93
431-433	Franchise Qualifications and the Native Vote	93
434-436	Views of the Commission based upon present situation in Cape Colony	94
437-442	Native Political Status throughout South Africa	95
443	Separate Voting by Natives	96
444-445	Results to be hoped for	96
446	Resolutions of the Commission in regard thereto	97
447	Reservations of one Commissioner in regard to such Resolutions	97
448	CONCLUSION	98

SOUTH AFRICAN NATIVE AFFAIRS COMMISSION.

R E P O R T .

To

His Excellency,
The High Commissioner.

MAY IT PLEASE YOUR EXCELLENCY,

WE, the undersigned Commissioners, having been appointed under Commission* issued by Your Excellency, dated the 22nd September, 1903, for the purposes hereinafter mentioned, have the honour to submit the following Report:—



PREFACE.

1. The Terms of Reference† to Your Excellency's Commissioners were more especially to enquire into and report on the following matters:—

- (1) The status and condition of the Natives; the lines on which their natural advancement should proceed; their education, industrial training; and labour.
- (2) The tenure of land by Natives and the obligations to the State which it entails.
- (3) Native law and administration.
- (4) The prohibition of the sale of liquor to Natives.
- (5) Native marriages.
- (6) The extent and effect of polygamy.

2. The following resolution passed at the Bloemfontein Conference in March, 1903, quoted in Your Excellency's Commission, further indicated the scope of the work to be done:—

“ That in view of the coming Federation of South African Colonies, it is desirable that a South African Commission be constituted to gather accurate information on certain affairs relating to the Natives and Native administration, and to offer recommendations to the several Governments concerned, with the object of arriving at a common understanding on questions of

* Annexure 1.

† Annexure 2.

"Native policy ; such Commission to consist of two
 "representatives from each of the Colonies, and one
 "each from Rhodesia and Basutoland, with the addition
 "of a Chairman to be nominated by the High
 "Commissioner."

3. In view of the comprehensive character of the Terms of Reference and the wide issues arising therefrom, it was essential to seek and admit full oral and written evidence from those competent to give it, and to visit not only each of the Colonies and Territories concerned, but those centres in each where differing conditions obtain.
4. It thereupon became necessary to indicate to the public the points upon which the opinions of witnesses were to be invited. This was done by means of a schedule of the subjects of enquiry* and a list of questions,† which showed clearly the scope of the enquiry and the lines on which the examination of witnesses would proceed. They were widely circulated and elicited valuable information. The replies to these questions are printed.‡
5. In pursuance of instructions, Interim Reports§ were submitted to Your Excellency at the conclusion of each session.
6. The Commission held sittings at the following places, viz. :—Cape Town, King William's Town, East London, Queen's Town, Lady Frere, Butterworth, Umtata, Kokstad, Pietermaritzburg, Durban, Salisbury, Bulawayo, Mafeking, Bloemfontein, Maseru, Pretoria and Johannesburg.
7. The witnesses, a list of whom is given,|| were either invited to give or, in response to advertisement, proffered their evidence. They represented the views of officials, politicians, ministers of religion and missionaries, lawyers, educationalists, land-owners, farmers, traders, municipalities and other public bodies, employers of labour, and Natives of all classes.
8. The Commission desires to record its appreciation of the readiness in general of invited witnesses to attend, often at much personal inconvenience, for the purpose of giving evidence, and of the frank manner in which the questions were answered by them.
9. In addition to the oral evidence¶ and the written replies to questions, numerous communications bearing more or less upon the subjects of enquiry were received.
10. Opportunities were taken to visit and inspect certain Native Educational and Industrial Institutions, Municipal Locations, Location Reserves, Land Settlements, Allotments, Labour Compounds and Hospitals. These visits afforded, by means of personal observation, much useful information to the Commission on some of the most important features of its work.
11. There have been unavoidable adjournments which interrupted the work and so delayed the final Report.

* Annexure 3.

† Annexure 4.

‡ Appendix D.

§ Annexure 5.

|| Annexure 6.

¶ Appendix C.

HISTORICAL.

12. It is important, before proceeding further, to state briefly certain historical facts affecting the Natives of the Colonies and Possessions within the sphere of enquiry.

CAPE COLONY.

13. The Cape Colony became a Possession of Great Britain by its formal cession, during 1814, by the Prince of the United Netherlands in consideration of the payment of £6,000,000; an arrangement which was confirmed the following year by the International Congress of Vienna. British troops had then been in occupation for eight years, dating from the capitulation of Governor Janssens after the battle of Blaauwberg in 1806.
14. At that time the Colony was bounded on the east by the Fish River and on the north by Bushmanland, an almost uninhabitable tract of country south of the Orange River. Gradually it extended, until by the incorporation of East Griqualand in 1879, Pondoland in 1894, and British Bechuanaland in 1895, it reached its present limits. It embraces an area of 276,565 square miles, and has a population of 2,409,804, consisting of 579,741 Europeans, 1,424,787 Natives, 395,369 coloured people of mixed race and Malays, and 9,907 Asiatics. It has had Responsible Government since 1872.
15. The earliest known inhabitants of the Cape Colony were Hottentots and Bushmen, the latter a pigmy race of hunters, yellow in colour, without any form of government other than parental, and quite incapable of adopting the habits of European civilisation. The Hottentots were a nomadic pastoral people not dissimilar to the Bushmen in appearance. Whence they came is not known, but they appear to have been fully established as early as the 15th century. Their government was a weak despotism varying in efficiency with the character of the Chief. Socially they were superior to the Bushmen, and they were able to adapt themselves to European modes of life. Few pure types of either race remain, though many of their characteristics are preserved in the coloured people who constitute a considerable proportion of the population.
16. The Natives inhabiting the eastern portion of the Colony to-day, known generally as the Kafirs, are an offshoot of the great Bantu race believed to have sprung originally from Central Africa. They are first heard of in connection with South African history in 1593, when the "Santo Alberto" was wrecked on the coast south of the Umtata River, and words mentioned as used by the savages are readily recognisable as being of Bantu origin. In the 17th century the Fish River was the boundary between the Kafirs and the Hottentots; in the 18th century Kafirs were encroaching on the Zuurveld west of the Fish River, and in 1798 a horde of them ravaged as far west as George, where they were turned back by the burghers of Stellenbosch. No Kafir tribe has at any time permanently established itself west of the Fish River.

The conquests of the cruel and tyrannical Zulu Chiefs, Tshaka and Dingana, at the beginning of the 19th century, caused internal redistribution of the Xosa tribes, but the presence of European settlers in the Colony prevented the advance westward which would otherwise probably have taken place. The greater part of the Native population of the Colony is now to be found in the Transkeian Territories lying between the Kei and the Umzimkulu Rivers, where their traditional manner of life is more closely followed than elsewhere.

17. In 1880 an important Cape Colonial Commission upon Native Laws and Customs was appointed, and as an outcome of its recommendations the Transkeian Territories Penal Code was adopted. It embodies in a convenient form the spirit of the statute and common law of the Colony, from which it differs only in providing for the punishment of criminal offences arising peculiarly from local aboriginal conditions and in the adoption of certain principles of the Native spoor law.

18. Reference to the annexed table* will show the comparative increase of the European and Native populations of this and the other Colonies and Possessions where obtainable.



19. Natal was discovered by Vasco da Gama in 1497. In the years 1836-38 a large body of Dutch farmers from Cape Colony migrated thereto. In 1842 it was occupied by the British, and in 1843 was proclaimed a British Possession. It was treated as a district of the Cape Colony until 1845, when Letters Patent were issued creating it a separate Colony with a Lieutenant-Governor subordinate to the Governor of the Cape Colony. In 1856 Natal became a distinct Government, and in 1893 was given Responsible Government.

20. Zululand, with which had previously been incorporated the territories of the Native Chiefs Umbegeza and Sambana and the Amatongaland Protectorate, was annexed to Natal in 1897, and in 1903 the area constituting what is known as the Northern Districts was transferred from the Transvaal Colony and became part of Natal, which now embraces an area of 36,173 square miles and has a population of 1,108,754, consisting of 97,109 Europeans, 100,918 Indians, 6,686 coloured people, and 904,041 Natives.

21. In the early part of the last century the despotic rule of the Zulu Chiefs caused many of the formerly independent tribes to flee from Zululand and Natal. Many sections of tribes fled into the Cape Colony, largely contributing to the Native population there; others broke northwards into the Transvaal and Matabeleland, while some migrated across the Zambesi River into Central Africa.

22. During the rule of Tshaka and Dingana, Natal, as distinguished from Zululand, became transformed from a country with an

*Annexure 7.

estimated Native population of 100,000 to one with a few remnants of tribes who were forced to seek inaccessible parts as a refuge from their oppressors. Thus, on the arrival of the first Dutch settlers, there was but a small Native population in Natal. From 1839, the year in which Dingana was defeated by the Dutch immigrants, and for some years after, many of the Native refugees from Natal returned from Zululand and other parts to re-occupy their ancient homes, accompanied by others who preferred the protection of the European settlers to savage rule.

23. In 1838 there were estimated to be in Natal proper about 10,000 Natives. These were all that were left out of the population of 100,000 believed to have been previously settled there. In 1843, many Natives having taken the opportunity afforded to return to Natal, the population had increased to 50,000, and is at the present time given at 700,668, exclusive of Zululand.

24. Law No. 19, 1891, of the Colony of Natal, enacts what is known as the Code of Native Law ; it does not abrogate Native unwritten law and it comprises generally the main principles of Native law which were first codified in a more limited way in 1878. Law No. 19, 1891, has been repeatedly amended since 1893, when Responsible Government was given to Natal. It has not been extended to the Province of Zululand, where uncoded Native law is administered. It has been extended to the Northern Districts recently transferred to Natal. The Native High Court, Magistrates and Chiefs administer Native law as already described under limitations as to jurisdiction defined by law. The Governor is Supreme Chief of the Native population in the Province of Zululand, with powers and authority defined by section 7 of Law No. 44, 1887, and in the rest of the Colony as defined by this law, amended by Law No. 19, 1891 enacting the Code. Chiefs have power to try all civil cases, divorces excepted, between Natives. In the Province of Zululand they have considerable criminal jurisdiction, but in the rest of the Colony this jurisdiction is much narrower. Appeals from Chiefs may go to the Magistrates or direct to the Native High Court. In addition to Law No. 19, 1891, and its amendments, and uncoded Native law, the Natives of Natal are also subject to special laws applicable to them only. Where the Code, or Native law, or special laws do not apply, then the Natives come under the ordinary Colonial law as applicable to Europeans.

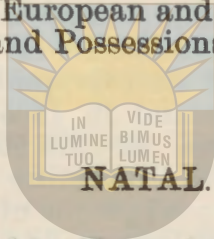
ORANGE RIVER COLONY.

25. The settlement of this Colony by Europeans was brought about by the Great Boer Trek of 1836 from the Cape Colony. At that time the Dutch immigrants settled around Winburg and along the Caledon River, but it was not until 1848, owing to troubles between the European settlers and the Natives, that the territory was proclaimed part of Her Majesty's Dominions. In 1854 the British Government resolved upon its abandonment, and, under the Convention of Bloemfontein, it became an independent Republic under the name of the Orange Free State. In 1900 the State was annexed as a Crown Colony and is now known as the Orange River Colony. The area is about 55,180 square miles, with a population

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24. Law No. 19, 1891, of the Colony of Natal, enacts what is known as the Code of Native Law ; it does not abrogate Native unwritten law and it comprises generally the main principles of Native law which were first codified in a more limited way in 1878. Law No. 19, 1891, has been repeatedly amended since 1893, when Responsible Government was given to Natal. It has not been extended to the Province of Zululand, where uncoded Native law is administered. It has been extended to the Northern Districts recently transferred to Natal. The Native High Court, Magistrates and Chiefs administer Native law as already described under limitations as to jurisdiction defined by law. The Governor is Supreme Chief of the Native population in the Province of Zululand, with powers and authority defined by section 7 of Law No. 44, 1887, and in the rest of the Colony as defined by this law, amended by Law No. 19, 1891 enacting the Code. Chiefs have power to try all civil cases, divorces excepted, between Natives. In the Province of Zululand they have considerable criminal jurisdiction, but in the rest of the Colony this jurisdiction is much narrower. Appeals from Chiefs may go to the Magistrates or direct to the Native High Court. In addition to Law No. 19, 1891, and its amendments, and uncoded Native law, the Natives of Natal are also subject to special laws applicable to them only. Where the Code, or Native law, or special laws do not apply, then the Natives come under the ordinary Colonial law as applicable to Europeans.

ORANGE RIVER COLONY.

25. The settlement of this Colony by Europeans was brought about by the Great Boer Trek of 1836 from the Cape Colony. At that time the Dutch immigrants settled around Winburg and along the Caledon River, but it was not until 1848, owing to troubles between the European settlers and the Natives, that the territory was proclaimed part of Her Majesty's Dominions. In 1854 the British Government resolved upon its abandonment, and, under the Convention of Bloemfontein, it became an independent Republic under the name of the Orange Free State. In 1900 the State was annexed as a Crown Colony and is now known as the Orange River Colony. The area is about 55,180 square miles, with a population

of 385,045, made up as follows :—143,419 Europeans, 6,160 coloured people and Asiatics, and 235,466 Natives.

26. This Colony has not within record been occupied to any large extent by Native tribes of importance, but in the early part of the 19th century portions of the country immediately north of the Orange River and extending to the Modder River were inhabited by Griquas, a people of mixed Hottentot and slave descent with an infusion of European blood. They were found there by the Dutch settlers when the latter arrived in 1838. Towards the east the country was hilly and was occupied by the Basuto, with whom the settlers were more than once at war. In 1866 the Dutch defeated the Basuto Chief Moshesh, who was compelled to cede to them a great portion of his best agricultural land now known as the Conquered Territory and lying north-west and west of the present border of Basutoland.
27. The Native population is now made up from various tribes: Basuto, Fingo, Bechuana, Bathlokoa, Koranna, and others of Hottentot and Bushmen descent, the prevailing type being Barolong, who are a branch of the Bechuana family. These fragments dispersed themselves among the European settlers, and their affairs have been administered under the common law of the country, subject to certain class legislation. The Natives are not allowed to acquire land.

TRANSVAAL.

28. As with Natal and the Orange River Colony, the first European settlers in the Transvaal were emigrant farmers who left the Cape in 1836. On the annexation of Natal many of these settlers recrossed the Drakensberg and settled, some in the Orange River Colony and others in the country north of the Vaal River. In 1852, under the Sand River Convention, their independence was recognised. In 1877 the South African Republic, as the country was then called, was proclaimed British territory. Retrocession followed in 1881, and in 1900 it was again annexed to the British Dominions. It comprises an area of 111,196 square miles, with a population of 1,268,716, consisting of 299,327 Europeans, 23,891 coloured people and Asiatics, and 945,498 Natives, of whom 133,745 are estimated to be Natives from other parts of South Africa temporarily resident for labour purposes.
29. The central and western districts of the Transvaal were the first definite resting-place of the large body of Zulus which under Umzilikazi fled from Tshaka's rule in 1817. The various Bechuana and Bapedi tribes then inhabiting the Transvaal were overwhelmed by Umzilikazi and either exterminated, driven away or compelled to submit to his rule. In 1830 Umzilikazi, fearing further attacks from Dingana's army, which he had fought the previous year, moved west, occupying the Marico district, whence he was ultimately driven north by the Dutch into the country now known as Matabeleland. The subdued and scattered tribes thenceforward enjoyed comparative immunity from war with other tribes, but they came into collision from time to time with the white settlers.

30. The majority of the Natives in the Transvaal belong to what may be called the central group of the South African Natives, *i.e.*, the Bechuana and those tribes whose people went to make up the present Basuto nation. There are, however, to be found many Natives of the Swazi, Zulu, Matabele, Shangana, Magwamba and other tribes living there, some under petty Chiefs, and others as independent families on private farms. The majority of the Natives in the Transvaal are to be found in the northern and eastern districts.

31. Up to 1885 there was no special law in the Transvaal for regulating Native administration. In that year the late Republic made legal provision for:—

- (1) The recognition of existing Native laws and customs not repugnant to the general principles of civilisation.
- (2) The appointment of officers to exercise the authority formerly exercised by Chiefs.
- (3) The constitution of the President as Paramount Chief of all Natives in the Republic.

32. By the Grondwet no equality between white and black was to be recognised in Church or State.

SWAZILAND.

33. Swaziland lies between the Transvaal, Natal and the Portuguese possessions.

34. It comprises an area of 6,536 square miles, with a population of 898 Europeans, 55 coloured people, and 84,531 Natives. The people belong to the Zulu-speaking race.

35. Though never incorporated with the late South African Republic, it came under the laws of the Republic for administrative purposes. It is now a dependency of the Crown, administered by the Governor of the Transvaal Colony, and a special Commission is sitting to determine questions affecting its future settlement.

BASUTOLAND.

36. Basutoland comprises an area of 10,293 square miles, and is situated between the Cape Colony, Natal, and the Orange River Colony. It has a population of 348,848, of whom 895 are Europeans, 163 coloured people, 59 Asiatics, and 347,731 Natives.

37. The recorded history of Basutoland dates back to the early part of the 19th century. In those disturbed times a Chief of the Bakwena tribe, by name Moshesh, was living near the Caledon River. A native of great resource and ability, he rose to eminence, and, taking up his abode at Thaba Bosigo, succeeded in gathering

around him many of the remnants of Sesuto-speaking tribes which had been shattered by warlike marauders. In this fashion he mustered a great following and consolidated it into what is now known as the Basuto nation.

38. The recognition of Basutoland as a Native State took place in the year 1842.
39. In 1852 an expedition under General Cathcart entered Basutoland to exact reparation from the Basuto for their depredations in the Orange River Sovereignty, and an action was fought at the Berea which resulted in the capture of a large number of cattle by the British and was followed by an expression of penitence from Moshesh. For the next sixteen years there was intermittent war between the Orange Free State and Basutoland, until, in 1868, the territory was proclaimed British and was annexed to the Cape Colony in 1871.
40. From the close of 1880 until 1884 the country was in a state of revolt and resistance to the authority of the Cape Government. This period ended in its disannexation by the Cape Colony, and administration was resumed by the Imperial Government in 1884.
41. The territory is administered by a Resident Commissioner under the direction of the High Commissioner for South Africa, in whom is vested the legislative authority, which is exercised by Proclamation.
42. The law of the Cape Colony as it existed in 1884 has effect so far as the circumstances of the country permit. Regulations provide for the establishment of Courts of the Resident Commissioner and Assistant Commissioners, and confer jurisdiction upon recognised Native chiefs in purely Native cases in which Native law may be administered. In all cases there is right of appeal to the Resident Commissioner.

RHODESIA.

43. That portion of the British South Africa Company's territories which falls within the scope of the Commission's enquiries is known as Southern Rhodesia, and comprises the Provinces of Mashonaland and Matabeleland, with an area of 143,830 square miles. The territory was, in 1888, declared to be under British influence and, certain powers of administration having been granted in 1889 by Royal Charter to enable it to carry out the objects for which it was formed, the Chartered Company occupied the country in 1890.
44. In 1893 the Matabele came into conflict with the forces of the Chartered Company and were, after some severe fighting, reduced to submission. In 1896 fighting again ensued with the Matabele, who were joined by the Mashona, peace being finally established in 1897.
45. The population of the territory is set down at 605,764, made up of 12,623 Europeans, 1,944 coloured people and Asiatics, and 591,197 Natives, of whom 20,367 are residing temporarily in the country for labour purposes.

46. The Natives of Southern Rhodesia consist chiefly of :—

- (a) The Matabele or Mandebele, who inhabit the Province named after them and are the descendants of the great Zulu following which under Umzilikazi broke away from Tshaka's rule in 1817, and, after many warlike vicissitudes, settled between the Limpopo and Zambesi Rivers. The Barozwe, a physically inferior branch of the Bantu race, then inhabiting that part, succumbed to their powerful enemies and, much reduced in numbers, retired into Mashonaland.
- (b) The Mashona or Baswina, the inhabitants of Mashonaland, who are the descendants of the once powerful Makaranga tribe which in the early part of the 16th century was found living in the country south of the Zambesi stretching from the sea westwards. Discord and oppression destroyed the power of this tribe. The survivors are now divided into clans of varying strength, each under independent chieftains. During the latter half of the 18th century a number of small tribes from Central Africa found their way across the Zambesi and settled in Mashonaland. These people appear to have been of the same stock as the Makaranga, their language and customs being similar. Scattered about in the southern parts are to be found relics of the once fairly numerous Barozwe. The Mashonaland Natives suffered severely from the incursions of the Matabele, and came under their sway.

47. The Province is administered under an Order in Council, which provides for a Constitution with large powers of control to the High Commissioner for South Africa.

48. The laws of the Cape Colony were adopted for administrative purposes until June, 1891, when fresh legislation ensued.

BECHUANALAND PROTECTORATE.

49. This territory, which comprises an area of about 275,000 square miles and was proclaimed a British Protectorate in 1885, is governed by a Resident Commissioner under the direction of the High Commissioner. It has a population of 1,004 Europeans, 119,411 Natives, and 361 coloured people. The Natives are of the Bamangwato, Bakhatla, Barolong, Bangwaketsi and Bakwena tribes. Scattered through the Bechuana are families and individuals of the Bakalahari tribe who, formerly slaves, are still largely dependent upon the Bechuana for their livelihood.

TERMS OF REFERENCE

INTRODUCTORY.

50. From the preceding historical outline it will be seen that the Commission's enquiries embraced a large and varied area, totalling, approximately, 914,773 square miles, with a population of 1,135,016 Europeans and 4,652,662 Natives, and that at one period or another aboriginal races of Bantu origin were in occupation of the greater part of this land, being displaced at intervals by European advance or by the ravages of other tribes which alternately asserted their dominance. This area is composed of seven Colonies and Possessions, each with its own Administration, legislating and conducting its affairs independently of its neighbours.
51. The diverse character of legislation in South Africa is shown in the Comparative Digest of Laws affecting Natives* compiled at the request of the Commission by Mr. Advocate McGregor, of the Cape Colony Bar. A study of the Digest reveals differences of law even between Divisions of the same Colony.
52. On all important questions, although marked differences exist, it should be possible to arrive at uniform principles to be followed in the future policy of South African Governments, but the diverse conditions under which different sections of the Natives live, and the varying degrees of civilised advancement to which they have attained, suggest the impracticability of immediate uniformity in Native administration. In illustration of this may be cited the conditions prevailing in various parts of South Africa, where are to be found Natives comparatively advanced in the scale of civilisation, holding land in their own right, and in the same neighbourhood masses who still cling to the tribal system and communal occupation of land.
53. That the Cape Colony has recognised the need for flexible Native administration based on varying local conditions is shown by the fact that in the Transkeian Territories legislation is still by Governor's Proclamation, except where an Act of Parliament by express provision extends its application beyond the Kei. Greater tolerance also is there given to such customs as polygamy and "lobolo," and claimants for the restoration of dowry cattle on desertion by the wife may bring their cases for adjudication before the Magistrate; while in the Colony proper, although the rights of children by marriages contracted according to Native custom are secured by the Native Successions Act, claims for the recovery of "lobolo" cattle are not entertained in the Law Courts.
54. Again, Zululand, which is incorporated with Natal, is not subject to the Code of Native Law which prevails in the remainder of the Colony.

* Appendix A.

55. It is obvious that advance towards general assimilation of laws affecting Natives throughout the various Colonies and Possessions of South Africa must of necessity be slow.
56. The early part of the last century may be adopted as the period at which Europeans came actively into contact with the Bantu tribes, none of whom, therefore, have been under the influence of civilisation for more than a century—some of them for much less.
57. The advisability of harmonising so far as practicable the direction of Native affairs in the various States of South Africa is admitted. Uniformity of practice also should be aimed at, but reckoning must be taken of the process of evolution and the effect of changes upon people passing from semi-savage life to enlightenment.

DEFINITION OF "NATIVE."

58. One of the first difficulties presented in connection with the consideration of laws was the varying definitions therein of the term "Native." So great indeed is the variation that in the same Colony it has several meanings.

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59. In the CAPE COLONY, for instance, the practice is to define "Native" in every Act in which the word occurs. The definition in one of the latest Acts, viz., No. 40 of 1902, relative to Native locations, is :—
- "Any Kafir, Fingo, Zulu, Mosuto, Damara, Hottentot, Bushman, Bechuana, Koranna or any other aboriginal Native of South or Central Africa, but shall not include any Native while serving in any of His Majesty's Ships and while in uniform."
60. The Glen Grey Act enumerates Kafirs, Fingos, Basutos, Zulus, Hottentots, Bushmen, and adds "and the like."
61. In the Liquor Law, 1898, the definition is :—
- "Any Kafir, Fingo, Basuto, Damara, Hottentot, Bushman, or Koranna."
62. In NATAL there is a special law, No. 14 of 1888 (To Extend and Define the Meaning of "Native"), of which clause 1 reads :—
- "The word 'Native' shall mean all members of the aboriginal races or tribes of Africa south of the Equator, including liberated Africans commonly called 'Aman-

"dawo' who are not exempted from the operation of
 "Native Law in terms of Law No. 28 of 1865: Provided,
 "that Griquas and Hottentots shall not come under
 "the provisions of this law: Provided, further,
 "however, that the provisions of Law No. 22 of
 "1878, entitled 'Law to Prohibit the Sale and Disposal
 "of Spirits and other Intoxicating Liquor to Persons of
 "the Native Race,' shall extend and be applicable to
 "Griquas and Hottentots."

63. Provision is made by Law No. 28 of 1865 to exempt certain Natives from Native law, after which, according to Law No. 14 of 1888, they do not come under the above definition, except for the purposes of the Liquor Act.
64. In the Liquor Act of 1896 the word "Native" means and includes :—
- "All members of the aboriginal races or tribes of Africa south
 "of the Equator, including liberated Africans, commonly
 "called 'Amandawo,' and whether exempted or not ex-
 "empted from the operation of Native Law, and Griquas
 "and Hottentots, and any person whose parents come
 "under the description of Natives, Griquas or Hottentots."
65. Under the late TRANSVAAL Republic the definition under Law No. 28 of 1895 read :—
- "Any person of any kind belonging to or being a descendant
 "of any Native races of South Africa whatever."
66. Under Law No. 23 of 1899 :—
- "The word 'Native' shall apply to the males of all
 "'coloured people' and coloured races of South Africa."
67. Under Law No. 19 of 1898 (Liquor Law) :—
- "The term 'coloured person' shall signify any African
 "or Asiatic Native or coloured Americans or St. Helena
 "person, Coolie or Chinaman, whether male or female."
68. Under Proclamation by the British Government, No. 37 of 1901 (Pass Law), the definition was :—
- "Every male person above the age of 14 years, belonging to
 "any of the aboriginal races or tribes of Africa south
 "of the Equator, and every male person, one of whose
 "parents belongs to any such race or tribe as aforesaid."
69. By an amending Ordinance for the purposes of the Pass Law there was an alteration providing that both parents must belong to an aboriginal race.

70. In the ORANGE RIVER COLONY Law No. 8 of 1893 reads :—

“ The expression ‘ coloured person ’ or ‘ coloured persons ’
 “ appearing in this law shall be interpreted and taken,
 “ unless the context clearly forbids it, to apply to and
 “ include a man or men as well as woman or women
 “ above the age or estimated age of 16 years of any
 “ Native tribe in South Africa, and also all coloured
 “ persons, and all who, in accordance with law or custom,
 “ are called coloured persons, or are treated as such, of
 “ whatever race or nationality they may be.”

71. In RHODESIA there is a definition in Section 3 of the Order in Council, viz. :—

“ Any person not of European descent who is a Native of
 “ South Africa or Central Africa.”

72. These variations are quoted in order to show the difficulty with which the Commission was confronted. It was imperative to clear the position, and a resolution was therefore passed to the following effect :—

For the purposes of the Report, the word “ Native ” is used by the Commission in the sense accepted in the several British Colonies and Possessions in South Africa.

73. There, however, the matter did not end, for it appeared of the utmost importance to proceed further and suggest a broad definition for future adoption. This is admittedly a most perplexing problem. It is notorious that a great deal of racial inter-mixture has taken place, and many of the so-called coloured people have, by their industry, intelligence and self-respect, raised themselves to a high standard. In coming to a conclusion, due weight was given to the circumstances under which many of the class above-mentioned have attained their present worthy position, which it is not proposed to disturb. But there should be a basis upon which the Colonies shall approach each other with a view to a common understanding.

74. The Commission recommends :—

That the word “ Native ” shall be taken to mean an aboriginal inhabitant of Africa, south of the Equator, and to include half-castes and their descendants by Natives.

LAND TENURE.

75. The first item of reference, and perhaps the most important, is Land Tenure. From it there is a common origin of many serious Native problems. It dominates and pervades every other question,

see A 17

it is the bedrock of the Native's present economic position, and largely affects his social system. It was clear from the mass of evidence tendered that the public attention to a great extent centred round it.

76. In order to reduce the subject to suitable proportions for consideration, it was divided into five principal sub-sections, viz. :—

- (a) Communal Occupation.
- (b) Individual Tenure.
- (c) Squatting.
- (d) Purchase and Leasing.
- (e) Vesting of Appropriated Lands in Trust.

77. Before treating these sub-sections in detail, it is necessary to outline the land system now obtaining in each Colony and Possession.

78. In the CAPE COLONY, Natives occupy land as follows :—

- (a) In locations or reserves set apart for Native occupation.
- (b) In locations on private property.
- (c) As servants in continuous employment of land-owners.
- (d) As holders of individual titles in freehold or leasehold or under quitrent tenure.
- (e) In urban locations.

79. There are in this Colony 6,400,000 morgen (= 13,440,000 acres) of land reserved for Natives, carrying a population of 1,057,610 persons, giving an average of 6 morgen (= 12½ acres) per Native, or a density of 50 persons per square mile.

80. There is, in addition, a population of 39,506 Natives living on 1,263 private locations established under Act No. 30 of 1899. The balance of the Native population will be living as domestic servants on farms, or on Native farms, together estimated at 213,843, or in town locations, estimated at 113,828.

81. The policy followed by the Government of the Cape Colony in respect of Native land tenure has been, to begin by adopting the communal system of occupation observed by tribes in their independent state, and, by gradually adapting it to the changing conditions of life attendant upon the march of civilisation, while at the same time establishing a just and sound administration of their personal as well as tribal affairs, to prepare the way for recognition by the people of the advantages of an individual system tending towards assimilation of European methods. Upon peaceable annexation of territory where tribes continued in occupation as before, or upon conquest of territory upon which loyal tribes or clans were in the early days located as a means of protection to the settler population from the frequent raids and disturbances created by those beyond the frontier, the rights and obligations pertaining to the land passed to or have been assumed by the Crown. In the

first case, then existing lines of occupation were recognised, and in respect of later annexations the people were assured of full protection in the enjoyment of their rights in the land without, in most instances, any formal act of reservation or insistence upon any special conditions other than fealty to the Crown. In the other case of allied tribes under Government rule being located on conquered territory, the land was sub-divided into locations and reserves and set apart for the use of the tribe either by Proclamation (as, for example, the Herschel Reserve), or by title (as in Fingoland), or without such formal reservation (*e.g.*, the Ox Kraal and Kamastone Locations), subject always to the express or implied condition of forfeiture for rebellion.

82. The initial step of importance in the administration of land matters has been the registration of occupiers for hut or, as it might properly be called, land tax purposes. Thereafter, the sub-division of the whole tribal area into locations has been effected, boundaries being at first widely fixed, and subsequently demarcated according as circumstances permitted.
83. In this process the tribal influence of the Chief has been kept under control and, according to his character, utilised. The power of allotting lands has been vested in the Governor, but in general has continued to be exercised by the Headmen subject to the decision of Magistrates in cases of dispute.
84. The system of individual tenure introduced first at the Kat River Settlement, and subsequently followed until modified by the Glen Grey Act, was to divide each location into a sufficient number of arable and residential allotments to enable grants under title being made to Native occupiers, the remaining extent being reserved for the use of registered holders of allotments as commonage under the management of a local body elected by them and acting under regulations approved by the Government. This system the Legislature definitely approved by the provisions of Act No. 40 of 1879, and it is well to note that, throughout, a measure of protection has been and is still afforded by the condition of title deed requiring the consent of the Government to any transfer of a grant, the Government being thus enabled to carry out the principle of one man one lot, the arable allotment and building lot being regarded as one, and the better to secure enjoyment of the rights of occupation by the people for whom the land was reserved.
85. The desire of the Government to promote the moral and material interests of the Natives by commutation of tenure led to the introduction of the measure in some of the earlier instances—notably those of the locations in the Peddie Division and in Gcalekaland—in parts where the people were not prepared for it; the surveys thus proving abortive. On the whole, however, the evidence shows that the system has been successful and is undoubtedly appreciated, but two important drawbacks are noticeable. First, in the large number of cases the building lots, which were laid out for the most part without regard to the then existing lines of occupation or mode of life, have never been taken up. The survey contemplated the establishment of villages, involving changes which, apart from other considerations that raise doubts as to the desirability of the

system in this respect, the people were insufficiently advanced to accept. Second, in the absence of provision for some simple means of effecting or insisting upon the necessary transfer when property has changed hands by death of the registered holder or otherwise, many of the titles to allotments remain in the names of the original holders, and in some cases the cost to the rightful owners of putting through consecutive deferred transfers, as compared with the value of the land, is so disproportionate as to be prohibitive. Moreover, there is a serious difficulty affecting transfer, arising out of the peculiar condition of the law in respect of Native succession, to which reference is made elsewhere.

86. These objections or difficulties have been met or remedied under the system provided for in the Glen Grey Act, No. 25 of 1894. This Act lays down in broad detail the basis upon which change of tenure should be carried out in Native areas. Districts occupied by Natives to which the Act is applied are divided into locations for local government purposes. Lists of the persons in occupation of and claiming allotments are framed by an officer appointed for the purpose, who, in company with a surveyor, undertakes a complete inspection, during which a preliminary survey is made, the number and size of allotments and the position of the grazing or commonage land roughly determined as far as practicable according to existing lines of occupation, and any re-arrangement of arable lands deemed advisable tentatively settled in the presence of the parties concerned. The impartial investigation, adjustment and settlement of disputes and difficulties preceding detailed survey have gone far, not only to remove prejudice and misapprehension from the minds of the Natives, but also to facilitate subsequent work. Upon completion of the preliminary work the detailed survey is taken in hand under the guidance of the surveyor and in consultation with the Magistrate employed during the inspection, and notice is issued for the initial payment of survey expenses and cost of title, averaging about £3 10s., which is in the first instance advanced by the Government. Half the amount is repayable in the first year and the balance in four equal annual instalments.

87. The broad principles recognised in this form of tenure may be summarised as follows :—

- (1) The grant is subject to the payment of perpetual quitrent at the rate of 15s. per five-morgen allotment, which is the average, and 3s. for every additional morgen, and survey expenses including cost of title.
- (2) It is inalienable without the Governor's consent.
- (3) It is hereditary according to the law of primogeniture as observed by the Natives themselves, powers of disinheritance for good cause and after due enquiry being conceded.
- (4) Transfer upon approval of the Governor or according to the table of succession is effected by simple endorsement of the Resident Magistrate upon payment of a registration fee of 2s. 6d.
- (5) It cannot be sub-divided or sub-let.

- (6) Rights of way and rights of expropriation for public purposes are reserved, mineral rights being subject to the provisions of the Mineral Law of the Colony.
- (7) It is liable to forfeiture for non-fulfilment of conditions, particularly for :—
 - (a) Rebellion.
 - (b) Conviction of theft.
 - (c) Non-beneficial occupation.
 - (d) Non-payment of outstanding instalments of survey expenses or quitrent, after summary process of distraint.
- (8) The value of the land cannot be counted for the purpose of qualifying for the franchise.

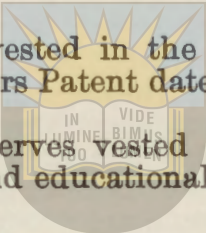
88. In the Glen Grey district the land is liable to execution for debt, but not in the districts of Fingoland, where a similar system of sub-division has been applied. Grazing and water rights are subject to regulation by a local body under Government control. At the outset no building sites are surveyed, although provision is made for such grants, upon the holder of an allotment erecting, or giving proof of his intention to erect, a substantial building. From the fact that few applications have been made for title to such sites it can be concluded that the people are not prepared for this part of the measure, their mode of life being unsuited to the conditions belonging to village centres.

89. In a number of instances, in arranging for re-settlement of lands vacated as the result of wars, recognition of good services rendered by loyal Natives has been given in the form of individual grants, notably in the old Tambookie Location (Glen Grey), in Emigrant Tembuland (Xalanga), the Tsolo district, and the King William's Town Division. In each of such cases the right to transfer has been reserved, and forfeiture for rebellion provided for, but in other respects the conditions of such special grants do not differ materially from those of ordinary titles. Encouragement has also been given in the direction of conversion of tenure by the law (Act No. 16 of 1899) providing for individual grants to Chiefs under conditions based on Act No. 25 of 1894.

90. Outside tribal areas there has not been, nor is there at present, any bar to the acquisition of landed property by Natives. In the European district of Elliot, in Tembuland, certain farms were sold to Europeans with the special condition that transfer should not take place without the sanction of the Governor. The reservation has been used in some cases to bar purchase by Natives, but has not been stringently maintained, and similar protection in another part of the same district in favour of Native holders has also been set aside. The occupation of private property by Natives who are not the owners of such properties or lessees paying annual rent of a certain value under a *bona fide* written lease (£36 for a sole lessee, £48 for two joint lessees, and £12 for each

additional lessee) or who are not in the *bona fide* and continuous employment of owners is discouraged. Such occupation of private property by Natives constitutes a private location, for the establishment of which a licence is required by law, which is issued only upon the authority of the Governor and with the consent of the Divisional Council. Licence fees amounting to £1 per annum for each male adult, as well as hut tax of 10s. per hut, are payable by the owner of the land. Exemption from licence fees can be granted by the local Inspector in respect of labour tenants. This exemption having been obtained there is no control or supervision or record kept of the terms and conditions of the contract which is left entirely to private arrangement between the landlord and tenant. The law (Act No. 30 of 1899) does not operate within municipalities, although municipal bodies are empowered by the Act to apply its provisions by regulations.

91. In NATAL, Natives occupy land as follows :—

- 
- (a) Locations vested in the Natal Native Trust constituted under Letters Patent dated the 27th day of April, 1864.
- (b) Mission reserves vested in the Natal Native Trust for religious and educational purposes.
- (c) Crown lands.
- (d) Private lands.
- (e) Special trusts created for European immigration not yet so utilised, and for educational purposes.

92. The greater portion of the land in the Province of Zululand is vested in the Crown and is occupied by the Natives communally. A Commission has recently been appointed to make recommendations with regard to the disposal of this land.

93. There are 42 locations set apart for Natives in Natal proper, comprising approximately 1,044,080 morgen (= 2,192,568 acres) of ground.* The population on these locations is set down at 227,708 Natives, giving an average of $4\frac{1}{2}$ morgen (= $9\frac{1}{2}$ acres) per Native.

94. These location lands are vested in the Natal Native Trust. The Governor and Executive Council of the Colony are the trustees. Under the provisions of the Letters Patent constituting the Natal Native Trust, the trustees are empowered to take and hold lands within the Colony of Natal, or any interest in such lands, and they may grant, sell, lease, or otherwise dispose of the lands as they shall deem fit for the support, advantage, or well-being of the Natives referred to in the Letters Patent, or for purposes connected therewith.

95. The locations were vested in the Natal Native Trust, as constituted under the Letters Patent aforesaid, for purposes connected

with the support, advantage, or well-being of the inhabitants of the Colony of Natal of African descent, called "Natives." In respect of certain of the locations in Alfred County, the trust has been modified to one for certain specified persons.

96. Under authority of an Act recently passed, the Natal Native Trust has mortgaged location lands for the purpose of raising money to construct irrigation works for the benefit of the Natives residing thereon.
97. There are two locations, named respectively Mnini and Putili, which are vested in special trustees named in the deeds of trust.
98. Location lands and Mission reserves are occupied communally by the Natives residing thereon. Seventeen blocks of land, comprising 127,211 acres, have been granted or set apart as Mission reserves, 4,078 acres of which have been granted to Natives in freehold with permission to dispose of or alienate the same with the approbation of the Government. The Supreme Court in 1891 held in respect of this protective restriction on transfer that the holder of such land could pass a transfer in the ordinary way without approval by Government.
99. The grants of Mission reserves were always to trustees, of whom the Secretary for Native Affairs was one and the others were persons connected with Missionary bodies. In some cases there was only one other trustee. The Secretary for Native Affairs ceased to be a trustee in 1895. Act No. 49 of 1903 constituted the Natal Native Trust sole trustee for these grants, but the terms of the trust remained the same.
100. The following, among other conditions in the deed of grant, may be specially mentioned :—

“ Any trust for Natives with intent and object that the said
 “ lands may be occupied and inhabited by Natives in
 “ order that the Missionary body referred to in the deed
 “ might have a fixed population to labour among as
 “ Missionaries without let or hindrance upon certain
 “ conditions imposed, set forth and declared.”
101. Another condition was as follows :—

“ It shall be lawful for the trustees to demand and receive
 “ such rents as they may determine upon and as the
 “ Natives who may hereafter wish to live on the said
 “ land shall agree to pay, and to demand and receive
 “ compensation in money by way of licences or otherwise,
 “ for the cutting and removing of wood and trees, and
 “ for the taking or removing of minerals or other
 “ natural products of, upon, or from the land, whose sale
 “ or removal would not be injurious to the Natives law-
 “ fully occupying the land: Provided, however, that after
 “ defraying the expenses of carrying out the trust, and
 “ after the improvements and ameliorations before men-
 “ tioned, should any be necessary, on the lands which pro-

“ duce the money, have been completed, the trustees are
“ empowered, with the consent of the Lieutenant-
“ Governor for the time being, to expend such moneys in
“ ameliorating the condition of the reserves or in the
“ building and maintenance of schools on such reserves.”

102. It is also stated in the grants that the Governor may at any time upon application from the trustees, transfer to any of the Natives resident on the land such portion or portions thereof as to him may seem fit, provided that the purchase money of the lands so transferred shall be used for the improvement of the land or the construction of roads, the erection of houses thereon, or such other purposes as to the trustees may seem fit and proper.
103. In 1903, Act No. 49, to make provision for the control and use of Mission reserves, was passed. Under Section 15 of that Act, regulations have been framed by the Governor in Council and have been put into operation. An annual rent of £3 per hut on these reserves is payable.
104. The latest returns from Natal show that the Natives possess 67,957 acres of ground in freehold and 33,515 acres in quitrent, while 215,516 acres of Crown lands have been sold to Natives under long terms of payment. A large number of Native owners of land have become possessed thereof by purchase from the Government of the Colony by payments extending over at first ten and later twenty years, on terms and conditions similar to those applying to European purchasers. In some instances individual Natives have purchased farms, and in many cases purchases have been made by syndicates or companies of Natives. On these farms are to be found Native tenants paying rent to the proprietors.
105. Act No. 7 of 1895 enables Natives to dispose of immovable property by will, and regulates the devolution of such property in cases of intestacy in accordance with Native law. Under subsection B of section 6 of the Courts Act of 1898, cases involving questions of ownership of immovable property, or questions of title thereto, or rights therein, are excluded from the jurisdiction of the Native High Court.
106. There are in Natal more Natives living on private lands than on the locations and Mission reserves combined. The figures show 421,080 Natives on private farms and 265,603 Natives on locations and Mission reserves. Natives on private farms pay annual rents varying from £1 to £5, and in some cases more. A large number render service in lieu of rent. They pay to the Government in addition a hut tax of 14s. per hut per annum.
107. A great number of Natives live on lands owned by absentee landlords, for which they pay rent.
108. Law No. 2 of 1855 was enacted by the Natal Legislature to prevent the unlicensed squatting of Natives on Crown lands or private farms, and to ensure the annual rendering to Government of accurate returns of such squatters and their families. This law, however, has become a dead letter ; in fact, it is not clear that it

was ever enforced. Several sections of Law No. 15 of 1871 deal with labour tenants on private land. These may also be said not to have been fully complied with.

109. Crown lands in Natal are occupied by Natives who are subject to certain conditions of occupation and have now to pay £2 per hut per annum in addition to hut tax. The payment of rent by Natives occupying Crown lands has not been extended to the Province of Zululand, on the ground that the land question in that Province is still the subject of consideration.

110. Natives residing on special trust lands (class (e) above) do so under conditions as to rent and occupancy imposed by the trustees from time to time.

111. In certain townships in Zululand, and in the case of certain lands in Natal vested for European immigration purposes, it is not permissible to sell land to Natives.

112. In the ORANGE RIVER COLONY, Natives occupy land as follows :—



- (a) In locations or reserves set apart for Native occupation.
- (b) As servants in continuous employment of land-owners.
- (c) As squatters and as labour tenants periodically employed.
- (d) As owners of farms.
- (e) In urban locations.

113. There are two locations (class (a)) in this Colony, viz. :—

- (1) At Witzies Hoek. In 1867, Paulus Mopedi, a Mosuto Chief, desired to become a subject of the Orange Free State, and the land known as Witzies Hoek was assigned for his occupation.
- (2) At Thaba 'Nchu, where certain farms have been used as Barolong locations since the annexation of that territory by the Free State Government in 1884.

114. On these locations there are 17,000 Natives, who occupy the lands tribally.

115. Under Law No. 4 of 1893 the number of Native squatters permitted on any farm or registered portion of a farm is limited to five families, which number may by special permission be increased to not more than fifteen families. There are 195,494 Natives living on private farms.

116. Under the articles of chapter XXXIV. O.R.C. Law Book (see part I., sections 1, 2, 3 and 6) Natives may not purchase or lease land, but the articles of part II. of this chapter make special provision in respect of Natives who own ground in the Thaba 'Nchu

district. In this district there are 87,761 morgen (= 184,298 acres) of ground, in fifty-one lots, owned by Natives, whose rights thereto were guaranteed under the Proclamation annexing the late Barolong territory.

117. In the TRANSVAAL, Natives occupy land as follows :—

- (a) In locations or reserves set apart for Native occupation.
- (b) On land owned by Natives.
- (c) On other private lands.
- (d) On Crown lands.
- (e) In urban locations.

118. There are in the Transvaal approximately 2,120 square miles (646,095 morgen = 1,356,800 acres) of ground set aside as Government locations for occupation of Natives in communal tenure, carrying a population of 123,309. On these locations the garden lots are apportioned by the Native Chiefs, and the people enjoy common rights in regard to water, wood and grazing. No payments are made to Government as rent in return for the use of these lands.

119. Section 22 of the Pretoria Convention of 1881 provided that :—

“The Native Location Commission will reserve to the Native tribes of the State such locations as they may be fairly and equitably entitled to, due regard being had to the actual occupation of such tribes. The Native Location Commission will clearly define the boundaries of such locations, and for that purpose will, in every instance, first of all ascertain the wishes of the parties interested in such land. In case land already granted in individual titles shall be required for the purpose of any location, the owners will receive such compensation, either in other land or in money, as the Volksraad shall determine. After the boundaries of any location have been fixed, no fresh grant of land within such location will be made, nor will the boundaries be altered without the consent of the Location Commission. No fresh grants of land will be made in the districts of Waterberg, Zoutpansberg and Lydenburg until the locations in the said districts respectively shall have been defined by the said Commission.”

120. Section 21 of the Convention laid down the constitution of the Commission, but the late Transvaal Government found it more practicable to appoint local Commissions to deal with Native locations. These local Commissions had not completed their labours at the time of the outbreak of the war in 1899, but had been instrumental in bringing about the setting apart of land for several tribes. Since the British occupation the work of these Commissions has been resumed.

121. There are 853 square miles (259,962 morgen = 545,920 acres) of ground privately owned by Natives, almost all of which has been purchased by tribal subscription, and is occupied communally by tribes or portions of tribes.
122. Section 13 of the Pretoria Convention of 1881 provided that:—
“Natives will be allowed to acquire land, but the grant or
“ transfer of such land will in every case be made to and
“ registered in the name of the Native Location Com-
“ mission, hereinafter mentioned, in trust for such
“ Natives.”
123. The late Transvaal Government subsequently appointed the Superintendent of Natives to take the place of the Location Commission as trustee in respect of all Native lands so acquired. The Commissioner for Native Affairs is now the trustee. In many cases land purchased by Natives was registered in the names of unofficial Europeans and Missionaries as trustees.
124. On occupied and unoccupied lands owned by Europeans and companies there is estimated to be living about one-half of the Native domiciled population, approximately 438,000. Under the provisions of the Squatters' Law, No. 21 of 1895, the number of Natives allowed in respect of every farm or divided portion of a farm is five families. This number may, however, be increased on any farm by special permission from Government.
125. This law has not been enforced throughout the whole of the Colony, and is practically now a dead letter. On many farms throughout the Colony, especially in the Zoutpansberg, Lydenburg, Waterberg, and Middelburg districts, there are large numbers of Natives congregated, forming unauthorised locations on private farms.
126. The Natives living on these private farms pay to the owners thereof an annual rental in labour or money varying in amount, the minimum being £1 per inhabited hut per annum.
127. The Crown lands comprise an area of 30,840 square miles (9,398,857 morgen = 19,737,600 acres) upon portions of which it is estimated there are living 180,427 Natives. Every adult cultivator on Crown lands is liable to pay to the Government, as landlord, an annual rental of £1. He also pays poll tax. As with those on private farms, Natives on Crown lands have free water and grazing rights, and have not in the past been restricted as to the extent of garden lands they cultivate.
128. In SOUTHERN RHODESIA, Natives occupy land as follows:—
(a) In reserves set apart for the Native population.
(b) On unalienated lands belonging to the Chartered Company.

(c) In locations on private lands by tenancy agreement under the provisions of Proclamation of 14th October, 1896.

(d) On private farms without agreement.

129. The land set apart for Native reserves comprises an area of 38,871 square miles (11,846,400 morgen = 24,877,440 acres).

130. All garden plots in these reserves are allotted by the Native Chiefs ; water, wood and grazing rights being enjoyed in common.

131. The Natives on the reserves (class (a)) pay poll tax, but no rent. All mineral rights are retained by the British South Africa Company. The Natives are in no way restricted as to the amount of land they may cultivate.

132. There are a large number of Natives living on unreserved and unalienated lands. These occupy their lands on the same conditions as those on reserves, with this exception, that they are liable to be removed to reserves without compensation, or to be charged rent. At present they are not called upon to pay any rent.

133. There are 416,121 Natives living on land described under the foregoing headings (a) and (b) viz., 264,618 and 151,503 respectively.

134. There are 62,727 Natives living on private locations established on farms under Proclamation of 14th October, 1896, which provides for such locations, of not less than seven heads of families each, with a view to the production of grain and other crops. Once located on the land, such Natives cannot be removed against their will for a period of two years unless with the consent of the Chief Native Commissioner. The landlord can, subject to the approval of the Chief Native Commissioner, enter into agreements, which must be made in writing, with such Natives as are desirous of working on his property, for any period not exceeding one year. He is, however, not allowed to enter into agreements with Natives whose residence at their own homes is, in the opinion of the Chief Native Commissioner, necessary for the cultivation of their lands and the protection of their crops. The Chief Native Commissioner determines the amount of arable land to be allotted to each head of a family. The landlord is forbidden to enforce compulsory labour upon his Native tenants, nor can he call upon them for payment under agreement until after the expiration of the first year of their tenancy, the amount of rent to be approved by the Chief Native Commissioner, or, failing any agreement, to be fixed by that officer. The usual rent is £1 per hut per annum in money or labour.

135. Rent is not recoverable by the land-owner from Natives living on private lands who are not brought under the provisions of the Private Location Proclamation.

136. As rewards for services rendered to the British South Africa Company during the Matabele War of 1893, about 80 one-hundred-acre plots of ground were granted to Natives, Cape Boys

and Indians. Of these, only two appear to have been granted to aboriginal Natives, and these, together with the majority of the others, are no longer held by the original grantees but have passed into the hands of Europeans.

137. It is interesting to note that near Bulawayo a settlement of Fingo families from the Transkeian Territories has been effected on lines similar to those provided in the Glen Grey Act. Arable allotments with suitable commonage have been provided, and each head of a family was promised title to his ten-acre lot on compliance more particularly with a condition that at least three months in each year he should be in service as a labourer; title to be claimable on completion of three full years' service, or on the production of a certificate that he has worked 36 months. In default of this service, the holder is liable to pay a sum of £3 annually, in addition to the poll tax for which every adult male Native in the country is liable. The settlement has proved successful, and, although occupation began only in the year 1894, there are already many qualified applicants for title. The people are contented, and are doing well.

138. They number 1,291, including women and children. More would have been ready to join them from the Cape Colony as well as the Transkeian Territories, but the Rhodesian Government has not seen its way to extend the system.

139. All Natives in Rhodesia pay the annual poll tax of £1 per male adult.

140. In BASUTOLAND, all land is occupied by the Natives under tribal tenure, the allotment of arable plots resting with the Native Chiefs, grazing being in common. No purchase of land within this territory is permitted.

141. The area of Basutoland is 10,293 square miles (3,136,914 morgen = 6,587,520 acres), containing a Native population of 347,731.

142. In the BECHUANALAND PROTECTORATE, Natives occupy land communally. Large reserves totalling 127,630 square miles (38,896,762 morgen = 81,683,200 acres) are set apart for the Native population of 119,411 souls, 100,100 of whom reside on these reserves. The area of these reserves would appear to be excessive, but much of it is waterless and unproductive.

(A) Communal Occupation.

143. It will be seen that in all the Colonies and Possessions tracts of land have been recognised, set aside and reserved to Natives for communal occupation.* History and tradition bear eloquent testimony to the fact that this form of tenure was admirably suited to the needs and habits of the aboriginal races; indeed it was originally the only possible form. It constituted a portion of the great tribal system under which the land was administered by the Chief and his Councillors for the people.
144. The Native population as a whole instinctively cling to and cherish the communal system. But there is an increasing number who fret under the conditions of communal life, seeking alike for the opportunity to gain independence and assert individualism. Education and contact with civilisation seem to augment the number. There is an apparent yearning amongst many who have progressed which requires satisfaction. The aspiration is healthy and trends in the right direction.
145. There arrives a time when it becomes necessary to consider whether a system has served its purpose and prepared the way for change, and, if so, what that change should be. To unduly perpetuate that which hinders a lower race from advancing, if it shows the desire and capacity to do so, is neither intelligent nor right.
146. The question then is: Are progressive tendencies manifested among the Natives of South Africa which require State recognition in the matter of re-adjusting the form of land tenure? In reply to this question the Commission has no hesitation in recording the conviction, derived both from overwhelming evidence and personal impressions, that progressive tendencies are manifested and that it is essential to provide for a change capable of extension according as local circumstances may warrant.
147. The Commission accordingly passed the following resolution:—
- Recognising the attachment of the Natives to and the present advantages of their own communal or tribal system of land tenure, the Commission does not advise any general compulsory measure of sub-division and individual holding of the lands now set apart for their occupation; but recommends that movement in that direction be encouraged, and that, where the Natives exhibit in sufficient numbers a desire to secure and a capacity to hold and enjoy individual rights to arable plots and residential sites on such lands, provision should be made accordingly under well-defined conditions.
148. The Natal representatives, while concurring in this resolution, do so, as regards Natal, only so far as it affects lands in that Colony at present set apart or dedicated for Natives as locations, reserves, or otherwise, where individual

* Annexure 8 and maps attached.

tenure is contemplated in the grant or deed of trust. With this exception they exempt from the resolution Natal Native Trust lands, and give the following reasons :—

- (a) They were in a major part vested in trust for the benefit of the Natives generally in the Colony proper, and not solely for Natives residing on them.
- (b) They are incapable of and generally unsuitable for a minute division.
- (c) The location regulations at present in force make adequate provision for marking off, when necessary, lots coinciding with actual occupation.
- (d) Sufficient permanency and security of occupation consistent with necessary political control are assured.

(B) Individual Tenure.

149. For many years the question of individual tenure of land by Natives has engaged the attention of the older Colonies of the Cape and Natal. In the Cape Colony experiments of a definite nature have been tried.
150. It has been held, as it is largely held to-day, that individualism is ultimately conducive to greater industry, enterprise and production, although it must be said that our limited experience of the system among the Natives up to the present has not in all cases furnished proof of this; that it disintegrates tribalism, checks retrogression, and promotes progressive growth in a healthy manner; further, that a higher sense of responsibility is created, whereby those in occupation of holdings must realise that they have much to lose by misbehaviour.
151. At various times and for various reasons during the latter half of the past century attempts have been made to settle Natives under allotment schemes. Among such reasons have been, to erect in certain areas screens between civilisation and barbarism; to reward public services rendered; to encourage deserving progressive people; or, to provide against overcrowding. Whatever reasons were predominant, the prospect has been clearly seen that at no distant date many existing locations where land is held under communal tenure will become congested; the land will be occupied in insignificant lots, and thereby eventually fail in economic productiveness.
152. It is not material to describe the various settlements or to dwell on the comparative merits of each. It is sufficient to say that the Glen Grey Act of the Cape Colony is the latest effort in pursuance of a policy well established there capable of application in due time to the Native races as a whole.
153. The design of that Act was to provide against congested areas, to limit holdings to a useful working size, to offer inducements to enterprise, to stimulate labour, and to give security to those who adopted the scheme.

154. The Commission has subjected the Act, its amendments and Parliamentary Reports thereupon to a critical examination, and has had the further advantage of studying on the spot the manner of working.
155. If in actual administration the local results hoped for have not been fully achieved, it must be borne in mind that difficulties will always arise in the carrying out of a measure new to the people and involving such great changes. Certain amendments in the Act have been recommended after an enquiry by a Select Committee of the Cape House of Assembly. These, if finally adopted, should go far to meet the objections felt and raised by the Natives against an Act designed to secure their occupation of the land and grant them a considerable voice in the management of their local affairs. In these remarks, however, the Commission does not thereby commit itself as a whole to approval of all the recommendations of the Committee mentioned. It may be added that no sustained effort was made to enforce the labour clause of the Act, which soon became in fact a dead letter.
156. The following recommendations of the Commission have relation to the conditions under which individual tenure should be granted in respect of location and reserve land now held by Natives under the communal system.
157. The right of permanent occupation should be assured subject to the following principal reservations :—
- (1) Liability to forfeiture on account of :—
 - (a) Conviction for rebellion, treason or sedition.
 - (b) Failure to beneficially occupy.
 - (c) Failure to punctually pay such rent or tax as may attach to the land.
 - (d) Second conviction for stock theft.
 - (2) The right of resumption of the whole or any portion of the lands for public purposes, subject to due compensation in land or otherwise.
 - (3) All rights to minerals and precious stones.
 - (4) The payment of an annual rent.
158. Some explanation is necessary as regards a portion of these reservations.
159. In respect to the liability for forfeiture on account of second conviction for stock theft, it must be remembered that the Cape Colony Government, when incorporating as it did a provision of this character in the Glen Grey Act, was animated by powerful reasons which appeal to the whole of South Africa. Stock thieving is the besetting sin of the aboriginal Natives, and against this, strong remedies are found requisite in every Colony. It is imperative to

attach severe penalties for stock thieving to lands under individual tenure, otherwise they might become harbours for criminals who, more than any other, tend by such propensities to embitter relations with the European community. It was suggested that there should be liability to forfeiture for the crime of malicious killing of stock prevalent in some parts of the country, but the majority of the Commission regarded this as a local feature, which would be best dealt with by the Legislature concerned.

160. The right of resumption by the State may appear to be subversive of the security it is desired to give, but no violation of the principle is intended. It may be that in the course of development of any Colony, it might become of absolute importance to command the use of particular areas for public purposes. In such circumstances there is warrant for expropriation, subject to the payment of due compensation in land or otherwise.

161. The question of taxation will be dealt with in another section, but it is pertinent here to offer an explanation of reservation (4), expressed in the words "The payment of an annual rent." The fixing of rent should be governed by a variety of considerations, and in general be determined by :—

- (a) Amount and quality of land
- (b) Water.
- (c) Proximity to markets, and other local conditions.

162. The reservations to be made in the granting of individual tenure having been stated, it remains to indicate what general conditions should, in the opinion of the Commission, be included :—

(1) The limitation of the area of each holding to be determined by :—

- (a) Present occupation.
- (b) Quality of land.
- (c) In the absence of special circumstances the limit to be approximately four morgen (= 8·4 acres).

(2) Mortgaging or pledging to be prohibited and invalid.

(3) Alienation or transfer not to be allowed without the sanction of Government.

(4) Succession to be to the lawful heir, subject to :—

- (a) The right of widows to use and occupy until re-marriage or death.
- (b) The heir who already occupies a holding electing to abandon that holding.

(5) The setting apart of a commonage.

- (6) The holdings and commonage to be subject to all such duties and regulations as may be established with regard thereto.
- (7) The occupier's interest not to be liable to attachment in execution.

163. In pointing out the lines upon which the granting of individual tenure should be conducted, the Commission does not advocate the exercise of undue pressure for its acceptance. In Cape Colony the demand for it is gradual, whilst in certain localities it meets with opposition. In other parts of South Africa it may be a long time before the advantages of this change are realised by the Native people.

164. It may be stated here that objections not shared by the majority of the Commission were made to any Native becoming by purchase the owner or occupier of more than one lot, it being urged that the principle laid down in respect of succession should apply to purchase.

165. In the opinion of Col. Stanford, Mr. Sloley and Capt. Quayle Dickson, Natives in occupation of reserves which have descended to them from their forefathers or which for other good reasons have been set aside for their permanent use by any Government, have a just claim to a greater fixity of tenure than is implied in the occupation and conditions approved by the majority of the Commission, and more particularly so in respect of those tribes which by voluntary submission to our government have been received into its protection upon the understanding that save for rebellion their land should not be taken from them. They are in favour of the principle embodied in the Glen Grey Act by which perpetual quitrent title is granted to each individual holder of land upon the sub-division of any location or reserve. Less than this would not, in their opinion, afford an adequate sense of security to Natives whose advance in civilised ideas is indicated by their readiness to abandon their long-cherished tribal system of occupation of land; nor do they think it would be a just recognition of existing rights.

166. Messrs. Krogh, Hamilton, de la Harpe and Thompson voted for the following sentence after paragraph 161 :—

“ There is an underlying first principle of business which the Natives must
 “ and should learn to realise as they advance, viz., that, if they are to
 “ enjoy the assurance of their land and the benefits they seek under
 “ individual tenure, they must pay rents as Europeans do, based upon
 “ producing value.”

(C) Squatting.

167. The term “squatter” includes Natives residing on Crown lands not formally set apart for Native occupation and whose settlement thereon is regarded as not entitled to the recognition accorded those who have permanently allotted locations, and Natives on private property who are not labour tenants nor in the continuous service of the owner or occupier of such property.

68. As these Crown lands are disposed of the Natives in occupation are left to make the best terms they can with the owners, and are generally permitted to remain upon condition of paying rent, furnishing labour, or both, as the case may be. No doubt it has been found profitable by land speculators to purchase Crown or other land and let it to Native tenants at high rates. Such occupation is pernicious to both races, encouraging the far-reaching evil of absentee landlordism on the one side and on the other barring the progress of the Native by insecurity of tenure. Other objections are, that the system restricts the supply of labour; that it fills up with Natives much land which would otherwise be better utilised and developed, and that it leads to the absence of due control over them.
69. To meet these evils each of the South African Colonies has enacted laws to restrict and regulate squatting. The most successful legislation to this end has up to the present been that of the Cape Colony by its Location Act (No. 30 of 1899), the principles of which are embodied in the recommendations of the Commission.
70. The general tendency of South African legislation is in the direction of limiting European owners or lessees to a certain number of Native families, three to five, on any one farm, irrespective of its size and requirements. On the other hand, the Cape Colony bases its limit on the working requirements only. In excess of this limit no Native is allowed to live on private property in the Cape Colony unless the place is licensed as a private location. By such limitations it was expected, with other advantages, to secure that labour would be more evenly distributed amongst the farmers. In some Colonies squatting is tolerated in spite of restrictive enactments, as the rents derived are a fruitful source of income to a large number of owners.
71. Whatever the influences at work, however, the fact remains that many Natives are now established on the land in an irregular manner. Two alternatives are open, viz. :—
- (1) To remove them.
 - (2) To regulate their occupation.
72. In dealing with this difficult problem the Commission has been much hampered by the want of reliable statistics relating to these people. Cape Colony and Southern Rhodesia are in a position to state with accuracy the number of authorised private locations and the people comprised therein. In addition, the Cape Colony has a record of their stock.
73. Although reliable figures are not available, the Commission is satisfied that in some of the Colonies, and more particularly in Southern Rhodesia, the Transvaal and Natal, a large number of Natives are squatting on Crown or private lands.

174. It is obvious that to summarily eject this population is calculated to cause discontent and serious distress. In advising the direction that legislative action should take, the Commission recognises :—
- (a) That in Southern Rhodesia special conditions, obtaining as a result of the last Matabele and Mashona rising, have led to the large locations now found on private farms.
 - (b) That in the Transvaal the Natives on Crown lands have not yet had the full benefit of the investigations and recommendations of the Commission intended by the late Government to enquire into their claims.
 - (c) That in Natal the process of disposal of the Crown lands is proceeding slowly, as much of the land is still occupied by Natives, and is more suited for Native than for European occupation.
175. Removal can only be gradual after the most careful consideration and under circumstances which will enable the Native to find work and to live elsewhere. What appears immediately desirable and practicable is to regulate such occupation as a policy on clearly-defined lines.
176. In recommending such a policy attention may be drawn to the Cape Colony system, which admits of private locations upon certain governing conditions.
177. Before dealing with the conditions under which such locations should be permitted, it is necessary to define certain terms as a working basis.
178. "PRIVATE LOCATION" to mean any number of huts or other dwellings on private property occupied by one or more Native male adults, such occupants not being in the *bona fide* and continuous employment of the owner or occupier of such land in or about the farming operations, trade, business or handicraft by him carried on upon such land.
179. "PROPRIETOR OF LOCATION" to mean the owner of any private property on which a private location is established, or the occupier, or representative in the district of any absentee owner or occupier of such property.
180. "LABOUR TENANTS" to mean any male adult in a private location who is *bona fide* required, but not continuously employed, by the proprietor of such location for the due working of his property in or about the farming operations, trade, business or handicraft by him carried on upon such property.
181. The Commission, after consideration of this question, resolved as follows :—
- (1) That the unrestrained squatting of Natives on private farms, whether as tenants or otherwise, is an evil and against the best interests of the country.

(2) That no Native other than *bona fide* servants of the owner or occupier, with their families, should be permitted to live on private lands, except under Government sanction and control, and, further, that such sanction should only be given on proof that it is necessary or desirable, and, save in the case of labour tenants, should be subject to an adequate annual licence to be paid by the owner or occupier of the land. The word "families" does not include adult sons unless they themselves are *bona fide* servants.

(3) That the main principles contained in the resolutions relating to locations on private property should be applied to Natives on Crown lands other than those duly set apart as Native reserves or locations, and that sanction for Native occupation on such Crown lands should not be given unless an adequate rent is charged to the Native occupier, based upon the producing value of the land.

(4) That contracts of tenancy exceeding one year should be in writing and duly attested.

(5) That, so far as may be practicable, lands held by municipalities or other public bodies or societies which are occupied by Natives should be subject to regulations similar to those applicable to private or Crown lands, as already recommended by this Commission.

182. In connection with the foregoing resolution the majority of the Commission does not recommend that any Government Department should be regarded as liable for payment of an annual licence in respect of Natives occupying Crown lands.

183. In the matter of contracts of tenancy it is important that the terms should be clear and be understood by the Natives. There is evidence that labour is at times unreasonably tied up under these contracts. Often enough it is alleged that Natives, if they become tenants, are not allowed to leave the farm in order to labour elsewhere temporarily, although their services are not at the time required by the farmer. Thus, not only does the country lose the benefit of a good deal of available labour, but many Natives industriously inclined are barred by servitude from the earning of wages for the betterment of their condition and the payment of their taxes. The reason for recommending written contracts duly attested is to secure so far as possible that both parties to any such contracts fully understand the terms and conditions thereof.

(D) Purchase and Leasing.

184. The conditions and restrictions which regulate the purchase of land by Natives vary considerably.

185. Briefly summarised, they are as follows :—

In the Cape and Rhodesia, and in Natal—with the exception referred to on page 21 (paragraph 111)—land, except that reserved for Natives only, may be held in freehold or upon lease, without distinction of race.

In the Orange River Colony, land may not be purchased or leased by Natives.

In the Transvaal, as provided in the Convention between the British Government and the late Republic, they may acquire land subject to its transfer on trust to an officer of the Government.

In Basutoland the land is inalienable.

In the Bechuanaland Protectorate, the land reserved to Natives is inalienable.

186. In discussing the subject, it must be remembered that throughout South Africa, as already shown, large areas have been set aside or recognised as available only for the occupation of Natives, and within those areas it is not permissible for Europeans to acquire holdings. Even under the Glen Grey system of the Cape Colony restrictions are imposed which in practice reserve the land exclusively for Natives.

187. In the Transkei and elsewhere in Native areas in Cape Colony a limited number of Europeans are permitted to occupy trading sites with the consent of the Government, and in the townships which are laid out round Magistracies Europeans may buy plots. In other Colonies and Possessions traders are similarly admitted, but they may not acquire any real right to the land they occupy.

188. We may, accordingly, approach the question of Natives purchasing land within spheres of European occupation with a consciousness of the special protection afforded them in respect of the lands reserved or set aside for their use.

189. Where the circumstances are exceptional, and the numerical disproportion between the races is so great as in South Africa, the question is : what effects are to be expected if Natives are allowed free traffic in land? No emphasis is required in stating that, wherever Europeans are living, repugnance is shown to the invasion of their neighbourhood by Natives for residential purposes. Farmers resent the intrusion amongst them of Native owners of land, and similarly Natives in their reserves are strongly opposed to surrendering any portion of the land they occupy to Europeans for farming purposes.

190. In urban areas the principle of the segregation of the races has already been recognised ; but in the case of the Cape Colony, Natal and Rhodesia this does not interfere with the right of the Natives to buy land, as already stated.

191. It is the fact that, say, 25 years ago there were comparatively few Native land-owners by purchase in the Cape Colony and Natal where to-day they exist in considerable numbers. The capacity to purchase, by collective process if necessary, is to-day in excess of what it formerly was. Furthermore, there is a manifest effort on the part of Natives to-day being made to possess land which is not counteracted by any reluctance on the part of European holders to dispose of it so long as the sellers are not themselves bound to live in proximity.
192. If this process goes on, while at the same time restrictions exclude Europeans from purchasing within Native areas, it is inevitable that at no very distant date the amount of land in Native occupation will be undesirably extended. Native wages and earnings are greater than they used to be, their wants are few, and their necessary expenses small. They will buy land at prices above its otherwise market value, as their habits and standard of living enable them to exist on land that it is impossible for Europeans to farm on a small scale. There will be many administrative and social difficulties created by the multiplication of a number of Native units scattered throughout a white population and owning the land of the country equally with them. Such a situation cannot fail to accentuate feelings of race prejudice and animosity, with unhappy results. It will be far more difficult to preserve the absolutely necessary political and social distinctions if the growth of a mixed rural population of land-owners is not discouraged.
193. The Commission has arrived almost unanimously at the conclusion that it is necessary to safeguard what is conceived to be the interests of the Europeans of this country, but that in doing so the door should not be entirely closed to deserving and progressive individuals among the Natives acquiring land, and has resolved as follows :—
- That certain restrictions upon the purchase of land by Natives are necessary, and recommends
- (1) That purchase by Natives should in future be limited to certain areas to be defined by legislative enactment.
 - (2) That purchase of land which may lead to tribal, communal or collective possession or occupation by Natives should not be permitted.
194. It should be explained here that the words "collective possession" are not to be considered to bar the joint ownership of a piece of land in the defined areas by a limited number of Natives, the object of the Commission, which is unanimous in this respect, being to prevent large numbers of Natives evading the spirit of the resolution by acquiring and holding land in undivided interests, and thereby, in effect, extending tribal or communal occupation.
195. The intention of the first resolution is twofold. It is a recommendation in the direction of limiting the purchase and leasing of land by Natives to areas within which the privilege

may be exercised by them without bringing them into conflict with European land-owners, and of the extension of this privilege by the creation of such areas in all Colonies and Possessions where this can be conveniently done.

196. It is recognised that in those Colonies where the acquisition of land by Natives has been hitherto unrestricted, vested rights have been set up. The above recommendations are, of course, made without prejudice to such rights.

197. The Commission further resolved :—

That whatever principles govern the settlement of the question of the purchase of land by Natives should apply equally to the leasing of land by Natives.

198. Col. Stanford dissented from the view of the majority on the question of restricting to certain areas only the right of the individual Native to purchase land. He holds that the acquisition by the more advanced Natives of vested individual interests in the land is a powerful incentive to loyalty, and that only in the event of its leading to the extension of the tribal system beyond the reserves or locations would the right of Native purchase be contrary to the best interests of both races. In his opinion sufficient cause has not been shown for the curtailment of privileges enjoyed for many years in the British Colonies. No depopulation of any area or district in respect of European occupiers has been proved; and he foresees that in the course of time, as the Natives in their locations advance in civilisation and receive full rights to individual holdings, the barriers now quite rightly placed in the way of their selling such holdings will be removed, and transactions in land proceed as freely in the reserves as is now the case elsewhere. Urban areas may be protected against undesirable Native occupation, as is done against the undesirable occupation of Europeans, by regulations.

The contention that the safety of the European races must be guarded by such restrictions as have been under discussion he does not hold to be sound. The Church, professions, commerce, trade, and labour are open to the ambition and energy of the Natives, and with so many avenues open to their advance the danger of their swamping the Europeans, if a real one, is not avoided by denying them the right individually to buy land.

He can see no decadence of the vigour, the enterprise and the courage which, since the occupation of the Cape Peninsula by the early Dutch settlers have resulted in the extension of European control and occupation to the limits now reached. Moreover, artificial restriction of the purchase of land, when attempted in the late Dutch Republics, resulted in the evasion of the law by various forms of contract whereby Native occupation of farms was effected, while at the same time advantage was taken of the opportunities thus afforded of fraudulent practices on the part of Europeans employed as agents or so-called trustees.

The proposed areas are not recommended for demarcation in existing reserves or locations. Therefore, in the older British Colonies and in the Orange River Colony, if demarcated at all, they must affect present European occupation. If, on the other hand, the design be to allow purchase by Natives in localities regarded as unsuitable for Europeans, sight is lost of the fact that usually the Native who desires to become a landed proprietor belongs to the civilised class and such localities offer to him no attraction.

Europeans are more and more entering upon occupation of land regarded as set aside for Natives. Missionaries, traders and others are permitted to establish themselves and carry on the duties or work of their respective callings. Townships spring up at the various seats of Magistracy, and Census returns clearly show that this influx is steadily increasing in volume. It is thus demonstrated that the idea of separate occupation of land by Natives, even in their own reserves, is not maintained at the present time, nor can it be in the future,

The Commission has no reliable data to go upon in making any comparison of the relative strength of these two streams: Europeans into Native reserves as owners of land or occupiers under Government sanction leading up to title, and, *vice versa*, Natives out of their reserves into surveyed parts as owners. From his own observation, so far as it goes, Col. Stanford's opinion is that the former is the greater.

199.

The representatives of the Colony of Natal dissent from the recommendation that the purchase of land by Natives should in future be limited to certain areas to be defined by legislative enactment, and they give the following reasons:—

- (1) That Natives in the Cape Colony, Natal and Rhodesia can, like all other persons, purchase and hold land in their own right at the present time, excepting in cases where Government or any other owner of land for special reasons may place a contrary condition on public or other lands when put up for sale.
- (2) That the resolution limits and restricts the sale of land by Europeans and races other than Natives.
- (3) That the resolution is in conflict with the spirit of other recommendations of the Commission, which have for their object the encouragement of individual tenure.
- (4) That Asiatics and other coloured races not of African descent may purchase land anywhere, whereas by this resolution the Natives, who are the aborigines of the country, will be excluded from this privilege except in limited areas selected, probably, for their unhealthiness and unsuitability for irrigation and cultivation and other kindred reasons.
- (5) That the resolution affects and limits the right of free trade possessed by every other subject of the British Empire, a right which is enjoyed by the Natives of South Africa in every other sphere of business.
- (6) That the resolution recommends a demarcation based practically on racial or colour lines unaccompanied by any other considerations such as the attainment by Natives of material and social progress, evolution and advancement from Native law, customs and usages, and polygamy, and the introduction of better modes of living and cultivation stimulated by the sense of security and proprietorship.

They are of opinion that the determining factors in the ownership of land by Natives should be:—

- (a) The degree of civilisation attained.
- × (b) Devolution and inheritance under the ordinary Colonial law applicable to Europeans, and not under Native law.
- (c) The abandonment of polygamy.

Subject to this standard being attained, they are in favour of unrestricted right and opportunity of purchase of land by Natives.

(E) Vesting of Appropriated Land in Trust.

200.

This sub-section may be divided into three principal parts, *viz.*:—

- (1) The objects and desirability of vesting in trust.
- (2) The limitation of existing reserves.
- (3) The expediency or otherwise of reserving more land for Natives.

201. The land set aside or recognised as reserved for Natives, being in some cases tracts to which they have ancestral or tribal rights, and in others rights given for past good services, is, in the legal sense :—
- (a) In the Cape Colony, Transvaal, Orange River Colony, Basutoland and Bechuanaland Protectorate, vested in the Crown.
 - (b) In Natal the greater part is vested in the Natal Native Trust, constituted by Letters Patent, the personnel of which consists in practice of the Governor and the members of the Government of the day.
 - (c) In Rhodesia, by Order in Council, provision is made for the assignment of land for Native occupation, but it remains vested in the British South Africa Company.
202. The Colony of Natal stands alone in the adoption of a separate Trust, constituted by Letters Patent dated 1864, for the disposal and management of reserved lands by vesting them in one body politic and corporate in deed and in name for the purpose of taking and holding such lands, and of granting, selling, leasing or otherwise disposing of them in such wise as might be deemed fit for the support, advantage and well-being of the Natives.
203. According to the evidence received in Natal, it appeared that this Trust enjoys the confidence of the Colony of Natal, inasmuch as by recent enactment the Parliament vested in it the Mission reserves.
204. The Commission considered whether it should recommend that the Natal system or some similar system embodying the principle of a separate trust in which to vest Native lands should be adopted in the other Colonies, and the majority of the Commission decided against the principle and in favour of these lands being administered by the respective Governments, such lands having first been accurately defined by special legislative enactment and formally dedicated to the use of the Native people. Certain members claimed that the vesting of Native lands in a separate trust gave better security to the Natives than any other form, and that such better security was necessary.
205. The important point next arises as to whether it is expedient to reserve and set aside any more land exclusively for Natives.

206. The areas at present so reserved and set aside are as follows:—

Name of Colony.	Area in square miles.	Population on Reserves.
CAPE COLONY	21,000	1,057,610
NATAL... ..	13,892	463,382
TRANSVAAL (including SWAZILAND) }	8,656	207,840
ORANGE RIVER COLONY	128	17,000
SOUTHERN RHODESIA ...	38,871	264,618
BASUTOLAND	10,293	347,731
BECHUANALAND PROTECTORATE	127,630	100,100
	220,470	2,458,281

207. The Commission is of opinion and recommends:—

- (1) That the time has arrived when the lands dedicated and set apart, or to be dedicated and set apart, as locations, reserves, or otherwise, should be defined, delimited and reserved for the Natives by legislative enactment.
- (2) That this should be done with a view to finality in the provision of land for the Native population and that thereafter no more land should be reserved for Native occupation.
- (3) The creation, subject to adequate control, of Native locations for residential purposes near labour centres or elsewhere, on proof that they are needed.
- (4) That the right of occupation of the lands so defined and set apart shall be subject to a condition of forfeiture in case of rebellion.

208. In some Colonies land has been purchased by Natives and is held for them by trustees. This system the Commission does not recommend should be continued, but is of opinion:—

That it is undesirable to extend the system of officially or otherwise taking into trust lands purchased by Natives, and that any land so held and acquired should be converted into individual holdings so soon as a desire for a change in that direction is manifested by those who can establish that they have proprietary rights in such lands.

209. In specially setting apart any land for Native occupation, certain obligations may be held rightly to attach thereto; that is to say, the Crown should reserve :—

- (1) All minerals and precious stones.
- (2) The right to removal and re-entry in the case of rebellion.
- (3) The power to apply regulations.

210. The Natal representatives do not concur with the resolution of the Commission in respect of the definition : delimitation and reservation by legislative enactment of lands set apart for Natives; and they give the following reasons :—

- (1) That where land dedicated or set apart for Natives has already been defined, delimited and reserved by some deed of trust or grant or the like, no legislative enactment in this direction is called for or necessary.
- (2) That where land has been dedicated or set apart and has not yet been defined, delimited and reserved by some deed of trust or grant or the like, it is the duty of the Imperial Government, in the first instance, to secure and safeguard Native interests and rights in the land in a permanent and legal manner, in accordance with the objects and intentions under which such land was set apart or dedicated.
- (3) That where land is at the present time in process of being set apart or dedicated in recognition of the righteous and undoubted claims and rights of Natives, as aborigines, to some provision in land being made for them, the same course should be followed as indicated in clause (2) hereof.
- (4) That action under clauses (2) and (3) hereof should not be delegated to a Legislature in which the Natives have no share, in which they would be unable by constitutional means to resist an adverse vote or to protect their interests, and which, in consequence of its being composed of members representing only the European population, and having other interests more in view, and also being more conversant than the Natives with the present or future value of the land, might be unwilling or opposed to such land being dedicated or set apart for the Natives.

| The Natal representatives, however, concur with the recommendation that there should be finality in the provision of land for the Native population.

The Natal representatives, with Mr. Sloley and Capt. Dickson, are in favour of vesting in special trustees created for that purpose all lands set apart or dedicated for Natives as locations, reserves, or otherwise, for the following principal reasons :—

That an incorporated Board of Trustees, created by Letters Patent, subject to specified conditions and powers with regard to the control, management and disposal of lands set apart and dedicated as aforesaid,

- (a) Gives greater security and permanency of appropriation than if the land were held by Government as Crown lands or vested in an individual officer of Government.
- (b) Renders it incapable of being directly or hastily affected by the pressure of any temporary popular feeling or agitation.
- (c) Removes suspicion and unrest from the Native mind, and conveys a sense of *bona fides*.
- (d) Guards the Natives against their own ignorance and protects them against the advances of speculators or other persons who, by purchase, mortgage, or otherwise, might dispossess them of their land.
- (e) Securely binds the trustees by definite terms and obligations.

- (f) Reserves to the Crown the full power and authority to alter or revoke Letters Patent, or any part of them, and to veto any legislation, rule, order, or resolution made in respect of the land.
- (g) Generally secures and protects for the Natives in a more permanent and inviolable manner than can otherwise be done what has been recognised as due and right to them.

11. Messrs. J. C. Krogh and J. A. Hamilton, (Transvaal representatives) desire to recommend that the principle of payment of rent should be applied in the case of the land set apart for Native occupation referred to in the above recommendations. The matter is dealt with under the head of Taxation, but it requires a passing reference here.

TRIBAL SYSTEM—NATIVE LAW AND CUSTOM— ADMINISTRATION.

12. A characteristic of the Natives of South Africa is their tribal organisation. The tribe is a community or collection of Natives forming a political and social organisation under the government, control, and leadership of a Chief who is the centre of the national or tribal life. It is through the existence of a Chief that the tribe is conscious of its unity. As the father is to the family, so is the Chief to the tribe. He is sometimes the Chief of a congeries of tribes and then is known as Paramount or Supreme Chief, or he may be the head of a single tribe composed of a number of families usually members of the same clan or using the same totem. Each member of the tribe owes him personal allegiance and service, to be performed gratuitously when called upon, in the interests of the Chief or the tribe. Each member has the right to maintenance from the land of the tribe.
13. As a father exercises authority within his family, as the Headman of a kraal or collection of kraals rules them and exercises authority over them, so the Chief rules the tribe and guides its destinies. Furthermore, as the father consults his family, and the Headman consults the men in the kraals under him, so a discreet and wise Chief consults the elders of his tribe. He is their chief court of appeal, he sanctions all changes made in the traditional usages of the tribe, but everywhere amongst the Natives the absolutism of the Chief is tempered by institutions which keep it in check. It cannot be said that the judgments of Chiefs were always equitable, but in the generality of cases they were so, and their administration on the whole was acceptable to the people.
14. The tribal system has either been modified or displaced by, or is being gradually brought under, statutory and administrative European control. It was a form of government perfectly understood by the Natives, carried with it mutual responsibility and suretyship, and required implicit obedience to authority. It possessed a ready means of communication and control extending from the Paramount Chief to the individual Native in

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TRIBAL SYSTEM—NATIVE LAW AND CUSTOM— ADMINISTRATION.

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214. The tribal system has either been modified or displaced by, or is being gradually brought under, statutory and administrative European control. It was a form of government perfectly understood by the Natives, carried with it mutual responsibility and suretyship, and required implicit obedience to authority. It possessed a ready means of communication and control extending from the Paramount Chief to the individual Native in

his kraal. It embodied an unbroken chain of responsibility—the responsibility of the Headman for his people, of the head of a kraal or family for its members, and of every individual of a tribe to the Chief.

215. Such then, briefly, was the tribal system which, either by direct legislation or by administrative methods, has been modified and moulded into the forms thereof in existence at the present time in British South Africa.
216. The laws, customs and usages prevailing amongst the Natives previous to the establishment of European government over them have not been abrogated or forbidden, except so far as the same may be repugnant to the general principles of humanity and civilisation.
217. It may fairly be said of the Natives of South Africa that though there are variations of details in the laws of succession and inheritance, and in other customs and usages of the various tribes, there is great similarity in their tribal systems.
218. The Chiefs continue to be recognised as a means of government of the Native races, as it has not in general been deemed desirable to dispense with them, but their jurisdiction, more particularly in criminal matters, has been, and is being, gradually transferred to European Magistrates and Commissioners. In a few words, the abolition of the tribal system and chieftainship is being left to time and evolution towards civilisation, assisted by legislation where necessary and administrative methods.
219. In Natal, the Transvaal and Southern Rhodesia certain powers are vested by law in the Governor or the Officer for the time being administering the Government. This was done with the object of retaining certain administrative powers formerly possessed by Chiefs which could not be exercised ordinarily by a Governor or Administrator, and also to supersede in a manner comprehensible by Natives their Paramount Chief or Chiefs by the substitution of the Head Officer of the Government.
220. In the year 1850 the Governor of the Colony of Natal was first specifically constituted Supreme or Paramount Chief over all the Natives. He was then vested with more extensive powers than at present. His legislative powers were taken away by the creation of the Legislative Council, and his jurisdiction as a Court of Appeal was removed by subsequent legislation. His powers have now practically been reduced to matters of administration, except in the case of disputes about general heirship of a deceased Chief of a tribe, where he decides finally, no right of appeal being allowed.
221. By Royal Instructions to the Governor of Natal, dated 20th July, 1893, it is directed that "Before exercising the Powers of "Supreme Chief, other than those by law vested in the Governor "and Council, the Governor shall acquaint his Ministers with the "action which he proposes to take, and so far as may be possible

" shall arrange with them as to the course of action to be taken.
" The ultimate decision must, however, in every case rest with the
" Governor."

222. In the Transvaal, by Law No. 4, 1885, which has not been repealed the State President was constituted Paramount Chief over all Chiefs and Natives in the Republic. He was empowered further with the advice and consent of the Executive Council, to make and frame regulations for the administration of the law. These powers are now exercised by the Lieutenant-Governor in Council.

223. In Southern Rhodesia, the Administrator in Council exercises over Natives all political power and authority.

224. The powers given in the two latter cases are in many points analogous and similar to those conferred on the Governor of Natal as Supreme Chief—if anything, they are more extensive and comprehensive—but the authority is not given in either case to enforce compulsory labour which is given to the Governor of Natal.

225. In the Cape Colony and the Orange River Colony neither the Governor nor the State President appears to have been placed in any special relationship towards the Native population which he did not occupy towards the rest of the inhabitants. In the Cape Colony, however, it has been found necessary to provide for certain special cases in the Transkeian Territories, by legislation. This, in Colonies where the Governor or the Administrator possesses extraordinary powers would not have been necessary, thus showing that some special Executive authority conferred by Parliament is required in respect of the large masses of Natives inhabiting British South Africa.

226. The Commission does not recommend abrogation of the special powers which have been described. But in respect of the self-governing Colonies and other Colonies or Possessions as they become self-governing, it feels that such powers should be regulated by Parliamentary enactment and that the responsibility of their application should rest, under constitutional usage, with the Ministry of the day responsible in all its actions to the local Legislature.

227. In the Cape Colony, Transvaal, Orange River Colony, and Southern Rhodesia, Chiefs do not exercise any criminal jurisdiction. In Natal, more particularly in the Province of Zululand, in Basutoland, Bechuanaland, and the Bechuanaland Protectorate, they still have a more or less limited jurisdiction in criminal cases.

228. Basutoland and the Bechuanaland Protectorate may be regarded as exceptional in their conditions, but as a policy it would appear best that Natives charged with criminal offences should be tried by trained officers who have no personal interest in the revenues accruing from fines or forfeitures resulting from proceedings before them.

229. In lieu of the incomes of which Chiefs and Headmen now exercising criminal jurisdiction would thus be deprived, and in recognition of the valuable services they render to the Government in administrative work, they should be granted adequate pecuniary

emoluments or pensions so as to assure to them a measure of independence in their living, and due remuneration for the duties they continue to discharge.

230. Past legislation by the various South African Governments has recognised the principle that the application of certain special laws to Natives is necessary and the Commission does not advise a change of policy in this respect. At the same time it is recognised that the protection of the law should be extended impartially to all alike.
231. Native Law, which is distinct from laws specially framed and enacted for the Native population, is administered in some form or other in all the Colonies and British Possessions in South Africa.
232. The weight of the evidence adduced before the Commission is against the enactment of a statutory code based on Native Law. It has been suggested, and with this the Commission agrees, that a text-book or hand-book, for reference only, descriptive of Native law and custom would be useful as a help towards uniformity in administration.
233. Many of the existing Native laws and customs are so interwoven with the social conditions and ordinary institutions of the Native population that any premature attempt to break them down or sweep them away would be inadvisable. At the same time the object of improvement and, so far as may be, assimilation with the ordinary Colonial law should be kept in view as an ultimate goal.
234. The principle of communal or collective responsibility was recognised by the Natives wherever the tribal system prevailed. Under it a man was bound to report to his superior the commission of any crime that he might become aware of or any extraordinary or suspicious circumstances that might come to his knowledge. For instance, if a member of a kraal saw a crime committed he was bound to report the fact to the head of his kraal; the latter was bound to act if necessary upon the report and to inform his superior; and so on until the Paramount Chief himself was aware of what had taken place. The omission in any of these grades to report involved subsequent liability to blame or punishment.
235. Collective responsibility has been adopted in the Spoor Laws of the Transkeian Territories and Natal, and it is that which makes them effective. The Spoor Law, it should be explained, is applied to the community, only when the actual criminal cannot be traced or identified, and in the Transkeian Territories the proceedings thereunder for recovery of value of stolen stock are in the nature of a civil action.
236. The principle of communal or collective responsibility when applied by us has been taken over very much as it existed amongst the Natives themselves. In Natal and the Transvaal it is applied in need in cases of homicide, assault, or other injury to person or property. In the Transkeian Territories it is limited to stock thefts only. As injustice may be done in its administration there should in all cases be trial and right of appeal.

237. In the Cape Colony, a Native may, with the exception of land held under the Glen Grey Act, leave his property by will. In Natal he has this right only in respect of immovable property held under title. In Southern Rhodesia the Cape law applies. There is nothing in the laws of the Transvaal or Orange River Colony to prevent a Native from disposing of his property by will. There appears to be no good reason for withholding from the Natives the power to make a will, and this power should be given to them in respect of devisable property.

238. An important question affecting the status of Native women arises in connection with the custom of "ukungena," or the taking over of widows by brothers, or even in some instances by sons, of the deceased. This practice should not be countenanced in any way whatever.

239. In the Cape Colony and the Orange River Colony a Native woman attains majority at the age of twenty-one years. This confers upon her rights and a legal status which under Native law and custom she could never attain. By these she is held to be under guardianship all her life, and, strictly speaking, may not hold property in her own right, even when such property is earned by her own labour. Moreover, by recognition of a Native woman's right to attain majority, she is placed in a position to emancipate herself from a condition which may have become distasteful to her and be free to choose her own path in life. As Christianity and education spread, a woman's endeavours towards a higher and more self-respecting position than that appointed to her by ordinary kraal life should not be thwarted by perpetual tutelage unsuited to present-day conditions. Experience in the above Colonies has not justified the fears sometimes expressed that this emancipation of Native women would have disastrous results on Native family life. Evidence is rather the other way. Reference has already been made to the increasing number of self-respecting Native women now to be found in the country. Moreover, the women and girls, when free agents, go in larger numbers into domestic and other service. Many are teachers in schools, others accompany their husbands or relatives to farms and labour centres, and thereby promote continuous instead of intermittent work at those centres. For these and other reasons it is recommended that in those Colonies and Possessions where it is not already the case, and so soon as local circumstances permit, Native men and women should be held to have attained their majority at the age of twenty-one years.

240. In this connection there arises the question of how far the principle of family responsibility should be maintained in respect of the head of a family being liable for the payment of the debts of his adult children or *vice versa*. Already the tendency is to leave each man to answer alone for his own debts or torts. Much injustice is wrought by exacting payment from individuals no longer able, in view of changed conditions, to control the actions of those related to them, and the granting of majority and independence to young Native men and women as recommended above should be accompanied by sole responsibility being placed on them for their own debts and torts. Nor should sons be liable for debts incurred by their fathers except to the extent of the property inherited by them from their fathers.

241. On the subject of succession and inheritance to land in intestate estates, the following resolution was passed :—

The Commission is of opinion that in the case of a Native dying intestate the succession and inheritance to all land in his estate held under title in the form customary in South Africa should, unless otherwise provided in such title, be determined in accordance with ordinary Colonial law.

242. The Commission deprecates any tendency to impede or prevent Natives pleading their own cases in Court, and holds that Natives should nowhere be compelled to employ attorneys or agents-at-law, the matter to be left to their own free will. On the other hand, it favours the exclusion of attorneys or agents in cases between Native and Native tried under Native law, except in special cases where the Magistrate is satisfied that the admission of an attorney is necessary ; nor should they be allowed to intervene in matters of administration.

243. The Commission suggests the desirability of establishing in each of the Colonies a system of compulsory registration by Natives of all births and deaths, so soon as it is deemed practicable.

244. The Commission has formed the conclusion that in the Transvaal, and in a lower degree in Natal and elsewhere, there is in largely-populated Native areas a numerical insufficiency of Magistrates and Native Commissioners qualified by experience to deal with Natives. The Commission is of opinion that, in order to secure more efficient supervision and expedite the despatch of business, these officers should be increased. It should be borne in mind that Courts within easy reach have a distinct influence for good and that large territorial jurisdictions weaken the hold of Government on the Native population and affect the efficiency of the Administration in many ways.

245. The Commission is of opinion that periodical meetings of representatives selected by the Government of each Colony and Possession in South Africa, for the purposes of discussion and advice, would be useful and are desirable, and that their reports on all matters affecting the Native population would be of value in the unification of Native laws and administration. Inter-Colonial Conferences between men of influence and knowledge, including those who are carrying out and those who devise the policy of Governments, could not fail to be beneficial, and the Commission recommends the above suggestion to the consideration of the Governments concerned.

Urban Locations for Natives.

246. Native Locations in urban areas may be divided into :—

(1) Those within municipal areas and under municipal control.

- (2) Those within municipal areas and under the direct control of Boards or Companies, as compounds.
- (3) Those in the neighbourhood of Municipalities and controlled by Government.

17. The Commission approves the present practice that wherever a location is within an area controlled by a Municipality or other Local Authority the responsibility for its control and management should be left to such Authority. But it is necessary that Government should always reserve the power of inspection and be able to exercise it with effect. Such inspection should be frequent and regular and if possible be made in the daytime. It was disclosed to the Commission that in various parts of the country inspections of municipal and other locations in urban areas were sometimes carried out in a harsh and injudicious manner, respectable Natives and their families being turned out of their dwellings at night time, and subjected to objectionable personal handling. Conduct of this sort is extremely harmful, and rankles long in the minds of the people.

18. The Commission has visited and inspected several municipal locations and records its opinion that in some respects their condition leaves much to be desired. The Natives who reside in or frequent these locations are in the main working people. As such there is every reason why they should be encouraged to stay as useful members of the community. The tendency of inadequate accommodation is to make them dissatisfied and restless; the standard of comfort is low, and they are liable to be over-crowded and over-charged.

19. The object should be to afford those who desire it the opportunity of acquiring in their own right holdings for residential purposes within these locations, and, with or without this, encouragement to make, and security for, improvements.

20. Where buildings are put up by the Local Authority they should be of a suitably comfortable class and the whole arrangements should be such as to enable the occupiers to live under sanitary and healthy conditions. Natives who erect their own buildings should be bound to conform to this standard.

21. In establishing these locations easy access to the place where the Natives go to work should be kept in view. The charges necessary to be borne by the Natives, in the way of rent, etc., and railway fares, should be as low as possible. The Commission thinks that the charges at present imposed are in some cases too high, and although a substantial revenue may thereby accrue to Municipal Treasuries and Railway Departments they ultimately fall on the employers, who have to pay correspondingly high wages.

22. A thorough registration and constant control by means of resident Superintendents should be maintained for the purpose of the better regulation of town locations by which the respectable industrious Natives may be encouraged, and no room allowed for criminals and others who indulge in vagrancy, drink and open prostitution.

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49. The object should be to afford those who desire it the opportunity of acquiring in their own right holdings for residential purposes within these locations, and, with or without this, encouragement to make, and security for, improvements.

50. Where buildings are put up by the Local Authority they should be of a suitably comfortable class and the whole arrangements should be such as to enable the occupiers to live under sanitary and healthy conditions. Natives who erect their own buildings should be bound to conform to this standard.

51. In establishing these locations easy access to the place where the Natives go to work should be kept in view. The charges necessary to be borne by the Natives, in the way of rent, etc., and railway fares, should be as low as possible. The Commission thinks that the charges at present imposed are in some cases too high, and although a substantial revenue may thereby accrue to Municipal Treasuries and Railway Departments they ultimately fall on the employers, who have to pay correspondingly high wages.

52. A thorough registration and constant control by means of resident Superintendents should be maintained for the purpose of the better regulation of town locations by which the respectable industrious Natives may be encouraged, and no room allowed for criminals and others who indulge in vagrancy, drink and open prostitution.

253. These locations should not be made a refuge for surplus or idle Natives for whose labour there is no local demand or who will not work, and power to expel such Natives from the location and from the entire urban area should be vested in the Local Authority, who should receive the full support of Government in this work.
254. In connection with this question of urban locations for Natives, the following resolution already quoted in another place should be here referred to, and it is recommended that the principle thereof be adopted by defining an area within each Municipality in which Natives may reside and hold property without being subject to location regulations :—
- “ This Commission is of opinion that certain restrictions upon
“ the purchase of land by Natives are necessary, and
“ recommends :—
“ That purchase by Natives should in future be limited
“ to certain areas to be defined by legislative enact-
“ ment.”
255. In calling attention again to the following resolution, also already quoted in another connection, it is desired to point out that the absence of any accommodation near labour centres for wives and families of Natives at work there affects very adversely the supply of labour with respect both to the number of labourers and the length of their service. The general principles affirmed above in regard to locations as at present understood apply so far as they are suitable to these suggested labour locations, but the following possible differences in the latter may be indicated :—A somewhat larger plot of land for each hut or building ; greater distance from a town ; a modification of the regulations to suit the conditions and circumstances of the Natives affected :—
- “ The Commission recommends the creation subject to
“ adequate control of Native locations for residential
“ purposes near labour centres or elsewhere on proof
“ that they are needed.”

Appeal Courts.

256. This is an important question, affecting as it does the contentment of the Natives, who value the right of appeal. Even under the tribal system they were at liberty to appeal from a judgment of a local Sub-Chief or Headman to their Chief and ultimately to the Supreme Chief, if there was one, beyond whom there lay no appeal.
257. When, in the different Colonies, European Courts were established, provision was made for appeal in Native civil and criminal cases from the judgments of Magistrates, Commissioners and Chiefs. In the Transkeian Territories there is still a Special Appeal Court in civil cases ; in other cases appeal lies to the Higher Courts of the Cape Colony : in Natal there is a Native High Court for specified cases, for other cases the Supreme Court. In Basutoland and the Bechuanaland Protectorate there is appeal to the Court of the Resident Commissioner. In Cape Colony proper, Orange River Colony, Transvaal and Rhodesia an appeal lies to the Supreme Court,

58. The Native Appeal Court in the Transkeian Territories, the proceedings of which are subject to review in the Supreme Court of the Cape Colony, is of great value to the Native population, affording as it does an early and inexpensive settlement of appeals in civil matters from the decisions of Resident Magistrates. Similarly in other Colonies, where adequate arrangements have been made to secure the same object, much satisfaction has been given to the Native people.

59. The Native High Court in Natal is a striking illustration of an independent Court free from the jurisdiction of the Supreme Court. The risk, indeed the certainty, under such conditions of the different Courts giving decisions inconsistent with each other is shown by the fact that in these two Courts conflicting judgments involving serious issues have been given. An instance of this quoted to the Commission is where the Native High Court refused to hear a case brought before it by a coloured man on the ground that the party or parties were Europeans, and that the case should go to the Supreme Court, while in the same or an identical case the Supreme Court held that the party or parties were Natives, and that the case should go to the Native High Court. The decision of neither Court is binding on the other. The result is that a whole class of persons in Natal are deprived of all legal remedy—a disability as grave as it is singular.

60. Whilst, therefore, attaching much value to the necessity of not undermining the influence of those who preside over Native Courts, and deprecating that any ideas be created in the ignorant Native mind suggestive of appeals being made easy, the Commission records the following resolution:—

- (a) The Commission disapproves of the creation or existence in any British Colony or Possession in South Africa of a separate and independent Judicial Court or Courts to deal with Native cases, except as hereinafter set forth, outside the jurisdiction of the Supreme Court of such Colony or Possession. It recommends that subject to the regulations of the Court there should be a right to appeal to and review by the Supreme Court in all Native cases, civil and criminal, tried in any other Court under Colonial Law, Statutory or Common.
- (b) That in civil cases or disputes arising purely upon Native law and custom, and in which both parties to the suit are Natives, special Native Courts of Appeal now established should continue to exercise the powers of final decision conferred upon them by the Legislature, subject to the distinction drawn above between cases tried under Native law and custom and cases tried under Colonial law, and provided always that the Supreme Court shall retain its powers of review.
- (c) That revision of and appeals against verdicts and sentences in criminal cases in any lower Court should be by or to a Judge or Judges of the Supreme Court.

Native Jurymen and Assessors.

261. In certain Colonies Natives can be placed on the Jury List ; in one Colony Natives are 'exempted' by law from serving as jurors ; in the others they cannot serve. Consideration was given to the desirability or otherwise of Natives being registered as jurors and being summoned to serve as jurors. The Commission is of opinion that Natives should not be used as jurors in any case in which a European or any person other than a Native is concerned, and in cases in which Natives only are interested it considers that the time has not come when it would be either advisable or right that Natives should be empanelled as jurymen.

262. The Commission has passed the following resolution :—

That in the opinion of this Commission Natives should not be empanelled as jurymen.

263. In Bechuanaland and Basutoland, possibly also in Colonies with large Native populations, the advantage derived from the use of carefully selected and intelligent Headmen and other Natives, as assessors in the Courts at the trial of members of their race, as provided for in the Transkeian Territories Penal Code, is recognised. The use of assessors will gradually educate the Natives up to the system of trial by jury, and it gives satisfaction to Natives to feel that in matters where their own people are concerned they have the confidence of the Courts and the Government

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Pass Laws and Travelling.

264. The Commission gave careful consideration to the subject of Pass Laws, and, while agreeing that the pass system was still necessary in most of the Colonies and Possessions, was unanimously of opinion, that Natives travelling with a pass should be hindered as little as possible by local regulations, and that attention should be specially directed to the needless and vexatious detention of Natives for long periods at border and other stations when travelling to and from labour centres. It is recommended that better facilities on the railways, and rest houses at certain stations and along main labour routes remote from the railways, be provided for Natives travelling, and that greater attention be given to sanitary arrangements in the way of latrines, lavatories, etc..

265. The following resolution was unanimously adopted :—

That travelling passes issued under the recognised regulations of any Colony or Possession should be in force till the journey has been completed, requiring only to be *viséd* if thought necessary, and without charge, on arrival at the first Pass Office in any other Colony or Possession.

266. The following suggestions are submitted :—

Uniformity in the form of pass issued : a distinctive colour to be adopted by each Colony.

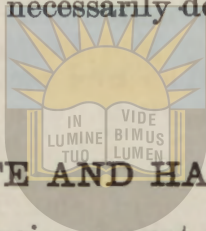
That on trains by which Natives mostly travel there should be a Native conductor, or other similar official, to give them necessary information and generally to assist them.

That railway officials should be instructed to remember that the travelling Natives are paying passengers and are entitled to reasonable attention.

267. On the subject of separate accommodation for Natives travelling by rail the Commission passed the following resolution :—

That while there is no desire to prevent Natives travelling by train in any class (first, second or third) for which they pay, provided there is separate accommodation for them, the Commission recommends that in the interest of goodwill and order and for the comfort of travellers of both races carriages of each class be set apart for Natives only and that tickets issued to them shall entitle them to travel only in such carriages.

268. With reference to the above resolution, the amount of the accommodation provided must necessarily depend on the extent of the traffic.



FAMILY LIFE AND HABITS.

269. Native family life is undergoing a great change; in some parts, owing to various causes, more rapidly than in others. Contact with Europeans, with their mode of life, their industries, their Christianising influences, their business dealings; the laws and forms of government, facilities for travelling, exchange of ideas, and a number of other factors appertaining peculiarly to civilised races, are slowly but surely transforming the whole social system and life of the Natives. European influence and example have variously impressed and operated upon them, and not in all cases for their good.

270. European clothing, which is coming more and more into general use, has not been an unmixed blessing. It has promoted public decency, but, not being adopted in its entirety, and being necessarily of inferior material, it has not proved equally conducive to the promotion of health. The use of cotton shirts by the men and the habit of allowing wet clothing to dry on the person have been peculiarly harmful. The heavy woollen blanket or skin kaross of earlier times would have been thrown aside for vigorous exercise, to be resumed with the first sensation of chill; but civilised attire does not lend itself to equally rapid adjustment, and a marked increase in consumption, pleurisy, inflammation of the lungs and rheumatism has been the result. European clothes, too, require much more frequent cleansing than their ancestral garb, a fact which, unfortunately, is not sufficiently realised by the Natives who have partially adopted our style of dress; but the hard school of experience will teach them as it has taught us to use greater care in these matters. The evils are not inseparable from European dress, but arise from an imperfect understanding of the laws of health.

271. The hoe has largely given place to the plough and other superior implements of agriculture, with the result that the Native woman who formerly did much of the tilling of the ground is now in a great measure emancipated from that form of labour; the men and boys taking her place.
272. It is sometimes said that civilisation, or the beginnings of it, have not tended to make the Native happier, more trustworthy, more civil, courteous and obedient, and stronger physically and morally; and at the first glance there is some excuse for forming this opinion. True it is that the advent of civilisation has weakened the power of what long ages had taught the Natives to regard as most necessary to their social and communal life, that it has tended to loosen tribal ties, to undermine wholesome patriarchal control, and has let loose in the midst of the resultant disorganisation all the temptations and vices which dog the steps of civilised advance. But where it has destroyed it will again construct; it has not taken away without offering something in return. The great powers of Christianity and education are at work. There has been and there continues a great struggle between the powers of good and evil, of light and darkness, of enlightenment and ignorance, of progress and tradition, of Christianity and heathenism. Is it, therefore, surprising that much of what was picturesque, attractive and even admirable in the Native when untouched by European influences has been swept away? The final outcome of a righteous war is not to be judged by the devastations of opposing armies or by the scenes of slaughter and bloodshed on the field of battle. No less fallacious would be the attempt to gauge the eventual issues of the civilisation of the Natives by the many unfortunate features of the struggle which still prevail. Already there are more encouraging aspects. The lax morality among the women which has been so often dwelt upon as the result of freeing them from the absolute control of their parents and sowing new temptations among them is diminishing, and there is growing up an ever-increasing number of self-respecting Native women who are learning to understand the freedom which has come to them and are careful not to abuse its privileges.
273. In their homes the Natives are a hospitable and social people, clever and bright in repartee, fond of music, open-hearted and generous hosts, imitative and tractable, and interesting in many ways. They are, speaking generally, not energetic of disposition, but the struggle for life has not been so hard with them as with the European nations, and there has in their past history been little to make them continuous workers.
274. They are attached to their homes and even when they go away to labour centres to earn money prefer in general to do so for short periods, and then to return and look after the interests of the family and the welfare of the stock, participate in the sociable joys of beer gatherings, and superintend the ploughing for the coming year. So long as it is impossible for the Native to marry and make his home, return nightly to his family, and live comfortably, near the great centres of labour, so long will there be the yearning to return frequently to his distant home, and so long will the flow of labour be impeded by this really amiable trait in his character.

275. In the first movement towards establishing model locations aiming to provide for this need, it would possibly be necessary to face the reluctance of the Native temperament to adopt anything new and unproved, but once a system has been tried, and has proved suitable, the Natives are not slow to recognise and take advantage of it, and attempts in this direction in the Cape Colony have already met with a considerable amount of success.

276. The following are the resolutions passed by the Commission on the subject of this chapter :—

The Commission finds that education and contact with Europeans are beginning to effect a change in the family life and habits of that large section of the Native population who have not formally adopted Christianity or civilised ways of life. This change has taken the form of a movement towards a higher standard of comfort in the matters of housing, clothing and diet; and improvement in the position and treatment of women has been brought about by the influence of Christian and civilised views on the marriage question; and the labour of women has been much lightened by the introduction of the plough and other appliances.

The Commission considers that evidence has shown that polygamy is on the decrease, that the Natives are gradually losing their faith in, and are resorting less to, witch doctors, and that, though still strongly attached to their Native customs as to cattle marriages, considerable change in the form of the dowry or "lobolo" has followed the destruction of the cattle by rinderpest.

Concurrently with these changes, certain demoralising influences have been at work. The inevitable relaxation of the stricter and more arbitrary of the tribal customs, though on the whole commendable, has been accompanied by a decrease of parental authority and a consequent assumption of independence by young men and women which has tended to the disregard of certain wholesome restraints upon misconduct.

The Commission, in view of these changes in the family life and habits of the heathen, recommends the encouragement of religion and education, the adoption of any measure calculated to preserve the inviolability of the marriage tie, the support of the authority of parents and guardians over minors, the enforcement of laws against immorality and drink, and the preservation of the Natives' sense of self-respect by sympathetic recognition of any legitimate aspirations, and by assistance in any well-regulated plans for their material welfare.

277. It is felt that much good may be effected by gradually educating the Natives out of superstitious practices and the employment of unskilled men untrained in the use of medicines and surgery. The Commission visited several Hospitals specially provided for the use of the Natives and was greatly impressed with their efficiency, potency for good, and their value in the

direction suggested in the following resolution which was passed unanimously :—

The multiplying of District Surgeons and the establishing of Dispensaries and Hospitals in connection with Magistracies in Natives areas would have a beneficial effect, not only for the restoration or preservation of health, but also for weaning the Natives from faith in witch doctors, diviners or soothsayers, or men who profess to have supernatural power or knowledge whether as medicine men or otherwise.

278. The danger of the influence of old and hardened criminals on youthful offenders has been recognised in many parts of the British Empire by the provision of suitable corrective establishments, in which such offenders undergo terms of imprisonment passed upon them. Youthful offenders should not be associated with habitual and hardened criminals whose influence and precepts will have the certain tendency of confirming and strengthening the young offenders in a career of crime. It should rather be the aim to give such offenders a moral and corrective training under sympathetic supervision in a separate place, with a view to their being induced to lead a moral and useful life on their discharge.

279. Boys and girls are frequently sentenced to terms of imprisonment, for offences under the Masters and Servants Laws, for petty thefts and small misdemeanours, which they have to serve in the common gaol.

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Together in Excellence

280. The following resolution was unanimously passed :—

That Reformatory Institutions should be provided for Native youths convicted of crime and sentenced to imprisonment, in which to undergo such sentences passed upon them, in order to prevent their mixing with and being contaminated by old criminals.

281. The desire to possess cattle has been in the past a strong incentive to Natives to earn money. Natives have often been heard to say that cattle were their bank and the means of securing their money in a visible and reproductive manner. The destruction of cattle by rinderpest and other cattle plagues has made the investment of money in the manner above stated more difficult. The increase of population and the partial conversion of the people from a pastoral to an agricultural people have also tended to reduce their holdings of cattle. Money is the great medium of business where formerly cattle were used. There are more difficulties in the way of possessing cattle and more reasons for retaining money. With a view, therefore, to encouraging thrift in Natives and the safe custody of their earnings, the Commission has passed the following resolution :—

That Natives should be encouraged to use Government Savings Banks, and that steps should be taken to enable Natives in large centres of population to avail themselves of their use.

CHRISTIANITY AND MORALS.

282. In considering the relations between the European and the Native populations certain responsibilities on the part of the race which occupies the position of the governing and superior caste claim attention. Among such responsibilities there is a duty as to the moral and intellectual elevation of the subject race, and the Commission recognises that upon the Governments of the South African Colonies this duty is laid.
283. For the moral improvement of the Natives there is available no influence equal to that of religious belief. The vague superstitions of the heathen are entirely unconnected with any moral ideas, though upon sensuality, dishonesty and other vices there have been always certain tribal restraints which, while not based upon abstract morality, have been real, and, so far as they go, effective. These removed, civilisation, particularly in the larger towns, brings the Native under the influence of a social system of which he too often sees and assimilates the worst side only.
284. It must apparently be accepted as an axiom that contact with what we are accustomed to regard as civilisation has a demoralising tendency as its first effect upon primitive races. It is clear that the Native year by year is becoming familiar with new forms of sexual immorality, intemperance and dishonesty, and that his naturally imitative disposition, his virility and escape from home and tribal influences provide a too congenial soil for the cultivation of acquired vices.
285. The testimony contained in the volumes of evidence is abundant to this effect, but the Commission has no wish to dilate upon this aspect of the question, it being sufficient to direct attention to the evidence of the witnesses who have especially touched upon these subjects.
286. The Commission considers that the restraints of the law furnish an inadequate check upon this tendency towards demoralisation, and that no merely secular system of morality that might be applied would serve to raise the Natives' ideals of conduct or to counteract the evil influences which have been alluded to, and is of opinion that hope for the elevation of the Native races must depend mainly on their acceptance of Christian faith and morals.
287. In this connection it has been observed by more than one witness that all that has been done for the regeneration of the Native has been by the efforts of Christian Missions, but such a statement cannot be accepted too literally. The Commission feels that from the earliest period of European settlement much good influence has been brought to bear upon the Natives by individual benevolence and attention to their spiritual welfare. It was, and in certain localities still is, the practice of Dutch and English farmers and other Christian families to include Native servants in family worship; while many of the larger employers of Native labourers, both at the mining centres and in the rural districts, provide buildings and afford opportunities for religious services.

288. By admission to Christian households, and by the example of the uprightness and purity of many of those around them, a large number of Natives have doubtless been brought under improving influences, but to the Churches engaged in Mission work must be given the greater measure of credit for placing systematically before the Natives these higher standards of belief and conduct. It is true that the conduct of many converts to Christianity is not all that could be desired, and that the Native Christian does not appear to escape at once and entirely from certain besetting sins of his nature; but, nevertheless, the weight of evidence is in favour of the improved morality of the Christian section of the population and to the effect that there appears to be in the Native mind no inherent incapacity to apprehend the truths of Christian teaching or to adopt Christian morals as a standard.
289. It does not seem practicable to propose any measure of material support or aid to the purely spiritual side of Missionary enterprise, but the Commission recommends full recognition of the utility of the work of the Churches which have undertaken the duty of evangelising the heathen, and has adopted the following resolution:—
- (a) The Commission is satisfied that one great element for the civilisation of the Natives is to be found in Christianity.
 - (b) The Commission is of opinion that regular moral and religious instruction should be given in all Native schools.

MARRIAGE BY NATIVE CUSTOM.

Polygamy.

290. The institution of polygamy doubtless had its origin in very early times and under conditions differing widely from those which now obtain. At that time constant inter-tribal fighting kept down the number of the men, while even in those conflicts which were in their nature almost wars of extermination, the marriageable women and female children were spared to be carried away captive—not the least prized of the conquerors' spoil. The result was the numerical preponderance of females which inevitably led to polygamous unions.
291. From generation to generation the same conditions prevailed until the practice became so closely interwoven with all the intricacies of the social system, that not until the passing of the very system itself can it ever be hoped that polygamy will cease to be one of the cherished customs of the conservative heathen.
292. But the end is gradually drawing near. There is ample evidence that polygamy is on the decrease, and it could not well be otherwise. The recent Census shows a comparatively slight surplus of women over men, and in such case polygamy on any extensive scale is impossible in the absence of almost equally widespread bachelorhood—a condition all but unknown to the Natives and happily at total variance with all their domestic ambitions.
293. The tendencies of contact with European modes of life are all in the same direction. Christianity teaches that marriage is the sacred union of one man and one woman for life, and that fidelity to a single love is as much the duty of the man as the woman. The

example of civilisation purports to be the same. The increased needs which attend the introduction of European comforts into the Native home are rendering the maintenance of more than one establishment impracticable for all but the wealthy. Cattle plagues have so reduced the numbers of stock that "lobolo" cattle are not readily forthcoming, and, more than this, the intending polygamist can no longer regard the outlay as productive—in the manner of former times—of a self-supporting establishment whereby to attain greater weight and more dignified tribal status; but on the contrary has learned from the experience of others that his new home will prove a source of constant expense and unending complications with the neighbouring trader. These and many similar considerations point to the conclusion that the custom has almost run its course, and that a time may be looked for when it will exist only in isolated and ever less frequent instances.

294. That polygamy constitutes an obstacle in the way of advance towards Christianity cannot be denied, and much of what has been written might at the first glance be taken to indicate that the time has arrived when legislation might wisely be introduced with a view to its direct suppression; but this is not the course which the Commission advises.

295. The objection to polygamy is not that it is physically unhealthy, nor can it be urged that it was originally unsuited to the adjustment in a natural manner of numerical disparity between the sexes, for there can be no doubt that by providing for the just recognition of the rights of children born in acknowledged wedlock, it was infinitely preferable to the state of licentious confusion which must otherwise have ensued.

296. On analysis, the objections resolve themselves into the undeniable charge that the custom is essentially material and unchristian. The Commission has no wish to defend it and looks forward to the time when it shall have passed into oblivion. But no attempt to Christianise the heathen by compulsory legislation can be advised. To destroy the remnants of a recognised and in the temporal sense a healthy polygamous system without having the power to check the licentious inclinations by which it is still sustained, or to extinguish the influence of the traditional associations which cling around it, might lead to a last state far worse than the first; and, seeing that all the signs of the times point to the steady decadence of polygamy, the Commission is of opinion not only that sufficient need for legislative intervention has not been established, but that in all the circumstances such intervention would be unwise and more harmful in its effects than the dying evil it sought prematurely to demolish.

297. The Commission passed the following resolutions:—

- (1) That polygamy generally is on the decrease throughout South Africa; that this is due amongst other things to the increased cost of living, the loss of cattle, and the consequent increase of the difficulties in obtaining "lobolo" consideration, and the increase in the proportion of men marrying.

- (2) The Commission is satisfied that considerable disadvantages in their advance towards Christianity result to the Natives from polygamy, which, however, is an old-standing and prevailing social institution amongst these people. The Commission does not regard it as among those customs which have to be put down with a strong hand, but looks forward to its gradual extinction by such means as greater spread of Christianity and of civilisation, by the labour of women being more than it is supplanted by that of men, and by the ordinary laws being voluntarily adopted; and owing to the absence of any great surplus of women in the Native population, without which general polygamy is impossible for any length of time.
- (3) That in respect of marriages under Native custom, the Commission advises :—

- (a) That such marriages should not be accorded the status of a Christian marriage solemnised by a minister of religion or a civil marriage entered into before a marriage officer.
- (b) That all marriages under Native custom should be duly registered.
- (c) Recognition of the succession rights of children.

298. The registration herein recommended is not intended to import into any marriage by Native custom a status or rights which do not essentially exist under that form of marriage.

299. The Natal representatives, whilst concurring with the foregoing resolutions, are of opinion that so long as polygamy is either allowed or tolerated, the Native form of marriage should be recognised as valid and binding in law in the same degree and manner as marriages under common law.

Ukulobola.

300. Traces of the custom by which a bridegroom made gifts to the father of a girl upon his giving consent, or as an incentive to his consent, to his daughter's marriage, are to be found among all the Oriental nations. References to it are seen in the early parts of the Bible; it is mentioned in Homer; it existed among the early Germans; and until recently, if not at the present time, a relic of it survived in Christian Norway.*

301. It is not surprising that a father, who has tended, clothed and fed his daughter till womanhood, who has her cheerful presence and useful service about the home, and who may be credited with a natural love for his offspring, should not be over-ready to fall in with the proposals of the stranger who would fain take to himself the ripening fruit of the father's years of care. Nor is it surprising

* See paper by Rev. Dr. A. Kropf, Natives Law and Customs Commission Report (Cape Colony, 1883), Appendix C, page 260.

that it should have become customary for the young man to compensate in some sort for all that he is to gain and the father to lose by the contemplated marriage. The sacrifice in itself tends to make the woman more highly prized by her husband, a fact of which the women themselves are very fully convinced, and, as a result of it, take pride in the cattle paid on their account.

02. * " 'Ukulobola' may be taken to be a contract between the father and the intending husband of his daughter, by which the father promises his consent to the marriage of his daughter, and to protect her, in case of necessity, either during or after such marriage, and by which in return he obtains from the husband valuable consideration, partly for such consent and partly as a guarantee by the husband of his good conduct towards his daughter as wife. Such a contract does not imply the compulsory marriage of the woman. The 'ikazi' may, therefore, upon every principle of sound law, be recoverable under such a contract, unless a Native marriage involves a condition of slavery, and thus becomes illegal."

03. The contract is not one of purchase and sale. The woman does not become her husband's slave. He may not sell her. He may not kill, injure, prostitute or maltreat her; all of which would be within his power and right were the statement correct that by the passing of "ikazi" or "lobolo" a woman becomes the chattel of her husband. The customs regulating the restoration or retention of "ikazi" or "lobolo" cattle constituted in the heathenish state a salutary check on both husband and wife. Should the marriage have proved a happy one the father was contented with his cattle and the husband with his wife. If the husband ill-treated his wife beyond all reconciliation, she returned to her father's protection and the husband recovered either a small residuum or, in some cases, none of his cattle, thus losing both wife and dowry. On the other hand, should separation have resulted from the wife's misbehaviour, most of the cattle were returned, the woman lost caste, and her father suffered. Moreover, by Native custom, no widow or woman separated from her husband might marry a second time except from her father's village, and with his consent, or, in his absence, that of her guardian.

04. Such, in briefest outline, is the favourable aspect of the custom as it operates among the Natives to-day. It is much to be regretted, however, that cases do occur of avaricious or pecuniarily involved parents bringing pressure upon their daughters to accept wealthy suitors, nor are such instances impossible under the highest forms of civilisation. But, as the law now stands, among the Natives as among ourselves, anything beyond persuasion is not permitted, and the use of force would be severely punished if brought to light.

05. The consent of a Native girl is necessary in every Colony or Possession in South Africa before marriage, and in some of these, where she is permitted to attain majority at the age of 21 years, her position is still stronger and she may marry without the

* Native Laws and Customs Commission Report (Cape Colony, 1883), page 30, paragraph 70.

consent of her father or guardian. Thus such hardships as are suffered are due partly to the clinging of the women themselves, even while they suffer for it, to their ancient customs, partly to their shrinking from the indecorous act of exposing their parents, and partly to ignorance of their rights, but not to any inherent defect in the law itself.

306. Even if it were possible it would not be advisable to do away altogether with the payment of dowry until Christianity and civilisation have advanced sufficiently among the Natives to have substituted something which will take its place in maintaining proper relations between husband and wife, and by that time the custom, in all probability, will have died a natural death.

307. Holding these views, the Commission sees no good reason why a Native married under Native custom should be debarred in any Colony from seeking for redress when deserted by his wife without just cause. This redress under the custom which governs the marriage is by way of restoration of the whole or a portion of the cattle according to the merits of the case. The rights of children born of such marriages are secured by special legislation in most of the States of South Africa, and it is certainly inconsistent that the check imposed by Native custom both on the treatment of the woman by her husband, and on her conduct towards her husband should be disregarded, thus leaving it open to avaricious fathers to trade upon the cattle system which, properly applied, tends rather towards upholding than to breaking down the sanctity, as far as it does exist, of Native family life.

308. The Commission passed the following resolutions :—

This Commission is of opinion that the Native custom of passing cattle known variously as "lobolo," "ikazi," and "bohadi" in connection with marriage by Native custom and usage should not be interfered with by prohibitory legislation, but be left to die out gradually as the outcome of an advance in civilisation. Evidence taken points to a tendency in that direction.

That provision be made for the hearing and determination of claims arising under Native custom for restitution of "lobolo," or such portion thereof as may be deemed equitable where a husband is deserted without sufficient cause by his wife.

MARRIAGE BY CHRISTIAN RITES AND BY CIVIL MARRIAGE OFFICERS.

309. The conversion of a Native to Christianity has consequences beyond the fact that he adopts the Christian faith and is received as a member of a Christian Church. It may bring about automatically an alteration in his relations with his family and in his position with regard to his property. The alteration referred to is not

that which arises from religious and ecclesiastical precepts with regard to his domestic relations—as, for instance, the conversion of the marriage tie from a mere contract to a sacred and permanent union—but it is more of the nature of a change in his legal status and of the laws regulating the disposal of his estate.

These consequences are not uniform in the various Colonies, and certain anomalous situations are created by what appear to be the inevitable difficulties attending the transference of an individual from one legal and social position to another.

Except in Natal, the principle underlying legislation on the subject appears to have been, throughout, a disinclination to accord to marriages under Native law and custom the full status which a Christian or civil marriage carries with it, but so far as possible to mark the status of a couple married by Christian rites or civil ceremony by bringing them and their property at once under the operation of the common law in such matters as applied to Europeans. The result is to remove the intestate estate of a Native who has contracted a Christian or civil marriage from the operation of the Native law of succession, and to bring it under the ordinary or Roman-Dutch law prevailing in the Colony. This disinclination is based upon the lack in marriages under Native custom of the essential condition in Christian marriage, that it is the union of one man and one woman for life. In the Native marriage polygamy may be, and often is, in contemplation by the husband. Moreover, under their own customs, separation was, and is, effected by the parties concerned without judicial proceedings being necessarily resorted to, simply by restoration to the husband of the cattle, or in some cases a portion thereof, paid by him to his father-in-law.

In Natal, on the contrary, the Native marriage is fully recognised and the devolution of estates under the Code of Native Law is prescribed by enactment, and such devolution is not affected by any Christian marriage by Christian rites, nor by anything but formal exemption from Native law. The tendency there has been to level up in certain respects the Native marriage to the Christian marriage, and the status and permanence of Native marriages have been recognised and strengthened by legislation. Divorce by a competent Court has been made necessary to annul a marriage by Native custom. A Native may not marry by Christian rites who already has a wife by Native law; this law is held to prevent even a Native monogamist converting his marriage under Native law into a valid Christian marriage with his own Native wife, and a Native married by Christian rites who subsequently contracts a Native marriage commits the crime of bigamy. A Native may, however, marry an indefinite number of wives under Native custom and commit no crime.

Further, in Natal, differing again from other Colonies, Christian marriage, unless the husband be exempted from Native law, does not improve the status of himself or his wife and does not remove his property from the Native law of succession and inheritance, so that, failing sons, his property in the event of his death goes to the male next-of-kin on whom devolves the guardianship of the widow and daughters,

314. Except in Natal, the intestate estate of a Native who has contracted a Christian or civil marriage is administered according to the Roman-Dutch law, the principle of which in this respect is the division of the property in prescribed shares to the widow and children of the deceased. This is distinctly opposed to Native law, which recognises the principle of primogeniture under which the eldest son succeeds to all unallotted property. The effect of Christian marriage under such circumstances is, therefore, to alter the distribution of the intestate estate very much in favour of the widow and minor children but to the disadvantage of the eldest son or other male heir. This does not affect the devolution of land held under the Glen Grey system of title, in regard to which special provisions have been made to a great extent in accordance with Native law.
315. In the Cape Colony a Native can escape from the position by disposing of his property by will, but in Natal, while subject to Native law, he has no such freedom of testamentary disposition except in respect of any landed property owned by him.
316. One of the strongest forces in Native life and one which might be utilised for bringing about an improvement in their social condition is the influence of the woman. That influence is already strong and would be made stronger and better if she were a free agent and a Christian wife. The Commission is impressed by the importance and desirability of furthering the emancipation of the Native woman of full age and of giving every encouragement to the increase of Christian marriages among the Natives, and it recommends that the Native woman so married should be thereby exempted from the tribal law and custom of guardianship, and in the event of widowhood that she should be personally free and independent. It is convinced that these would prove powerful influences in the advancement of the Native people.
317. The following resolutions were adopted :—
- That it should be the endeavour of ministers of religion and civil officers who solemnise the rite of marriage between Natives, to satisfy themselves that such Natives, in Colonies in which the effect of Christian or civil marriage is to bring the administration of their estates within the Roman-Dutch law, fully realise the legal obligations which they are undertaking.
- That no minister of religion should solemnise a marriage without being licensed as a marriage officer.
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318. The Natal representatives, whilst in the main in accord with the foregoing chapter of the Report, desire to record the following special opinions :—
- (1) That Natives who adopt the principle of monogamy by marrying according to Christian rites should, with their offspring, thereafter not contract marriage according to Native law and custom, and should in all respects be subject to the ordinary Colonial law in regard to marriage, and that

"lobolo" which is associated with Native marriages should not, therefore, be claimable or receivable for the widows or female children of Natives married by Christian rites.

- (2) That the ordinary Colonial law should, in the case of Natives married by Christian rites, be only applicable to devolution and to administration *ab intestato* in respect of real estate and not otherwise.
- (3) That it is due and right to Natives about to marry by Christian rites that they should be made to realise fully and to understand the legal effects and obligations of marriages which automatically remove them from the Native law of succession and inheritance before such marriages are solemnised.

THE CHURCH SEPARATIST MOVEMENT.

19. The next subject in the Commission's enquiries is the Church Separatist or "Ethiopian" Movement, having, as its origin, a desire on the part of a section of the Christianised Natives to be freed from control by European Churches. Its ranks are recruited from every denomination carrying on extensive operations in South Africa, and there is in each case little or no doctrinal divergence from the tenets of the parent Church, though it is alleged, and the Commission fears with truth, that relaxed strictness in the moral standard maintained frequently follows.

20. Almost without exception secessions have been led by Church officers who have been unable to co-operate smoothly with their European Superintendents. The Commission has little sympathy with the movement, as there can be no doubt that its leaders have not yet arrived at a stage when dissociation from the control of European Missionaries is likely to contribute increased wisdom in Church administration, or more ennobling examples of personal self-sacrifice and piety; but so long as it remains unassociated with mischievous political tendencies, members unite in advising that any measure capable of being represented as religious persecution should be avoided. The policy they advocate aims rather to secure such wise control and guidance of the movement that its potentialities may be exerted for good and not for evil. Some of those who by restless ambition have become prominent in association with the movement, are not men to whom its destinies could with confidence be entrusted, and in order to maintain some check upon the possibly harmful influence of such, the course which commends itself to the Commission is to accord recognition to such Native Churches as are possessed of sufficiently stable organisation to control their pastors and enforce discipline where necessary and to ensure the appointment to the ministry of reliable and worthy men only; but not to encourage those bodies which owe their existence to the discontent, or, as in some cases, to the very misconduct of men who, with a following of kindred spirits, have severed connection with their parent Church, and own no competent central authority. In pursuance of this policy it has been recommended, under the heading of "Marriage by Christian Rites," that no minister of religion should solemnise marriages without being licensed as a marriage officer, the granting of a licence to depend on the moral character, education and the general fitness of the applicant for the duties and responsibilities

of the office. It is thought that a judicious exercise of the right to withhold such licences would prove a convenient and effectual means to differentiate between religious organisations recognised by Government as working satisfactorily in the general public interests, and bodies and individuals of whom it is unable to approve. The Commission is led to hope that in this way what is worthless and unstable in the movement will dwindle into insignificance, while so much of it as is lasting and in harmony with the true principles of religious and social advancement will not be unduly impeded, but will grow in the fulness of time to be a power for good.

321. The following are the resolutions passed by the Commission :—

That in the opinion of this Commission the Ethiopian Movement, now represented by the African Methodist Episcopal Church, the Ethiopian Order in the Church of England, and numerous semi-organised schismatic fragments detached from every denomination operating to any considerable extent in this country, is the outcome of a desire on the part of the Natives for ecclesiastical self-support and self-control, first taking tangible form in the secession of discontented and restless spirits from religious bodies under the supervision of European Missionaries without any previous external incitation thereto. Further that upon the affiliation of certain of these seceders and their followings to the African Methodist Episcopal Church lamentable want of discrimination was displayed by the first emissaries to South Africa in the ordination to the ministry of unsuitable men.

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That the Commission is not disposed to condemn the aspiration after religious independence, unassociated with mischievous political propaganda, but at the same time does not fail to recognise that in the case of a subject race such an aspiration misdirected on the one hand by the leadership of ignorant and misguided men and repressed by misunderstanding or harshness on the other might be fraught with the seeds of racial mistrust and discontent.

That the Commission cannot but regard with concern the fact that many who have been prominently connected with the movement in its various phases are men lacking in the breadth of view, wisdom and forethought necessary properly to foster and direct the fledgling ideals of a people just emerging from ignorance and barbarism into a state of semi-enlightenment.

That, reviewing these resolutions, the Commission would not advise any measure of legislative repression, unless unforeseen developments render it necessary, considering that effort should rather be directed towards securing efficient constitutional control and organisation in order that the influences at work may be wisely directed, and any individual cases in which pastors abuse the trust reposed in them, may be amenable to authoritative

discipline. To this end the Commission would deprecate the recognition of detached secessionary fragments acknowledging no efficient central authority.

That no minister of religion should solemnise a marriage without being licensed as a marriage officer.

NATIVE PRESS.

22. The Native Press has on the whole proved itself to be fairly accurate in tracing the course of passing events and useful in extending the range of Native information. It has not, however, arrived at maturity, and while at times it throws interesting light on the present phase of educated Native thought, it is not as yet a faithful reflex of the opinions of the more staid and experienced men who are in closer touch with the masses. The mere fact of its existence is a proof of rapid educational advancement. It cannot be said that nothing but good has accrued from it, but an infant press could not be expected to be wholly free from mistakes and indiscretions. Although the organs claiming to express Native opinion may not have been infallible, freedom of thought and speech within lawful limits is not lightly to be assailed. A minority in the Commission favoured the enactment of a law to punish persons responsible for publications in the Native language creating distrust and animosity between the races or likely to produce conflict between them, but after careful consideration the motion was negatived.

23. The following resolution was passed :—

This Commission considers that the Native press is a result of the educational advancement of the Natives, developing without restriction in the liberty of thought and speech permitted them under the British flag; that the Native is naturally more ready to accept without reserve information conveyed through channels which he regards as peculiarly his own; and, seeing that the Native press has proved on the whole a fairly accurate chronicle of passing events, the result has been a wider dissemination of contemporary knowledge not only amongst those who read but through them amongst the illiterate masses; that the press is at the same time valuable as an index to a certain aspect of Native thought, though not as yet a faithful guide to Native opinion as a whole, much of what appears being immaturely advanced, while the stolid good sense of the more experienced but less lettered men seldom if ever finds expression in print; that while open criticism of a powerful and despotic Chief was rarely practised by the Natives in the past, a free press more or less in touch with European ideas could not be expected to maintain the same attitude towards our Government, and that the change need not be regarded as a symptom of disloyal tendencies, but

rather as the result of a rapid assimilation of European methods before their objects are fully understood, or their privileges sufficiently appreciated to prevent occasional misuse by the unripe judgment of would-be political writers.

NATIVE POLITICAL ASSOCIATIONS.

324. More or less closely associated with the Native Press, Native Political Associations are being formed and in some parts are taking an active and intelligent interest in what they consider to be the political welfare of the Native people. They seek in the main to attain their ends by constitutional means, and their resolutions are made public. The Commission considers that the wishes of such bodies are the more easily dealt with by being openly expressed and clearly understood, and regards such public expression as being far better than discontented silence.

325. The Commission passed the following resolution :—

In view of the progress of education, the Commission sees no occasion for repression of the desire shown by certain sections of the Natives to form Societies for the promotion by constitutional means of what they believe to be their political interests. It considers, moreover, that so long as their deliberations continue to be conducted publicly, as at present, through the medium of the Native Press and otherwise, the danger arising from any mistakes made is far less insidious and proportionately more easily met than the secret plotting carried on in less enlightened days.

EDUCATION.

326. The witnesses who have given evidence have shown very marked divergencies of opinion upon the subject of Native Education. A large class of witnesses, while not absolutely hostile to some form of literary education, apparently have regarded it as of secondary importance as compared with industrial and manual training, and have expressed themselves as opposed to any considerable expenditure of public money in support of Native schools. It has been represented to the Commission with some force that the Native is more useful and contented when brought under the control of the European and so acquires habits of industry and a knowledge of the simpler forms of the agricultural and mechanical arts. That a process of education in the foregoing sense is actively going on has been made clear. The many thousands of Natives constantly employed on farms, railways and public works, and in mines and workshops are inevitably being brought under what is, in the wider sense of the word, an educational influence,

and are thereby becoming more useful and productive members of the community. These occupations involve considerable travel, removal for longer or shorter periods from their home environment and contact with civilised conditions, all of which have the effect of stimulating mental activity and widening their intellectual outlook. It appears evident that the forces surrounding the Natives are tending more and more to bring them into the field of industry, and to effect slowly by a natural process their conversion into an industrial people.

27. The enquiries of the Commission have been largely directed towards the question as to whether education in its more restricted sense as a development of the intellectual faculties by literary instruction had militated against the Native's industrial usefulness, or had had the effect of making him more industrious, contented and law-abiding.

28. The consensus of opinion expressed before the Commission is to the effect that education, while in a certain number of cases it has had the effect of creating in the Natives an aggressive spirit, arising no doubt from an exaggerated sense of individual self-importance, which renders them less docile and less disposed to be contented with the position for which nature or circumstances have fitted them, has had generally a beneficial influence on the Natives themselves, and by raising the level of their intelligence, and by increasing their capacity as workers and their earning power, has been an advantage to the community.

29. Testimony has been given as to the value of education as a concomitant of religious and moral instruction, and as to its economic effect in raising the standard of material comfort and thus creating wants. Apart from the consideration that there is a moral obligation upon the State to provide for the intellectual development of all classes of its subjects, there appear to be very sound reasons of policy for the adoption of a liberal and sympathetic attitude towards the subject of Native education. The Native, in common with the rest of mankind, does not live by bread alone, and possesses certain mental impulses and aspirations which demand satisfaction. Before the advent of European civilisation, the struggle for existence, the chase, war, tribal politics, all furnished a field for the exercise of faculties which new conditions have condemned to inactivity. No policy can be complete or sound which is limited to political or economical considerations only, and which takes no account of the irrepressible forces within each individual. And it is evident that there is among the people themselves a growing desire for education, which cannot and need not be suppressed. Native witnesses have been strong on this point, and the Native Churches which have seceded from European control have established schools for which they have attempted, in most cases unsuccessfully, to secure Government recognition and financial aid. Asserting as they do that they are denied in South Africa opportunities for higher education, the independent Native bodies have already sent or have encouraged the parents to send youths to America for a course of instruction in the Negro colleges. The character of the education at these colleges, with the accompanying grant of "degrees" on low qualifications and the atmosphere of racial animosity in which the education is acquired, render an extension

of this practice undesirable. Another course, which, while equally demonstrating the desire of the Native for education, is free from any objection, except that it would be better to educate the Native youth in South Africa, is that favoured by certain European Missionaries and Native parents who have preferred to seek the desired education for their boys in England and elsewhere in Europe.

330. The votaries of great religions have ever regarded the work of education as a pious duty, and the beginnings of Native education in South Africa were connected with Christian Missionary effort and were originally dependent for support upon the contributions of parent Churches in Europe and America. A later development was the endeavour of the Mission schools to meet the requirements of the Education Departments of the different Governments, thereby obtaining grants in aid of their work.
331. The Governments have responded with varied degrees of liberality, and the result has been that Native education in South Africa has almost completely resolved itself into what may be briefly described as a system of State-aided Mission schools. There has also been in nearly every Colony helpful legislation on the subject.
332. Some idea of the position of this State-aided education may be obtained from the following tabulated form, based upon the latest available official figures, and in the case of the Cape Colony upon information supplied by the Education Department :—

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TERRITORY.	Native Population.	Estimated No. of Native Scholars.	Percentage of Native Population in Schools.	Public Expenditure on Native Education.	Rate per head of Grant to Scholars.	Amount Contributed by Domiciled Natives in Direct Taxation.
CAPE COLONY	1,424,787	60,451 (a)	4.24	£ 47,657 (b)	s. d. 15 9	£ 105,241
NATAL	904,041	10,154 (c)	1.12	7,265 (c)	14 4	162,193
TRANSVAAL	811,753	11,683	1.13	5,000	8 7	280,269
(Labourers temporarily resident)	133,745	—	—	—	—	—
SWAZILAND	84,531	—	—	—	—	29,688
ORANGE RIVER COLONY	235,466	6,500 (d)	2.76	1,800	5 6	42,803
SOUTHERN RHODESIA	570,830	334 (f)	.05	154	9 3	100,806 (e)
(Labourers temporarily resident)	20,367	—	—	—	—	—
BASUTOLAND	347,731	10,484	3.01	7,000	13 5	60,528
BECHUANALAND PROTECTORATE ...	119,411	1,000 (g)	.83	500 (g)	10 0	10,566
	4,652,662					

(a) This figure is an estimate, but approximately correct. The official returns do not separate "coloured" from "aboriginal" scholars, and the figure of 60,451 has been arrived at by excluding centres where the "coloured" population predominates. The number of scholars in the Transkei, where the population is almost entirely aboriginal, is 38,652, and the expenditure on education in these districts is returned at £25,534, which gives a rate per head of 13s. 2d.

(b) The sum of £47,657 is the amount provided on the estimates for 1902 of the Cape Education Department for "Native Industrial Institutions and Mission Schools," and is exclusive of any proportion of Central Administrative Expenditure. It can only be regarded as approximate. Using this figure, £47,657, the rate of expenditure per head of Native scholars is 15s. 9d.

(c) Taken from Report of Superintendent of Education (Natal) for year ending June, 1903.

(d) Taken from evidence of Director of Education in Orange River Colony.

(e) The rate of taxation in Southern Rhodesia has been doubled since these figures were returned.

(f) Taken from evidence of Director of Education, Southern Rhodesia. The figures refer to those schools only which obtain grants. There is no evidence as to the number of scholars in schools not obtaining grants.

(g) Figures given by Protectorate Administration.

333. The foregoing figures may be used for the purpose of forming some general conclusions, but there is such a lack of definite statistics, that it would be unwise to base on the available figures any positive conclusion as to the exact position and cost of education among the aboriginal Natives. The figures reveal that only a very small percentage of the Native population is receiving any education.
334. In the Cape Colony neither the Estimates nor the School Returns take separate account of aboriginal and coloured children, and the number and amount given have been arrived at by a process of estimating. In addition to this, there are, in all the Colonies and Possessions, many schools attended by Native children, whose numbers are not included in the Returns, as they do not receive State aid and, therefore, are not under inspection and control.
335. In addition to the amount set down it would also appear right to include in each of the Territories a portion of Central Administrative Expenditure as fairly chargeable against Native education. It has been found impossible to discover what this proportion would amount to in each case.
336. The liberality of the Cape Government is marked and commendable, but the Commission is of opinion that the evidence discloses the need generally for more liberal total grants in aid of Native education.

7. It has been found impossible to obtain any figures as to the amount of local contribution by Natives in the form of school fees, subscriptions or rates. The Commission recommends for general guidance the adoption of the principle in the distribution of grants that local contributions by Natives should be adequate in amount and that grants should only be given after satisfactory report by Government Inspectors as to the efficiency and conduct of the Native schools to be aided.

8. Evidence points to the fact that a local contribution is more satisfactorily collected in the form of a rate for educational purposes than by the payment of school fees or by irregular and spasmodic collection of voluntary subscriptions by Headmen. The most recent reports of inspections of schools in the districts under the Glen Grey Act reveal a marked increase in the number of qualified teachers and scholars and a distinct improvement in the actual attendances, which good results are traceable to the improved financial system under the Act.

9. The Commission does not recommend any measure of compulsory education for Natives, nor does it consider it advisable that any system of general public undenominational education, independent of existing Missionary organisations should be undertaken at present. There would be a distinct loss in the separation of secular instruction from moral and religious influences, and the cost of any general scheme for establishment of undenominational schools for Native children would be prohibitive. Nor does there appear any present necessity to unduly force the extension of education among the Native population. Their own growing desire for it and the energy exhibited by the Mission bodies to compete with each other in the matter of providing schools seem to assure considerable future expansion. But the resources of these Mission Churches are limited as to men and means, and there are parts which their organisations have not reached and in which there may be, and in places is, a local desire among the Natives for means of education. With reference to such neighbourhoods and elsewhere, it is necessary to consider and decide upon the question whether Native schools established, or to be established, in full compliance with the regulations of Government and under its supervision, but without European Missionary control, should be recognised and aided or not. The Commission, while admitting that there is much opposition to the view, holds that recognition and aid should be given. The movement is a legitimate one, and if such schools are well conducted, adequately supported by local Native contributions or rates, comply with public requirements, and are recommended by responsible Inspectors, their reasonable claims should be met, as this course would bring them under control, and would not only ensure that the teaching should be efficient, but that the moral tone should be what is desirable.

10. The Commission is of opinion that any local demand for Native education not otherwise provided for should be met by the creation of a fund to be administered or not, as circumstances permit, by a local Board or Committee, and to be raised by means of a rate levied upon the Natives in the area concerned, such rate to count in lieu of school fees to those who pay the rate.

341. The Commission is also of opinion that in places where a local desire on the part of Natives for education is expressed, where such education is not otherwise provided for, local effort should be met by Government aid, and that the provisions of the Glen Grey Act appear to supply the most suitable machinery for the necessary financial and administrative purposes.
342. What is particularly needed is to aid and direct, and to promote efficiency in, all existing educational agencies. The practical possibilities at present appear to be embodied in the following resolutions :—

The Commission is of opinion that education has been beneficial to the Natives of South Africa and that its effect upon them has been to increase their capacity for usefulness and their earning power, and therefore recommends :—

- (a) The continuance of Government grants in aid of Native elementary education.
- (b) That special encouragement and support by way of grants in aid be given to such schools and institutions as give efficient industrial training.
- (c) That a central Native college or similar institution be established and aided by the various States, for training Native teachers and in order to afford opportunities for higher education to Native students.

The Commission further recommends that it should be recognised as a principle that Natives receiving educational advantages for themselves or their children should contribute towards the cost:—in the matter of elementary education and industrial training by payment of school fees or a local rate, and as to higher education by payment of adequate students' fees.

The Commission is of opinion that, where possible, in schools for Natives there should be instruction in the elementary rules of hygiene.

The Commission is of opinion that regular moral and religious instruction should be given in all Native schools.

343. With reference to the terms of the above resolutions, it is advisable, in the opinion of the majority of the Commission, to extend to some form of industrial training the same general support that is accorded to elementary education. In support of this view, it is urged that industrial training and instruction in manual work are of particular advantage to the Native in fitting him for his position in life. The minority, while not failing to recognise the moral and economic value of manual or industrial training and the special importance of this form of instruction, is of opinion that the evidence has shown that this branch of education is attended with particular difficulty and expense, and that, while simple manual training forms an excellent adjunct to ordinary teaching, definite technical instruction must be treated

as a special course which it is impossible to make co-extensive with elementary education, and for which it is unreasonable to make provision at the public charge without an adequate contribution from the students who have the advantages of such higher forms of industrial education. Nor must it be forgotten that the great demand of South Africa at present is for the unskilled or partially-skilled Native labourer.

344. The Commission, however, considers that, where it is possible workshops and school-farms in connection with elementary Native schools should receive a special measure of encouragement and support. More advanced industrial training requires the establishment of trade schools or technical institutions involving somewhat elaborate equipment, and the maintenance of an expensive staff of instructors. Some excellent institutions of this character have been inspected by the Commission, which realises that there is no likelihood of such institutions rapidly multiplying in the near future. The endeavour should be in the direction of establishing and equipping a few high-class technical schools rather than of increasing a number of second-rate ones likely to turn out poorly trained workmen.

345. It recommends special grants in aid of industrial training institutions of the required standard, but considers that such aid should be conditional upon the payment by the students of fees bearing some reasonable proportion to the cost of their board and education.

346. The Commission considers that the question of the curriculum for Native schools should be dealt with by a conference composed of educational experts and men of experience among the Natives, and limits its recommendations in this respect to an expression of opinion on the following points :—

Moral and religious instruction should be given in all Native schools.

In the elementary stages of Native education it would be well to allow the Native language to take the place of English as a medium of instruction in the lower standards, and the teaching of English, which in itself is desirable, should proceed as a separate study. The text books and reading lessons in the Native languages might with advantage, be of a character to impress on the minds of the pupils, among other useful matters, simple scientific and sanitary principles, temperance and the elementary rules of hygiene.

347. The Commission has received much evidence pointing to the necessity for some improvement in the facilities for and methods of higher education for Natives, who themselves are strongly desirous of such advanced instruction, and setting forth the view that it is the duty and should be the policy of the South African States to provide such opportunities. The evidence of Education Officers is to the effect that the supply of Native teachers is far from equal to the demand, and that many of those

whose services are available are of inferior attainments. The Commission is impressed with the advisability of establishing some central institution or Native college which might have the advantage of the financial support of the different Colonies and Possessions and which would receive Native students from them all. The immediate advantages of such a scheme appear to be, the creation of adequate means for the efficient and uniform training of an increased number of Native teachers, and the provision of a course of study in this country for such Native students as may desire to present themselves for the Higher School and University Examinations.

LIQUOR.

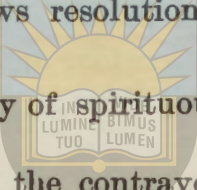
348. The weight of evidence before the Commission in regard to the liquor question has been overwhelming in favour of total prohibition to Natives. In the course of its enquiries in this connection it came to the knowledge of the Commission that upon many farms in certain areas it is the practice to supply the labourers employed with intoxicating liquor as an incentive to work, or as part wages. This applies particularly to farms in the wine-producing districts, and in less degree to farms and industrial estates of various kinds in other parts of South Africa. At some mines Kafir beer is supplied to Native labourers as an anti-scorbutic under regulations approved by Government. Other employers and contractors on large works follow the objectionable practice first described. It has been urged by some witnesses that the system of stimulating or rewarding labour by issue of liquor rations is established by long usage, and that without it labour cannot be procured; while others contend that the practice is pernicious and demoralising, and must ultimately lessen the physical value of the labourer.
349. The Commission has carefully weighed the issues and does not consider that there is sufficient justification, where the measure of total prohibition is, or may hereafter be, put in force, to make any exception from its operation in respect of any Native labourers in any part of the country. As will be seen from the resolution quoted hereafter, the Commission does not oppose the use of Kafir beer by such labourers in moderate quantities and under due control.
350. In favour of the exemption from prohibition of Natives who are Parliamentary voters, as in the Cape Colony, excepting the Transkei, it has been urged that having qualified for the franchise they may be assumed sufficiently advanced to have developed self-restraint and self-respect enough to be freed from all restrictions in respect to liquor. Experience, however, disproves the assumption; the fact being that the Native is constitutionally incapable of being a moderate drinker, and that he must either abstain entirely or the chances are that he will drink to excess, and when in drink all the failings of his nature assert themselves.
351. The evidence shows that the Natives themselves and their best friends unitedly desire prohibition. Even were it otherwise, the Commission would not recommend an exemption which must

inevitably increase the manifold obstacles to the effective administration of prohibitive legislation.

352. Where the supply of liquor to Natives has been prohibited, difficulty has arisen, as was to be expected, in the detection of contraventions of the law. The Natives are unwilling to give information against dealers from whom they purchase direct illicitly; while low-class persons, both European and coloured, have opportunities of procuring liquor and of supplying it to Natives under conditions so favourable as almost to defy conviction. The Commission recommends that, in order to deter the class of person mentioned from practices of this kind and to deter licensed dealers and all others from breaking the law, the penalties attaching throughout South Africa to conviction for supply of liquor to prohibited persons should be such as to leave no doubt of the serious light in which the offence is regarded.

353. It is further recommended that no liquor licence should be issued where the surroundings point to the conclusion that a licence is really sought as a cloak to cover illicit sale to Natives.

354. In pursuance of these views resolutions were unanimously passed as follows :—

- 
- (a) That the sale or supply of spirituous liquors to Natives should be prohibited.
- (b) That the penalties for the contravention of the laws or regulations prohibiting the sale or supply of liquor to Natives should be uniformly severe throughout South Africa.
- (c) That no licence should be granted to sell or supply spirituous liquors within any Native location or reserve, or in the proximity thereof, where the reasonable conclusion is that no remunerative business can be conducted without sale or supply of liquor to Natives.

355. In regard to Kafir beer it was unanimously resolved :—

That the manufacture of Kafir beer containing not more than 4 per cent. of spirit be permitted for home consumption; that the holding of Kafir beer parties on private property be under restrictions and in Native locations or areas in which Natives are congregated be regulated by Government; and that the sale of Kafir beer be prohibited.

356. The Commission bears in mind that Kafir beer is food as well as drink, and, taken in moderation, has proved itself of great value as a preventive, of scurvy and kindred complaints to which the Native, whose diet seldom comprises anything of the nature of green vegetables, is very liable to succumb when unable to obtain a supply of his accustomed beverage.

LABOUR.

357. The Terms of Reference include Native labour as one of the subjects set down for enquiry and report. The Commission realises that certain aspects of the South African labour question were fully dealt with by the Transvaal Labour Commission of 1903. The questions submitted to that Commission were: what are the requirements of the industries of the Transvaal, and how far is it possible to obtain an adequate supply of labour from Central and South Africa to meet those requirements. That Commission reported in the sense that in respect of agriculture, mining, and other industries, including railways, the demand for labour was in excess of the supply, and that the demand would in all probability increase. With particular reference to the mining industry, the finding was that the demand was in excess of the supply by no less than 129,000 labourers, and that a further number of 196,000 would be required in five years. The Labour Commission, in its Report, went on to express its opinion that no adequate supply of labour existed in Central and South Africa to meet the above requirements.
358. The present Commission sees every reason to agree with the finding of the Labour Commission as to the particular questions which engaged its attention, and it has addressed its enquiries more to the following points in connection with the labour question affecting the whole of the British South African Colonies and Possessions :—
- The number and distribution of the Native population.
 - The proportion of such population which, as able-bodied males, may reasonably be looked to for supplying the necessary labour for agricultural, mining, industrial, and domestic work.
 - Whether the proportion of labourers and workers which such a population might reasonably be expected to supply is actually forthcoming.
 - If such reasonable supply is not forthcoming, what are the reasons or causes of the failure on the part of the Natives to meet such expectations.
 - What practical measures can be recommended to improve the present position.
359. In attempting to get reliable figures upon which to base conclusions, the enquirer is met at the outset by the same difficulty that confronts one in dealing with several other South African subjects, namely, the absence of reliable statistics and returns.
360. Attempts have been made to meet this difficulty by obtaining estimates from persons possessing a special knowledge of the circumstances, and certain results have been arrived at. These results are in accord with the general trend of the evidence given before the Commission, and with your Commissioners' personal opinion as to the facts.
361. The following table is an attempt to set forth the existing demand and supply as regards Native labour :—

362. The first part of the table shows the Native population in the various Colonies and Possessions. The area of the Native reserves and the number of the Native population on those reserves are shown on Annexure No. 8. The estimated number of able-bodied males over 15 years of age, and the estimated number of those between the ages of 15 and 40, which is the period of life during which the Native is disposed to leave his home for the purpose of working for wages, are shown in the foregoing table. The table also shows the estimated number of married men, which has been calculated at one-seventh of the population, and the estimated number of unmarried men, which has been arrived at by deducting the number of married men from the total number of males over 15 years of age. The number of workers available at any one time has, for the purpose of this table, been estimated as being one-third of the married men and one-half of the unmarried men. The calculation thus made shows an estimated total of 474,472 as the number of Natives available for paid labour at any one time, or a percentage of 50.6 of the total male population between the ages of 15 and 40.
363. The table showing the demand is based where possible upon evidence given before this Commission and before the Labour Commission, and, where such evidence has been unobtainable, upon an estimate of the requirements for domestic purposes, farm and other industries.
364. In presenting this table the Commission fully recognises that results based on figures which are largely estimates must be accepted subject to the usual allowance by way of margin for error. Figures which have not been supported by evidence and by general knowledge of the probabilities have been disregarded. In dealing with a mass of people spread over a wide area and under varying conditions, errors in estimating figures have a tendency to balance or correct each other, and when the conclusion arrived at by the consistent application of reasonably sound principles coincides generally with known facts, it may be taken as approximately correct. With these considerations in view the Commission feels justified in submitting these figures as fairly representing the case for all practical purposes.
365. There is one fact which all evidence points to, namely, that the South African Native is not at present a continuous worker. The average period for which he will remain away from his home in the capacity of a labourer has been variously estimated, but there are no figures to prove any definite conclusion as regards all classes of workers. It appears most probable that this period may be estimated at three to six months for the labourers in mines and on other industries, with a longer period in the case of agricultural labourers.
366. The proportion of actual workers at any one time to the possible number of workers is largely a matter of conjecture. Any attempt to obtain definite conclusions from the number of passes issued seems futile. The number of passes issued may illustrate the tendencies of the supply of Native labour, or may render possible comparisons between the supply at the different seasons, but as such passes give no record of the period for which

labourers work, they throw no light on the question as to how many are employed at any one time.

367. Starting with the number of all the males between the ages of 15 and 40 as being the total source of supply from which all workers have to be drawn, it seems reasonable to assume that the conditions of communal life, and the known disposition of the Natives, make it probable that half this number on the average may be expected to work at any one time. That is, that there are about 900,000 able-bodied possible workers, of whom about 450,000 may be held to be always at work. The units of this total alternate between their homes and outside labour, but the approximate total is constant. In endeavouring to arrive at an estimate of the proportion of the Native population which may reasonably be looked to for a constant supply of labourers, the Commission has recognised that the Natives of South Africa have always been a pastoral, and, to some extent, an agricultural people, and that, having regard to the fact that their homes, their wives and families, and their worldly possessions are at a distance from the great labour centres, it would be unreasonable to expect the entire adult male population to leave their homes in search of work.
368. The calculations which have been made show an estimated constant demand of 782,000, and an estimated continuous supply of 474,472, showing a shortfall of 307,528 labourers.
369. Under these circumstances the question naturally arises, how in South Africa agriculture or any industry is carried on? The answer is that when carried on at all it is carried on under difficulties, as to which there is abundant evidence. The British South African aboriginal Native has not fully met the labour requirements of the country. There is no doubt that were these Natives alone to be relied upon, South African industries could at present only be worked at half power. Native labour has had to be supplemented by the employment of Africans imported from other parts of Africa, Indians and Chinese. In the latest report of the Government Mining Engineer of the Transvaal, it is mentioned that of the Natives employed in mines there, only 15 per cent. were British Africans. The economic disadvantage of this position is obvious, and the serious annual loss to British South Africa by the withdrawal of the large sums in wages paid to these foreigners is manifest.
370. There are many causes which may be deemed to have produced this situation. As shown in the table [Annexure No. 8], one-half of the Native population lives on reserves. The bulk of these occupy land for the most part communally and free of charge, except hut or poll tax, upon which it is possible for them in some fashion or other to make a living as agriculturists or peasant proprietors without the necessity, excepting in exceptionally bad seasons, of earning wages.
371. With regard to those who do not live on the reserves and who have, either from personal motives or by reason of compelling circumstances, occupied either Crown lands or the lands of private owners upon payment of rent, it may be said that this portion of the population has continued to be able to farm, on a small scale

indeed, but with sufficient measure of return to enable them to supply their own small wants and pay such rent and taxes as have been demanded from them.

372. Both the above classes of Natives have had access to the land on terms which have enabled them to regard work for wages as a mere supplement to their means, and not as it is regarded in the older industrial communities, namely, as the urgent condition under which the majority of mankind earn their daily bread.

373. The theory that the South African Natives are hopelessly indolent may be dismissed as being not in accordance with the facts. Even the simple wants of the Native population cannot be supplied without some degree of exertion. The population of 4,652,662 has to derive its sustenance from a soil which is not everywhere fertile, and the Native agriculturist has to contend with the same drawbacks of drought and pestilence that beset the European farmer. The labour of tilling the soil, weeding and reaping is shared, but is by no means exclusively performed by the Native women ; and the representation of the Native living at his own village a lazy and luxurious life, supported by his wife or wives, is misleading. The Commission is not of opinion that polygamy has any considerable effect upon the Native question in retarding the development of the Native as a worker.

374. The main reasons for the existence of the labour difficulties may be summarised as follows :—

The Native populations have always been pastoral and agricultural.

The rapid increase of South African labour requirements, particularly during the last quarter of a century, has found them to a great extent unprepared to meet the new conditions which surround them.

The normal condition of Native life is that of a small cultivator and herdsman, and the circumstances of their history have never developed among them a class accustomed to, and dependent upon, continuous daily labour.

The inexpensiveness of their living, the limited nature of their wants, and the comparative absence of incentive to labour.

The terms on which they occupy the land.

375. Given such a population, possessing easy access to the land, it would have been extraordinary if the present situation had not followed on a very rapid growth of industrial requirements.

376. Except in the case of farm labour and the like, which is specially suited to the Native, it must not be forgotten that what is known as paid labour generally, means to the Native, as a rule, absence from home and family, and in some employments irksome and often hard and dangerous work, and the abandonment of the ease, comforts and pleasures of Native village life. As further discouragements there have been breaches of agreement by con-

tractors, misrepresentations by labour agents and touts, and occasional harsh treatment, which have tended to shake the confidence of the Native. The rate of wages, nominally high, has to be considered in relation to the purchasing power of money at present South African prices, and it must be remembered that the Native has as a rule to pay top prices for his purchases.

77. Having given weight to all such considerations, the Commission is of opinion that administrative measures are desirable to bring about a healthier economic condition. The agricultural and industrial development of South Africa is retarded by the lack of a sufficient labour supply, and the importation of foreign labour, particularly in the Transvaal and Natal, has, after most careful consideration of the subject, been found to be absolutely necessary. This condition of things is deplorable, but it exists.

78. The supply available from local sources is capable of being increased, and the Commission has given attention to suggestions as to how this is to be done. Any recommendation as to higher wages is quite out of place. In the first place, any departure from the principle that the rate of wages must be a matter of free contract between employer and employé is unsound, nor is any relief from present difficulties to be found in such a measure. To raise the rate of wages in one locality might have the effect of attracting labour to that particular quarter at the expense of other industries, but that would not alter the general situation. Further, it has been stated, and the Commission feels that there is a measure of truth in the suggestion, that while increased wages might have the effect of tempting a larger number of labourers into the market, on the other hand, such increased gains would enable them to remain for a longer period at their own homes.

79. The Commission, therefore, makes no recommendation on the subject of the rate of Native wages.

80. Any measure of compulsion is to be deprecated, not only as unjust, but as economically unsound. Native evidence in Natal was to the effect that the form of compulsory service obtaining there, is intensely distasteful to the Native people concerned. The labour is paid for at less than the prevailing rate, thus penalising the men employed, who, by going out to the ordinary employments open to unskilled labourers, could earn higher wages. Some of the most responsible and important witnesses in Natal expressed in evidence before the Commission their disapproval of this form of compulsory labour.

81. Indirect compulsion in the form of a labour tax, with a remission to workers, has been recommended, but the suggestion appears to the Commission to be open to the same objections as apply to direct compulsion; in addition to which, any measure of taxation of this kind to be really effective, would have to be so high as to be impossible of application. Every Native community includes in its number the old, the infirm, and those who, by virtue of other pursuits, or by reason of family circumstances, it would be very unjust to force from their homes into the labour market or to heavily tax with a view to doing so. But the Commission

considers that in the interests of the State, of the development of the great natural resources of the country, and of the Natives themselves, it would not only be legitimate but wise and just to keep in view in all legislative and administrative measures, the creation of a condition of things which at least will not perpetuate or aggravate the existing labour difficulty. It cannot but be an advantage to the Natives to be induced without compulsion to become more industrious. Economic pressure and the struggle for existence will be felt by many of them at no very distant date, and an industrious people will be better fitted for such conditions—which are even now arising. The formative influences which labour and industry will bring to bear on the character of the Native himself will be most valuable.

382. It might have been supposed that the farmer, by reason of his being a land-owner and because of the fact that he is able to offer the Native, employment that is congenial to him and under natural and healthy conditions, would have had great advantages in the competition for the services of the Native labourer. It is the general complaint by farmers that the attractions of the towns and the high rate of wages given at the mining centres and ports together with the system of unregulated squatting and other causes, increase their difficulty in obtaining an adequate supply of agricultural labour. The Commission considers that an administrative measure which might to a great extent assist the farmers in this respect would be a strict enforcement of the laws designed to check the practice of unrestricted squatting and to regulate and control private locations. In addition, the Commission desires to see in force throughout British South Africa the principle adopted in the Cape Colony of exempting from hut or poll tax any Native who is a farm servant and in *bona fide* and continuous employment.

383. The following are the recommendations made with a view to stimulate industry among the Natives.

The checking of the practice of squatting, by refusal to license all but necessary or desirable private locations, and the imposition of a tax on such locations as may be authorised, based on the number of able-bodied Natives domiciled thereon.

The imposition of a rent on Natives living on Crown lands as distinct from recognised reserves or locations, such rent to be based upon the value of such land and to be regularly and punctually collected.

The enforcement of laws against vagrancy in municipal areas and Native labour locations, whereby idle persons should be expelled.

The encouragement of a higher standard among Natives by support given to education with a view to increase their efficiency and wants.

The encouragement of industrial and manual training in schools.

The protection of the Native worker in his health, his comfort, his safety and his interests, by provision for his

accommodation and transport when travelling by rail or road to and from his work.

The enactment of regulations which will so far as possible secure that while at the larger labour centres his food his housing, his sanitation, and his medical treatment, should be satisfactory. In this respect the Commission recognises that very much has already been done at Cape Town, Kimberley, Johannesburg, and other centres.

The abolition of all taxes or charges upon passes when travelling.

34. One branch of the Native labour question is the employment of women, and the Commission feels that it is highly desirable that every measure should be adopted which would encourage the employment of Native women in domestic work. The employment of Native women for domestic purposes would, particularly in Natal and the Transvaal, release large numbers of men and boys for employment in occupations more suited to them. One of the results which the employment of females may reasonably be hoped to have would be the introduction into Native domestic life of higher standards of comfort, cleanliness and order. At the same time it cannot be overlooked that the employment of women in large centres of population would undoubtedly expose them to much temptation and the danger of moral ruin. The remedy for this must always rest largely with the individual employer, whose duty it should be to protect and care for the character of female servants. Where it might appear probable that organised efforts to secure a supply of Native female servants would be effective, provision might be made for the formation of Societies which would undertake the duty of protecting female workers by securing suitable employment for them and providing them with homes or refuges while awaiting employment.

35. Reference has been made in another portion of the Report to labour locations. The Commission considers that where found practicable the formation of labour locations, where the Native could reside with his family near his employment, would largely tend to diminish the number of those intermittent workers in whom absence from their families induces a spirit of restlessness and disinclination to remain in continuous employment.

36. Messrs. Krogh, Hamilton, Thompson and de la Harpe desire to add to the foregoing list of recommendations made with a view to stimulate industry among the Natives, the following:—

The imposition of an annual rent on location land based on the producing value.

The substitution of individual for communal tenure, with the right of sale between Native and Native.

Close attention to the enumeration of huts liable to tax and the punctual collection of the tax thereon.

TAXATION.

387 This is a matter in which an accurate knowledge of the actual existing facts would be of the greatest service in considering what changes, if any, should be made in the amount of taxation to be borne by the Natives and in the manner of levying or collecting it. Definite information in clear and reliable figures covering the whole ground is difficult, if not impossible, to get at present, and in this connection the Commission takes the opportunity of suggesting to the Governments concerned that more attention might be given to the continuous collection of complete data and the creation of full and reliable records on many questions of fact touching the Native population: their numbers, their movements going to and returning from work, their marriages, their birth and death rate, their consumption of dutiable goods, and their other contributions to the revenue, the amount fairly chargeable to them for police and administration purposes, the amount spent on them for education, and so forth. Statistics, when true, may throw great light on the path of the administrator and of the legislator.

388 Taxation is of two kinds: direct and indirect; meaning by direct what is paid as a tax by the Native to the Government, and by indirect what the Native contributes to the Government by the purchase of goods on which Customs or other duty or tax has been paid to the Government. We may dispose of the latter first. There are no official figures showing the value of dutiable goods imported into Native territories or areas in South Africa except Basutoland and the Bechuanaland Protectorate, but attempts have been made to arrive at some approximate figure of the amount of such goods consumed by the average Native and the amount of indirect taxation in that way contributed by the Natives to the State. The Commission sought for evidence on the subject, but found great diversity of opinion even among those whose business it is to sell such goods to Natives.

Indirect Taxation.

389 Taking the figures of Basutoland and the Bechuanaland Protectorate as being the most accurate available, they show:—

In BASUTOLAND:—

Total annual imports to 30th			
June, 1904	...	...	£298,140
Total Customs duty collected...			£35,882
Native population	...	...	348,000
White population	...	...	900

or an average annual contribution by the Natives to the State of 2s. per head.

In the BECHUANALAND PROTECTORATE:—

Total Customs duty collected, 1903	...	£13,355
Native population...	...	120,000
White population	...	1,000

10. After allowing for the revenue contributed by the white population these figures also show 2s. per head as the amount of duty paid by the Natives within the Protectorate.

11. In the NATAL Blue Book on Native Affairs, 1903, the following appears:—

“ *Estimated Value of Goods Imported into the Colony of Natal for the Kafir Trade, showing approximately the Amount of Duty collected thereon for the year 1903.* ”

	Value.	Duty.
	£	£
“ Beads	14,378	6,385
“ Blankets	80,000	16,000
“ Picks, Hoes, Shawls and Tobacco	8,400	2,750
“ Other Goods	200,000	15,000
	<u>£302,778</u>	<u>£40,135</u>

12. These figures include importations for Zululand and should therefore be judged in connection with the figures of the whole Native population of the Colony of Natal, Zululand and New Territory, which were, according to the Census of 17th April, 1904:—

Male	426,766
Female	477,275
	<u>904,041</u>

13. On the basis of these figures, therefore, the value of goods imported into Natal for the Native trade amounts only to 6s. 8d. per head of the Native population and the Native contribution to the Government by way of duty to 10½d. per head per annum.

14. This figure differs so materially from the more precise figures shown by Basutoland and the Protectorate that it is necessary to recall the fact that the Natal figure is an estimate only.

15. In the TRANSKEIAN TERRITORIES there are no reliable figures available, which is much to be regretted, as they would be to a large extent typical. The Commission thinks that it is worthy the consideration of the authorities whether a system of ascertaining and recording the value of goods consumed by the Natives in the Territories and the duty paid thereon could be adopted. The evidence of witnesses on the facts was conflicting. A Native witness who had been seventeen years in the Transkei estimated £8 a year as the expenditure on imported goods of an average Native family. A trader thought it might be £10 a year per family, and another £2 a year per head. These figures are guesses, and the amount of duty included in the amount spent can only be guessed at.

16. In the ORANGE RIVER COLONY the official *estimate* supplied to the Commission is:

Total Customs duty contributed by Natives	
in 1903	£27,600
Native population	235,500

or 2s. 4d. per head.

397. In RHODESIA:—

Total Customs duty collected 1903-4...	£126,572
Native population	570,830
Coloured population	1,944
White population	12,623

398. Allowing for the spending power of the Europeans, which is probably not less than as 50 to 1 compared with the Natives in Rhodesia, these figures also suggest the view that 2s. per head per annum covers all the indirect taxation borne by the Natives of South Africa. The Acting Chief Native Commissioner of Mashonaland estimates a little over 9d. per head as their contribution in his Province, which coincides roughly with the Natal estimate.

399. An estimate of 2s. per head per annum as the average amount contributed by all the Natives throughout British South Africa in indirect taxation, appears to be a fair one, and as that is the amount shown by the Basutoland and Bechuanaland figures and no equally definite figure is before it, the Commission accepts it as a basis of calculation. On this basis the amount contributed in duty on imported goods by the whole Native population of the country is £465,266.

400. The articles which bring in the largest sum are blankets and rugs, which are subject to a duty of 25 per cent. Hoes and agricultural implements are free.

401. The Commission has no recommendation to make in regard to individual duties, and points out that the way to increase the total of the Native's contributions to the revenue under this head is to increase his wants and his capacity to earn money, while at the same time creating if possible a condition of things which by natural pressure will compel the Native to work more continuously.

402. Direct Taxation.

Turning now to direct taxation:—

In the shape of poll or ordinary hut tax the Natives paid during 1903-4 to the Governments of South Africa	£792,094*
In general rate for local purposes under the Glen Grey Act†, Divisional Council road rate, dog tax, passes, they paid	£80,454
	<u>£872,548</u>

403. The proceeds of the Divisional Council rate and of taxation under the Glen Grey Act, are spent by and on the Natives themselves, through their local governing bodies, for local purposes. The Europeans, however, benefit in common with the Natives in respect

* See Annexure 9.

† The amount paid under the Glen Grey Act as District and General Council rate during 1903, and included above, was £17,519. In 1904, collections under this head reached £38,630.

of expenditure on roads, which absorbs a large share of the amount collected in rates from the Native people. Deducting the estimated total of these rates and taxes, say, approximately, £19,000, there remains an amount of £853,000 annually contributed by the Natives in direct taxation for general purposes, or about 3s. 9d. per head of the total population of 4,652,662.

4. No figures are available to show how much of the total annual expenditure of every Government should be fairly charged to the Natives if an accurate account were struck with them. The first cost of the administration of Natives and their affairs shown in the various Budgets amounts to a little over £484,000. But this first cost of administration is arrived at in various ways, the same head of expenditure being sometimes charged to the Natives and sometimes not. For instance, in Natal the amount is £25,000 only: the cost of Magistrates and police, etc., not being taken into account in this figure.

5. In addition to this total of £484,000, therefore, a proportion of the amount spent on education, on Magistrates and police, on interest on unproductive debt, on public works not yielding revenue, on central administration, and generally, should be debited to the Natives before it is possible to say precisely what they should contribute in the aggregate to the revenue as taxpayers in order to pay their fair proportion of the total public expenditure.

6. The Commission, in making the recommendations quoted below, recognises that the amount of yearly hut or poll tax charged to the Natives may properly vary in different parts of South Africa, but has fixed a minimum below which it should not fall. That minimum is £1 per annum, exclusive of local taxation for beneficial purposes.

7. The Commission also recognises that the value of the land occupied by the Natives and of the produce thereof has increased since the hut tax of 10s. a year now obtaining in the Cape Colony and the 14s. a year obtaining in Natal were fixed; and that money is more easily earned by the Natives now than then. It must, however, be considered that the cost of living has increased for the Natives.

8. The Commission is of opinion:—

- (1) That it is necessary to impose direct taxation upon the Natives.
- (2) That direct taxation can best be imposed by means of a poll tax or hut tax.
- (3) That such tax should not be less than £1 per year, payable by every male adult Native, with an additional £1 for every wife after the first.
- (4) That the following be exempt:—
 - (a) Farm servants in *bona fide* and continuous employment.
 - (b) Natives domiciled within any urban area who pay local taxes.

409. In addition to the taxation referred to above, the Commission is in favour of the extension of the principle of local taxation for beneficial purposes on the lines of the Glen Grey Act.
410. These resolutions do not touch the question, which was fully discussed in Commission, of whether rent should be charged to the Natives for the land given up to their use and occupation. The majority of the Commission are opposed to the idea of rent being charged to Natives on locations and reserves. The resolutions recommend a change wherever the present tax is less than the minimum named therein, *e.g.*, in the Cape Colony, Natal, and the Bechuanaland Protectorate; but a minority of the Commission urge that above and beyond this change in detail, there is the greater question of whether the Natives should be required, or not, to pay rent for the land they occupy. The Commission has affirmed the principle that rent should be paid in the case of squatters on Crown lands, and in the case of the Natives holding under individual tenure what is now location or reserve land.
411. In the opinion of the minority, this principle is sound and should be extended, wherever possible, to all land in the use or occupation of Natives, such as Native locations or reserves, together with the further principle that the rent should be based on the producing value of the land.
412. The minority referred to does not consider that a rent charge by the State could be properly described as taxation, being a payment for value like any other rent. The subject is introduced here because of its collateral bearing upon the matter of taxation, and its direct bearing upon the question of whether the Natives contribute adequately to the State for the benefits they receive from the State. Among these benefits, not the least is the peaceful use and occupation of large tracts of country, aggregating 141,100,800 acres, throughout South Africa, free of rent.
413. The minority of the Commission believes that to do away with free land to Natives would be to strike at the root of much that is most unsatisfactory in Native life—tribalism, communal occupation of land, polygamy, inertness, the comparative unprogressiveness of the mass, the absence of the desire for or incentive to agricultural or industrial paid labour—and that coupled with the right of purchase and sale of land among themselves, leading in time to larger individual holdings, the change would in a relatively short time reduce the number of Natives tied to the locations and reserves, release a large number for work more valuable to themselves and to the country, and would immensely raise the manner of living and the habits of the Natives remaining on the locations and reserves.
414. The minority recommends that hand in hand with the levying of rent on land and out of the greatly increased revenue which would thereby accrue, a liberal encouragement and endowment of schools, industrial training institutions, irrigation works, roads, railways, hospitals and other schemes and works likely to raise the standard of Native life and to increase their efficiency as economic units in the State, should be given.

415. The Commissioners forming the minority claim that the suggested change would bring the Natives under the pressure of the law "If a man does not work neither shall he eat," and by doing so would set in motion certain potent forces which would start the Native races of this country on the upward road more than any legislation which could be devised.
416. The view of the majority of the Commission on the subject of the tenure of land by Natives in what are known as reserves distinctly differs from that set forth above. The majority reject as historically incorrect the view that such land has been given up for the use of the Natives without the existence of any antecedent right on their part. With the exception of certain cases in which land has been granted to Native tribes as an act of grace or in reward for special services (*e.g.*, as was done for the Fingos in what is now known as Fingoland), the people are at present in occupation of the ancestral land held by their forefathers. Often the area of this ancestral land has been restricted and several of the tribes occupy considerably less than the extent of country formerly held by them. In the main the Natives have distinct rights which should be regarded as rights of ownership, and there is no justification for the assumption that they ought to be regarded as in occupation merely as tenants at will of the Crown and subject to the payment of annual rent for the use and enjoyment of the land. These tribes came under European government in most cases by peaceful annexation and did not understand that the transfer of sovereign rights to the Crown involved the surrender or forfeiture of land ownership. Therefore, a special tax based on land values and on the assumption that the Natives have been provided with land and should pay rent for it, would be unjust and would be so regarded by them.
417. The taxation of the Native should be based upon considerations as to what may be deemed to be an adequate contribution, with a due regard to his means and capacity to contribute to the revenue, and to the proportion of public expenditure which may be chargeable to Native administration. Any form of indirect taxation alone would not be effective in dealing with a people who at present are only commencing to develop a necessity for the taxable commodities of European civilised life. Native contributions to revenue have, therefore, to be supplemented by direct taxation, and the form of hut tax or poll tax applied where they are domiciled and where they occupy the land is the most convenient and equitable.
418. The majority of the Commission deprecate the view that any calculation of the amount of land in occupation of Natives can be based upon the total area of reserves referred to in the argument of the minority and shown in Annexure No. 8. The total of 220,470 square miles includes an area of no less than 127,630 square miles in the Bechuanaland Protectorate which has already been described in this Report as "much of it waterless and unproductive," and which carries a population of 78 to the square mile. The table in Annexure No. 8 shows the density of the population on the remainder of the reserves as varying from 6.80 in Southern Rhodesia to 132.81 in the Orange River Colony. Excluding the extreme figures, the density of the population in reserves in the Cape

Colony, Natal, the Transvaal, and Basutoland is such, that the majority regard the conclusion that 2,458,281 of the Native population are occupying 141,100,800 acres of land as fallacious and misleading. A calculation as to distribution of land that may more appropriately be made is that 4,652,662 Natives are allotted in South Africa 220,470 square miles of land as against 694,303 square miles owned by 1,680,529 Europeans and others.

419. The Natal representatives do not concur with the resolutions of the Commission on taxation, with the exception of the first two clauses with which they agree.
- They are of opinion, however, in view of the increase in wages and in the cost of administration, that Natives generally, but especially those who reside on lands set apart for them as locations and reserves and who do not pay rent, are under-taxed at the present time where the hut tax is less than £1 per hut annually. They therefore agree that where the present hut tax is less than £1 it should be brought up to that figure as a maximum, except in the case of Natives in locations and reserves as already stated, in which case they think that the maximum should be 30s.
- As an alternative to the payment of hut tax, they would be in favour of a poll tax of £1 per annum payable by all male Natives above the age of 18 and under 50 years residing on locations or reserves where no rent is paid, provided that Chiefs and Headmen, who fill official positions, are exempted, and that poll tax takes the place of hut tax and any obligation to render compulsory service.
- In respect of Natal, where Natives are called upon to render compulsory labour, they are of opinion that this obligation should cease on the imposition of increased taxation up to and above £1 per annum.

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To the Native Representative.

420. Under their ancient tribal system the Native people were not without representation and the wishes of the tribe at all times played an important part in guiding the policy of the Chief's government.
421. With the exception of the military autocracies established over the Zulus by Tshaka, over the Matabele by Umzilikazi, and by Umswazi in Swaziland, the rule of Native Chiefs in South Africa was not so irresponsible as it is generally believed to have been. Their will was tempered and to a very large extent controlled by a Council so weighty and influential that no step of serious tribal importance was taken until the whole matter had been discussed by it at length. This Council consisted of advisers of the Chief generally spoken of as Councillors. Certainly they were such, but they were much more; they were the direct representatives of the people's wish, and in the very considerable freedom of speech permitted to them at their gatherings, the popular voice found means of expression. A Councillor was not formally appointed, simply becoming such as his opinion at the public gatherings increased in weight and as he acquired popular influence he grew to be accepted more and more as representative of a section of the tribe. It might be courage and warlike achievements, wealth, skill in public debate, penetration in unravelling the intricate windings of Native law suits, or other personal attributes which made him a representative and public man. At their

homes the Councillors were recognised as arbitrators in civil disputes. A few of them were always to be found at the Great Place, where they largely relieved the Chief of the burden of judicial cross-questionings and assisted him in the Executive, fulfilling many of the duties of Ministers under more advanced forms of government. There was, of course, no form of election, but sufficient has been said to show that the Council was distinctly representative of the people's voice. No sooner did any matter of concern to the tribe arise than the Councillors were summoned, no important action being taken until it had been fully discussed in all its bearings.

422. As European government superseded that of the Chiefs the old machinery fell into disuse, save perhaps in Basutoland, where, under a new name, the National Council presided over by the Resident Commissioner maintains to a large extent the tradition of the past. Councils still meet under the presidency of Chiefs in British Bechuanaland and the Protectorate, and affairs of minor importance are decided by them.

423. The present position in South Africa cannot be considered as a whole without regard to the various forms of government obtaining in the several Colonies and Possessions.

424. These are :—

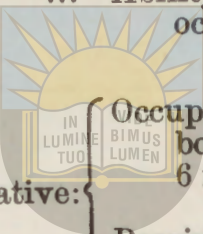
Cape Colony...	...	}	Self-governing Colonies.
Natal ...	...		
Southern Rhodesia...	...	}	Royal Charter with Legislature partly elective.
Transvaal ...	...		
Orange River Colony		}	Crown Colonies.
Basutoland ...	...		
Bechuanaland ...	...	}	Protectorates.
(Protectorate)			

425. In Basutoland and the Bechuanaland Protectorate the Natives have not been disturbed in their tribal form of government, though legislative power is removed from the Chiefs and centred in the High Commissioner. In these Territories, as in the Crown Colonies, the Natives have a useful chain of communication with the supreme authority through the officers appointed to manage them and conduct affairs relating to them. Generally speaking, these officers consist of Commissioners, Magistrates and others. In Basutoland, however, a further means of ascertaining the opinions of the people is provided in the Council already referred to consisting of 100 selected Native representatives.

426. In the Crown Colonies there is a member of the Executive Council responsible for Native affairs. In Natal, Transvaal and Rhodesia the Governor or Administrator is Supreme Chief.

427. The Commission is satisfied that in the Crown Colonies and in the Protectorates above-mentioned the interests of the Natives are safeguarded.
428. Under Responsible Government a Minister, who is a Member of Parliament, has control of Native affairs.
429. The main conditions, in addition to being a British subject, born or naturalised, governing the franchise in the Cape Colony, Rhodesia and Natal may be here given :—

CAPE COLONY and RHODESIA :—

Age	...	...	21 years.
Sex	...	...	Male.
Education	...	...	Ability to write name, address and occupation.
Property, alternative:	 Occupation of building, or land, or both, for 12 months (in Rhodesia 6 months), to value of £75. Receipt for 12 months of wages at rate of £50 per annum.		

Land held on communal tenure and under Glen Grey Act title may not be brought into computation.

NATAL :—

Age	...	...	21 years.
Sex	...	...	Male.
Property, alternative:	Possession of immovable property to value of £50, or rental of yearly value of £10. Income of £8 per mensem, or £96 per annum, and three years' residence.		
Special Qualifications for Natives	Residence ... 12 years in Natal. Exemption ... 7 years from Native Law. Certificate of good character. Consent of the Governor.		

430. The following particulars are quoted from the latest official returns relative to registered voters :—

In the CAPE COLONY :—

Number of voters in 1895	...	...	90,985
Number of voters in 1899	...	...	119,738
Number of voters in 1903	...	...	135,168

Statistics relating to race distribution of voters in 1903 :—

European.	Indian.	Kafir.	Fingo.	Other.	Malay.	Hottentot.	Chinese.	Total.
114,450	399	5,455	2,662	10,162	747	1,226	67	135,168

In RHODESIA there were in 1903 :—

Europeans.	Asiatics.	Natives.
5,199	52	51

In NATAL :—

Number of Voters in 1893	...	10,273
Number of Voters in 1903	...	18,946

Race distribution in 1903 :—

European.	Coloured.	Griquas.	Natives.	Indians.	Total.
18,680	103	7	2	154	18,946

431. The position is, then, as regards direct representation of the Natives of South Africa that, except at the Cape, it is practically non-existent ; and there, Native interests have secured a considerable amount of attention because of their political power which is sufficient not only to influence elections but even to turn the balance in certain constituencies, and to affect the general policy.

432. It is not so material to compare the two systems—the one giving freely and the other restricting—as to weigh the prospects if the Natives, within whose comfortable reach the qualification is now deemed to be, are to have the franchise accessible in equal degree with a European community over whom they preponderate so largely in numbers.
433. The Native population of the Cape Colony is about a million and a half, out of which a quarter of a million are adult male Natives and potential voters. The present number of Native voters is, therefore, the merest fringe of the impending mass, and in view of this fact the full magnitude and gravity of the question may be apprehended. A few of the witnesses claimed that full and equal political rights should be granted to all classes of men fulfilling the necessary franchise qualifications, and they urged that anxiety on the score of disproportions might be relegated to the distant future.
434. These views are not shared by the Commission which recognises that a situation has arisen requiring fair but resolute treatment, a situation not only immediately unsatisfactory but pregnant with future danger.
435. In the Cape Colony the Natives have been admitted to the franchise on equal terms, with the result that in the Eastern Divisions such as Victoria East, Fort Beaufort, Somerset East, Queenstown, Wodehouse, Aliwal North, and Tembuland, the Native voters by throwing their weight in favour of one or other of the two European parties now existing can already determine the issue of any election.
436. There are other constituencies in which the Native voters are sufficiently numerous to exercise a strong influence in any election, and in the present state of parties the Native vote has acquired an excessive importance. The growing power of the Native vote is not confined to these Eastern divisions. On the contrary, the movement westward of these people towards the seaports and inland towns is noteworthy. Port Elizabeth already has 1,114 Native voters ; Cape Town, Woodstock and Wynberg, 478 ; Humansdorp, 80 ; Victoria West, 46. In five only out of the 46 constituencies of the Cape Colony are there no Native voters. Further, the qualifications for the franchise are becoming more easy of attainment by the Natives. Higher wages are being earned by the unskilled labourer, education is spreading fast, and the holding of fixed property is becoming more common. From this it is clear that in the near future Native voters in at least some of the constituencies will outnumber the Europeans. Under such circumstances the voting of the future may proceed upon race lines and no one acquainted with the conditions of life in South Africa will hesitate to say that a conflict would then arise fatal to the good relations which have upon the whole hitherto existed between white and black in this country. The wise course, therefore, is by forethought and timely provision in the interests of all classes to avoid the evil already looming in the distance. It is certain that the Europeans in any constituency will not rest content to be represented in their Legislature by a member returned against their wishes by the Native vote alone, and it is equally certain that throughout South Africa the Europeans will not tolerate in any

Legislature a Ministry dependent upon a majority consisting of members owing their seats to the Native electorate.

437. The Commission has duly regarded another aspect of this question, that is the desirability of extending to the Natives in some parts of South Africa franchise privileges which hitherto they have not enjoyed there.
438. In Rhodesia the law is the same as in the Cape Colony, and has, therefore, been dealt with; but at present there are only 51 Native voters. In Natal, after many years of nominal accessibility of franchise rights, only two Native voters figure on the rolls. In the Transvaal and Orange River Colony, under Republican administration the Natives had no vote. One object of the Commission's recommendations is to secure in due time in these Colonies also a measure of representation to the Natives, which hitherto has not been accorded to them. In favour of this it may be urged that they are rising in the scale of civilisation; they are in many cases increasing in material wealth, including the holding of land; they are becoming good workers in mines and more or less skilled in other industries; they contribute to the revenue in direct and indirect taxation; their labour is a valuable economic factor in South Africa, and for these reasons their interests should be represented in the legislative bodies of the country, otherwise such interests might unduly suffer for lack of expression and publicity.
439. The Commission has the fullest confidence that once the franchise in respect of Natives is placed upon a fair and permanent basis throughout South Africa, more attention will be given to educational and other interests of Natives which hitherto have rather been in the background or have been prejudiced by the more obtrusive question of their political status.
440. The Commission recognises its responsibility in tendering advice on the subject of the political status of the Natives throughout South Africa, which involves a twofold change, *viz.* :—In Cape Colony and Rhodesia the limitation of existing rights; and in the other Colonies the creation of practically new rights. The latter is true of Natal, notwithstanding the present theoretical right of the Natives there to the franchise, since in practice it is withheld from them.
441. The Commission arrived at the conclusion that the possession of the franchise by the Natives under the system existing in the Cape Colony, which permits it being used in a spirit of rivalry with and antagonism to the European electorate, which makes the organised Native vote the arbiter in any acute electoral struggle between political parties, and which as the Native voters increase numerically will enable them to out-vote the Europeans in certain parts of the country, is sure to create an intolerable situation and is an unwise and dangerous thing.
442. On the other hand, the Commission recognised that it was unnecessary and impracticable to take away the franchise from the Natives where they already had it, all that is needed being to change the manner in which it should be exercised. It also felt

that in those parts where the Natives have not in the past had any vote or any form of elected representation in the Legislatures, it is likely to be advantageous to the State and conducive to their contentment to give them the same privileges as elsewhere in South Africa ; provided that this can be done without conferring on them political power in any aggressive sense, or weakening in any way the unchallenged supremacy and authority of the ruling race, which is responsible for the country and bears the burden of its government.

443. Having arrived at these conclusions, the Commission had little difficulty in deciding upon the system which it should recommend for adoption in order to attain the objects in view. The system suggested in the resolution which follows hereon is one which has stood the test of many years' experience in another British Colony, and it embodies an idea which pervades much of the most thoughtful evidence on the subject led before the Commission. The central idea of the scheme, in favour of which there is entire unanimity among the Members of the Commission, is separate voting by Native electors only for a fixed number of Members to represent them in the Legislatures of the country, with the same status as other Members ; the number and qualifications of such Members to be settled by each Legislature ; the number not to be more than sufficient to provide an adequate means for the expression of Native views and the ventilation of their grievances, if any, and not to be regulated by the numerical strength of the Native vote ; no Native to vote at the election of any candidate or Member who is to represent Europeans ; all Colonies and Possessions in South Africa to adopt the plan as they become self-governing.

444. Among the results hoped for from the change are:—

The avoidance of racial strife, on the inevitableness of which under the existing system in Cape Colony the Commission has already dwelt.

The freeing of all questions affecting the betterment of the Natives from any considerations of consequent increase in their political power, and from the resulting hostility to measures conducive to their progress and improvement on the part of many Europeans otherwise friendly to the Native cause.

The direct representation of Native views and interests by Members elected by the Natives themselves, and by them alone, which has never hitherto been the case.

The establishment of a uniform and permanent political status for the Natives throughout South Africa, otherwise impossible, giving them a voice in the discussion and settlement of their affairs, and removing all grounds for discontent arising from a comparison of their position in this respect in different Colonies.

The direct and continuous exchange of views on questions affecting the interests of our large Native population, between the Government and other Members of the Legislature, and the Member or Members elected by the Natives to represent them,

445. It is true that there will still be political influences at work among the Natives, and party candidates will still compete with each other for their votes, but the Commission has sufficient confidence in the political sagacity of the Natives to believe that they will not become the mere tool of parties but will speedily realise their responsibility and, appreciating their opportunity when returning a Member for themselves, will choose that Member wisely. The votes of their Members in the respective Legislatures will still count in a division and will be sought for by contending parties, but, whatever party triumphs may result from their votes, these will not arouse such racial hatred as must come in time from the system which makes the Native voter a potential dictator in local elections.

446. The following are the resolutions of the Commission above referred to :

(1) That in the interests of both races, for the contentment of the Native population and better consideration of their interests, it is desirable to allow them some measure of representation in the Legislatures of the country ; that such representation should be granted on the following lines and recognise the following main principles :

(a) That no Native shall vote in the election of any member or candidate for whom a European has the right to vote.

(b) That the extent of such representation, that is, the number of members to be granted to Native constituencies, shall be settled by each Legislature, and that at least one such seat should be created in each of the self-governing Colonies in South Africa now, and in each Colony or Possession as it becomes self-governing.

(c) That in each Colony now self-governing, or when it becomes self-governing, there should be created an electoral district or districts in which Native electors only shall vote for the election of a member or members to represent them in the Legislature, and that there should be separate voters' lists and separate candidates for Natives only, but that this should in no way affect the franchise, the voters' lists, or the representation of the European community within such districts.

(d) That the qualification for the Native voter be the same as for the European.

(2.) That the qualification of the member or members to represent the Natives should be determined by each Legislature.

447.

Mr. Samuelson concurs with the above resolutions of the Commission subject to the following reservations :

(1) That the qualification of the voter shall include an educational test.

(2) That no Native who is uncivilised and who is a polygamist shall be eligible as a voter.

448. The Commission submits with this Report and its Annexures the original Minutes and other Papers relating to its Proceedings.

We have the honour to be,

Your Excellency's most obedient Servants,

GODFREY LAGDEN,

Chairman.

Cape Colony...

W. E. STANFORD.

F. R. THOMPSON.



Natal...

S. O. SAMUELSON.

MARSHALL CAMPBELL.

University of Fort Hare

Together in Excellence

Orange River
Colony ...

JNO. QUAYLE DICKSON.

J. B. DE LA HARPE.

Transvaal ...

J. C. KROGH.

J. A. HAMILTON.

Rhodesia ...

THOMAS C. SCANLEN.

Basutoland ...

H. C. SLOLEY.

H. M. TABERER,

Secretary.

HOUSE OF ASSEMBLY,

CAPE TOWN,

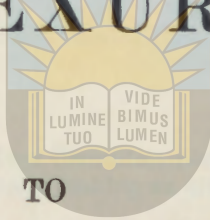
30th January, 1905.

18

SCHEDULE OF ANNEXURES

REPORT OF COMMISSION

ANNEXURES



TO

University of Fort Hare
Together in Excellence

REPORT.

SCHEDULE OF ANNEXURES

TO

REPORT OF COMMISSION.



1. Letters issued by His Excellency the High Commissioner appointing the Commission, together with two Government Notices making an alteration in the Commission and appointing the Secretary.
2. Letter from His Excellency the High Commissioner to the Chairman, dated 21st September, 1903, transmitting his Commission.
3. Printed Paper, showing Heads and Order of Evidence.
4. Printed Paper, showing Questions on which particulars were sought.
5. Interim Reports of the Commission, dated respectively 4th December, 1903, and 6th June, 1904.
6. Alphabetical List of Witnesses, arranged according to Countries in which Evidence was taken; together with a List of Persons invited to give Evidence, but who were unable to attend.
7. Population Return of the various South African Colonies and Territories, 1904.
8. Return of Density per Square Mile of Native Population in Reserves. Polygamy and Labour Return. Maps showing Extent of Land occupied by or reserved for Natives, as follows ;
 - 8a. Cape Colony.
 - 8b. Natal.
 - 8c. Transvaal.
 - 8d. Orange River Colony.
 - 8e. Southern Rhodesia.
 - 8f. Bechuanaland Protectorate.
9. Return of Native Taxation,

From Rhodesia :—
 Sir Thomas Scanlen, K.C.M.G.
 From Basutoland :
 Herbert Cecil Sloley, Esquire.

NOW KNOW YE that I, reposing great confidence in your zeal, knowledge and ability, have authorised and appointed, and do by these presents authorise and appoint you the said Godfrey Lagden, Thomas Scanlen, Samuel Olaf Samuelson, Marshall Campbell, Walter E. Stanford, Francis Robert Thompson, James Alexander Hamilton, Johannes Christoffel Krogh, Quayle Dickson, Stephanus Jacobz, and Herbert Cecil Sloley to be my Commissioners, and you the said Godfrey Lagden to be Chairman, for the purposes mentioned in the aforesaid Resolution, and more especially to enquire into and report on the following matters :—

1. The status and condition of the Natives ; the lines on which their natural advancement should proceed ; their education, industrial training and labour.
2. The tenure of land by Natives and the obligations to the State which it entails.
3. Native Law and Administration.
4. The prohibition of the sale of liquor to Natives.
5. Native Marriages.
6. The extent and effect of polygamy.

And I do hereby desire and request that you, or any five or more of you, do, as soon as the same can conveniently be done, using all diligence, report to me in writing your proceedings by virtue of this Commission.

And I further will and direct, and by these presents ordain, that this Commission shall continue in force until you shall have finally reported upon the matters aforesaid, or otherwise, until this Commission shall be by me revoked ; and that you the said Commissioners or any five or more of you shall sit from time to time at such place or places as you shall find necessary for the purposes aforesaid ;

And I do hereby direct and appoint that you have liberty to report to me your several proceedings from time to time, and at such places aforesaid as the same or any part thereof may respectively be completed and perfected.

In Witness whereof I have caused this Commission to be issued this 22nd day of September, 1903.

GOD SAVE THE KING.

Given under my Hand and Seal this Twenty-second day of September, One Thousand Nine hundred and Three.

(Sgd.) ARTHUR LAWLEY,
 High Commissioner.

High Commissioner's Notice No. 86 of 1903.

IT IS HEREBY NOTIFIED for general information that Johan Bestendig de la Harpe, Esquire, has been appointed to be one of the Representatives of the Orange River Colony on the Inter-Colonial Native Affairs Commission in the place of Stephanus Jacobz, Esquire, resigned.

By Command of His Excellency the High Commissioner,

(Sgd.) C. H. RODWELL,
 Acting Imperial Secretary.

Johannesburg,
 21st October, 1903.

High Commissioner's Notice No. 73 of 1903.

IT IS HEREBY NOTIFIED for public information, with reference to the High Commissioner's Notice No. 70 of 22nd September, that Henry Melville Taberer, Esquire, has been appointed Secretary to the Inter-Colonial Native Affairs Commission.

By Command of His Excellency the High Commissioner,

(Sgd.) C. H. RODWELL,
 Acting Imperial Secretary.

Johannesburg,
 24th September, 1903.

ANNEXURE No. 2.

High Commissioner's Office,

Johannesburg,

21st September, 1903.

I.S. No. 4424/03.



SIR,

I have the honour to forward to you a Commission appointing you to be Chairman of an Inter-Colonial Commission constituted in terms of Resolution 10 passed at the Customs Conference held at Bloemfontein in March last.

That Conference was composed of leading political representatives from the Colonies of British South Africa, and I need hardly say that I attach great weight to the recommendations which after careful deliberation they made.

The Resolution above-mentioned was in the following terms :—

“That in view of the coming Federation of South African Colonies it is desirable that a South African Commission be constituted to gather accurate information on certain affairs relating to the Natives and Native Administration and to offer recommendations to the several Governments concerned with the object of arriving at a common understanding on questions of Native policy. Such Commission to consist of two representatives from each of the Colonies and one each from Rhodesia and Basutoland, with the addition of a Chairman to be nominated by the High Commissioner.”

The consideration of this important question is by no means free from difficulty. The laws, policy, and form of administration adopted by the various Governments together with the habits, customs, and characteristics of the Native people, are known to be in many respects divergent. It is hardly, therefore, to be expected, even with every desire to make concessions in order to arrive at a common understanding, that entire reconciliation can be effected where the territorial circumstances and conditions present so much disparity and where systems, the growth of many years, have been established and maintained during the process of evolution.

In furtherance of its object the Commission will discuss under such headings and in such order as it may consider advisable any question brought forward by yourself as Chairman or by the other members acting on behalf of the Governments which they respectively represent.

There are, however, some subjects in particular which my opinion and my interpretation of the Bloemfontein Conference lead me to think are of paramount importance, and which I therefore submit for definite consideration.

They are :—

1. The status and condition of the Natives. The lines on which natural advancement should proceed. Education. Industrial training. Labour.
2. The tenure of land and the obligations to the State which it entails.
3. Native law and Native administration.
4. Liquor prohibition.
5. Native marriages, succession and inheritance.
6. The extent and effect of polygamy.

These subjects are not necessarily placed in the order which the Commission may desire to consider them.

The advisability of obtaining information on many important points by means of written statements from the Governments concerned, and from individuals, and of inviting the attendance of persons whose evidence is considered likely to be of value, is a question which you will no doubt bring forward for discussion at an early stage of the proceedings. The attendance of any private European individuals who may be required as witnesses may be obtained by your direct invitation as Chairman of the Commission ; that of officials or Natives should be sought through the head of the Government under which they are employed or reside. The expenses of such witnesses will be defrayed by joint contribution of the Colonies concerned.

It is not possible to estimate the time during which the Commission is likely to be occupied and circumstances may preclude the possibility of completing in one or two sessions the important task entrusted to it. In order, therefore, that the various Governments may be kept informed of the progress of the work I request that you will furnish me, in the event of adjournment, with the minutes of proceedings up to date and a report of any conclusions which may have been arrived at. The Commission will finally present a complete report of the whole proceedings accompanied by its observations and its general recommendations upon the whole subject of reference.

I desire in conclusion to express the hope that the proceedings of the Inter-Colonial Native Affairs Commission may be marked by the same spirit of amity and co-operation which formed so gratifying a feature of the Conference recently presided over by Lord Milner at Bloemfontein, and that the result of its labours may be to provide one more stepping-stone towards the federation of British South Africa.

I have the honour to be,

Sir,

Your most obedient Servant,

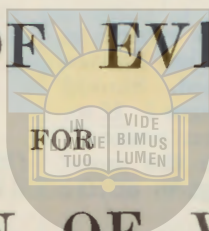
(Sd.) ARTHUR LAWLEY,

High Commissioner.

ANNEXURE No. 3

SOUTH AFRICAN NATIVE AFFAIRS COMMISSION.

HEADS OF EVIDENCE



EXAMINATION OF WITNESSES.

University of Fort Hare
Together in Excellence

- 1.—Land Tenure.
- 2.—Marriage Laws and Customs. Succession and Inheritance.
- 3.—Administration of Local Affairs.
- 4.—Franchise.
- 5.—Native Labour.
- 6.—Education, Religion (its influence on the character and well-being of the Natives), and Industrial Training.
- 7.—Laws affecting Natives and their Administration. Tribal System.
- 8.—Taxation :
 - (a) Direct.
 - (b) Indirect (with regard to the consumption of dutiable goods), and other contributions.
- 9.—Liquor Traffic.
- 10.—The Status and Condition of the Native. His earning power and resources.

ANNEXURE No. 4.

SOUTH AFRICAN NATIVE AFFAIRS COMMISSION.

QUESTIONS.

- (1) With what Natives or Native tribes are you familiar? How long have you resided in South Africa?
- (2) What is your knowledge or experience of the employment or control of Natives or the administration of Native Affairs?
- (3) Describe briefly the conditions of land tenure obtaining among the Natives with whom you are best acquainted. What are your views on the land question as affecting the Natives? Do you favour the communal or individual system of land tenure? State your reasons for the views you hold.
- (4) State the laws and customs in regard to marriages obtaining among the Natives with whom you are acquainted. Should the State recognise such marriages? If so, to what extent, and for what reasons? What are the influences upon the moral character, industry, and progress of the Natives (men and women) of
 - (a) Polygamy;
 - (b) The customs connected with Native Marriages known as "ilobolo," "ikasi," or "bohadi."
- (5) What are the existing laws of Native succession and inheritance with which you are acquainted? Are they satisfactory? If not, what changes do you suggest?
- (6) Is there in operation any special system, apart from tribal organisation, by which the Native people with whom you are acquainted administer their local affairs? If so, please describe it, and say with what results it operates. Suggest changes if you think any advisable.
- (7) Are the Natives you are dealing with in these answers eligible to qualify as Parliamentary electors? If so, do Native voters exercise their right intelligently and independently? Please state whether you are in favour of Parliamentary and Municipal Franchise for Natives; and if so, subject to what qualifications (property, wages and educational). Give your reasons.
- (8) Is difficulty experienced in procuring a sufficient supply of Native labour? If this difficulty exists, is it diminishing or increasing; and, in your view, from what causes? Is farming or any local industry at present suffering from want of labour or from the cost of the same? What are the rates of wages in the various classes of labour? Can the labour supply be increased by a change in the rate of wage?
- (9) (a) What has been the effect of the education of Natives in respect to
 - (i.) Industrial Habits
 - (ii.) General usefulness?
 How far is industrial training desirable? What should it comprise? To what extent and for what reasons do you think education should be encouraged or supported by the State? What is your opinion of the State-aided or other systems of education with which you are acquainted?
 - (b) What influence has the teaching of the Christian religion exercised upon the Native mind and character? Has it tended to advance their material welfare?
- (10) In what respects do you consider the laws affecting Natives and their administration are faulty, and in what ways can you suggest amendment?
 - (a) If you are acquainted with the workings of any tribal systems state their advantages or disadvantages, and the extent to which Government recognition and support should be given?
- (11) (a) Does the Native contribute fairly by direct and indirect taxation towards the State?
 - (b) What goods does he consume, and what does he contribute in forms other than taxation?
- (12) Are you in favour of the total prohibition of the sale and supply of alcoholic liquors to Natives? Give your reasons.
- (13) What is your opinion of
 - (a) The status and condition of the Native men and women compared to that of 20 years ago;
 - (b) Their present resources;
 - (c) Their earning power;
 - (d) Their cost of living?
- (14) What in your view, will, in future, become of the surplus Native population for which no reserved land may be available?
- (15) Have you suggestions of a definite nature to offer on any other points? [Vide List of Subjects attached.]

ANNEXURE No. 5.

Queenstown,

4th December, 1903.

Interim Report of the South African Inter-Colonial Native Affairs Commission, constituted by His Excellency the High Commissioner for South Africa by Notice in an Extraordinary Issue of the "Official Gazette," dated the 22nd September, 1903.

TO HIS EXCELLENCY THE HIGH COMMISSIONER FOR SOUTH AFRICA.

May it please Your Excellency,—

In terms of the Commissions issued by the High Commissioner and by the Governor of each Colony and Dependency represented, the Chairman and Members appointed thereby met on 29th September, 1903, at Capetown and having deliberated, adopted methods of procedure.

In Your Excellency's Letter of the 21st September, 1903, addressed to the Chairman of the Commission, it was directed in order to keep the various Governments informed of the progress of the work that in the event of adjournment a report should be submitted with any conclusion which may have been arrived at, together with the Minutes of proceedings up to date. Copy of the Minutes of Proceedings is appended.

ANNEXURE "A."

In view of the profound importance of the subject your Commissioners realised at an early stage of their labours that in order to attain the object desired it was essential to seek and admit full evidence, oral and written, from those competent to give it, and to visit, not only each of the Colonies and Territories concerned, but those centres in each where different conditions obtain.

ANNEXURE "B."

The lines upon which the examination of witnesses should proceed were then determined, and heads of evidence to be taken were drawn up and published, together with a series of questions to which written replies should be invited. These questions, of which copies are attached, have been widely circulated throughout South Africa, and are eliciting valuable information.

It became manifest that the progress of the work would be hampered and impeded unless and until some comparative digest could be made of all the laws and regulations relating to Natives now of force in the various States and Dependencies of British South Africa. Thereupon arrangements were made to meet this want, and a digest which cannot fail hereafter to be of permanent value, is in course of preparation.

The Commission heard at Cape Town the evidence of witnesses conversant with Cape Colonial Natives' affairs, and visited certain locations established in that neighbourhood for the housing and accommodation of large numbers of domiciled and migratory Natives employed thereabouts.

The Commission then proceeded to the Eastern Province of the Cape Colony with King William's Town as a centre to which, during the period from the 2nd to the 26th November, further witnesses were called and evidence taken particularly upon the subject of the Native land settlements and administrative features peculiar to British Kaffraria.

It was there that, in the year 1853, Governor Sir George Cathcart inaugurated the system of individual land tenure, under which a considerable amount of ground is still held. Visits were paid to certain land settlements at Middledrift and elsewhere, to the Municipal locations, and to the native industrial institutions at Lovedale, in the District of Victoria East.

Proceeding from King William's Town on the 26th November to East London, further evidence was taken and inspection made at that place of the large Native location, containing 11,000 persons, controlled by that Municipality. Thence the Commission journeyed *via* Queenstown to Lady Frere, in the District of Glen Grey, and there investigated the system of Native land tenure and local self-government, established in 1894, under the Glen Grey Act of the Cape Colony, hearing evidence as to the results and working of the Act and inspecting many of the allotments. The Commission then paid a visit to the mission settlement at Mount Arthur, and returned to Queenstown.

It has been decided by the Commission to adjourn on this date, and to re-assemble on the 15th of February, 1904, at Kei Road, in the Cape Colony, for the purpose of proceeding to the Transkeian territories.

The Commission is unanimously of opinion that it would be premature to express views upon the various subjects of reference until full opportunity has been afforded of gaining information of a comparative character in other Colonies, which may form the basis of general conclusions from which recommendations may be offered.

P.O. Box 909, Durban,

June 6th, 1904.

Interim Report of the South African Inter-Colonial Native Affairs Commission, constituted by His Excellency the High Commissioner for South Africa, by Notice in an Extraordinary Issue of the "Official Gazette," dated September 22nd, 1903.

TO HIS EXCELLENCY THE HIGH COMMISSIONER FOR SOUTH AFRICA.

May it please Your Excellency,—

In the first Interim Report, dated Queenstown, December 4th, 1903, your Commissioners stated that in view of the profound importance of the subject under reference, and in order to attain the object desired, it was essential to seek and admit full evidence, oral and written, from those competent to give it, and to visit not only each of the Colonies and Territories concerned, but also those centres in each where different conditions obtained.

In pursuance of this policy, the Commission determined, upon re-assembly, to continue its investigations in the Cape Colony, and for that purpose met on March 11th last, at Kei Road, in the Eastern Province.

Proceeding thence by land transport through the Transkeian Territories, where the mass of the Native population of the Cape Colony reside, the Commission took, *en route*, the evidence of many witnesses, including prominent officials, missionaries, professional men, farmers, traders, Native chiefs, and headmen. This step proved of great value as offering an opportunity to study the features of administration in those territories where individual land tenure and local self-government have been partially established.

After hearing evidence at Butterworth, Umtata, and Kokstad, the Commission proceeded thence on April 1st to Pietermaritzburg in Natal.

At Pietermaritzburg and Durban, which latter place was appointed as a centre for the greater convenience of witnesses from the southern parts of Natal and from the Province of Zululand, sittings were held from the 7th April to this date (the 1st June) during which period evidence was taken from persons representing all classes of the community in Natal, who displayed a great desire to be heard.

Your Commissioners found it necessary to make exhaustive enquiry regarding, *inter alia*, the results in Natal of the system of Native Administration under the existing code of Native Law legalised by Statute, which presents features of a character unique in South Africa.

The Session in Natal included visits to industrial institutions, and a short visit of inspection to Zululand in order to acquire information from personal observation.

In accordance with instructions contained in Your Excellency's letter of 21st September, 1903, a copy of the Minutes of Proceedings is appended. The full notes of evidence are being printed, and will be placed before Your Excellency as completed.

Your Commissioners adhere to the opinion expressed in their first Interim Report that it is undesirable to express views upon the various subjects of reference until their enquiries are complete.

The Commission has resolved to close its second Session to-day, and to re-assemble at Pretoria at a date approximate to the 1st of August next for the purpose of pursuing its investigations in other Colonies and territories.

ANNEXURE No. 6.

List of Witnesses Alphabetically Arranged.

CAPE COLONY.

NAME OF WITNESS.	DESIGNATION.	DATE.	QUESTION.	VOL.	PAGE.
Attaway, Rev. A. H.	Minister, A.M.E. Church	15th October, 1903 ...	3090—3223	II.	252
Brownlee, W.	Resident Magistrate	15th March, 1904 ...	13116—13697	II.	954
Bull, Rev. H. P.	Missionary, Anglican Church	15th October, 1903 ...	2985—3089	II.	245
Collins, H.	Representing Farmers' Congress	4th November, 1904...	45316—45489	IV.	941
Coppin, Bishop L. J.	Minister, A.M.E. Church	14th October, 1903 ...	2581—2840	II.	215
Cornish Bowden, A. H.	Assistant Surveyor-General	8th October, 1903 ...	1021—1155	II.	92
Coulter, T.	Mayor of Kokstad	29th March, 1904 ...	16229—16281	II.	1179
Crisp, Rev. Canon	Missionary, Anglican Church	15th October, 1903 ...	3224—3308	II.	261
Crowe, R. J.	Farmer and Hotel-Keeper	16th November, 1903	10258—10353	II.	749
Daley, M. H.	Labour Agent	16th March, 1904 ...	13943—14025	II.	1026
Dalindyebo and others	Native Chiefs and Headmen	22nd March, 1904 ...	...	II.	1091
Davies, Rev. D. B.	Missionary, Wesleyan Church	2nd December, 1903	12493—12747	II.	901
De Bruin, C. G.	Griqua Headman	31st March, 1904 ...	17594—17701	II.	1267
Dick, R. J.	Special Magistrate	2nd and 16th Nov., 1903	5549—6541 10354—10446	II.	424, 755
Dillon, Lin	Accountant to Chief Magistrate	22nd March, 1904 ...	14924—15013	II.	1092
Dower, E. E.	Chief Clerk, Native Affairs Department	1st October, 1903 ...	1—707	II.	1
During, D. N.	Assistant Resident Magistrate	1st December, 1903 ...	11690—11838	II.	840
Dwane, Rev. J. M.	Missionary, Anglican Church	12th November, 1903	9678—9782	II.	708
Edmonds, R. P.	Farmer	17th November, 1903	10447—10673	II.	763
Ely, F. H.	School Inspector	11th November, 1903	8941—9052	II.	654

NAME OF WITNESS.	DESIGNATION.	DATE.	QUESTION.	VOL.	PAGE.
French, Sir Somerset R., K.C.M.G.	Postmaster General	14th October, 1903 ...	2504—2580	II.	207
Garstin, F. C.	Resident Magistrate	1st December, 1903 ...	11839—12200	II.	849
Golding, G. F.	Farmer	2nd December, 1903	12748—12900	II.	916
Hall, E. F.	Government Land Surveyor	15th March, 1904 ...	12984—13108	II.	929
Hargreaves, J. C.	Resident Magistrate	31st March, 1904 ...	17308—17519	II.	1248
Hargreaves, Rev. P.	Missionary	30th March, 1904 ...	16816—17058	II.	1218
Harper, Rev. J.	Missionary	12th November, 1903	9361—9677	II.	687
Heathcote, R.	Law Agent	22nd March, 1904 ..	14594—14769	II.	1066
Henley, Col. S. S.	Law Agent	16th March, 1904 ...	13766—13942	II.	1011
Herbert, W. J.	Coloured Employer	19th October, 1903 ...	3619—3664	II.	290
Heyneman, J. G. B.	Acting Master, Supreme Court	9th October, 1903 ...	1395—1497	II.	123
Heywood, A. W.	Conservator of Forests	21st March, 1904 ...	14329—14360	II.	1049
Humphrey, J. C.	Farmer	29th March, 1904 ...	15625—15934	II.	1141
Hunter, D. A.	Lay Missioner, Free Church of Scotland... ..	11th November, 1903	9245—9360	II.	674
Jabavu, J. Tengo... ..	Native Newspaper Editor	16th November, 1903	9870—10257	II.	723
Kawa, Rev. P. K.	Native Missionary, Anglican Church	10th November, 1903	8425—8581	II.	610
King, A. D.	Farmer	29th March, 1904 ...	16075—16228	II.	1171
Kling, H.	Missionary, Rhenish Church	20th October, 1903 ...	4253—4397	II.	338
Kriel, T. L.	Farmer	22nd March, 1904 ...	14770—14828	II.	1080
Landrey, J.	Farmer	17th November, 1903	10674—10798	II.	778
Leach, P. W.	Chief of Transkeian Detective Department	29th March, 1904 ...	16398—16428	II.	1192
Leary, W. P.	Resident Magistrate	30th March, 1904 ...	16429—16815	II.	1194
Le Roux, Rev. P. L.	Dutch Reformed Church Mission... ..	21st October, 1903 ...	4398—4593	II.	346
Liefeldt, M. W.	Resident Magistrate	15th March, 1903 ...	13116—13697	II.	954
Lightfoot, Ven. Archdeacon	Clergyman of the Church of England	18th October, 1903 ...	2299—2361	II.	188
Lloyd, C. A.	Superintendent, Municipal Location	26th November, 1903	11290—11689	II.	821
Lowe, N. A.	Superintendent, Docks Location... ..	8th October, 1903 ...	1156—1394	II.	102
Lowry, H. T.	Trader	21st March, 1904 ...	14539—14593	II.	1063

McClure, Rev. J. J.	...	...	...	Minister, Presbyterian Church	...	12th October, 1903	1979—2195	II.	166
Malleson, P. R.	...	...	...	Cape Orchard Company	...	21st October, 1903	4644—4755	II.	361
Mamba, E.	...	...	...	Representing Native Vigilance Association	...	21st March, 1904	14072—14328	II.	1032
Mdolomba, Rev. E., and others	...	...	...	Representing Ndabeni (Maitland) Location	...	16th, 21st, 22nd and 23rd October, 1903	3442—3618 4594—4643 4756—4848 5076—5154 5347—5442	II.	277, 356, 368, 386, 407
Merriman, Hon. J. X., M.L.A.	...	...	...	Ex-Crown Minister	...	22nd October, 1903	5155—5346	II.	393
Moffat, J. B.	...	...	...	Resident Magistrate	...	9th October, 1903	1498—1812	II.	130
Moiketsi Libenyi, and others	...	...	...	Native Chiefs and Headmen	...	31st March, 1904	17520—17578	II.	1259
Moshesh, George T.	...	...	...	Native Chief	...	30th March, 1904	17059—17205	II.	1230
Msingapansi, and others	...	...	...	Native Chiefs and Headmen	...	31st March, 1904	17579—17593 17702—17798	II.	1264 1273
Muir, Thos., LL.D.	...	...	...	Superintendent-General of Education	...	9th October, 1903	1813—1978	II.	149
Musgrave, Major B. D.	...	...	...	Inspector, Native Locations	...	1st December, 1903	12201—12492	II.	879
Mzimba, Rev. P. J.	...	...	...	Native Presbyterian Minister	...	18th November, 1903	10836—10964	II.	790
Parker, E.	...	...	...	Trader	...	2nd December, 1903	12901—12983	II.	924
Parkhurst, Rev. W. H.	...	...	...	Warden of Zonnebloem	...	13th October, 1903	2362—2493	II.	194
Pamla, Rev. C.	...	...	...	Native Missionary	...	29th March, 1904	16281—16397	II.	1185
Pamla, George	...	...	...	Native Labour Agent	...	16th March, 1904	14026—14071	II.	1030
Peregrino, F. Z.	...	...	...	Newspaper Editor	...	19th October, 1903	3919—4309	II.	317
Pringle, W. W.	...	...	...	Farmer	...	29th March, 1904	15935—16074	II.	1163
Quinan, W. R.	...	...	...	De Beers' Explosive Works	...	16th October, 1903	3309—3441	II.	268
Rabie, P. R.	...	...	...	Farmer	...	19th October, 1903	3771—3918	II.	308
Rein, E.	...	...	...	Acting Registrar of Deeds, K. W. Town	...	17th November, 1903	10799—10835	II.	787
Robb, A. J.	...	...	...	Assistant General Manager of Railways	...	12th October, 1903	2196—2298	II.	182
Roberts, W. A.	...	...	...	Coloured Employer	...	19th October, 1903	3619—3664	II.	290
Roberts, Dr. A. W.	...	...	...	Acting Superintendent of Lovedale	...	19th November, 1903	10965—11123	II.	797
Roberts, S. H.	...	...	...	Chief Inspector, Native Locations	...	19th November, 1903	11124—11289	II.	810
Rose-Innes, R. W.	...	...	...	Attorney-at-Law	...	10th November, 1903	8582—8940	II.	619
Sauer, Hon. J. W., M.L.A.	...	...	...	Ex-Crown Minister	...	4th November, 1904	44992—45315	IV.	914
Scott, J. H.	...	...	...	Ex-Chief Magistrate	...	21st March, 1904	14361—14538	II.	1050
Seti, W. N.	...	...	...	Native Clerk, Civil Service	...	5th November, 1903	7459—7851	II.	547

NAME OF WITNESS.	DESIGNATION.	DATE.	QUESTION.	VCL.	PAGE.
Smith, Bishop, C.S.	Minister, A.M.E. Church	7th November, 1904...	45490—45576	IV.	957
Sprigg, Major Howard	Resident Magistrate... ..	30th March, 1904 ...	17206—17307	II.	1241
Stanford, Col. W. E. M., C.B., C.M.G. ...	Secretary, Native Affairs Department ...	7th November, 1904...	45577—45578	IV.	966
Stewart, Dr. J.	Superintendent of Lovedale	3rd November, 1904...	44900—44991	IV.	898
Stormont, Rev. D.D.	Principal of Blythswood	16th March, 1904 ...	13698—13765	II.	1006
Strachan, Donald	Farmer	28th March, 1904 ...	15014—15624	II.	1098
Struben, H. W.	Landowner	19th October, 1903 ...	3665—3770	II.	293
Stuart, Rev. W.	Missionary, Free Church of Scotland ...	11th November, 1903	9053—9244	II.	661
Sweeney, C. J.	Resident Magistrate... ..	7th October, 1903 ...	708—1020	II.	69
Tainton, L. G. H.	Inspector, Native Locations	6th November, 1903...	7852—8196	II.	567
Tele, J., and another	Native Headman	13th November, 1903	9783—9869	II.	717
Toise, D., and others	Native Chief and Councillors	5th November, 1903...	7284—7458	II.	538
Thompson, N. O.	Resident Magistrate	15th March, 1904 ...	13116—13697	II.	954
Umhalla, N. C.	Native Headman	4th November, 1903...	6542—7283	II.	501
Veldtman, and others	Native Chief and Headmen	15th March, 1904 ...	13114—13115	II.	942
Verity, J. G.	Assistant Resident Magistrate	6th November, 1903 ..	8197—8336	II.	597
Visser, J. D. J.	Superintendent, Government Agricultural Farm	22nd October, 1903 ...	4849—5075	II.	373
Waddell, W.	Trader... ..	22nd March, 1904 ...	14829—14923	II.	1083
Waterston, Dr. Jane	Medical Practitioner	14th October, 1903 ...	2841—2984	II.	230
Weber, Rev. J.	Missionary, Rhenish Church	20th October, 1903 ...	4040—4249	II.	328
Whitaker, George, M.L.A.	Merchant	10th November, 1903	8337—8424	II.	603
Wright, W. G. W.	Assistant Resident Magistrate	23rd October, 1903 ...	5443—5490	II.	415
Persons invited to give Evidence but unable to attend.					
Barrable, D. P.	Journalist				
Blaine, G....	Farmer				
Bryce, J.	Licensed Victuallers' Association				
Cameron, W. M.	Secretary, Order of Ethiopians				
Cumming, R. F.	Clerk to Special Magistrate				

Cumming, W. G.	...	...	...	...	Secretary, Native Affairs Department	...	...
Du Plessis, J.	...	...	...	...	Farmer	...	...
Elliott, J. J.	...	...	...	...	Attorney-at-Law	...	...
Fenix, G.	...	...	...	...	Mayor of Cala	...	...
Finch, J. R.	...	...	...	...	Town Clerk, Cape Town	...	...
Fuller, A., M.L.A.	...	...	...	...	Minister for Agriculture	...	...
Garrett, J. W.	...	...	...	...	Trader and Mayor of Lady Frere	...	...
Gibson, Right Rev. Bishop	...	...	...	...	Coadjutor Bishop	...	...
Hofmeyr, Hon. J. H.	...	...	...	...	Ex-Crown Minister	...	...
Jameson, Dr. L. S.	...	...	...	...	Prime Minister	...	...
Jurisch, Captain M.	...	...	...	...	Surveyor-General	...	...
McEwen, T. S.	...	...	...	...	General Manager of Railways	...	...
McLaren, Rev. J.	...	...	...	...	Inspector of Schools	...	...
Mantsayi, Robert	...	...	...	...	Native Vigilance Association	...	...
Nelson, J. C.	...	...	...	...	Farmer	...	...
Nuttall, Rev. Ezra	...	...	...	...	Wesleyan Minister...	...	...
Reinecke, Rev. J.	...	...	...	...	...	...	...
Rubusana, Rev.	...	...	...	...	Native Missionary	...	...
Slater, J.	...	...	...	...	Journalist	...	...
Schreiner, Hon. W. P.	...	...	...	...	Ex-Crown Minister	...	...
Soga, E. K.	...	...	...	...	Native Journalist	...	...
Soga, Dr. W. A.	...	...	...	...	Native Missionary	...	...
Stuart, Rev. W.	...	...	...	...	Missionary (Burnshill)	...	...
Taberer, Rev. C.	...	...	...	...	Missionary, E. C., St. Matthew's Mission	...	...
Theron, T., M.L.A.	...	...	...	...	Farmer	...	...

NAME OF WITNESS.	DESIGNATION.			DATE.	QUESTION.	VOL.	PAGE.
Warren, Col., M.L.A.	...	...	...	...	...	...	...
Warren, R.	...	...	...	...	...	...	...
Weir J. W.	...	...	...	...	...	...	...
Willem, M.	...	...	...	...	...	...	...
NATAL.							
Addison, Col. F.	...	...	...	20th May, 1904	26691—30029	III.	726
Addison, Dr. W. H.	...	...	...	19th May, 1904	29363—29592	III.	706
Alexander, R. C.	...	...	...	17th May, 1904	28159—28422	III.	640
Armstrong, W. N.	...	...	...	9th May, 1904	25790—25950	III.	514
Barnett, P. A.	...	...	...	21st April, 1904	21037—21148	III.	234
Bazeley, H.	...	...	...	26th May, 1904	30858—31166	III.	792
Beachcroft, R. H.	...	...	...	26th May, 1904	30579—30857	III.	777
Beaumont, W. H.	...	...	...	18th April, 1904	18072—18229	III.	16, 717
Bennett, T. R.	...	...	...	20th May, 1904	29593—29690	III.	589
Boshoff, H. G.	...	...	...	11th May, 1904	27190—27611	III.	347
Brunner, E. A., M.L.A.	...	...	...	29th April, 1904	22990—23181	III.	362
Bryant, Rev. D. A.	...	...	...	29th April, 1904	23182—23319	III.	805
Chadwick, J. C. C.	...	...	...	26th May, 1904	31167—31360	III.	658
Clarke, W. J.	...	...	...	17th May, 1904	28423—28632	III.	612
Collenso, Miss H. E.	...	...	...	12th May, 1904	27661—27936	III.	401
Dives, R.	...	...	...	2nd May, 1904	23816—24086	III.	854
Elliot, Sir H., K.C.M.G.	...	...	...	27th May, 1904	31952—32044	III.	190
Emmett, J. C.	...	...	...	19th April, 1904	20460—20769	III.	572
Essery, E.	...	...	...	10th May, 1904	26880—27076	III.	683
Finnemore, R. J.	...	...	...	19th May, 1904	28926—29194	III.	392
Gibson, J. Y.	...	...	...	2nd May, 1904	23669—23815	III.	40
Goodwin, Rev. W. A.	...	...	...	11th April, 1904	18421—18710	III.	625
	...	...	...	12th May, 1904	27937—28158	III.	

Harrison, S.	...	...	...	...	...	Assistant Under-Secretary for Native Affairs	...	{ 7th April, 1904 ... 17796—18071 11th April, 1904 ... 18230—18420 10th May, 1904 ... 27136—27189 }	III.	{ 1 29 584 }
Hulett, G. H.	...	...	...	...	...	Advocate	...	30th May, 1904 ... 33122—33659	III.	911
Hulett, Sir J. L.	...	...	...	...	...	Ex-Secretary for Native Affairs	...	18th April, 1904 ... 19993—20459	III.	148
Jameson, Hon. R., M.L.C.	...	...	...	...	...	Merchant	...	20th May, 1904 ... 30030—30146	III.	744
Kambula and Gumede	...	...	...	...	...	Native Farmers	...	4th May, 1904 ... 24816—25064	III.	455
King, J.	...	...	...	...	...	Farmer	...	3rd May, 1904 ... 24533—24815	III.	438
Kirkman, J.	...	...	...	...	...	Sugar Planter	...	19th May, 1904 ... 29195—29362	III.	697
Koch, H. C.	...	...	...	...	...	Master of Supreme Court	...	14th April, 1904 ... 19623—19800	III.	123
Kumalo, J., and others	...	...	...	...	...	Native Chief and Headmen	...	5th May, 1904 ... 25384—25478	III.	485
Kunene, C.	...	...	...	...	...	Native Journalist	...	1st June, 1904 ... 33976—33978	III.	974
Kunene, M.	...	...	...	...	...	Native Farmer	...	6th May, 1904 ... 25775—25789	III.	512
Labistour, G. A. De R.	...	...	...	...	...	Attorney-General	...	13th April, 1904 ... 19258—19516	III.	90
Labuschagne, Hon. C. J., M.L.C.	...	...	...	...	...	Native Farmer	...	28th April, 1904 ... 22686—22793	III.	333
Lutuli, M.	...	...	...	...	...	Native Farmer	...	28th May, 1904 ... 32045—32394	III.	859
Mackenzie, J. W.	...	...	...	...	...	Labour Contractor	...	10th May, 1904 ... 26442—26879	III.	546
Mahashi Ka Somanyala, and others	...	...	...	...	...	Native Policemen	...	30th May, 1904 ... 32693—32796	III.	893
Maling and Kumene	...	...	...	...	...	Native Farmers	...	6th May, 1904 ... 25479—25632	III.	492
Masson, J. L.	...	...	...	...	...	Surveyor-General	...	14th April, 1904 ... 19801—19992	III.	137
Mason, S. J.	...	...	...	...	...	Merchant	...	3rd May, 1904 ... 24453—24532	III.	434
Matthews, M.	...	...	...	...	...	Resident Magistrate	...	30th May, 1904 ... 32395—32692	III.	874
Mini, and others	...	...	...	...	...	Native Chief and Headmen	...	1st June, 1904 ... 33886—33975	III.	963
Moor, Hon. F. R.	...	...	...	...	...	Ex-Crown Minister	...	20th April, 1904 ... 20770—21036	III.	212
Murray, A. K.	...	...	...	...	...	Farmer	...	28th April, 1904 ... 22794—22989	III.	338
Ndunge	...	...	...	...	...	Native Chief	...	31st May, 1904 ... 33660—33713	III.	947
Plant, R.	...	...	...	...	...	Inspector of Native Education	...	21st April, 1904 ... 21149—21360	III.	245
Radebe, M. S.	...	...	...	...	...	Native Newspaper Editor and Trader	...	9th May, 1904 ... 25951—26441	III.	521
Rathbone, F.	...	...	...	...	...	Trader	...	30th May, 1904 ... 32797—33121	III.	898
Rethman, J. F.	...	...	...	...	...	Farmer and Trader	...	3rd May, 1904 ... 24087—24452	III.	420

NAME OF WITNESS.	DESIGNATION.	DATE.	QUESTION.	VOL.	PAGE.
Roach, Rev. F., M.L.A. ...	Missionary, English Church ...	27th May, 1904 ...	31641—31951	III.	838
Rudolph, G. M. ...	Ex-Resident Magistrate ...	27th April, 1904 ...	22230—22469	III.	309
Samuelson, R. C. A. ...	Solicitor ...	6th May, 1904 ...	25633—25774	III.	501
Saunders, C. J. R. ...	{ Chief Magistrate and Civil Commissioner, Zululand ... }	25th May, 1904 ...	30147—30578	III.	753
Schrumpf, Father B., and Langa, Father T. ...	Trappist Missionaries ...	18th May, 1904 ...	28633—28925	III.	669
Schwikkard, E. A. O. ...	Farmer ...	26th April, 1904 ...	22006—22229	III.	296
Scott, C. W. B. ...	Solicitor and Farmer ...	26th April, 1904 ...	21785—22005	III.	280
Scott, Rev. J. ...	Missionary, United Free Church of Scotland ...	29th April, 1904 ...	23320—23554	III.	369
Shepstone, A. J. ...	Resident Magistrate ...	25th April, 1904 ...	21361—21615	III.	257
Shepstone, H. C. ...	Ex-Secretary for Native Affairs ...	12th April, 1904 ...	18948—19257	III.	75
Shepstone, J. W. ...	Ex-Secretary for Native Affairs ...	12th & 13th Ap'l, 1904 ...	{ 18711—18947 19517—19622 }	III.	58, 112
Smith, A. P. ...	Ex-Clerk to Native Trust ...	25th April, 1904 ...	21616—21784	III.	270
Stuart, J. ...	Assistant Resident Magistrate ...	31st May, 1904 ...	33714—33885	III.	951
Suter, Rev. F. ...	S.A. General Mission ...	27th May, 1904 ...	31361—31640	III.	817
Swaimana and others ...	Native Chief and Headmen ...	10th May, 1904 ...	27077—27135	III.	580
Uys, Hon. D.C., M.L.A. ...	Farmer ...	28th April, 1904 ...	22470—22685	III.	322
Viljoen, L. ...	Farmer ...	5th May, 1904 ...	25319—25383	III.	481
Wiltshire, H., M.L.A. ...	Mine Owner and Farmer ...	2nd May, 1904 ...	23555—23668	III.	384
Winter, Hon. H. D., M.L.A. ...	Ex-Crown Minister ...	5th May, 1904 ...	25065—25318	III.	467
Woollatt, S. B. ...	Principal Veterinary Surgeon ...	12th May, 1904 ...	27612—27660	III.	610
Persons invited to give evidence, but unable to attend					
Adams, W. ...	Farmer ...	...	...	...	...
Astrup, Right Rev. N. ...	Church of Norway Mission ...	...	...	...	...
Baynes, Right Rev. Bishop ...	Church of England ...	...	...	...	...
Baynes, Hon. J., M.L.A. ...	Minister, Lands and Works ...	...	...	...	...
Bosman, H. J., M.L.A. ...	Agent ...	...	...	...	...
Bridgeman, Rev. J. M. ...	Missionary, American Board of Missions ...	...	...	...	...

Chadwick, R. McK.	...	...	...	...	Attorney-at-Law	...	...	...	...
Fannin, Mr. Justice	...	...	...	...	Natal Native High Court	...	...	...	...
Fergg, F., M.L.A.	...	...	...	...	Secretary, Board of Executors, Vryheid	...	...	...	...
Hathorn, K. H., M.L.A.	...	...	...	...	Advocate	...	...	...	...
Jackson, J. O.	...	...	...	...	Ex-Magistrate	...	...	...	...
Johnstone, Hon. F. A. R.	...	...	...	...	Farmer and Ex-Crown Minister	...	...	...	...
Leuchars, Hon. G., M.L.A.	...	...	...	...	Secretary for Native Affairs	...	...	...	...
Mansel, Col., C.M.G.	...	...	...	...	Commanding Natal Mounted Police	...	...	...	...
Mbozane	...	...	...	...	Chief	...	...	...	...
Ogle, John	...	...	...	...	Native Headman	...	...	...	...
Voss, John	...	...	...	...	Farmer	...	...	...	...

RHODESIA.

University of Fort Hare

Baleni and Gwabo	...	...	...	...	Native Preacher and Gardener	...	...	10th September, 1904	36688—36698	IV.	205
Barthelemy, Rev. Father M.	...	...	...	...	Missionary, Roman Catholic Church	...	...	9th September, 1904...	36523—36589	IV.	192
Brown, W. H.	...	...	...	...	Farmer	...	...	1st September, 1904...	35349—35441	IV.	104
Carbutt, C. L.	...	...	...	...	Native Commissioner	...	...	8th September, 1904	36014—36079	IV.	156
Clarke, Sir Marshall, K.C.M.G.	...	...	...	...	Resident Commissioner	...	...	31st August, and 1st September, 1904	34933—35035	} IV.	72, 94
Crewe, Col. P. D.	...	...	...	...	Farmer	...	...	9th September, 1904...	35216—35348		
Deary, H. J.	...	...	...	...	Merchant	...	...	31st August, 1904	36488—36522	IV.	191
Duthie, Dr. G.	...	...	...	...	Director of Education	...	...	31st August, 1904	34625—34790	IV.	50
Edwards, W.	...	...	...	...	Native Commissioner	...	...	2nd September, 1904	35657—35719	IV.	137
Fuller, Col. J. W.	...	...	...	...	Chief Staff Officer, B.S.A.P.	...	...	30th August, 1904	34515—34624	IV.	45
Gambo and Sikombo	...	...	...	...	Native Chiefs	...	...	1st September, 1904...	35442—35488	IV.	114
	...	...	...	...		...	...	8th September, 1904...	36080—36141	IV.	159

NAME OF WITNESS.	DESIGNATION.	DATE.	QUESTION.	VOL.	PAGE.
Grey, Col. Raleigh	Chairman, Salisbury Chamber of Mines ...	31st August, 1904 ...	34791—34932	IV.	61
Helm, Rev. C. D.	London Missionary Society	9th September, 1904...	36266—36397	IV.	170
Hole, H. Marshall	Civil Commissioner, Bulawayo	9th September, 1904...	36418—36487	IV.	186
Hull, E. A.	Farmer	12th September, 1904	36930—37011	IV.	224
Jackson, H. M. G.	Native Commissioner, Bulawayo	9th September, 1904	36398—36417	IV.	185
Jenkins, P. L.	Secretary, Rhodesia Chamber of Mines	12th September, 1904	37012—37072	IV.	229
Kerr, J.	Merchant	10th September, 1904	36699—36835	IV.	206
Leary, Rev. J. W.	Missionary, Church of England	12th September, 1904	36836—36929	IV.	217
Makgatho, Rev. M.	Native Minister, A.M.E. Church	10th September, 1904	36590—36687	IV.	199
Napier, Col. W.	Farmer	9th September, 1904	36145—36265	IV.	163
Springer, J. McK.	Missionary, Methodist Episcopal Church ...	2nd September, 1904	35489—35656	IV.	117
Taberer, W. S.	Acting Chief Native Commissioner, Mashonaland	30th August, 1904 ...	34183—34514	IV.	29
Taylor, H. J.	Chief Native Commissioner, Matabeleland ...	8th September, 1904	35720—36013	IV.	142
White, Rev. J.	Wesleyan Missionary	1st September, 1904	35036—35215	IV.	80
Wilder, Rev. G. A., D.D.	Missionary, American Board of Colonial and Foreign Missions	30th August, 1904 ...	33979—34182	IV.	1
Persons invited to give evidence, but unable to attend.					
Haddon, L.	Merchant				
BECHUANALAND PROTECTORATE.					
Ellenberger, J.	Assistant Commissioner	15th September, 1904	37073—37312	IV.	233
Khama	Native Chief	15th September, 1904	37313—37372	IV.	248

BRITISH BECHUANALAND (Cape Colony).														
Plaatje, S....	...	...	...	...	...	Native Journalist	...	...	...	...	15th September, 1904	37621—37757	IV.	264
Montsioa, B.	...	...	...	...	...	Native Chief	...	...	...	...	15th September, 1904	37420—37620	IV.	256
Rowland, E.	...	...	...	...	...	Trader	...	...	...	...	15th September, 1904	37373—37419	IV.	253
ORANGE RIVER COLONY.														
Dickie, R.	...	...	...	...	...	Farmer and Trader	...	...	...	...	22nd September, 1904	38153—38271	IV.	303
Fraser, Hon. J. G., M.L.C.	...	...	...	...	...	Solicitor	...	...	...	...	21st September, 1904	37758—37986	IV.	270
Gill, H. F.	...	...	...	...	...	Chairman, Chamber of Commerce	...	...	...	...	23rd September, 1904	39291—39327	IV.	379
Goronyane, Rev. J.	...	...	...	...	...	Native Wesleyan Minister	...	...	...	...	21st September, 1904	37987—38036	IV.	291
Grützner, Rev. H.	...	...	...	...	...	Lutheran Missionary	...	...	...	...	23rd September, 1904	39070—39126	IV.	364
Gunn, Hon. H., M.L.C.	...	...	...	...	...	Director of Education	...	...	...	...	21st September, 1904	38047—38089	IV.	295
Hancock, J. W.	...	...	...	...	...	Inspector, Native Locations, Bloemfontein	...	...	...	...	22nd September, 1904	38440—38557	IV.	320
Kumalo, Rev. B., and others	...	...	...	...	...	Native Minister, A.M.E. Church	...	...	...	...	23rd September, 1904	39127—39290	IV.	368
Motshumi, Rev. J.	...	...	...	...	...	Native Wesleyan Minister	...	...	...	...	22nd September, 1904	38435—38439	IV.	320
Nyokong, J. J. M.	...	...	...	...	...	Native Landowner	...	...	...	...	21st September, 1904	37987—38036	IV.	291
Orford, Rev. Canon	...	...	...	...	...	President, Native Teachers' Association	...	...	...	...	22nd September, 1904	38342—38434	IV.	314
Scott, Rev. J.	...	...	...	...	...	Chairman, Wesleyan Synod	...	...	...	...	22nd September, 1904	38558—38737	IV.	327
Turvey, J. H.	...	...	...	...	}	Farmers	...	...	...	...	22nd September, 1904	38738—38920	IV.	338
Van Reenen, J. M.	...	...	...	...										
Wessels, C. H.	...	...	...	...	...	Ex-Chairman of Volksraad	...	...	...	...	23rd September, 1904	38921—39069	IV.	352
Whitworth, Hon. W. S., M.L.C.	...	...	...	...	...	Mine Manager	...	...	...	...	22nd September, 1904	38090—38152	IV.	299
Wilson, A.	...	...	...	...	...	Farmer	...	...	...	...	22nd September, 1904	38272—38341	IV.	310

NAME OF WITNESS.	DESIGNATION.	DATE.	QUESTION.	VOL.	PAGE.
Persons invited to give evidence, but unable to attend					
Hanger, H.	Farmer				
Oelrich, H.	Farmer				
Schimpers, F.	Farmer				
Dyke, Rev. R. H.	Missionary	27th September, 1904.	39592—39738	IV.	413
Hobson, G. R.	Chairman of the Basutoland Chamber of Commerce	26th September, 1904.	39474—39521	IV.	398
Lerothodi, and others	Native Chiefs	26th September, 1904.	39328—39473	IV.	382
Weigall, Rev. Canon S.	Missionary, English Church	27th September, 1904.	39522—39591	IV.	403
Persons invited to give evidence, but unable to attend					
Gerard, Rev. Father	Roman Catholic Missionary				
TRANSVAAL.					
Bourke, Hon. E. F., M.L.C.	Mayor of Pretoria	7th October, 1904 ...	41886—42054	IV.	629
Brande, Rev. S. J., and Mphela, Rev. J. M. ...	Native Ministers, Ethiopian Catholic Church in Zion	4th October, 1904 ...	40782—40869	IV.	519
Carter, Right Rev. W. M.	Bishop of Pretoria	14th October, 1904 ...	43339—43479	IV.	761
Clarke, Rev. W. E. C.	Superintendent of Native Education	6th October, 1904 ...	41661—41734	IV.	601
Creux, Rev. E.	Missionary, Swiss Society	6th October, 1904 ...	41735—41786	IV.	609
Everard, Hon. T., M.L.C.	Farmer	11th October, 1904 ...	42641—42813	IV.	703
Farmer, Rev. Canon E.	Missionary, Church of England	10th October, 1904 ...	42130—42305	IV.	652

Forbes, D.	Mine Manager	18th October, 1904 ...	44568—44801	IV.	868
Francis, R. C.	Merchant	7th October, 1904 ...	41864—41885	IV.	627
Goodenough, Rev. H. D.	Missionary	17th October, 1904 ...	44142—44337	IV.	838
Hogge, E. H.	Resident Magistrate	3rd October, 1904 ...	40044—40258	IV.	453
Irvine, Dr. L. G.	Mine Medical Officer	13th October, 1904 ...	42848—42935	IV.	719
Loveday, Hon. R. K., M.L.C.	Ex-Member of Volksraad	4th October, 1904 ...	40523—40701	IV.	490
Macfarlane, T. J. M.	Witwatersrand Native Labour Association	13th October, 1904 ...	43005—43139	IV.	733
Makone, Rev. M. M., and others	Native Ministers, A.M.E. Church	3rd October, 1904 ...	40259—40308	IV.	473
Mama, J. B., and others	Natives	7th October, 1904 ...	42055—42094	IV.	645
Mavrogordato, T. E.	Acting Superintendent, C.I.D.	18th October, 1904 ...	44478—44567	IV.	861
Meintjes, E. P. A.	Member of Town Council	4th October, 1904 ...	40702—40781	IV.	509
Miller, A. M.	Manager, Swaziland Corporation	6th October, 1904 ...	41402—41660	IV.	577
Molatje, P., and others	Representing Basuto Committee of Johannesburg	17th October, 1904 ...	44338—44477	IV.	853
Mulota, S., and others	Native Chiefs of various tribes	(10th October, 1904 ...	42095—42129	IV.	649
Munnik, G. G.	Ex Landdrost and Ex Mining Commissioner	(11th October, 1904 ...	42814—42847	IV.	715
Msane, S., and Kumalo, S.	Native Compound Managers	4th October, 1904 ...	40309—40522	IV.	476
Nourse, T. C. M.	Representative of Rand Pioneers	17th October, 1904 ...	44338—44477	IV.	853
Pim, H.	Chartered Accountant	13th October, 1904 ...	43140—43238	IV.	746
Pott, W., and others	Transvaal Landowners' Association	18th October, 1904 ...	44802—44899	IV.	886
Pritchard, S. A. M.	Chief Inspector of Natives	17th October, 1904 ...	43966—44141	IV.	823
Radloff, C. G.	Farmer	13th October, 1904 ...	42936—43004	IV.	729
Schreiner, T. L., M. L. A.		7th October, 1904 ...	41787—41863	IV.	619
Shepstone, T., and others	Transvaal Agricultural Union	11th October, 1904 ...	42320—42640	IV.	668
Strange, H.	President, Chamber of Mines	5th October, 1904 ...	40870—41401	IV.	525
Tsewu, Rev. E., and others	Native Independent Ministers	14th October, 1904 ...	43480—43548	IV.	777
Tucker, W. K.	Representative of Rand Pioneers	14th October, 1904 ...	43549—43795	IV.	876
		17th October, 1904 ...	43796—43965	IV.	805

NAME OF WITNESS.	DESIGNATION.	DATE.	QUESTION.	VOL.	PAGE.
Ware, Fabian	Director of Education	10th October, 1904 ...	42306—42319	IV.	666
Windham, W.	Secretary, Native Affairs Department	3rd October, 1904 ...	39739—40043	IV.	427
Persons invited to give evidence, but unable to attend.					
Botha, General Louis.	Landowner				
Burger, Schalk	Ex-Vice-President S.A.R.				
Dahl, Captain.	Ex-Native Commissioner				
De la Rey, General	Farmer				
Grant, William.					
Griffith, C.	Native Commissioner				
Maggs, C.	Assistant Secretary, Native Affairs				
Marwick, J. S.	Agent for Land Companies				
Mason, Mr. Justice.					
Rose-Innes, Sir J., K.C.M.G.	Chief Justice				
Roux, J. P.	Farmer				
Roy, J. S.	Town Councillor				
Sievwright, E.	Attorney-at-Law				
Solomon, Sir R., K.C.M.G.	Attorney General				
Uys, Piet.	Farmer				
Wessels, Mr. Justice.					
Wheelwright, C. A.	Native Commissioner				
Witwatersrand Church Council representatives					

ANNEXURE No. 7.

POPULATION OF THE VARIOUS SOUTH AFRICAN COLONIES AND POSSESSIONS AND THE DISTRIBUTION OF THE NATIVE POPULATION ON THE LAND.

(Previous years shown in *italics* for comparison purposes.)

Name of Colony or Possession.	European.	Aboriginal.	Coloured.	Asiatic.	Natives on Private Farms.	Conditions of Occupation.	Natives in Town Locations.	Con- ditions of Occup' tn.	Natives on Crown Lands.	Conditions of Occupation.	Natives on Reserves.	Con- ditions of Occup' tn.	Natives on Private Locations.	Con- ditions of Occup' tn.
CAPE COLONY ... (1891) <i>382,998</i>	579,741	1,424,787 (1891) <i>1,066,238</i>	395,369	9,907	213,843	Arrangement between Landowner and Native.	113,828	Bye-laws.	Nil.		1,057,610	Glen Grey and other Land Acts, Location Regulations, Reserve Regulations, Tenancy at will.	39,506	Private agreement under Location Act 30 of 1899.
NATAL (including Zululand) (1891) <i>47,436</i> (1880) <i>25,271 (a)</i>	97,109	904,041 (1891) <i>628,478</i> (1880) <i>362,477 (a)</i>	6,686	100,918	426,674 (d)	"	Nil.	"	13,985	Rent of £2 per hut p. a.	463,382 (e)	"	None re-cognised.	
TRANSVAAL (including Swaziland) (1899) <i>288,750</i>	300,225	1,030,029 (b) (1899) <i>754,321</i>	23,946	Included under Coloured.	479,753	"	28,264	"	180,427	Yearly tenancy at £1 p. a. Free of Rent.	207,840	Tenancy at will.	"	
ORANGE R. COLONY (1890) <i>77,716</i> (1880) <i>61,022</i>	143,419	235,466 (1890) <i>129,787</i> (1880) <i>79,496</i>	6,160	University of Port Hare Together in Excellence	195,404		22,972	"	Nil.		17,000	"	"	
SOUTHERN RHODESIA ...	12,623	591,197 (c)	1,944	"	82,023	"	9,959	"	151,503	"	264,618	"	62,727	Private agreement under High Commissioner's Procl. of 14 10 98.
BASUTOLAND ... (1891) <i>578</i> (1875) <i>499</i>	895	347,731 (1891) <i>218,902</i> (1875) <i>127,707</i>	163	59	Nil.		Nil.		Nil.		347,731	"	None re-cognised.	
BECHUANALAND PROTECTORATE	1,004	119,411	361	Included under Coloured.	1,000	"	Nil.		18,311		100,100	"	"	
Totals ...	1,135,016	4,652,662	434,629	110,884	1,398,787		175,023		364,226		2,458,281		102,233	

(a) Excludes Zululand.

(b) Includes 133,745 labourers temporarily resident.

(c) " 20,367 " "

(d) Includes Zululand, 5,594.

(e) Includes Zululand, 197,779.

{ These figures are not shown in the distribution of the Native population on the land.

ANNEXURE No. 8.

Density per Square Mile of Native Population on Reserves.							Polygamy and Labour Return.		
NAME OF COLONY OR POSSESSION.	Area. Sq. Miles.	Native Population.	Area of Reserves in Square Miles. (See Maps attached).	Native Population on Reserves.	Density per Square Mile of Native Population on Reserves.		Percentage of Married Natives who are Polygamists.	Estimated Number of able-bodied Natives between the ages of 15 and 40.	Estimated Number of Natives who sought labour in 1903.
CAPE COLONY	276,565	1,424,787	(a) 21,000	1,057,610	50.36	{ Cape Col. 25 Tr. Terr. 22 Br. Bech. 9 }		277,089	152,539
NATAL	36,173	904,041	(b) 13,892	463,382	(c) 33.35	(f) 20		164,988	121,810
TRANSVAAL including Swaziland (labourers temporarily resident) ...	117,732	896,284	(d) 8,656	207,840	(e) 24.00	(g) 18		126,500	74,767
ORANGE RIVER COLONY ...	55,180	235,466	128	17,000	132.81	5		50,000	10,000
SOUTHERN RHODESIA... ..	143,830	570,830	38,871	264,618	6.80	{ Mashd.: 40 Matabd.: 20 }		126,000	67,500
(labourers temporarily resident) ...		20,367							
BASUTOLAND	10,293	(h) 347,731	10,293	347,731	33.78	17		55,301	50,000
BECHUANALAND PROTECTORATE ...	275,000	119,411	127,630	100,100	.78	—		22,206	15,000
Total	914,773	4,652,662	220,470	2,458,281				822,084	(i) 491,616

(a) Excludes 2,681 square miles approximate area of Mission Reserves and Lands granted to Chiefs under title.

(b) Includes Zululand (10,100 square Miles).

(c) Density per square mile on Reserves in Natal 66.48, and in Zululand 19.58.

(d) Includes Swaziland (6,536 square miles).

(e) Density per square mile on Reserves in Transvaal 59.4, and in Swaziland 12.9.

(f) Excludes Zululand.

(g) Percentage in Transvaal is 11.65, and in Swaziland 29.83.

(h) Excludes 20,000 males estimated absent from Territory at Census Taking.

(i) Not more than one-half of this total can be regarded as representing labourers at work at one time, and it should be noted that the figures in this column do not include resident farm labourers.

ANNEXURE No. 9.—Return of Native Taxation.

Name of Colony or Possession.	Form of Direct Taxation.	Amount Collected.			Indirect Taxation	Estimated (a) Amount.	Other Taxation.	Amount.			Total.		
		Year.	£	s. d.				£	s. d.		£	s. d.	
CAPE COLONY ...	Hut Tax 10s. per ann.. also Quit Rents and Occupation Rents	1903-4	(b) 105,241	7 0	Customs.	142,478 14 0	Special Hut Tax for Divisional Council purposes and Rates for Local Government purposes	(c) 19,205 5 2			266,925 6 2		
NATAL ...	Hut Tax 14s. per ann.	1904	162,193	0 0		90,404 2 0	Dog-tax	15,585 5 0			268,182 7 0		
TRANSVAAL (including Swaziland)	Poll Tax £2 per male adult per ann.	1903-4	309,957	0 0	"	103,002 18 0	Travelling passes and certificates, and dog-tax	(d) 32,817 1 9			445,776 19 9		
ORANGE RIVER COLONY ..	Poll Tax £1 per male adult per ann.	"	42,803	0 0	"	23,546 12 0	Passes and dog-tax	12,846 0 0			79,195 12 0		
SOUTHERN RHODESIA ...	Hut Tax 10s. per ann. (e)	"	100,806	10 0	"	59,119 14 0	—	—			159,926 4 0		
BASUTOLAND ...	Hut Tax £1 per ann.	"	60,528	0 0	"	34,773 2 0	—	—			95,301 2 0		
BECHUANALAND PROTECTORATE	Hut Tax 10s. per ann.	"	10,566	0 0	"	11,941 2 0	—	—			22,507 2 0		
		Total, £	792,094	17 0		465,266 4 0		80,453 11 11			1,337,814 12 11		

(a) Estimated contribution 2s. per head per annum. See par. 399 of Report.

(b) Excludes licence fees on Private Locations paid by Landowners (£1,801), but includes Hut Tax on Private Locations (£2,748), and Quit Rent and Occupation Rent on Crown Lands (£10,984 17s. 0d.).

(c) Figures in regard to Dog Tax are not readily obtainable.

(d) Excludes revenue derived from Passports in labour districts paid by employer.

(e) Subsequently raised to £1 Poll Tax.

COMPARATIVE DIGEST
OF
LAWS AFFECTING NATIVES.



University of Fort Hare
Together in Excellence

Prepared for the South African Native Affairs Commission by MR. ADVOCATE
A. J. MCGREGOR, of the Cape Colony Bar, Cape Town.

locations A.8 A IV.V
land tenure A.17
Squatter A.30 A XII XIII

APPENDIX A.

COMPARATIVE DIGEST OF LAWS AFFECTING NATIVES.

DEFINITION OF NATIVE-COLOURED PERSON.



1. In Cape Colony there does not appear to be any general statutory definition of Native, though special definitions are found for the purposes of various Acts (See e.g. Article on Liquor Legislation par. "b" and Sec. 27, Act 17, 1864 and Sec. 26, Act 30, 1899).

2. In Natal, however, by Law 14, 1888, "Native" shall be deemed to mean and include "all members of the Aboriginal races or tribes of Africa south of the Equator, including liberated Africans, commonly called Amandawo, who are not exempted from the operation of the Native Law in terms of Law No. 28 of 1865. Provided, that Griquas and Hottentots shall not come under the provisions of this Law" (though they do fall under the provisions of the Liquor Law of 1878, since repealed; but see Sec. 4 Act 38, 1896).

It will be observed that this definition is less extensive than that of the Liquor Act, 38 of 1896, Sec. 4 (in view of which clause Act 10, 1891 does not seem to be of any material importance).

Laws affecting the Natives of Natal shall apply to Natives (generally) as above defined so long as they sojourn or reside in Natal (Sec. 2).

Persons cited or summoned in any legal proceedings as "Natives" are to be deemed such, unless they prove the contrary.

3. In O.R.C. by Sec. 8, Law 8, 1893, the expression "coloured person" means a man or woman... of any native tribe in South Africa, "and also all coloured persons and all who in accordance with law or custom, are called coloured persons or are treated as such, of whatever race or nationality they may be". This is a description rather than a definition, presumably suggested by the special circumstances of the case. A similar definition is found in the Mining for Precious Metals Ordinance 3 of 1904 and the Poll Tax Ordinance 2 of 1904. Both these Ordinances specifically include Asiatics and the former Polynesians also. There does not seem to be any general definition of "coloured person". (In Law 16, 1894, Sec. 1 we find the expression: "the coloured people, commonly called Bastards"....).

4. In the Transvaal in Proc. 37, 1901, as amended by Ord. 27 of 1903, and the regulations under Proc. 37, the term "Native" means a male person over fourteen years of age both of whose parents are members of some aboriginal race or tribe of Africa." See also Sec. 2, Proc. 38, 1901).

5. In the Rhodesian Order in Council of 20th October 1898 we find (Sec. 3) that "Native" means "any person not of European descent who is a native of South Africa, or of Central Africa".

6. As to the Bech. Protectorate—See Article—"Liquor Legislation" par. (b) and Sec. 11, Proc. 4 April 1892.

NATIVE LAW.

Exemption from Operation of.

1. Save as to Acts 17, 1864 and 22, 1867 (of which later) the main Cape legislation hereon is found in Act 39, 1887.

At the outset we note this distinction: In Cape Colony the exemption flows automatically from the possession of voting rights or educational qualifications; in Natal, Orange River Colony and Transvaal application must in each case be made, and the possession of certain qualifications does not *per se* involve exemption or override the discretion of the Executive Authority concerned.

2. IN CAPE COLONY Act 39, 1887, provides in effect as follows:—

(a) No persons being duly registered voters (at Parliamentary elections) whatever their nationality, tribe or colour, shall be in any other way, or to a greater extent, subject to the operation of any laws than voters of European nationality or extraction may be, so long as they remain duly registered, though any Native voter may claim to have his name removed from the list framed by any registering officer.

(Note: In (a) there is no exclusive and specific affirmation of a Native's exemption—the exemption may include him—for the section applies to *any* voter, whatever his nationality, etc., and among the laws to which he is not subject in any greater degree than a European are those set out in the Schedule. See par. (b) hereof.)

(b) "No Native, Kaffir, Fingo, Basuto, Hottentot, Bushman or the like" who

I. holds a certificate from the Education Department of qualification as an elementary teacher;

II. holds an inspector's certificate that he has reached the "fourth standard," or any higher education certificate;

III. is a Graduate or Undergraduate of the Cape University;

IV. is a Minister of the Gospel, duly admitted as such into any Christian Church, is to be subject (to any greater extent than if he were of European descent) to the laws mentioned in the Schedule, viz.:—

Acts 17, 1864; 18, 1864; Ord. 10 of 1864 (Kaffraria); Acts 22, 1887; the Liquor Act 28, 1883; Native Location Act 37 of 1884 (Sec. 2).

(With these qualifications may be compared those of Orange River Colony and Transvaal in Sec. 3 hereof.)

(c) Hut Tax; liability to pay this tax is not affected by the Act (Sec. 3).

(d) Native Locations Act (37, 1884) remains applicable to all persons resident in a location, whether or not a Kaffir, Fingo, or the like (Sec. 4).

(e) Native registered voter may claim certificate of registration; which proves itself by intendment of law on production (Sec. 5).

3. WHO MAY APPLY FOR EXEMPTION IN NATAL, ORANGE RIVER COLONY AND TRANSVAAL.

In Natal—any male Native and every unmarried female Native resident in the Colony. (Sec. 29, Law 28 of 1865.)

In Orange River Colony and Transvaal—the following:—

I. Any ordained coloured Minister of a *recognised* Christian denomination;

II. Orange River Colony, "Any coloured person holding a *higher* education certificate from the Education Department in this or any other British Colony, *and* holding at the time a position as teacher in a *recognised* educational establishment in *this* Colony."

Educational Qualification.

Transvaal:—"Any coloured person holding a certificate of qualification as an elementary teacher, or any higher educational certificate in *this or any other British Colony*, and any coloured person who exercises a profession or trade."

(Note.—The italics are of course not in the Act. It will be observed that the qualification apparently is higher in the Orange River Colony than in the Transvaal.)

Compare (Cape) Sec. 2 (b), I, II, III (above) hereof.

Note the word "recognised" as to the Christian denomination not used in (Cape) Sec. 2 (b), IV (above) hereof.

4. APPLICATION FOR EXEMPTION.

In Natal, Orange River Colony and Transvaal exemption must be sought by application duly made (see:—Natal: Law 28, 1865; Orange River Colony: Ord. 2, 1903; Transvaal: Proc. 35, 1901, Ord. 28, 1902).

(a) In Natal (Sec. 2) and Orange River Colony (Sec. 1) the petition is to Lt.-Governor (in Natal now the Governor); in Transvaal to the Commissioner for Native Affairs (Sec. 1).

(b) In Natal the prayer is to be exempt from the operation of Native Law;

In Orange River Colony and Transvaal it is for relief from the operation of the law relating to passes—or (in Transvaal) such other laws as may be notified by the Administrator in the Gazette (this addition giving a certain degree of elasticity to the law hereon).

(Note.—While full Cape exemption is based on franchise, Natal exemption may (other things being equal) be a step towards acquiring the franchise.)

(c) No letter of exemption to issue before applicant has taken oath of allegiance (Sec. 12, Natal, Sec. 2 (2), Orange River Colony and Transvaal).

(d) Procedure to obtain letters of exemption:—

This is simple in Orange River Colony and Transvaal and more elaborate in Natal. The requirements of application are set out in Secs. 3 and 4 (Natal) and Sec. 4 (Orange River Colony and Transvaal). In Natal, there must be information not only respecting applicant but respecting also his family, property, Chief, etc., and he must state whether he can read or write.

In Orange River Colony and Transvaal in addition to information respecting the applicant there must be:—

I. In the case of a Minister of Religion, information as to his ordination, denomination, etc.;

II. the production of the educational certificate, where that is the qualification (and in Orange River Colony there must in either case be a certificate from Magistrate, A.R.M. or J.P. as to applicant being a fit and proper person for exemption, whilst in Natal there has to be attached to petition a certificate by a resident, not a Native, possessing a juryman's qualification, to the like effect as that in Orange River Colony).

In each of the three Colonies there must be a supporting affidavit. (Sec. 4, Natal; Sec. 5, Orange River Colony and Transvaal.)

(e) Action of the Executive:—

In Natal the Lt.-Governor (Governor), in Orange River Colony the Lt.-Governor, in Transvaal the Commissioner for Native Affairs, has in each full power and discretion to investigate the facts, and to grant or refuse the application (Secs. 7, 8, and 9, Natal; Sec. 7 Orange River Colony and Transvaal respectively).

5. EFFECT OF EXEMPTION.

(a) This has already been indicated (see Sec. 2 (a) and (b) and Sec. 4 (b) hereof). In Natal the exempted Native seems to become amenable only to the ordinary common and statutory law—as opposed to Native Law; the effect in Orange River Colony and Transvaal is less far reaching.

(b) In Orange River Colony and Transvaal the exempted coloured person has, under pain of a penalty, to carry about and produce on demand, his letter of exemption (Sec. 3); in Natal the Native must produce the letter in order to establish his exemption.

6. THE NATAL ACT DEALS WITH VARIOUS CONNECTED MATTERS, e.g.:

I. There is a special power given to the Lieut.-Governor and Council to examine witnesses under oath, etc. (Sec. 15 etc.), and a penalty for dealing illegally with the letters of exemption (Sec. 18).

II. The rule as to legitimation by subsequent marriage is extended to children of exempted Native by wife married according to Christian rites (Sec. 20).

III. Wife and children of married Native included in the exemption—save as to sons who have attained the age of 16 years and to children who have married—and subject to the Governor's power to except other children from the exemption (Secs. 21 and 22).

IV. Exempted Native not to marry again according to Native Law (Sec. 24).

V. Exempted daughter marrying unexempted Native according to Christian rites forfeits her exemption but retains common law rights on the parents' estate if marrying according to Native Law she forfeits the latter rights also (Secs. 25 and 26).

VI. Succession to exempted Native's property to be in terms of will or according to the ordinary law (Sec. 27).

VII. Law not to extend to Natives living in polygamy (with a minor exception (Sec. 28)

VIII. Secs. 29—35 deal with the petition for exemption of an unmarried Native female—a guardian of European descent being necessary in this connection.

7. CERTIFICATES OF REGISTRATION—TRANSVAAL.

Under Ord. 28, 1902, "certificate of registration" may be issued to any Native "employed under a contract of service as a skilled artisan, mechanic, tradesman, or other skilled employee or who shall on his own behalf carry on some trade or business"—the certificate exempting him from the operation of the existing "pass" laws (Sec. 1);

This certificate shall be valid for 12 months, and thereafter renewable—£1 being payable on issue or renewal (Sec. 3);

Failure to renew within 21 days after expiration involves resubjection to "pass" laws, till date of renewal (3).

8. CAPE CERTIFICATES OF CITIZENSHIP.

Act 17, 1864, in order to prevent Colonial Fingoes being mistaken for Kaffirs authorises the issue of certificates of citizenship to Fingoes and contains regulations to prevent the abuse of such certification;

Further, Kaffirs or Native Foreigners are entitled of certificate after 10 years' service in Colony (but Governor to have discretion as to issue even though this 10 years period be not attained).

By Sec. 7. Act 22 1867, in the case of certain Kaffirs and Tambookies therein specified, the proprietors of land or of a building not less than £10 in value became entitled to receive the said certificate (and certain powers of issue in other meritorious cases given to Governor).

(Note.—There are certain special exemptions, of course, under specific Acts, e.g. see the instances given under par. (d) (6) of Article "Liquor Legislation" and an exemption under Sec. 1, Law 8, 1896 (O.R.C.) exempting "male coloured persons, between the ages of 18 and 70 years, who have rights to land and pay quit rent" from the payment of the poll tax.)

NATIVE LAW.

Note.—Native Law has been codified in Natal and not elsewhere (Law 19, 1891—Schedule. See also Acts 1, 1901; 1894; 40, 1896; 8, 1897; 25, 1892; and 47, 1903). A comparative study is not accordingly sought to be here given, nor is there any attempt to give a digest of a Law to the full comprehension, indeed, of which expert knowledge is desirable: all that is attempted is to draw attention, cursorily and not necessarily systematically, to certain matters that strike one as being of interest.

Part II deals with criminal procedure, etc., where we may usefully note a comparison with the Transkeian Penal Code. Part I of this article deals with matters of more general import, which may be termed Substantive Native Law.

P A R T I.

Substantive Native Law.

(a) Chapter I (General Explanations).

Note here that "Supreme Chief" means the Officer administering the Government (Sec. 5).

"Tribe".... Communities existing in connection with Mission Stations may be regarded as Tribes (Sec. 8).

"Chief".... also includes the persons appointed by the Supreme Chief to have charge over Natives connected with Mission Stations (Sec. 9).

Kraal and House, Kraal Property and House Property are also explained (Sec. 14, 16, 17, 18). (Compare the definition of kraal in Sec. 5 of the Transkeian Penal Code (24, 1886).

(b) Chapter II (The Supreme Chief).

Note his power to call upon all Natives to supply labour for public works, etc. (Sec. 36) that he is not subject to any Court of Law in Natal by reason of any order, act, etc., ordered or done, either personally or in Council (Sec. 40) and that he is upper Guardian of all Orphans, etc. (Sec. 41). The principle embodied in Sec. 40 seems to be one of some moment. (See also the recent Act (47, 1903), giving power to remove Natives residing upon *private lands* to another part of the Colony).

(c) Chapter IV (Chiefs of Tribes).

Note that the Chief is responsible *inter alia* for:—the prompt supply of men.... as labourers for public works, etc.; and for the prevention of crimes and offences, and of the production, sale, etc., of intoxicating liquor, Native beer excepted (Sec. 46 (b) and (h)).

Note, further, the Power of the Chiefs "to try all civil cases (divorces excepted) between Natives" provided the defendants (or persons complained of) are members of their tribes (Sec. 49 and Secs. 50, 51, etc.).

Note that while the Chiefs take cognisance of crimes committed within their jurisdictions, they do not adjudicate thereon. (Sec. 56. See also article "Native Courts.")

(Compare the power to appoint Chiefs to exercise jurisdiction—Sec. 4 Regulations, Proc. 2 B., 1884, and Sec. 10, Proc. 10, June 1891—Bech. Protect.. See also as to jurisdiction of Chiefs sections 31 and 32. 2 B.B. 18 85).

(d) Chapter V (District Headmen).

Note, that these detain cattle not belonging to their tribe and brought into or through their districts under suspicious circumstances—notifying the fact to the Chief or Administrator of Native Law (Sec. 63). (See also Sec. 4, Act 13, 1894).

(e) Chapter VI. (Kraal Heads).

These are responsible to the Chief and Supreme Chief for the good conduct of inmates of their kraals, and are civilly liable for contracts entered into by, and for fines imposed upon such inmates when acting as their agents, etc. (Sec. 73). They must also summarily arrest any Native bringing intoxicating liquor into their kraals (Sec. 75). See also Sec. 293 as to strange cattle.

(d) and (e). Note.—The Headman and Kraal Head in effect made to aid in the prevention of cattle theft and drunkenness).

(f) Other Chapters (VIII—XIII) deal with: Personal Status (VIII), Inheritance and Succession (IX), Marriage (X), Divorce, etc. (XI), Lobolo (XII) and Guardianship (XIII)—of which IX, X, XI and XII are incidentally noticed in the appropriate articles elsewhere. Sec. 108 (The Kraal Family System, Chapter IX) seems noteworthy as indicating a somewhat elaborate system of house-affiliation. Again Sec. 187 (Ch. XIII) provides that where property is acquired, etc., by one who is alleged to be incapable of managing it, the Native High Court, if satisfied as to the incapacity, is to make an order as to the management of the property and may place the said person under guardianship, etc. (See Amendment Sec. 7, Art. 29 of 1896. See also sub-sec. f. of Sec. 4 of Courts Act 1898).

(g) Chapter XIV allows medicine men and women to practice for gain; but a licence from the Administrator of Native Law is required, and unlicensed practice is penalised. In the Cape Colony this licensing is not met with, though the unlicensed "quack" is occasionally criminally prosecuted; in Natal alone apparently is the medicine man licensed.

(h) Chapter XV Secs. 205 and 206 hereof deal with the destruction of crops by cattle and damage negligently caused by grass fires, and affix a certain liability on the Kraal Head owning the cattle or being Kraal Head of the person causing the fire. (Herein also of damages against one committing adultery, abducting wife or child, or defaming character.)

(i) Native good manners, etc. are noticed in Chapter XVI, and Chapter XVII lays down (Sec. 230) the important principle that native women and girls are not to be deemed mere chattels and also provides (Sec. 232) that cattle, etc. sold or bartered, are taken as guaranteed by the seller to be free from latent disease for 14 days from the day of sale.

(Chapter XVIII—"Courts"—is noticed in another article—see "Native Courts.")

(N.B.—Law 19 of 1891 (and the Schedule thereto) does not extend to the Province of Zululand, where the Native Law in essence seems to remain uncoded. Par. 8, Act. 37 of 1903.)

This code (of which only a few points are here noted) is not only important in itself; it stands by itself. For although we find a Penal Code in the Transkei (see Part II hereof) the latter is of general application. In the Transkeian Proclamations we have a provision (see Sec. 23 of Proc. 110 of 1879) that where the parties are Natives, the case may be dealt with by the Magistrate according to Native Law; but that law is not codified, and would be decided by the Magistrate in accordance with the evidence led before him, or from his knowledge of the law; and the same principle doubtless holds good in other Colonies.

Note A.—Where Native Law is codified it is presumably important that the code should, on the whole, record the best presentment of actual (and not purely ideal) Native Law (but see Sec. 5 now repealed, Law 44, 1887); and it is conceived that there may possibly be some difficulty in having, in any one Colony, one code which sufficiently meets this requirement, regard being had to possible diversity of race and tribe, customs and usage. But this is merely one consideration in what may well be a many-sided problem; and meanwhile it is probable that Natalian experience may be of assistance in arriving at an estimate of the expedience of the practice adopted by the Natalian Legislature.

Note B.—Transkei: It may be conveniently pointed out here that in the Transkei it is provided that where the parties to a suit before a Magistrate are Natives, the Magistrate may deal with the case according to Native Law (see Sec. 23 Proc. 110, 1879); and in a recent case (*Sekelini v. Sekelini* 21 S.C.R. p. 118) the Chief Justice has been disposed to hold that, in certain classes of actions at least, the word *may* must be taken to mean *shall*. It is an enunciation of the obvious to add that in such a matter it is desirable that the Legislature should express its intention as unambiguously as may be.

Note C.—Bechuanaland Protectorate: By Sec. 10 Proc. of 10th June 1891 where Commissioners or Magistrates exercise jurisdiction in cases where Natives only are concerned, they must follow the laws and customs of the Natives concerned, so far as they are applicable; but if such laws and customs conflict or are not clearly proved or are incompatible with good government etc., the Court may decide the matter in accordance with the law which would govern if the parties were Europeans (See also Sec. 4, Order in Council of 9th May, 1891).

Note D.—In Basutoland in any case, etc., where all the parties are Natives, and in all cases before a Native Chief, Native Law may be administered (Sec. 13 Regulations B. 1884), (As to the word *may* here used, see as perhaps applicable the note on *Sekelini's* case in Note B hereof). (See also Article on "Native Courts.")

PART II.

Criminal Procedure &c.—Criminal Law.

(Natal: Code of Native Law; Cape: Transkeian Penal Code).

With Part II of the Natal Code may be compared the Transkeian Penal Code (24 1886), (See also, on a point of technical procedure, Proc. 14 of 1895, Transkei). But note, the former obviously is not a Penal Code, and so far as it extends, applies to *Natives*; the latter is on the whole what it purports to be, a complete code of Criminal Law, but it applies generally. It is no part of the scheme of these notes to discuss legislation, generally applicable; the fragmentary remarks which follow mainly draw attention to certain matters wherein the two codes deal with similar questions.

1. UNLAWFUL ASSEMBLY. FACTION FIGHTING.

(Natal Code Ch. XXII Secs. 273 etc.; Transkeian Penal Code, Ch. VI Secs. 91, etc.), Both Codes (Sec. 273 and Sec. 95) deal with an assembling of more than five persons (the Cape Sec. 95 referring to "five or more persons") from whose conduct a breach of the peace may ("reasonably", Cape) be apprehended. Refusal to disperse on direction to that effect by an authorised person (a J.P., etc., at the Cape; a *Kraal Head*, etc., in Natal) is an offence. (Note that in Natal the *Kraal Head* disperses.) The Cape Sec. 96 provides for the use of force to compel those assembled to disperse; and also (Sec. 98) provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who at the time of committing that offence is a member of that assembly is guilty of that offence.

(As to civil liability it was decided in the case of *Steenekamp vs. Kyd* (15 Supreme Court Reports, Cape p 221) that "a person who conspires with others to wage war against the Queen, and joins them in appointing a leader to conduct the war, is responsible for damage done to individuals by the orders of such leader, if such orders might reasonably have been anticipated as a consequence of the conspiracy" (Head Note), (In his judgment the Chief Justice (de Villiers, C. J.) indicated that this rule should be construed by the light of the facts of the particular case).

Natal: A very recent Natal Act (47, 1903) *inter alia* deals with and makes punishable the liability of Natives taking part in unauthorised armed assemblies,—provides for the imposition of fines by the Supreme Chief on the male adults of a tribe where there is a combination to suppress the names of, or to shield from justice, those participating etc., provides for the specifying and enforcing of such fine and for execution in connection therewith, and also provides for imprisonment for default of payment of such fines (Secs. 2—6).

By Sec. 2, Act 11, 1896, "Faction fighting" means fighting with or without weapons, between Natives, in which not less than eight persons are engaged, and includes any breach of the peace. . . . or homicide, occurring in such fight".

The Natal Law (Sec. 14, 26 of 1875) provides that—quoting the marginal note—"in case of homicide, assault, or injury ("to person or property", Sec. 14) from Native riot or faction fight; proof of taking part in same to be deemed sufficient (to prove guilt) unless it be satisfactorily proved that accused was not guilty".

In conjunction herewith note Sec. 1 Act 47, 1903 (taking the place of Sec. 6, Law 44, 1887) which deals with a condition of things under which after a homicide, assault, etc., has occurred, there is reason to believe that there is a combination among any tribe or community of Natives to suppress evidence relating to some homicide or assault, etc., or to conceal the perpetrator thereof, etc. when the Governor may impose a fine not exceeding £20 upon each adult male. (As to Faction Fighting see also (Natal) Acts 11, 1896 and 9, 1897).

2. WITCHCRAFT.

This subject is dealt with at the Cape (in the Transkei) in Natal and Rhodesia (Cape Penal Code, Ch. XI; Natal Code, Ch. XXI; Rhodesia Ord. 14, 1899).

The Transkeian Penal Code (Ch. XI Secs. 171—175) deals with the imputing to another the use of witchcraft, the employing of a witch doctor, the supplying by the latter of advice or witchcraft materials, and the using of witch medicine with intent to injure. (The general Regulations in Proc. 110 of 1879 Secs. 14 and 15 also refer to witchcraft). These enactments are with substantial closeness followed in the Rhodesian Ord. (14, 1899) wherein are certain further provisions dealing with, e.g., the naming of thieves by witchcraft, and including in the term "witchcraft" the "throwing of bones" (It is suggested that this latter term refers to what is—it is believed—termed in Dutch "*dol os goi*").

The Natal Code (Ch. XXI) deals with: practising as a male or female diviner, or a rain or lightning doctor, consulting or employing any of the foregoing—professing for gain a knowledge of witchcraft etc.

(This subject does not seem to be specifically dealt with under this head in the Transvaal, Orange River Colony or Basutoland).

3. CODIFICATION.

(a) Although the Transkeian Penal Code is in the form of a code and is stated to work satisfactorily, yet it is not absolutely exhaustive; for Sec. 269 provides that where any act is committed which is not made an offence by the code, but is a crime or offence according to Cape Law, it is to be dealt with as though committed in the Cape Colony.

(b) The Natal Code does not purport to be a code of criminal law; what it seemingly does is to make criminally punishable certain acts on the part of Natives which (it is conceived) are opposed to the moral sense of or socially injurious to Natives, but are not criminally punishable under the ordinary law—e.g. See Ch. XXIII Sec. 277 "Offences against decency and morals" e.g. adultery (which though technically a crime according to the Books is not criminally dealt with, in the Cape Colony at least), illicit intercourse with or by a widow (save in a case of *ukungena*), the seduction of any unmarried girl (no age limit being apparently assigned); see further e.g. Sec. 274; remaining in a kraal after being requested to withdraw.

4. PRINCIPLES OF LEGISLATION.

Tested by the provisions of the Natal Code (as partially exemplified in the previous section), the Transkeian Penal Code leaves outside the sphere of the criminal law certain acts which may possibly be an offence to the native moral sense (though only the expert mind can judge of the correctness of this tentative assumption).

Speaking generally, it is conceived that while a differentiation between European and Native as to what constitutes an offence may tend to meet cases whose occurrence is injurious and reprehensible to Native social well-being, it is possible that one result of such a system of differentiation may be tacitly to encourage or legalise practices which a more civilised society seeks to discourage or eradicate. But here again, the right course can only be indicated by those whose mind is conversant with Native Customs and whose judgment is fortified by experience.

NATIVE LOCATIONS.

1. INTRODUCTORY.

The legislation on the subject of Native Locations in the different Colonies does not appear to run on parallel lines, though no doubt many of the leading principles are similar, and the conditions which have called forth such legislation are presumably in many respects identical. And indeed these conditions—which are outside the scope of these notes—may themselves serve as a sort of gloss or commentary on the enactments; for a statute is best understood when we know not only what the legislator is enacting but what precisely was the state of things sought to be remedied. Experts would know whether it is correct to say that the Native Location is at once in part a conservator of tribal usage and in part a solvent thereof or a departure therefrom on the road, and with a view, towards non-tribal conditions; for one's present purpose it must suffice to say that, in some Colonies at least, the subject has an economic and a fiscal, as well as a social and a police aspect.

2. LEGISLATION.

In the Cape Colony there still is, and there has been, a considerable body of statute law bearing on the subject; the Legislature seems to have gone with more detail into the matter than is observable in the Statute books of the other Colonies. Much of this Cape legislation is referred to in the case of *Kama vs. Colonial Government* (15 S.C.R. p. 47), which indeed is worth reading for the transactions therein recorded.

The following Cape Acts are to be noted:—40 of 1879, 37 of 1884, 30 of 1899, 5 of 1899, 25 of 1894 and 40 of 1902; and incidentally Sec. 4, Act 39 of 1887, Secs. 211 and 235, Act 40 of 1889, Sec. 68, Act 23, 1897, Secs. 1 and 2, Act 20 of 1891, and Sec. 3, Act 12 of 1893.

In the Transkei: Proclamations 125 of 1897, 314 of 1897, 175 of 1900 (for Elliot) and 125 of 1903, should be noted.

In the Orange River Colony we have Law 8 of 1893 and the provisions contained in the Municipal Corporation Ordinance 6 of 1904, Secs. 103—109, while in the Transvaal the legislation (of which more presently) is meagre and unconsolidated and in part has reference specifically to "Coolies", as distinguished from "Natives".

In Natal one falls back substantially on Act 37 of 1896, which does not contain much in the way of positive enactment but rather indicates the extent to which the Executive can by Regulations control and supervise Native Locations. It goes without saying that in referring to paucity of legislation one does not necessarily presume to suggest any necessity for legislation; nor can one in the abstract determine whether the tendency should be to leave the Executive a free hand in the way of regulating Locations, or whether the Legislature should itself lay down the principles and lines of control. Past history and present-day conditions would be a factor in determining this question.

3. DELEGATION OF POWERS.

It remains a fact worthy of notice that in the Cape Colony (excluding the Transkei) there has been less extensive delegation of power to the Executive, than appears to have been the case in Natal; but the excluded portion is significant, for the Transkei is a signal instance of authority largely delegated by the Legislature, and therein the delegation of authority appears to be justified by results. It will be observed, however, that even in the Cape Legislation on this subject the power of framing Regulations is duly conferred on the Governor; to do otherwise would be to load the pages of the Statute Book with detail, and moreover it may well be that in regard to many matters of the kind dealt with by Regulation it might be injudicious to delay matters till the sanction of Parliament could be obtained, whilst the matters themselves might be of such a domestic character as to be more suitably dealt with by Regulation. The Legislature, after all, would remain the arena where complaints against Regulations could be disposed of; and so the Legislative check would (albeit indirectly) not be lost, whilst the expert and informed official would steadily continue to do his work under the aegis of the Executive. The governing consideration is that the Executive should not make enactments in excess of the powers conferred on it; for if it did, the aid of the Law Courts could be properly invoked and the unauthorised Regulation would in effect be declared not to be binding, in so far as it was in excess of the authorization.

4. TENURE AND TITLE.

To some extent the subject of Native Locations has relation to that of land tenure.

In the main, the idea of personal and individual tenure is absent from the Enactments now under consideration.

In the Cape Act (40 of 1879), however, the preamble asserted that it was expedient that portions of land in the Locations there contemplated should be granted on personal and individual tenure. In terms thereof the Governor was authorised to grant title to lots to individuals in those Locations upon quit-rent tenure—there being a further provision as to the Governor reserving a sufficient area for commonage land or lands for the common pasturage of stock. But this principle does not appear to have been adopted in the later legislation.

The Glen Grey Act (25 of 1894—see also article on "land tenure" etc.) is only an apparent exception. For though therein we find a division of land into Locations, excepting what had already been granted or alienated etc., though the arable land in such Locations after making allowance for commonage and building sites is to be divided into allotments which are to be granted to approved claimants, and though title deeds are issued; yet the title is subject to certain statutory conditions which forbid alienation without the Governor's consent: (See also Sec. 1, Act 15, 1899—To amend the Glen Grey Act); the registered owner may not mortgage or pledge his interest; and (by Sec. 26) land allotted under this Act is deemed (for purposes of Sec. 17, Act 14, 1887, i.e., for the purpose of exercising the Parliamentary Franchise) to be held on Communal Tenure. It may also be pointed out that the statutory conditions above referred to prohibit the keeping of canteens for the sale of liquor, prohibit the sub-dividing or sub-letting of the allotment, deal with the making of roads, railways, etc., and provide for forfeiture under certain conditions (viz. rebellion, and cases of theft which have been visited with imprisonment for a term of one year or more and failure for a year to occupy the allotment beneficially—a three months' notice of intention to cancel for such failure being given.) Minerals and precious stones are reserved to the Crown; and there is a provision as to the distribution of water.

5. NATIVE LOCATIONS, DIFFERENT KINDS OF.—

Cape. A. In Cape Colony the Native Locations fall into different classes:

(1) Those established under Act 8 of 1878 and dealt with under the provisions of Act 40 of 1879 (noticed in the preceding paragraph). Under that Act the Governor also had power to make Regulations for fixing the number of stock which each owner of a lot might depasture on the commonage lands, etc.

(2) Those established under Act 25 of 1894 (also noticed in the preceding paragraph). That act applies in the division of Glen Grey and in such other Districts (or portions thereof) in which the inhabitants are mainly aboriginal natives, as the Governor may proclaim.

(3) Those established under Act 37 of 1884, dealing more especially with Locations on Crown Land, and

(4) Those established under Act 50 of 1899 (repealing Act 33 of 1892) dealing with private locations, i.e., locations on private property.

These require a more detailed notice, and are dealt with in the next paragraph. (The provisions of the Cape Law regarding private locations are set out clearly in the Memorandum attached to G.N. 176 of 1900,—to which attention may usefully be directed.

(5) The Native Labour Locations (regulated by Act 5 of 1899) on private property in areas in which large numbers of natives are employed in mining or other works.

(6) Certain Native Locations established at an early date e.g., Kama's Location referred to in the case of Kama vs Colonial Government (already referred to) and e.g. locations in the division of Peddie, which latter are now apparently administered under the ordinary laws respecting locations on Crown Land, and are not further considered here.

(7) Native Locations within Municipalities.

(8) In 1902 the Native Reserve Locations Act (40 of 1902) was passed "to make provision for the establishment of Native Reserve Locations in or near urban areas", and provided that the Governor might by Proclamation establish native locations in or near a City, etc., for the occupation or residence of natives employed in such city, etc.; and that such natives were to reside within such locations, with the exception of (Sec. 4):—

1. A native in *bona fide* employment as a servant.
2. Natives who are exempted under the Act.
3. Natives exempted by the Relief Act of 1887.

It is noticeable that by Sec. 6 the Government apparently provides houses or dwellings for occupation, for which occupation rent has to be paid to the inspector, on pain of summary ejection; and that the rules and regulations which the Governor is empowered to frame provide not only for the appointment of officers and headmen, the registration of inhabitants, and the like, but also for the mode of collecting rents and railway fares, the control of hospitals and schools, the protection and care of Government property, and the issue of passes to Native Residents (Sec. 11).

(Note also that in case of conflict with regulations of Municipalities, etc., the Regulations under the Act are to govern).

The words in italics are noticeable, for the principle contained therein.

This class of location in part doubtless owes its origin to considerations of health in towns; and as the type will not again be met with, one may at once point out how largely two principles are discernible in the regulations framed under this Act:

I. The paternal character of the Administration, under which the Inspector allots accommodation to any native arriving in the location, even though only a temporary resident—no occupier of a hut being allowed to harbour a non-resident native without leave; while no private huts are allowed to be constructed without special sanction from the Minister. (Secs. 11, 13 and 16 of Proc. 112 of 1903).

II. The importance of health and sanitary considerations, as evidenced in the Regulations in Proc. 214 of 1903, which seem to be deserving of careful notice. (Compare the Togat Act—Natal—Art. Master and Servant, Sec. 7).

Transkei B. In the Transkei reference is made to locations both on Crown and on private land. Procs. 125 of 1897 and 314 of 1897 in the main resemble the Cape Legislation; whilst Proc. 125 of 1903 goes more into detail and suggests comparison with the Regulations in G.N. 642 of 1899 (C.C.) and the Natal Regulations.

C. In the other Colonies there is no such varying classification:

(1) In the Orange River Colony Law No. 8 of 1893 makes provision with regard to "locations of coloured people, within the limits of the local authorities"—and thereunder (in effect) coloured people not residing on the premises of a white master, are obliged to reside in the Municipal Location.

(2) In the Transvaal the principle that coloured persons should not be allowed to live or collect in a man's erf in a town with the exception of such as were under contract with him had already been enunciated in Volksraad Resolution, Art. 104 of 25th September, 1871, (Pamphlet of Barber Macfadyen and Findlay p. 11). Further in 1893 (6th September V.R. Resolution Art. 1393) the Government was instructed:

"Firstly to offer their locations to all Kaffir tribes for whom locations have yet to be beaconed off, as was provided in 1891, and should they refuse to accept the same within one year they shall forfeit all further claim to a location.

Secondly: Not to grant any location on ground which is rich in minerals." (Pamphlet p. 54).

Again in 1894 (V.R. Resolution of 3rd September, Art. 1569) the Government was instructed "not to take private land for natives (native locations) unless the owners agree to the amount of compensation given" (pamphlet p. 55). Thereafter in 1895 (Law No. 21) we find more detailed provisions, with a view amongst others of safeguarding the public health, regarding the number of native house-holders allowed on private property and instructing the Government to apply for further locations, if such were needed "besides the locations and other places already appointed by the Government for the residence of Natives" (Pamphlet p. 56).

Lastly in terms of Sec. 12 of Proc. 28 of 1901 the Sanitary Boards are empowered to lay out places within their jurisdiction as Native Locations, where all natives should have to reside except those who, being in domestic service, were lodged on the premises of their employers; and to make regulations for the supervision of those locations. Here for the first time apparently we come across the principle of controlling locations in the Transvaal by Regulations. (Locations for Coolies, Arabs, etc., are noticed in Law 3, 1885—this Law and subsequent Volksraad Resolutions, etc., being brought up on page 92 (and seq.) of Barber Macfadyen and Findlay's Pamphlet relating to Natives and Coolies.)

(3) Natal.—Already in 1855 (by Ord. 2 of 1855) it was provided that Natives were to be removed from Crown land not within Native Locations; and (by Sec. 6) that owners etc. of land were to send returns to the Magistrate where more than 3 native families resided on their land.

Thereafter under Act 37 of 1896 various regulations were made some of which will require further notice hereafter; the Act itself does not set out any substantive law for locations. There appears to be a Bill, not yet passed into Law, "to enable Town Councils to establish Native Locations"—(with this may be compared Law No. 8, O.R.C. and Sec. 2, Act 20, 1891, and Sec. 3, Act 12, 1893, of Cape Colony).

(4) In Rhodesia the proclamation of 14th October 1896 makes provision for the locating of Natives upon private property "with a view to the said natives being placed in a position of being able to maintain themselves by their own labour and in security under suitable supervision and upon fair and reasonable conditions as to their employment".

6. DEFINITION, ESTABLISHMENT, RESIDENCE, REMOVAL.

I. Definition Cape Colony:—Locations on Crown lands and private Locations:—

(a) Location on Crown Land means (Sec. 7, Act 37, 1884) any number of huts or dwellings occupied by any of the Native races. . . . on certain Crown Lands reserved for the purpose of Native Tribes within the Colony, commonly known as Native Locations. The private location by Sec. 2 of 30, 1899, means any number of huts or dwellings on any private property, occupied by one or more native male adults, such occupants not being in the bona fide and continuous employment of the owner or occupier of such Land, either as his domestic servants or in or about the farming operations, trade, etc., carried on by him upon such land. (As to "Owner" see also Secs. 9, 10 and 20 Act 30, 1899).

Transkei:—By Native Location on private property is meant (Sec. 2, Sched. Proc. 125, 1897) "any number of huts or dwellings on any one farm occupied by three or more male adults, being Kafirs, etc.", and then the Cape definition is followed.

Rhodesia:—"Location" means a settlement of natives on private lands in accordance with the provisions of the proclamation of 14th October 1896.

There do not seem to be corresponding definitions in the Statutes Books of the other Colonies.

II. Establishment.—

Cape Colony:—

By Sec. 3, Act 30, 1899 an annual licence has to be taken out by the owner in the case of a private location; to secure this the production is required of a certificate signed by the Inspector or Chairman of the Location Board (referred to in Sec. 14); (and see Secs. 17 and 18 for Governor's power to revoke or modify licence).

Transkei:—

Sec. 3, Sched. Proc. 125, 1897 makes Governor's leave necessary to the establishment of a native location on private property (existing locations being deemed to have been duly established, unless a Governor's notice to the contrary appear in Gazette).

Rhodesia:—

By Sec. 1, Proc. 14th October 1896 (Stat. Vol. I, p. 124) a private person may locate on his property a certain number of heads of native families, not less than seven, able and willing to cultivate the ground with a view to the production of crops, and there upon the provisions of the law with regard to Native Locations on private property shall apply to such location. (It may here be pointed out that while there appears to be no general law regulating locations (in general) in the Orange River Colony, Law 4, 1895 (as to Vagrancy) limits the number of native households on a farm to 5, or, under certain conditions, to 15. But there is no provision that such households must be specifically collected in, or treated as, a location for legal purposes).

III. Residence etc.—Speaking generally it would seem that in the Cape, Transkei and Natal, on Crown Lands, no new homestead may be erected in a location without the consent of the Inspector (Cape Colony) or the Magistrate (Transkei) or the Secretary Natal Native Trust, through the Magistrate (Natal) See Sec. 1, Sched. G.N. 642, 1899; Sec. 3, Sched. Proc. 125, 1903; and Sec. 4, G.N. 49, 1902; See also Article "Local Self Government" Sec. 8).

IV. Removal of Natives:—

Cape and Transkei:—

A Native unlawfully being in a location may be removed by order of the Magistrate, after having been summoned to show cause against such removal (Sec. 20, Act 37, 1884, and Sec. 9, Sch. G.N. 125, 1897).

Natal:—

By Sec. 3 G.N. 697, 1896, a native coming into a location without "consent" may be removed by order of the Magistrate.

Rhodesia:—

By Sec. 2, Proc. 14th October 1896 no person upon whose property a location is established may remove, or permit the removal of, a native, complying with the terms of that Proc., without the consent of the Chief Native Commissioner for a period of two years from the date of the establishment of the location.

7. CERTAIN PRINCIPLES OR PROVISIONS IN LOCATION LEGISLATION.

(a) Supervision:—

Supervision, control and management are made matters of regulation. In Natal (Act 37, 1896) we find the Governor authorised to make rules for, *inter alia*, the apportionment of land in locations for use and occupation by natives, the admission of natives to and their removal from locations, the powers and duties of Inspectors under the Act, the duties of Chiefs etc.

The "Chief" does not as such seem to figure in this connexion in the legislation of the other Colonies. But regulations, and the Inspector to supervise their enforcement, are integral principles in the Cape Acts, 37 of 1884 and 30 of 1899, in the Rhodesian Proclamation, and (in the case of Municipal locations) in the Orange River Colony Law, where the official in question is termed "Superintendent".

(b.) The Inspector:—

The Inspector necessarily has certain powers and duties. By Act 37 of 1884 (Cape) the Governor may appoint an Inspector to "supervise and manage" every native location; and no Inspector is to be appointed over less than 100 huts or dwellings, unless these are "on land belonging to a private person". The same person may be Inspector of more than one location;

and within the location he has the powers and performs the duties of a Field Cornet or Constable. By Act 30 of 1899, which has to be read as one with 37 of 1884, he or the Chairman of the Location Board (mentioned in Section 14, Act 30, 1899) has to certify to the number of Natives necessary to the working of a farm. He gives directions as to the branding or marking of cattle (Sec. 21, 37, 1884). By the Cape Regulations (G.N. 642, 1899) no new homestead can be erected without his consent (sec. I) and the Headman of the location allots the arable land to the inhabitants subject to his approval (Sec. 2).

In the Transkei, the Magistrate takes the place of the Inspector for these latter purposes (Secs. 3 and 5, Sched. Proc. 125 of 1903); whilst in Natal the Secretary of the Natal Native Trust (through the Magistrate) must give his consent to a new homestead (Sec. 4, G.N. 49 of 1902) the Chief of the Location taking the place of the headman in respect of the arable land.

In Rhodesia the Chief Native Commissioner determines the amount of arable land to be allotted to each head of a family in the location (Sec. 3) and plays an active part in location administration; the inspector figures in connection with municipal locations.

(c.) Location Board and number of Natives (Cape Colony):—

The Location Board (mentioned above) consists of the Civil Commissioner of the Division and two members of the Divisional Council (Sec. 14, Act 30, 1899) and an appeal lies to this Board from the decision of the Inspector as to the number of natives necessary for the due working of the owners' property (other than those in the owners *bona fide* and continuous employment).

In respect of natives other than these (and certain others mentioned in Sec. 11, Act 30 1899) the consent of the Divisional Council and of the Governor is required (Sec. 3, Act 30, 1899). By Sec. 5 of that Act no license shall authorise more than 40 male adults to be in occupation of a private location at any time.

(d.) The Register:—

An important feature in location economy and administration (See Secs. 13, 14, and 15, Act 37 of 1884, and Sec. 8, Act 30 of 1899).

The Inspector under Act 37, 1884 has to keep a correct register of:—

The number of huts or dwellings, the names and occupations of the occupants, and "the number, marks and other description" of the cattle (which term throughout this article may be taken to include horses, horned cattle, sheep and goats); and the inhabitants are bound to give information as to these matters, and every inhabitant must give notice of any new hut erected by him, of the cattle coming into his possession and of the death of any person in the hut; and an analogous duty rests upon an owner in the case of a private location on his land—such register being open to the Inspector's inspection. An analogous duty is cast upon the owner, etc. in the Transkei (See Secs. 6, 7, and 8, Sched. Procs. 125 of 1897 and 314 of 1897) but this special provision seems not to obtain in other Colonies, though in Natal the Magistrate keeps a "record of all consents given to native to reside in his location". (See Sec. 8, G.N. 697 of 1896), and in the Orange River Colony the Local authority presumably has a list of persons furnished with residential passes (Secs. 2 and 3, Law 8 of 1893). But the Cape enactment furnishes a record which is useful at once statistically and for police purposes (presumably) and the social duty is cast upon the occupant of the hut of keeping the inspector informed, just as in the private location the owner has to keep his register accurate.

(e) Vicarious responsibility of landowner—Sec. 28, Act 37, 1884, provides that where the occupier of a hut on a private location is convicted of the theft of cattle, and the owner cannot recover the full value from the thief, he may recover the balance from the owner of the land. This in theory seems an archaic provision, and its utility must be estimated by those conversant with the working of the Act. Doubtless the explanation is that the principle is in accord with Native conceptions of justice, the owner being equivalent to Chief or Headman; just as in the case of contiguous kraals in Natal (under the Cattle Thefts Act), there is collective contribution or fining for a theft in certain cases (See also Cape Act 41, 1898, repealing Sec. 200 of the Transkeian Penal Code, Act 24, 1886). Indirectly one effect of such a provision might be to make the owner more careful as to those settling on his land and more interested in seeking to help to secure reparation for the theft.

(f) The licence:—

Here the fiscal side of the question comes to the fore. To what extent the Native should be taxed is a matter on which trained and informed experience must speak; the licence is on simple process of securing a contribution to revenue from or on behalf of the Native and so Sec. 3, Act 30, 1899 provides for the annual licence to be taken out by the owner of land on which a location is established (See also Secs. 4, 10 and 11, Act 30, 1899).

But for Native male adults *bona fide* required for the due working of private property (and others) no licence is payable—a provision not without economic importance. As to the number so required the inspector decides in the first instance; and from his decision there is an appeal to the Location Board, consisting of the Civil Commissioner and two members of the Divisional Council.

No similar provision seems to be found in the other relative enactments.

(g) Native labour and contracts:—

The economic idea is present in the Rhodesian regulations in another guise (Secs. 4—8, Proc. 14 Oct. 1896 (Stats. 1, p. 125). By Sec. 4 it is provided that the resident owner may agree with located natives as to their employment by him on his property, but the contract must not be for a period exceeding one year, must be approved by the Chief Native Commissioner, and must not be made where the Chief Native Commissioner thinks that the residence of such native on the land is necessary for the cultivation of the soil (Sec. 5). No private person may make an agreement as to the hire or removal of located natives without leave of the Chief Native Commissioner (Sec. 7). The Native Commissioner may not agree as to the employment of natives where the owner of the land wishes to employ them at an equal wage (Sec. 6); compulsory labour is prohibited but where the owner provides seed grain, the Chief Native Commissioner has power to fix a proportion of the harvested crop to be handed over as an equivalent (Sec. 8). These regulations do not seem to be found in the other Colonies in this connexion (but see, as to the proper working of a property, 'Sec. 13, Act 30, 1899,' already referred under (c).

(h) The Hut Tax:—

This is payable under Acts 37, 1884 and 30, 1899, but is noticed under the head of "Taxation".

(i) Arable, Pasturage of Cattle:—

These rightly seem to be a subject of care in location administration; a short synopsis follows:—

Cattle:—

Cape.

Secs. 16, 19, 21 and 22 Act 37, 1884: Inspector may seize and impound unregistered cattle; the possession of unregistered cattle may raise a presumption of guilt (see below); Cattle have to be branded, on direction given by Inspector; unbranded cattle may be dealt with as unregistered.

These provisions do not in this form seem to obtain in Transkei or Natal, but (Sec. 15 G.N. 697, 1896) in Natal stray stock must be reported to the headman, by him to the Chief, and by Chief to Magistrate, upon whose "pass" the cattle are impounded.

Pasturage and Arable Land:—

(See also Sec. 8 of Article Local Self Government) In Natal, Chiefs are to see that grazing is kept distinct from arable land (Sec. 9, G.N. 697, 1896) grass lands are for common use of the location natives (Sec. 10) and tribal disputes about grazing lands to be decided by the Magistrate and referred to the Secretary Native Affairs Trust (Sec. 11). Then follow certain provisions (substantially similar) in the Natal G.N. 49, 1902 and Transkeian Proc. 125, 1903:—

I. Where arable land is so situated as to interfere seriously with the depasturing of stock, the Magistrate with the approval of Chief Magistrate (Transkei) or Secretary for Native Affairs (Natal) may prohibit cultivation thereof, and allot to cultivator land in a more suitable spot (Sec. 6, G.N. 49 and Sec. 4, Sched., Proc. 125) Sec. 4 (Transkei) providing for compensation to cultivator.

II. Sec. 9, G.N. 49 and Sec. 7, Sched., Proc. 125:—The land of a person removing from location may by Chief (Natal) or Headman (Transkei) be allotted to another; but the allotment may be left in friend's charge, where the allottee removes to seek service.

III. Sec. 8 G.N. 49 and Sec. 6, Sched., Proc. 125:—Land under cultivation at the date of the taking effect of regulations is deemed to have been duly allotted to the cultivator, unless proof to the contrary be adduced.

IV. In Cape Colony, Transkei and Natal the Headman (or. in Natal. the Chief) of each Location allots arable land to the several inhabitants. (See Sec. 2, Sched. G.N. 642, 1899, Sec. 5, Sched. Proc. 125, 1903, Sec. 7, G.N. 49, 1902).

In Rhodesia the allotment of arable land to each head of a family in a location is determined by the Chief Native Commissioner (Sec. 3, Proc. 14 October, 1896).

(j) Theft repression:—

Upon proof to the satisfaction of the Magistrate that stolen stock has been traced to a kraal, he may with the approval of the Chief Magistrate (in the Transkei) or the Secretary for Native Affairs (in Natal) order any homestead in the location, (the Trankeian enactment has it: "a communally occupied location") or "any kraal or homestead situated in a Native Location" (in the language of the Natal Government Notice) to be removed to some other part of the District (Transkei) or of the location (Natal) (Sec. 1, Sched. Proc. 125, 1903 Sec. 1 G.N. 49, 1902).

In Cape Colony, again, where any inhabitant of a Native Location is charged with theft of cattle, or with receiving the same with guilty knowledge, the fact that the animal in respect of which the charge is made is found in such person's possession without having been registered (where a reasonable time for registration has elapsed since the date of possession) is *prima facie* evidence of such person's guilt (Sec. 19, Act 37, 1884).

(k) The Chief—still plays a part in Natal Regulations. (See G.N. 697 and G.N. 49, 1902): e.g.,

He is to see that there is no contravention of rules (Sec. 16, G.N. 697) and that land is kept distinct from arable (Sec. 9, G.N. 697), and the land initially allotted to a person who has removed from a Location is at the disposal, for allotment, of the Chief, subject to the approval of the Magistrate (Sec. 9, G.N. 49).

The word "Chief" includes his representative district headman.

(l) Outspans—Natal:—

By Section 18, Law 9, 1870, Native reserves and Locations are declared liable to servitude of outspan, but subject to controlling rules to be made by Governor with advice of Executive Council.

(m) Beacons—Preservation—Transkei:

For crown lands occupied as a native location the Government advances its share of the cost under the regulations (Proc. 198, 1901) and this is recoverable from the residents of the Location.

8. SCAB—THE HEADMAN—TRANSKEI

Part VII of the Sched. to Proc. 60 of 1903 deals with Native Locations. (The Headman to aid in the administration of the Act—Sec. 22—Minister may provide a dipping tank, the expense to be recovered in manner therein provided—Secs. 23 and 25, etc.).

9. SCOTCH THISTLE AND BURRWEED (XANTHIUM SPINOSUM)—HEADMAN—TRANSKEI.

Proc. 190 of 1902 deals with burrweed, Proc. 256 of 1902 with "Scotch thistle" and Proc. 225, 1902, with both plants. The Headman is made responsible for the extirpation of the plant in each case, and is authorised to call out labourers to do the work of extirpation, under penalties.

Proc. 225 also expressly imposes a duty on occupiers.

Cape:—Again by Section 235, Act 40 of 1889 the Headman is charged with a similar duty and deemed to be the owner for certain purposes.

It does not appear that similar special provisions are set out in the enactments of the other Colonies, save that in Natal (Act 38 of 1874) where burrweed is found growing, etc. in any Native Location or upon Crown Lands occupied by Natives, the inhabitants of the nearest kraal are liable to the penalties imposed by the Act (See also Act 20, 1901—Natal).

(See Law 4 of 1897, Sec. 3, Transvaal.)

10. NATIVE LOCATIONS IN MUNICIPALITIES, Etc.

This subject is dealt with in the Cape Colony (Secs. 1 and 2, Act 20, 1891; Sec. 3, Act 12, 1893; and see Sec. 30, Act 37, 1884, allowing a Municipality by Regulations to apply the provisions of that Act (or any of them) to a Native Location, so far as they can be so applied.

Orange River Colony: (Law 8 of 1893).

Transvaal: (Sec. 12, Proc. 28, 1901).

Natal: Act 2, 1904.

Rhodesia: (Secs. 3 and 4, Ord. 4, 1893).

Law 8 of 1893, in the Orange River Colony (already partially noticed in par. 5, b (1) hereof) goes into the matter in some detail—providing for the appointment of native locations for coloured people in municipalities, etc. and the making of regulations for the maintenance of order and other purposes, the appointment of Superintendents (whose powers and duties are fixed by regulation), the providing of residential passes (mentioning *inter alia* the stock and name of master of the person referred to in the pass), the acquiring (on payment of 5s.) of a certificate by persons working on their own behalf, etc. and the exempting from certain provisions (above set out) of “coloured persons in the employ of a white master—residing on the erf of such master”.

The Cape Acts (above) provide for the appointment of an Inspector of Native Locations by the governing body of a Municipality, etc., which inspector gives permission to settle in the location and (by Act 12, 1893) has certain powers of search within certain municipalities.

The Natal Act “To enable Town Councils to establish Native Locations”, gives certain substantial powers to Town Councils to establish locations within which all other than exempted natives may be compelled to reside, and to frame regulations for various purposes, including the prevention of the manufacture and sale of Kaffir Beer, etc.).

The Transvaal enactment has been already noticed (see last par. 5, b (2)) and the Rhodesian Ord. (4, 1893) is to the same effect apparently in substance as the Cape Act (20, 1891).

11. “CURFEW” REGULATIONS.

(a) Cape Colony:—By the “Local Authorities Increased Powers Act, 1895” (Sec. 2) any Local Authority may (acting in accordance with law) make regulations for prohibiting the presence of natives “such as Kaffirs, Fingoes, Basutos, Hottentots, Bushmen, Korannas, Griquas, Bechuanas, Zulus and the like, in the streets, public places or thoroughfares, within the local limits of the jurisdiction of such local Authority, between the hours of 9 p.m. and 4 a.m. without a written pass or authority from their employer”, or some authorised person.

No such regulation to apply to:

- I. Natives exempted under Act 39, 1887 (See Article “Exemptions”) or
- II. The registered owners of land within the area of the Local Authority, and the members of his family resident with such Landowner, or
- III. Those possessing certificates of good character from the Magistrate (these to be renewed annually).

Such regulations not to prohibit the residents of a Native Location from being in the streets in such Location between the said hours (Sec. 2).

These regulations to have force of law after approval by the Governor and publication in the Gazette (Sec. 3), (See also, in Natal, Law 15, 1869, Sec. 2, noticed in Sec. 5, Article “Squatting.”)

(b) Rhodesia:—

Sec. 10 (2), Ord. 16, 1901. No native residing in a Native Location shall absent himself therefrom between the hours of 9 p.m. and 5 a.m. without a pass signed by the Inspector of the Location or other authorised person.

Note:—It will be observed that in Cape Colony the above regulations may be made by a local Authority acting duly in that behalf; in Rhodesia the section is law, apart from any local option in the matter.

12. THE “NATIVE LABOUR LOCATIONS ACT” (5, 1899) of Cape Colony is substantially in a class by itself and its provisions are only briefly indicated: e.g. The Governor may (wholly or in part) suspend the operation of the ordinary Location Acts, by Proclamation, in respect of areas (therein defined) in which large numbers of natives reside or are located with a view to their employment in or at any coal mine or any other mine or any public or private work; after the date fixed by Proc. all or certain of the provisions of the Act come into operation in the whole or portion of the “proclaimed area”.

Register:—

The manager etc., of the mine etc., has to keep a register, showing *inter alia* the number of huts (each numbered), the names (also to be numbered) of the male adults, and the numbers, marks, etc., of their cattle. He has to furnish the male adults with tickets, and native male adults without permission or ticket may be removed by a Police Officer.

Spoor and Theft of Cattle:

If a spoor of a stolen animal be traced to a proclaimed area, a right of search in huts therein is given to Police Officers, etc., and if a Native inhabitant of a proclaimed area be charged with theft of cattle or with receiving with guilty knowledge, the possession of such animal being found unregistered in such native's possession (after the lapse of a reasonable time for registration) is to be *prima facie* evidence of guilt. In the case of Natives lawfully detained in a compound etc., the employer may only sell goods reasonably necessary for their use and well-being.

Further provisions in the Act relate to hut tax (Sec. 10), the appointment of an Inspector (Sec. 13) the ejection from area of unauthorised persons (Sec. 15) and the extension of the provisions of this Act, or part thereof, to a Municipality etc., with the consent of the Municipality etc. (save as to provisions as to liquor (Sec. 18) and the Governor's power to make regulations (Sec. 16).

(Native is defined in Section 17).

LAND TENURE.

1. THE GLEN GREY ACT (25, 1894).

(a) It is not sought here to give any digest of this important Act, the working of which has doubtless been the subject of interested consideration during past years and which deals (as reference to the Act itself will show) with various important matters like e.g. The granting of allotments; Commonage, Locations and Location Boards; Alienation and transfer of land; Administration of Estates; Lists of Voters; Labour Tax; District Councils; Liquor Licenses.

(b) The question of land tenure under this Act has already been partially noticed in the Article on "Native Locations" (Sec. 4 thereof) to which attention is here directed; and the division of the arable land into allotments is not here enlarged on. The Title deed issued is also there referred to; and it will be observed that the Schedule to the Act contains the statutory conditions on which the title is issued, the land having been previously surveyed. While therefore the landholder under that title pays quitrent (Sec. 1 of the Schedule) he holds under a special statutory title. The size of the allotment is 4 morgen more or less. The holder's property both moveable and immovable, is liable to execution for debt (Sec. 5 of Schedule), but subject to Sec. 2 of Sched. (i.e. the Sec. prohibiting alienation without the Governor's consent and the approval of the new holder); and his land cannot be devised by will (Sec. 24 of Act). We are not yet in the domain of ordinary "ownership".

(c) Provision is made (Sec. 11 of Act 25, 1894 and Sec. 2 of Act 15, 1899) for the grant of Commonage land (not exceeding two thirds of an acre) for the building of "a substantial house or other buildings"; and Secs. 12—16 deal with the payment of costs of survey of the locations and of quitrent and the recovery of arrears thereof, cancellation and reallocation being the ultimate remedy for non-recovery.

(d) The Commonage (for which due allowance had to be made when allotting the arable land to holders) is reserved for the use of the registered holders in the Location; but the right is reserved to the Governor of making roads, railways, dams, etc., and taking materials for those purposes, without compensation, and of establishing outspans; and the right to precious stones and minerals is reserved to the Crown. The control of this commonage is in the Location Board (see Article on "Local Self Government"); but the ownership must presumably be deemed still to be in the Crown, subject to the substantial rights of use of the landholders.

2. THE TRANSKEI.

Here according to the Proclamation the right of allotting the land is expressed to be vested in the Governor—the land is to be divided into districts or wards (for purposes of allotment) by the Chief Magistrate; a Headman or Field Cornet is to be nominated to the superintendence of each sub-division; and he is to submit for the approval of the Chief Magistrate a list of the members of the tribe to whom he proposes that land should be allotted for occupation (Secs. 40—44, Proc. 110, 1879, and the corresponding sections in the other analogous Proclamations). The theoretical Crown-ownership seems to be uniformly affected by the idea of a quasi trust *pro populo*. But apparently there is no question here of title issuing on such

allotment, though there is nothing to prohibit any native acquiring land as his own by title in the ordinary way from one who already has title (e.g. in a town like Umtata, as one understands).

3. IN THE O. R. C. however we find express provision hereon, See Chap. 34:—

(a) Coloured persons born of a lawful marriage between a white or coloured father and a coloured or white mother and residing in the State may own fixed property; and their children may inherit it. (Secs. 1, 2 and 3).

Coloured persons other than the above may not buy, get transfer of, or lease immoveable property; and a sale or lease to them is prohibited by a penalty on the person effecting it. (Secs. 6 and 9).

Coloured persons owning fixed property could never become burghers but were declared liable to commando service. (Sec. 10).

(b) Moroka:—Here there is a special provision that coloured landowners whose "ground rights" were guaranteed by the annexing Proclamation may sell their ground-rights to their respective parents, children (or descendants) or brothers and sisters, in so far as those relations inhabited Moroka (i.e. the Barolong Territory) at the time of annexation. (Save as above the provisions in (a) apply).

(c) Bastards:—(Law 16, 1894): "The Coloured people commonly called Bastards" who had resided 5 years in the State, and not being subjects of a Native Chief, may have erven and buildings in towns registered in their names provided they produce certificates of good conduct.

Note:—The marriage referred to in (a) hereof must be a lawful marriage; compare what was said by the Chief Justice in Parrott's case, see article on "Sale of Liquor").

4. TRANSVAAL.

Here the principle is adopted of vesting land titles in a responsible representative of the Government. This principle was initiated during the British administration in 1880, and was definitely laid down by paragraph 2 of article 31, of the Pretoria Convention of 1881, and re-affirmed by article 18 of the London Convention of 1884, in the following terms: "All transfers to the British Secretary for Native Affairs in trust for Natives will remain in force, the Native Location Commission taking the place of such Secretary for Native Affairs."

By a resolution subsequently passed in Executive Council, date 4th January 1886, the Superintendent of Natives (now the Commissioner of Native Affairs) was appointed as the Officer in whose name, as trustee, all transfers should be placed.

5. RHODESIA.

(a) Sec. 83 of the Order in Council of October, 1898, provides that a Native may acquire etc., land on the same conditions as one not a native, but—and this provision seems to deserve consideration—no contract for encumbering or alienating land belonging to a native shall be valid, unless the contract is made in the presence of a Magistrate and he certifies that the consideration for the contract is fair and reasonable and that he has satisfied himself that the Native understands the transaction.

Note:—This provision may be usefully compared with the Glen Grey provisions regarding alienation. It would appear so far as one can judge, that this provision is in harmony with the policy of other Rhodesian enactments. The rights are conceded and admitted; but the person enjoying them is deemed not to be quite *sui juris* mentally—so to speak—and a species of guardianship is provided for the protection of his interests.

(b) By G.N. 49, 1895, certain areas were reserved for the occupation of Natives in Matabeleland—but here again there seems to be no idea of title or ownership.

So again, by Sec. 81 of the above Order in Council (of 1898) it was provided that the Company should assign to the Natives sufficient land for their occupation (and suitable for their agricultural and pastoral requirements), whilst Sec. 82 provide that questions of settlement on land should be dealt with by the Administrator in Executive Council, and Sec. 10 of the High Commissioner's Proclamation (No. 18 of 1898) gave to a Native Commissioner (subject to the approval of the Administrator in Council) power to assign lands for huts, gardens and grazing grounds for each kraal on vacant land or reserves in his District—no new huts to be built or gardens cultivated without his consent and his approval of the position selected.

Again by Sec. 84 of the Order in Council of Oct. 1898, the Company retains mineral rights in all land assigned to natives; and if such land is required for mineral development, townships etc., the natives may (with the High Commissioner's approval) be ordered to remove

from such land to other suitable land (to be assigned to them) but, save by order of the Administrator, approved by the High Commissioner, no natives are to be removed from any kraal or from land assigned to them for occupation (Sec. 85).

All this, however, deals with occupation; there seems to be no question of title or grant (compare the Transkeian provisions noted in Section 2 hereof); but there seems still to be the idea of a quasi-trust, and the exercise of the theoretical right would doubtless throughout be tempered by the recognition and application of this idea.

6. NATAL.

(a) Here there seems nothing to add to what is found in the article "Native Locations" (Natal Act 37, 1896), the effect of which seems to be that natives are not entitled to own land in locations.

It is understood (without professing to speak with knowledge) that in Zululand the natives remain in occupation of their lands (Natives of South Africa: page 71).

(b) In the BECH. PROTECT. it is suggested that the land remains in the theoretical quasi-ownership of the Chiefs, presumably in trust for their tribesemen; for there has not been formal annexation apparently, though some Chiefs seem to have made concessions to white men. (See a note by the Rev. W. C. Willoughby, p. 310 of Natives of South Africa and see also Proc. 9, 1899: Bech. Protect.)

7.—It need not be here enquired, nor is one in a position to answer the question, how far, if at all, the land in Basutoland is held by the Chiefs subject to paramount ownership rights of the Crown.—This larger question, which may or may not be already practically *res decisa* must be taken to remain open as far as this memorandum is concerned, though one inclines to the view that those paramount rights are theoretically existent, though not to be exercised in the ordinary course.

But apart therefrom, it will have been observed that (e.g. in the Transkei) the general rule may be taken to be that the land should on the whole be not granted away, but be deemed to be held in trust for the natives (a principle presumably adopted also in Natal); for though there are special provisions in the Transkei as to e.g. grants to missions, traders and farmers, (see Proc. 103, 1900, and Proc. 136, 1902) yet it must be taken (for the present, at least), that these are but exceptions to the general rule; as is also the principle on which the Executive has acted (so one understands) in giving title in a town like, say, Umtata; where presumably from the nature of the case ownership is expedient in the interests of the town and the more ancient system of occupation could not aptly be allowed to prevail, once the town was regularly constituted. (By Sec. 9, Proc. 36, 1902 one who being in occupation under that Proc. is convicted of the crime or offence of selling etc. intoxicating liquor to any aboriginal native, etc. is liable to ejectment).

LIQUOR LEGISLATION

(a) General Principle:—

Total prohibition seems to be the general principle governing the question of the sale of liquor to natives—though this prohibition is also subject to conditions or exemptions.

In the Cape Colony such prohibition as can be effected is brought about through the action of the Licensing Court which has the power (but lies under no statutory obligation) to impose conditions as to the sale of liquor to natives and "such conditions may impose such restrictions or conditions, *exclusive of total prohibition*, upon such sale as to the Court may seem meet". Consequently there is no general legal prohibition *per se*. (Secs. 1 and 2 Act No. 28 of 1898. (The italics are of course not found in the text of the Act).

It should, however, be borne in mind:—

(1) That the Court has upheld the validity of conditions which go to place a very substantial restriction on the sale. In the *Queen vs. Parrott* (16 S.C.R. p. 452) the Court upheld the validity of a condition that "no native man not being a servant shall obtain liquor except under a certificate from a Justice of the Peace." There the Chief Justice remarked that if a certificate had been required from, say, the Archbishop of Cape Town (the place then in question being Piquetberg) the condition would virtually have amounted to total prohibition.

"The Act contemplates that among the classes of Natives enumerated therein there may be many who should not be allowed to buy or receive liquor, but that some of them may be trusted not to abuse the privilege."

(2) The provisions of Secs. 21 and 22, Act No. 28 of 1883 must not be overlooked. Thereunder the Governor may define areas ("where aboriginal natives of South Africa are located or resident, etc.") within which no licence may issue without his consent, and where no person may supply etc., liquor to natives, under a penalty, save for medicinal purposes. But such areas can only be defined where the statutory requirements are satisfied; there can be no arbitrary defining.

(3) Under the Glen Grey Act (No. 25 of 1894) the Licensing Court may prohibit the sale of liquor to natives at Lady Frere (Sec. 64)

(4) "The Local Bodies" Increased Powers Act, 1893" (No. 12) gives to Municipalities or other local bodies power to frame by-laws for suppressing or preventing, or restricting and regulating the making, buying, delivering, etc., of Kaffir beer within the Municipality, etc.

(5) "The Native Reserve Locations Act, 1902" (No. 40) provides in Sec. 14, that no licence shall issue for the sale of liquor within any such Native Reserve Location; that the sale, or purchase (by an agent, etc., for a native) for other than medicinal purposes shall be prohibited (Sec. 15); that save for such medicinal purposes no liquor shall be brought into the location without a permit from the Inspector, etc. (Sec. 16); and that the possession of liquor by a Native in such location is illegal save as permitted by the Act (Sec. 17)—penalties being provided for contraventions.

It will thus be observed that in certain of the cases here indicated the prohibition is not statutory and does not arise out of the action of the Central Executive even but of the local authority.

In the Transkei on the other hand total prohibition obtains (Sec. 30 of Proclamation 238, 1902) save where the prohibited person (Native) produces a permit signed by the Magistrate.

Total prohibition, in principle, also obtains in the Orange River Colony, except as regards Kaffir beer (see below), (Sec. 41, Ord. 8 of 1903), the Transvaal (Sec. 46 of Ord. 32 of 1902), Natal (Sec. 66, Act 38 of 1896), Rhodesia (Secs. 4 and 5 of Regulations of 25 November, 1898), Basutoland (Sec. 7 of the Regulations of Proc. 2. B. 29th May, 1884, and the Bechuanaland Protectorate (Proc. 4th April 1892, Sec. 11, as amended by Proc. 26, 1896, and Proc. 19, 1897). Natal and Rhodesia have an exemption in respect of a sale to Indians for consumption on the premises. In several of these Colonies the prohibiting clauses contain an exemption in respect of liquor supplied for medicinal purposes, and provision is made against abuse hereof. So in Natal the burden of proof is on the person supplying the liquor, that the liquor was required for medicinal purposes and by Sec. 7, Act 36 of 1899, the dealer or person supplying must produce the prescription of a medical practitioner or otherwise satisfy the Court that there was urgent necessity. This point will again come under notice presently in another connexion. In Basutoland and the Transkei the introduction of liquor is prohibited unless permission has been obtained therefor. A similar permission is required in the Bechuanaland Protectorate where a permit is also required for the removal of liquor within the Protectorate.

In the Orange River Colony by Sec. 42, Ord. 8 of 1903, a master may give his servant one single drink of intoxicating liquor per diem, to be drunk in the presence of the master.

(b) The term "Native" or "Coloured person":—

In the Cape Colony, Natal, Rhodesia and the Bechuanaland Protectorate, the word "Native" is used and defined; in the Orange River Colony and Transvaal the reference is to "coloured persons". The Transkeian Proclamation uses both terms. The Cape Act 28 of 1883 simply speaks of aboriginal Natives of South Africa without further amplification, while the Act of 1898 defines a Native as any "Kaffir, Fingo, Basuto, Damara, Hottentot, Bushman or Koranna".

No reference is here made to Bechuana, and it may be questioned whether under present circumstances the definition is sufficiently wide or elastic. As it is, the High Court at Kimberley has quashed a conviction where the liquor was supplied to a Bechuana. (*Anhauser vs. the King* (9 H.C.R. 234).)

"The Native Reserve Location Act" has what appears to be a better definition:—"any Kaffir, Fingo, Zulu, Mosuto, Damara, Hottentot, Bushman, Bechuana, Koranna, or any other aboriginal native of South or Central Africa"; but the definition "shall not include any Native while serving in any of His Majesty's ships and while in uniform".

The Transkeian Proclamation makes the term "prohibited person" include all Kaffirs, Basutos, Bechuanas and others of the Bantu race, as well as all Hottentots, Korannas, Bechuanas, Indians, Griquas, Asiatics, coloured persons, and those partially or wholly descended from any of the above or married to or living in concubinage with an individual or any of the above classes". This definition is not apparently quite artistic or ethnologically scientific; but it is certainly couched in wide terms. It specifically mentions Griquas who are not named in the last preceding definition, introduces terms like "coloured person", Indians, Asiatics, and omits e.g. Fingoes, Damaras, Bushmen. The use of the terms "Asiatics" and "coloured persons" may have in contemplation Malays and persons from across the seas who had they been of South African birth might have ranked as Coloured persons of one kind or another.

The Natal Act runs:—"All members of the aboriginal races or tribes of Africa, south of the Equator, including liberated Africans, commonly called "Amandawo", and whether exempted or not exempted from the operating of Native Law, and Griquas and Hottentots, and any person whose parents come under the description of Natives, Griquas, or Hottentots". It will be observed that "parents" is in the plural number; and it might perhaps be expedient (speaking generally) to make it clearer how the matter would stand in the case of a person one of whose parents was a Native.

In Rhodesia we simply find "any person being, or being a descendant of an aboriginal native of Africa". This phraseology was adopted so far back as 1898 and one is not aware that it has been found necessary to alter it.

In the Bechuanaland Protectorate "the word 'Native' means any aboriginal Native belonging to any Native Tribe, and includes half-castes and all persons of mixed race living as members of any Native community, tribe, kraal or location"; and by Proclamation 26 of 1896 the prohibiting clause (Sec. 11 Proc. 4th April of 1892) also applies to "Indians"; and this term includes "any aboriginal native of India, or the descendant of such aboriginal Native."

In Parrott's case (already referred to) the Chief Justice said "I fear the time will come when it will be almost impossible to decide whether particular persons are Natives in terms of the Act in question and a great many other Acts on the Statute Books. Natives to whom the definition applies are continually marrying or cohabiting with other Natives and even Europeans, and in many cases it is difficult to decide whether the progeny falls under the one class or the other." It may be helpful to add two further excerpts from the same judgment. "Where a European is married to a Native woman their children would probably not be treated as Natives, but the illegitimate children of a Native woman by a European, if retaining the features and characteristics of the mother, would be Natives. The Magistrate had seen both men during their lifetime, and he was satisfied from their appearance that they were Natives. In the absence of other evidence the appearance of the persons furnishes the best criterion of descent". It may be that dicta by Judges in other jurisdictions might also throw some light on this question and the citation is worth making, not merely in the present connexion, but as having a more general significance perhaps.

It will be observed that among those prohibited in the Transkeian Proclamation are Indians and Asiatics. Indians are also included in the prohibiting clauses of the Natal and Rhodesian Enactments (Sec. 66 and Sec. 4 respectively). For the wording of the definition of Indian the respective interpretation sections may be looked at, if necessary, the Rhodesian being simply:—Indian means "all aboriginal natives of India or their descendants."

It would seem that the term Asiatic is not used except in the Transkeian Proclamation; and the exemption in favour of Indians in Natal and Rhodesia has already been noticed.

In the Enactments obtaining in the Orange River Colony and the Transvaal, there seem to be no definitions of the word Native or coloured person; and the prohibiting clause in those Enactments simply speaks of coloured persons. This terminology would doubtless embrace a coloured individual from, say, the U.S.A., and is probably intended to include those who in Natal would be termed Indians.

(c) The term "liquor":—

(1) In the Cape, Transkeian, Orange River Colony and Transvaal enactments, liquor is defined so as to include Kafir beer; but this definition is not found in the Natal and Rhodesia definitions; and indeed the Natal enactment has certain sections which seem to regulate rather than to prohibit the sale of Kafir Beer. (Sec. 17 of Act 38 of 1896, Secs. 2, 4 and 5 of Act 36 of 1899). A Native Beer Licence is required for the sale of Native beer in a Borough or Township. Outside a Borough or Township the sale thereof is prohibited upon premises wherein business is carried on, while a later section provides that "the sale of Native beer upon premises outside a Borough, township or village being the seat of a Magistracy, either as a business or in

combination with any other business is prohibited"; and then follows a proviso which does not seem to be contained in the other enactments: "provided, that this section shall not be deemed to prevent the sale and supply of Native beer by Native women, according to their usual practice and not as a permanent business".

In the Orange River Colony the prohibition against the use of or supply to Coloured persons of liquor is specially modified in respect of kaffir beer in Sec. 43, Ord. 8 of 1903, which reads:—

"Nothing in the last two Sections shall prohibit the brewing, use, gift or possession of kaffir beer (juala) by any Coloured person, nor shall any licence for such brewing be required to be taken out."

The Cape law (Sec. 7 Act 28 of 1898) allows Kafir beer to be made on private land etc., with the consent of the owner etc.; or if in a Native location within a Municipality etc., with the consent of the Commissioners etc. (See also the law referred to in paragraph (a) (4) of this Article).

The Transvaal enactment (in Sec. 49) empowers the Lieutenant Governor, by Notice in the Gazette, etc., to authorise the brewing and supplying gratis to employees of Kafir beer, not containing more than 3 p.c. of alcohol, by a person, company or corporation employing more than 50 *bona fide* employees—for consumption on the premises (see hereon G. N. No. 710, 1902); and further provides that nothing in the previous sections prohibits the "use, gift or possession of Kafir beer not containing more than 3 p.c. of alcohol by coloured persons in any Native location or Village distant more than 12 miles from the nearest town, municipality or public digging". It will be observed that throughout the idea of sale is excluded. There does not seem to be any analogous provision in the Orange River Colony. The Rhodesian law apparently makes no direct reference to Kaffir beer.

In the Bechuanaland Protectorate we find Proc. 19 of 1897 adopting the definition of liquor contained in Sec. 3 (Cape) Act 28, 1883; but Sec. 11 Proc. 4th April 1892 (the prohibiting section, already referred to in Section (a) hereof) provides that the terms of that paragraph shall not apply to the use, sale, exchange or supplying of Kafir beer by the native producer thereof, or to gingerbeer or the like liquor; though the Section applies where wine, etc., is mixed with such drinks. *Together in Excellence*

(2) Eau de Cologne—Orange River Colony. The selling, etc. hereof to Natives living in the Ward Moroka is prohibited (Law 6, 1892); and this provision appears to be now extended to the whole Colony. (Proc. 16, 1902).

In the Transvaal Eau de Cologne is also included under "Intoxicating Liquor." (See Procl. Admn. No. 80 of 1903.

So in the Bechuanaland Protectorate by Proc. of 22nd December 1892 the terms "spirituous liquor" and "intoxicating liquor" are to include "Eau de Cologne".

(d) Certain subsidiary matters may receive brief notice.

(1) Unlawful Possession of Liquor:—Certain enactments e.g. Cape (Sec. 7 Act 28 of 1898; and Sec 17 Act 40 of 1902), Transkei (Sec. 33 of the Proclamation) Orange River Colony (Sec. 42), Transvaal (Sec. 48), Natal (Sec. 12 Act 36 of 1899), Rhodesia (Sec. 10 of the Regulations of 1898), and the Bechuanaland Protectorate (Sec. 1. Proc. 18 of 1897) impose a penalty on the unlawful possession of liquor (But see par. (3) hereof, below). The general principle does not seem to be contained in the principal Cape Act of 1883. In the Orange River Colony the possession of liquor by a coloured person is presumed to be unlawful till the contrary be proved.

(2) Agent etc. obtaining liquor for a native:—

A person expressly obtaining liquor for a native not entitled himself to obtain it renders himself liable to a penalty by Cape Law (Sec. 4 Act 28 of 1898), Transkei (Sec. 36 of the Proclamation) Orange River Colony (Sec. 44), Rhodesia (Sec. 3 (4) Ord. 19 of 1899). The Transvaal and Natal do not appear to contain an analogous provision. Some provision of the kind above indicated would presumably be useful in the carrying out of the objects of the enactments.

(3) Master etc. obtaining liquor through servant etc.—

A practical question which deserves passing mention is the extent to which or mode in which a European may employ the services of a Native (or Indian) to obtain liquor for him—as his messenger or servant.

In the Orange River Colony the law (Sec. 43 of Ord.) allows the dealer, on the written application of the servant's master or mistress etc., for whose consumption the liquor is required, to deliver to the coloured servant of such person a bottle of liquor "properly secured by a cork".

In Natal Secs. 67 and 69 (of Act 38 of 1896) contain somewhat elaborate provisions by which a European may upon a written order signed by himself obtain liquor through a Native or Indian. This order must be signed by the sender and addressed to the dealer, who must "assure himself of the genuineness of such order" etc., and that it is dated upon the day upon which it is presented. On furnishing the liquor the dealer must give the messenger a return pass, keeping the counterfoil, which must be filed and remain open for the inspection of the police for a month.

In Rhodesia there are somewhat analogous provisions (Secs. 6, 7 and 8 of the Regulations of 1898).

In the Bechuanaland Protectorate par. 3 of Proc. 18, 1897, provides that the prohibition of the possession of liquor by a native does not apply to a possession on behalf of his master by a *bona fide* servant.

(4) Coloured person or Native serving liquor.—

This is prohibited in Orange River Colony (Sec. 45 of Ord.) Transvaal (Sec. 50 (2) of Ord.), and Natal (Sec. 11 Act 36 of 1899), the last quoted Section providing that a sale upon licensed premises by a Native is to be deemed an illegal sale.

(5) Burden of proof.—

There are certain provisions relative to this e.g.—

I. By Sec. 62 (2) of the Transvaal Ord. the presence of any coloured person in any bar on the premises of the licensed holder, where such coloured person is not in the employ of the latter, is *prima facie* evidence of a sale of liquor to the coloured person. To the same effect substantially is Sec. 58 (2) of the Orange River Colony Ord.

II. Again, Sec. 46 of the Transvaal Ord. and sec. 66 of the Natal Act (38 of 1896), (and Sec. 7 of Natal Act 36 of 1899) impose on the person supplying liquor to a coloured person or native the burden of showing that it was for medicinal purposes—where this is the alleged justification for the selling. See also the Rhodesian Regulations of 1898. (Reference may also be made to the concluding sentences in section (a) hereof.

III. Further, see 6 of the Natal Act, (32 of 1901) provides that "whenever in any plaint or charge for an offence under this Act, any person is charged as being an Indian or Native, then unless the contrary be shown, such person shall be deemed and be taken by the Court to be an Indian or Native as the case may be".

(6) Exemptions:—

There are certain exemptions in some of the enactments. *Vide* the Cape Act 39 of 1887 (Secs. 2, 3 and 4) providing for a statutory exemption in terms of which natives who are registered voters, or who hold certain educational or religious qualifications are not subject to the prohibiting clauses of the Liquor Act; and *Vide* the Natal Act (Sec. 66 of Act 38 of 1896), the Rhodesian Regulations (of 1898 Sec. 16) and the Bechuanaland Protectorate Proclamation No. 26, 1896 (Sec. 4) whereby exemptions in favour of Indians or Natives in Natal, and of Indians in Rhodesia and the Protectorate may be granted by the Executive.

(7) *Isitshimiyana*:—

The Natal Act (38 of 1896 Sec. 78 and see Sec. 4 Act 32 of 1901) prohibits the making, selling, using or being in possession of *Isitshimiyana*.

(8) Punishments.—

It may be pointed out that in par. 46 (a) of the Transvaal Ord. there is a minimum punishment even in the case of a first conviction, a principle which, in the case of a second conviction, obtains also in the Transkei (Sec. 30). But it would be beyond the scope of these notes to discuss this question here, though it is believed that the principle of providing a minimum punishment is not often adopted in the case at least of a first conviction.

(9) Beer-drinking Parties.—

In the Transkei by Proc. 291, 1902 (extending the provisions of Proc. 185, 1895) any person who holds, or permits to be held, in any hut or kraal or upon any land of which he has possession or occupation a Beer Gathering or "Imigidi", or any kind of beer-drinking

party, is held responsible for the good behaviour of persons present thereat; and should any affray, assault, or breach of the peace occur thereat, or subsequently arise therefrom, such aforesaid person is liable to be fined (or imprisoned in default of payment). (See VI below also).

In Natal, certain Regulations published, by virtue of Sec. 2 Act 5, 1898, in G.N. 32, 1903, contain "rules for controlling and regulating the gathering of Natives belonging to different kraals or homes for the purpose of feasting or beer drinking". One notes therein:—

I. Two forms of beer drinking assemblies are prohibited, viz.—Firstly, where the beverage commonly known as "Utywala" etc. is sold or retailed at so much per measure; secondly, where the assembly for drinking such beverage is known as "Itimiti", or tea meetings, where on payment of an admission fee, no further charge is made for the beverage (Sec. 1).

II. Other forms of beer drinking assemblies again, are declared public (Sec. 2), and thereat (Sec. 9) females other than the hostess and boys (abafana) may not be present (wedding parties alone excepted).

One notes also, *inter alia*:—

III. To supply beer to a person already intoxicated is an offence (Sec. 8);

IV. All guests or visitors must leave at sunset (Sec. 10);

V. No party may be held on a Sunday or public holiday (Sec. 7);

VI. The host is responsible for the good conduct of visitors, etc., (Sec. 5) (*vide* Transkeian rule above);

VII. Notice has to be given of intended gathering (Sec. 14—16); other provisions, not here material, relate to the good conduct of the gathering, the observance of Native etiquette, the avoidance of tribal animosities or breaches of the peace etc.

In the Orange River Colony the giving of "beer parties" is regulated by Chapter 109, whereby no such party may be given without permission of the Magistrate or J.P., and the payment of a Licence fee of £1.

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LOCAL SELF-GOVERNMENT.

(Glen Grey and Transkei. Act 25, 1894 and Proc. 352, 1894. This Proc. has reference to certain districts specified in the Proclamation).

1. GLEN GREY—LOCATION BOARDS.

Each location, including the commonage, is under the control of a board of three persons appointed by the Governor. These must be landholders—headmen are eligible—they hold office for one year but are eligible for re-appointment—and vacate office for the same reasons as do the members of the District Council (See Sec. 2 (c) I hereof). The Governor may confer powers on the Boards by Regulations. (The Glen Grey Act has already been referred to in the Article "Native Locations", Sec. 5 (a) (2).

2. THE DISTRICT COUNCIL—Glen Grey and Transkei ("for the administration of local affairs").

(a) Appointment:—

I. Glen Grey: The members of the Location Boards in each of the two Field-Cornetries select three members for recommendation to the Governor for appointment;

II. Transkei: The Headmen in each district nominate 4 of their number for recommendation to the Governor for appointment. In each case: On failure to nominate, or to nominate acceptable persons, the Governor may require a nomination of other suitable persons, and on failure to do this, he may appoint persons he thinks fit.

Further: In Glen Grey, the Governor nominates six; in Transkei, two members (making the number 12 in Glen Grey, and 6 in Transkei, besides the Magistrate—see "d" hereof. (Sec. 39 Glen Grey Act, and Sec. 3 Proc.).

(b) Term of office—(G.G. and Tr.)—3 years; members eligible for re-appointment (Sec. 40 Glen Grey; Sec. 4 Proc.). (The words appointment and re-appointment (not election) will be noticed.

(c) Causes of vacating of office:—

I. Glen Grey:—Where a member:—

- ceases to hold land;
- is convicted of an offence punishable by imprisonment without the option of a fine;
- leaves the community for 3 months;
- fails to attend three consecutive meetings;
- resigns or becomes incapable of further service owing to death, etc.
- his office becomes vacant (Sec. 8 and 41).

II. Transkei: The same as above—save that the expression ceasing to be a head-man must be substituted for ceasing to hold land (Sec. 5).

(d) The Magistrate in G.G. and Transkei is additional member, *ex officio* Chairman and (in Transkei) convener of the Council (Sec. 42 G.G. and Secs. 6 and 7 Tr.).

(e) The Meetings—Transkei: Held quarterly, or as specially convened (Secs. 8 and 9) (as to G.G., see Sec. 43).

(Note.—At each meeting the Chairman “informs” the members of the subjects to be discussed. After discussion of each subject, the members of the Council shall, by voting record their opinions thereon. The Chairman shall then decide upon the action to be taken, and shall, if necessary, apply to the General Council (see below), hereinafter established, for authority to carry out the proposals, or take such other steps as may be required”. (Par.10).

It seems permissible to point out (though the remark is somewhat obvious) that the language here used is deserving of consideration, and seems to indicate a rudimentary or tentative phase of local self-government. The Council is primarily advisory; the administration rests with the Governor or his Officers; but presumably the advisory element serves to keep the administrative in touch with public opinion, and so performs a useful function of its own.

3. THE GENERAL COUNCIL—TRANSKEI.

(a) Composition:—The Chief Magistrate, the Magistrates of the Districts, members nominated out of their number by the members of the District Councils (two by each District Council) and four members nominated by the Governor.

(b) Meetings:—On days fixed by the Magistrate of Butterworth, the Chief Magistrate being empowered to call special meetings. The business thereat is conducted on practically the same principles as obtain in the case of the District Councils (see Sec. 2 (c) Note, hereof). Applications may be made to this Council by the District Council, for authority to carry out intended proposals (Secs. 10, 12, 13, 15, 16, 18).

4. RATES—GLEN GREY AND TRANSKEI.

(a) Glen Grey:—I. A rate not exceeding 2d. in the £ on property owned otherwise than under the Act (with certain exceptions) may be levied by the Council for the purposes of the Act (Sec. 47).

II. The Council shall also levy in each year a rate of 5s. to be paid by every registered holder and every other male adult in the district capable of labour, exclusive of those owning land under ordinary quitrent title or in free hold (Sec. 48). The payment of this latter is ultimately enforceable (like that of the Labour Tax) by fine and imprisonment (in the event of non-payment) Secs. 36 and 51.

(b) Transkei:—It shall be lawful for the Governor to levy an annual rate of not less than 10s., “to be paid by every native man or woman, who shall be the occupier either alone or with his or her family, either of any separate portion of land or of any hut, and also a rate to be paid by every other native man residing in the area”.

For the recovery of the rate, the remedy is similar to that in Glen Grey (see Sec. 4 (a) hereof).

(c) Appropriation of the proceeds—Glen Grey and Transkei:—The money raised by such rates is to be appropriated—subject to the approval of the Governor—to various specified objects, e.g.:

- I. The expenses of valuation collection, payment of officers and members, etc.;
- II. The construction and maintenance of roads and bridges;
- III. Tree planting;

- IV. Eradication of the *Xanthium Spinosum* and of scab;
- V. Establishment of tolls and pounds;
- VI. The establishment of industrial and agricultural Schools etc., etc. (Sec. 53 G.G. and Sec. 23 Proc.).

5. OFFICERS.

May be appointed to carry out the business of the respective Councils (Secs. 52 G.G. and 24 Tr.).

6. POWERS AND DUTIES—TRANSKEI.

Works and services proposed by the General Council and approved by the Governor may be carried out by such Council, or the carrying out may be delegated to the District Council (Sec. 26), etc.

7. LABOUR BUREAU—GLEN GREY AND TRANSKEI.

The District Council (Glen Grey) or the General Council (Transkei) has to receive applications from public departments, contractors or persons desiring to obtain the service of native labourers. The Governor may make regulations providing for the registration of persons capable of labour (Secs. 59 G.G. 31 Tr.)

8. FURTHER POWERS—TRANSKEI.

(a) Under regulations approved by the Governor the Council may deal with certain specified matters, e.g.

- I. The control and management of locations, etc.;
- II. The regulation of grazing rights upon commonages;
- III. The enclosing of arable lands by occupiers;
- IV. The regulation of the number, etc. of huts, etc. on commonages;
- V. The regulation or prevention of beer-drinking and native dances (Sec. 36).

(b) Regulations under this section (36) have already been framed (G.N. 87, 1896)—e.g.:—

I. Providing that no new homestead may be erected in any location without the consent of the District Council; and that, upon its representation, the Magistrate may remove an existing homestead to a more suitable spot (subject to compensation to be determined by the Council, payable out of Council rates).

II. Where arable land seriously interferes with the depasturing of cattle, other land may be allotted by the Magistrate subject again to such compensation as the Magistrate thinks reasonable.

III. Other regulations deal with beer-drinking, fire-kindling, outspans, etc.

(As to I and II hereof—reference may be made to the Article "Native Locations" Secs. 6 III and 7 (h)).

Note.—Natal: As to the possible conferment of a suitable measure of self-government on Native Converts in a specified reserve, see Article "Mission Reserves" (Sec. 2 (h)).

FRANCHISE (PARLIAMENTARY).

1. Cape Colony:—Schedule E to Act 9, 1892 though repealed is a useful compendium of the qualifications entitling to registration—see paragraphs 1 to 7; and by Sec. 50 of the Constitution Ord. the register is conclusive proof of the right to vote. But with these qualifications should be read Sec. 17 of Act 14 of 1887 which expressly prohibits qualification by reason of general sharing in tribal or communal occupation of lands or buildings. Act 9, 1892 does not in terms differentiate between persons of different race or nationality or exclude any person otherwise qualified on the ground of colour—so that it does not technically figure in the legislation specially affecting the Native races or specially concerned with Native questions; though no doubt the requirement set out in paragraph 5 of the Schedule (i.e. being able to sign

one's name and write one's occupation and address) would presumably operate in the direction of excluding a substantial number of Natives otherwise qualified to be placed on the register.

2. Transkei: there the provisions of the Cape law obtain; (See Act 30, 1887).

3. Natal: Here we have a differentiation—as witness:—

(a) Law 11, 1865, enacts: That Natives, whether possessed of the property qualification or not, whether exempt from the operation of Native Law or not, are not entitled to become duly registered or to vote, save as excepted in the said law (Sec. 1).

That any Native male resident for 12 years (consecutively or *in toto*) in Natal, possessing the requisite property qualifications exempted from the operation of Native Law for 7 years (see article "exemptions" hereon), and producing a certificate from three duly qualified electors of European origin certifying to their knowledge of the certificated person, etc. (see Sched. to Law) may petition the Lt.-Governor "for a certificate to entitle him to be registered as a duly qualified elector", etc.

That the Lt.-Governor may grant or refuse application save that no certificate shall be granted unless there have been three months publication thereof;

That every male native exempted from the operation of Native Law for 7 years who has obtained this certificate is entitled to be registered as voter and to vote.

(b) Law 2, 1883, Sec. 6 enacts that persons subjected to special laws or tribunals are not entitled to vote, unless they possess letters of exemption granted by the Governor; and these are only granted upon an application "both written in English and Dutch and signed in European characters by the applicant in the presence of a Magistrate, a Justice of the Peace", etc. showing, *inter alia*, that the applicant has the property or other qualification required by law, is a British subject, and, "if a Native", has been exempted from the operation of Native Law.

Here, as in Cape Colony, there is an Education test; but here that test is specifically applied in the case of persons subject to special laws, etc.

It is said that the effect of this clause is almost entirely to exclude Natives from the franchise ("Natives of South Africa", p. 212).

Apparently the statutory law remains in spite of a 7 years general "exemption"—unless the Governor grant the statutory exemption.

(c) Act 8, 1896, enacts that persons "who (not being of European origin) are Natives or descendants in the male line of Natives of countries which have not hitherto possessed elective representative institutions founded on the Parliamentary Franchise" are disqualified as electors, unless they obtain an exempting order from the Governor-in-Council. (The rights of persons already duly enrolled are not affected hereby.)

(Indians would apparently be affected by this law).

4. Rhodesia: As in Cape Colony there is no express exclusion of natives from the franchise—see H.C. Proc. 25 Nov. 1898. But note that communal or tribal occupation of land *per se* does not qualify (Sec. 4), and note the educational test (ability to sign name and write address and occupation) in Sec. 5. With Sec. 4 compare Sec. 17 (Cape) Act 14 of 1887.

TAXATION.

Hut Tax; Poll Tax: Consolidated Tax.

1. In Cape Colony, Transkei, Natal, Basutoland, and the Bechuanaland Protectorate a hut tax is payable, viz.:—10s. in Cape Colony, Transkei, and the Protectorate; 14s. in Natal and (now) 20s. in Basutoland. In Orange River Colony there seems to be no general hut tax, a poll tax being payable of 20s. (formerly 10s.) per head (and see below Sec. 5 (a) as to Witziesshoek). In Transvaal there is a consolidated tax payable by the Native of 40s. All the above payments are annual.

2. CAPE COLONY.

(a) The Tax.

I. The tax is payable in respect of all huts on private property as well as on Crown Land, and in the former case the landowner is liable therefor, the occupier or person using

the hut paying the tax in respect of huts on Crown Land (Secs. 10 and 11, Act 37, 1884). See Sec. 10, Act 5, 1899, also, as to the hut tax on huts in the Proclaimed Area. Under Sec. 25 Act 30, 1899, a further tax of 2s. has to be paid on huts in the Proclaimed Area by the hut-tax payer to the Inspector of Native Locations in Locations on Crown Land, the proceeds being handed over by the Civil Commissioner to the Divisional Council as and for road rates.

II. By Sec. 211, Act 40, 1889, the Divisional Council may levy a special rate "in the proportion of one shilling for each hut or dwelling for every farthing in the pound levied upon the assessed owner of rateable property" in respect of huts on Crown Land not liable to be rated, etc. (See also Sec. 68, Act 23, 1897, for the rate leviable in respect of Public Health purposes).

(b) Collection of Tax.

The Civil Commissioner can sue. On failure to pay there is a remedy (besides the ordinary remedy by action) by seizure and attachment of stock and other moveables, and ultimate sale, unless the person claiming the cattle gives security to prosecute his action and perform the judgment of the Court. That judgment may be for the cost of seizure and costs of action as well as for the amount of the tax (Sec. 24, Act 37, 1884). The tax is payable on Dec. 31st without previous demand.

(c) Exemptions.

I. Male adults so old or chronically infirm as to be incapable of rendering service (Sec. 24, Act 30, 1899). (See par. 9 (a) hereof.)

II. The registered land-owner does not fall within the scope of the law where he occupies his property, nor the lessee under a written lease paying a cash rental of not less than £36 per annum.

III. Two or more Native male adults joined in a *bona fide* written lease and paying a rental of £48 or more in case of 2 lessees (and not less than £12 additional rent for each of any greater number), or who occupy any private property as registered owners (Sec. 10, Act 30, 1899).

3. TRANSKEI.

(a) 10s. payable by every Native, to whom an allotment has been made, for each hut occupied by a person or family on the land (10s. being payable in respect of each wife whether occupying a separate hut or not); the Headman is obliged to assist in the collection (Proc. 110, 1879, Secs. 45—49; Proc. 112, 1879, Secs. 45—49; Proc. 140, 1885, Secs. 44—48; Proc. 431, 1895); and on non-payment there is a procedure similar to that obtaining in Cape Colony (Proc. 9, 1894). (See Proc. 105, 1901, as to the district of Elliot).

(b) Lepers.—The Chief Magistrate may exempt from the payment of hut-tax any leper otherwise liable therefor who has been removed to an asylum, and whose family is in indigent circumstances in consequence of the said illness and removal (Proc. 308, 1899).

4. NATAL.

The tax 14s. is leviable on every hut occupied by a Native within the Colony; but when the house is of European construction, inhabited by one Native, having only one wife, "and otherwise conforming to civilized usages," no tax is payable.

The Governor may (as in Transvaal, see below) appoint Collectors of the tax and make rules for the carrying out of the provisions of the Law (Law 13, 1875, Secs. 2 and 3).

5 ORANGE RIVER COLONY.

(a) Hut-Tax. Witzieshoek: The sum of £1 per annum is payable in respect of every occupied hut tax therein, a penalty (or, in default of payment thereof, imprisonment) being prescribed in default of payment of the tax; the Commandant to be the Collector and the Chief to render assistance (Sec. 8, Law 9, 1898, amended by Ordinance 39 of 1903).

(b) Poll-Tax of £1 per annum to be levied on each male coloured person between the ages of 18 and 70 years, domiciled, or who has been living for six months in the Orange River Colony (Secs. 1—3, Ord. 2, 1904).

Exempted are:—

- I. Coloured persons on recognised coloured diggings (see Chap. 70 and (c) below)
- II. Coloured persons who have rights to land and who pay quitrent.

Note A.—If a coloured person is unable to pay the poll-tax when required, the Collector shall give notice to the white owner or occupier of the farm, etc., and if the tax is not then paid or security given, the Resident Magistrate or Special J.P. is to place the coloured person under contract with a white person in the district who is willing to pay.

Note B.—Arabs, Chinese and other Asiatics, and all other persons who are by law and custom in South Africa regarded as coloured, are considered coloured persons for the purpose of this Ordinance (Sec. 20).

(For various other provisions, mainly of detail or administrative machinery, reference may be made to the Ordinance, if desired).

(c) Taxes on coloured persons on public diggings: (Throughout the age limit is 18 to 70)

I. At Jagersfontein there are three forms of registration certificates (or passes) for coloured persons in domestic service, for those engaged in cattle farming, for those working in the mine.

In each case the Registration Certificate holds good for one month, and 1s. is payable thereon or on its renewal (Secs. 4 and 5, Chapter 70).

II. On other public diamond diggings a fee of 1s. (payable every month) on certificate of registration (Secs. 3—5).

III. On diggings for gold, etc., 1s. payable on a monthly certificate (Sec. 9, Ordinance 3 of 1904).

Note.—On the diamond diggings unregistered coloured persons may not be employed, and there is provision for further payment (beyond the registration fee) towards hospitals (Secs. 7 and 9, Chapter 70).

6. TRANSVAAL.

(a) There must be an annual payment by every adult male aboriginal Native domiciled in the Transvaal of a consolidated tax amounting to £2 in lieu of taxes payable under certain repealed laws.

(b) If such Native has more than one wife by Native Custom, he pays a further tax of £2 for each additional wife.

(c) The Governor appoints Collectors and makes rules for the carrying out of the provisions of the Ordinance (as in Natal, see above) defining therein also the duties in respect of this matter of Native Chiefs and Headmen.

(d) A penalty is provided for non-payment (See Rhod. 7 (d) below Ord. 20, 1902).

(e) Regulations framed under this Ordinance provide *inter alia*:—

I. For the co-operation (under a penalty) of Chiefs and Headmen (Secs. 3, 4 and 10).

II. That when the paying native resides in a location or kraal under control of a Chief or Headman, the payment must be made in his (or his representative's) presence (Sec. 5).

III. A receipt has to be given (Sec. 6).

IV. The Headman is liable for the payment of the tax by persons liable to pay it in his kraal, and for the production of the previous year's receipt belonging to such persons (Sec. 7), and must *inter alia* inform the Native Commissioner or Magistrate of persons entering his location or kraal for purposes of residence (Sec. 10).

V. The Collector may extend the time for payment, and, if he has no alternative, take payment in grain or stock, the value being taken to be the price current in the nearest practicable market, and the reasonable cost of carriage being added (Sec. 11). (Compare herewith 8 (c) for an analogous provision in Basutoland and par. 9 (c) as to the Bech. Protectorate).

7 RHODESIA.

(a) Native tax is payable by every adult male Native, viz.: £1 in respect of himself and 10s. for each wife or reputed wife after the first (Ordinance 21 of 1904, Sec. 4).

(b) Collectors are appointed by the Administrator (Sec. 4).

(c) Exemptions, whole or partial, are provided for in favour of any Native satisfying a Magistrate, Native Commissioner or Collector, of his indigence and inability to work through age, chronic disease, or other sufficient cause (Sec. 5. See also Sec. 7 (1), quoted below). The tax is not expected from Mission pupils receiving industrial training and no wages.

(d) Six months after the tax falls due, delinquents become liable to fine up to £10, or imprisonment up to three months. Such penalty does not relieve from payment of tax (Sec. 6).

(e) Regulations may be made by the Administrator, with the advice of the Executive Council and approval of the High Commissioner, further providing for collection and exemptions, defining duties, and prescribing penalties up to £10 or three months' imprisonment for breach of such regulations (Sec. 7). Those issued include provision for:—

I. Co-operation with Collectors of all Chiefs, Headmen, and Indunas, and responsibility of Heads of Kraals for the tax of inhabitants.

II. The issue of receipts to such Heads of Kraals, and of metal tokens to each unit; the latter to be issued through the Heads of Kraals in the case of tax paid through them.

8. BASUTOLAND.

(a) There is a hut tax of 20s. per annum for every hut erected for the occupation of a family: Proc. 2 B, 1884, Chapter "Hut Tax, Pounds, Passes" Sec. 1 as amended by Proc. 9, 1903 (Sec. 1).

(b) Such payment of 20s. is due for each wife of any person residing on any lot, whether a separate hut be erected for her or not. The tax is also payable for every hut occupied by any unmarried man (Sec. 2, Proc. 2 B, 1884).

(c) The tax may be paid in grain or stock; the Resident Commissioner each year fixing the value at which such grain or stock is to be received (Sec. 4 a B 1884), (See par. 6 (e) V, and par. 9 (c) hereof).

9. THE BECHUANALAND PROTECTORATE.

I. Here (*vide* Proc. 10, 1899);

(a) There may be exemption (by an Assistant Commissioner) by reason of extreme old age, blindness, personal infirmity or other cause, incapacitating the native from earning a livelihood (Sec. 3), (Compare the Cape enactment par. 2 (c) I hereof).

(b) There are provisions regarding the giving of a token to serve as a receipt and for a fine (or imprisonment on non-payment) in the case of failure to pay the tax, analogous to those obtaining in Rhodesia (see par. 7 (d) hereof) and respecting any wrongful interference with the said token, which has to be affixed to the hut as an indication of payment (see Secs. 5, 6 and 7 of Proc.)

(c) The Collector in necessary case may accept payment in grain or stock at current market rates (see 6 (e) V and 8 (c) hereof), (Sec. 3 Proc.)

(d) Sections 8, 9 and 10 give power to appoint a Native Chief as Collector, and deal with his duties and the payment of a commission of 10s. per cent. to him, subject to his not acting carelessly or improperly in the collection.

Note.—By Sec. 4, the Police have to report as to the non-payment of the tax; and the Chiefs when paying over must furnish a list of persons who are in default.

II. Under Proc. 6 of 1900, it is provided:—

That male persons of full age, not occupying a separate hut, have to pay a tax of 5s. per annum; and that the provisions of the foregoing Proc. (10, 1899) are to apply to such tax *mutatis mutandis*, the metal token here being kept by the payor, to be produced on application by any Chief appointed to collect the tax.

SQUATTING.

1. SQUATTING ON CROWN LAND (GOVERNMENT LAND) BY NATIVES.

(a) This is prohibited in Natal, Orange River Colony and Transvaal. See (Natal) Sec. 2, Ord. 2, 1855 and Sec. 3 Law 41, 1884 (which penalises squatting which takes place without the consent of Government—Natal), Sec. 19, Ch. 133 (O.R.C.) and F.V.R. Resolution 10th June 1891 (Transvaal).

In Orange River Colony, Sec. 19, Chap. 133 prohibited squatting on Government or Town Land without written permission specifying names and number of people, their stock, etc.; and Sec. 1 of the Natal Ordinance directed the removal of Natives from Crown Land, while Sec. 2 penalised the erection of huts, etc. on such ground (in each case, other than Land

cations) without permission. Such permission having presumably been somewhat extensively given (see preamble to Law 41, 1884) the latter enactment provided for

(b) The Collection of Rent from Native Squatters on Crown Lands (Natal)—such rent being normally fixed at £1 per hut per annum, with power reserved to the Governor to raise or diminish the amount to meet the equities of the case, and to frame Regulations under the Act (See Government Notice 110, 1887—as to which we notice that the Magistrates were appointed officers for the collection of these rents).

By Act 48, 1903, the rent is fixed at £2, in lieu of £1. Law 41, 1884 and Act 48, 1903 are not to apply to Zululand unless specially extended by Proclamation. Thereafter, Native Squatters may be removed summarily after the expiry of a six months' notice in writing by the Magistrate and disregarded by the Native Squatter (See Par. 4 and 5, Law 41, 1884). (Ord. 2, 1855, repealed so far as in conflict with Law 41, 1884).

(Note.—The Cape Legislation on squatting does not appear to be directed to, or deal with, Natives specifically: see e.g., Act 23, 1879).

(c) Foreign Native Tribes prohibited from squatting in the S.A.R. G.N. No. 50, Local Laws 1881.

2. SQUATTING ON PRIVATE LAND.

Here the Natal legislation does not seem to run on similar lines to that of Orange River Colony and Transvaal—which is largely the same in principle.

(a) Natal legislation appears mainly directed towards the removal of the Squatter on the complaint of the private owner. If the Squatter had no permission to reside on the land in the first instance, the Magistrate must order his removal forthwith; if he was so residing by reason of an initial lease or other agreement now become void, the Magistrate causes him to be removed after a notice giving him time to collect the growing crops.

(b) Orange River Colony and Transvaal legislation: Here the leading thought seems to be as to the number of Native householders which the landowner can keep on his farm: it is largely economic legislation, seeking to effect an equitable distribution of labour on the farms. (See Sections 12, 19, 21, 22, 29, 30, 33, 34, 36, 37, 39, etc., Chap. 133 and Sections 9—20, Law 4, 1895 (O.R.C.) and Law 21, 1895 (Transvaal)).

Note I.—The Vagrant:—In Orange River Colony Sections 12 and 30, Ch. 133 provide that one wandering about without "honourable means of subsistence" may be detained and if he has no means of existence can be dealt with as a vagrant and fined or imprisoned or otherwise (so far the enactment is general, referring to both white and coloured but the alternative differentiates)—"if not a white person may be placed under contract as a servant with a white inhabitant for a period not exceeding one year, provided the vagrant be entitled to select his master in the district—the contract to be made and registered before the Landdrost at the ordinary local rate of wages.

II. The Squatting of Natives:—The Transvaal Preamble (Law 21) refers to the desirability of checking squatting in order to promote health, encourage free labour, and protect population and property.

III. The normal number of families allowed is 5 (Section 9, Law 4; Section 2, Law 21 of 1895).—N.B. The Transvaal Sections speak of families, the Orange River Colony Sections of heads of families, of coloured persons—the latter being defined as persons who have one or more wives or a family; coloured persons over 60 years of age, who have no children fit for work, not being considered heads of families. (The word families is used in this article for both expressions). 74

IV. Variations of or Exemptions from this Rule (Note III above):—

The number may only be exceeded after permission granted.

A. In Transvaal the express consent of Government declared necessary (Sec. 2, Law 21 of 1895):

B. In Orange River Colony Sections 12, etc. provide for enquiry by Landdrost as to the reasonableness of request for a greater number, and his making inspection *in loco* if necessary; under no circumstances are more than 15 families to be allowed; for each family above 10 a tax of £5 per family has annually to be paid; and the Landdrost is entitled after investigation to withdraw or modify the special permission previously given by him (Notice by way of analogy the Cape legislation in Sec. 14, Act 30, 1899—Locations). 075

C. The following not reckoned as heads of families in Orange River Colony (Sec. 11, Law 4 of 1895):—

- (a) Single coloured persons hired by owner, etc.;
- (b) Heads of families temporarily hired for definite jobs on the farm;
- (c) Heads of families etc., temporarily in the hire of a white person who have accepted a piece of work (job work), under contract, to be done on the farm. (This exception, however, does not include Natives engaged to plough and sow either for wages or on the halves).

D. In Transvaal.—The white owner may keep 5 families as servants under him for each farm owned by him—not to exceed 2½ in all (Sec. 3); the tenant or “bijwoner” may also keep five with owner’s sanction (Sec. 4); where a “native” owns the farm, a similar number (5) of families is allowed, whose permit to reside (under Sec. 7, see next paragraph, V. hereof) must be had from the Superintendent of Natives (Sec. 9).

E. In Orange River Colony.—No owner of a farm not occupied by a white person may keep more than two families of coloured persons; but in Moroka the coloured owner may keep three families with leave of Executive (Sec. 21, Ch. 133).

V. Permit-List of Coloured Persons.—

In Transvaal.—(Sec. 7, Law 21) the landowner has to give a written permit to reside to heads of families which he keeps under Law 21, shewing the place where they may establish themselves, and a head of such family living on a farm without such permit is subject to be fined, etc., as a vagabond.

In Orange River Colony the landowner must keep, and on application submit to the Field Cornet, etc., a list of coloured persons on his farm with their stock (Sec. 36); any stock held by such coloured persons in excess of the stated number liable, in absence of satisfactory account, to be impounded on behalf of the Government (Sec. 37).

VI. Supervision: Transvaal.—Section 2, Law 21, speaks of the coloured persons being “under white persons who shall be responsible for and supervise the health and safety of such natives.”

VII. Farm, meaning of.—A portion of a farm separately transferred to a white person is, generally speaking, treated as a farm under the laws now under consideration (Section 5, Law 21 of 1895, and Sec. 10, Law 4 (1895)).

VIII. Removal.—By Sec. 7, law 21 (Transvaal) coloured persons living on a farm without a permit must be removed by the Commissioner or Sub-Commissioner on his getting notice thereof; whilst Sec. 41 Ch. 133 (O.R.C.), has provisions regarding the removal of coloured persons from the farm of absentee owner.

IX. Enforcement of Law.—In Orange River Colony Sec. 33, Ch. 133, provided that Burghers should interrogate persons as to his pass under this law and if necessary detain such person and bring him before J.P., F.C., etc., who may send him before Landdrost, but the detained person may, if he so elect, be contracted to some person selected by him.

X. Notice of Leaving or to Remove, Transvaal.—Coloured persons wishing to leave their residence or private property must (failing special agreement) give three months’ notice to owner and to Commissioner or Sub-Commissioner; a similar notice due by owners etc., to coloured person whom he does not wish to have remaining any longer, saving to such person his right to harvest his standing crops (Sec. 8).

(Notice in this connexion the expression “servants” as used in Sec. 3, See “D” hereof).

3. MISSION STATIONS, CHIEFS’ RESIDENCES, DIGGINGS, Etc.

In Orange River Colony the above provisions of the law regarding squatting do not apply to recognised Mission Stations, nor to land granted by Government to coloured chiefs and their people for residence, nor to public diggings or recognised coal mines (Sec. 23, Law 4, 1895)

In Transvaal old recognised Mission Stations, failing to transfer their ground as locations to the name of the Superintendent of Natives, apparently fall under the “Squatters Law” (F.V.R. Resolution, 3rd October, 1895. Art 1497.)

4. RHODESIA.

Note: Sec. 81, Order in Council, 20th October 1898, and Sec. 10, High Commissioner’s proclamation of 25th November 1898, deal with the assigning of land to natives, the latter giving powers to the Native Commissioners of assigning lands for huts, gardens, etc., for each kraal on vacant land, etc.—no new hut to be built or garden cultivated without his consent; (G.N. 49, 1895 dealt with the reservation of areas for natives in Matabeleland).

5. VAGRANCY IN BOROUGHES.

Natal.—In certain Boroughs (in Natal) "Every coloured person found wandering abroad after, and before such hour as such Corporation may fix, and not giving a good account of himself, or herself", is deemed to be an offender within the meaning of the Law (No. 15, 1869, Sec. 2); and in (apparently) all boroughs the Corporations have to erect suitable buildings for the reception and shelter for the night of non-resident Natives (Sec. 3); and the Corporation may fix hours and make rules etc., for the carrying out of the provisions of the Act.

(See Article "Native Locations", Sec. 11 (Curfew Regulations) for certain Cape and Rhodesian Legislation).

(Note: That the expression "Coloured person" is here used, and includes, *inter alia*, Coolies and Lascars).

MISSION RESERVES AND GRANTS.

1. TRANSKEI to give greater security of occupation for mission work, the Governor may make grants—subject to certain conditions e.g.—

- (1) Power of resumption for public purposes on payment of compensation, to be fixed, failing agreement, by arbitration;
- (2) Rights to gold, silver and precious stones reserved:;
- (4) Proprietor to use land for *bona fide* missionary purposes—subject to cancellation of title on cessation of such user;
- (5) Land granted not to be alienated or sub-let without consent of Governor;
- (8) Grant subject to cash payment of fair valuation assessed by Government unless grant had been in grantee's occupation at the time of annexation (Proc. 75, 1903).

2. NATAL, Act 25, 1895, is now repealed by Act 49, 1903, as to which note:

(a) The Natal Native Trust to be Trustees of the Mission Reserves mentioned in the Schedule; (Sec. 4);

(b) The Mission Reserves to be kept for occupation solely by natives, (save as to any part set aside under the Act) and to be administered for the benefit of the resident Natives according to the intention of the several deeds by which the Reserves were granted. (There is a proviso as to the granting of temporary occupation of store sites and as to prospecting and mining rights etc.) (Sec. 5);

(c) The protection of the interests of the Missionary Bodies etc. named in the respective Deeds of Grant (Sec. 6):

(d) That suitable sites for Churches and Schools may be leased to Missionary Bodies at a nominal rent for a period not exceeding 21 years, but renewable from time to time (Sec. 8);

(e) That the Trust may charge the Natives rent and make charges for the supply of water, etc. (Sec. 9);

(f) The appropriation of moneys collected under the Act (Sec. 10).

(g) The Trust to have full control of the Reserve, with power of removal (Sec. 11);

(h) The power of the Governor in Council to set apart a Reserve, or part thereof for exclusive occupation by Native Converts, the prohibition by rules, made by such Governor, of native customs and heathen rites, and the confinement on such natives of a suitable measure of self Government (Sec. 12);

(i) The Governor has power to decide what powers, if any, are to be exercised by Native Chiefs in such Reserves (Sec. 13);

(j) The power of Supreme Chief, acting in conjunction with Natal Native Trust, to remove any tribe, portion of tribe, or Native from Reserve, see Sec. 37, Sched. Law 19, 1891 (Sec. 14)

(k) Rules: Governor in Council may make rules for (*inter alia*): (Vide G.N. No. 574 of 1904.)

- (1) The admission of Natives to the Reserve;
- (2) The lease and hire of land; (the repealed Act included sale);
- (3) The appropriation of land for cultivation, pasturage and commonage;
- (4) The charge to be made for rent, agistment of cattle, etc.;
- (5) The preservation of health;
- (6) The maintenance of order;
- (7) The education and industrial training of children (Sec. 15).

(Note: It will be observed that the Transkeian enactment speaks of grants—reserving the right of resumption for public services; whilst the Natal Act by the omission of any power to make rules for the sale of land would seem expressly to affirm the principle of non-alienability).

MASTER AND SERVANT (NATIVE). THE LAW AS TO

Cf. the Cape Acts 15, 1856; 18, 1873; 28, 1874; 7, 1875; 30, 1889; and as to the apprenticeship of Juvenile Offenders: 7, 1879, and 8, 1889.)

Orange River Colony: Ordinance 7 of 1904.

Transvaal: Law 13 of 1880.

Natal: 40, 1894 (the principal Act); 50, 1901; 35, 1899; 49, 1901; 15, 1871.

Rhodesia: 16, 1901.

I. The Cape and Transvaal enactments on the subject do not differentiate in this behalf between Natives and others; in Rhodesia there are certain specific provisions; but principally in Natal do we find legislation that calls for detailed notice. There the Act to be considered is the "Master and Servants" (Native) Act, 1894.

2. The Natal Act (40, 1894) very largely follows the lines of the Cape legislation (save for the race differentiation) and certain differences (few of them of great moment) can be succinctly pointed out:—

(a) A leading difference is found in the fact that the Cape Acts (e.g. 15, 1856) deal with apprentices; the Natal Act does not do so in this connexion, apparently.

(b) The duration of the written contract, signed before the Magistrate or J.P., is limited to 36 months from the date thereof; at the Cape it is 5 years (Secs. 8, Act 40, 1894; Sec. 5, Ch. 2, Act 15, 1856).

(c) In Natal payment of wages must be made in money (Sec. 14 (Compare Cape Act 23, 1887)).

(d) In the matter of illness

I. the Cape Act provides that, where the servant becomes incapable for service through illness not occasioned by his own fault, he is entitled to receive his full wages for the first month of such incapacity and all the other stipulated benefits during the whole period of incapacity, unless it extend in all beyond a period of two months or unless the term of service expires sooner. At the end of two months or any time thereafter during the incapacity the master may treat the contract as determined, being however bound to make good his stipulations; if he does not so treat the contract but permits the servant to remain, the servant can claim neither wages after the first month nor other stipulated benefits after the two months—save food and lodging where the master has by the contract undertaken or is deemed to have undertaken to provide it. But no servant hired by any contract to perform service in a trade or handicraft is entitled to receive wages or other benefits during the time he is incapable, but only food and lodging (if so stipulated by the contract) for a month unless the contract expires before that time.

(II.) In Natal, incapacity arising from sickness disentitles the servant to receive wages not already earned; if he reside on the premises the master must provide him with proper food for two months of such incapacity when he may treat the contract as determined. Where the

servant being resident on his master's premises, is received therefrom into a Hospital, the master must pay hospital fees at a rate not exceeding 1s. a day for a period not exceeding two months, provided the sickness or accident be not occasioned by the drunkenness or misconduct of the servant (Secs. 15 and 16).

(e) The Natal Act (Secs. 17 and 18) provides that if the body of deceased servant be not claimed by his relatives, the master must see to its decent interment, and is entitled to charge the cost thereof against the estate of, or wages due to, the deceased.

The Cape Act has no corresponding provision apparently.

(f) As to contracts for the service of a child, the Cape Act (Sec. 12, Ch. 2, Act 15, 1856) gives the mother the right to contract in the father's absence, where the Natal Act (Sec. 19) gives the right to the guardian.

(g) In Natal the Governor may give special authority to a J.P. to exercise jurisdiction and have all the powers of a Magistrate under the Act (Sec. 24); in the Cape Colony any Special Justice of the Peace may exercise jurisdiction as if he were a Magistrate though the measure of punishment is on a more restricted scale (Sec. 1, Act 30, 1889).

(h) Secs. 26 and 28 of the Natal Act authorise a sentence of imprisonment without the option of a fine (Sub secs. (6) and (7) of Sec. 28 would according to the Cape scheme be included among the sub-secs. of Sec. 26 (vide Secs. 2 and 4 Cape Act 18, 1873) and the last sentence in sub-sec. 2 does not occur in the Cape Section). As to these compare, Ch. II A. 8.m. of Article "Labour Agents—Labour Districts".

(i) Sec. 33 specially authorises the whipping of boys under 16; neglect to return to work after a trial or imprisonment for an offence under the Act is to be deemed an offence under Sec. 26 (Sec. 1, Act 50, 1901—substituted for Sec. 33, Act 40, 1894). Where a servant is fined and the master pays the fine, he may deduct it from the servant's wages (Sec. 37). These provisions do not seem to figure in the Cape Act.

(j) In Sec. 35 absence arising from desertion (as well as absence during imprisonment, as at the Cape) may be added to the original term of service.

(k) By Act 35, 1899, the master must lodge his complaint within three months—at the Cape it is one month (Sec. 8, Act 18, 1873). Secs. 40 and 42, Act 40 of 1894, provide for due notice to the absent complainant before ordering cost against him—an equitable provision not seemingly in the Cape Secs. 10 and 11, Act. 18, 1873, which, however, would tend to protract the proceedings somewhat.

(l) The Natal Act (Sec. 58) provides that minority does not prevent a Native servant from prosecuting his claim without the intervention of a guardian.

Note.—(a) The Cape Act also deals with the effect of the death, insolvency or change of residence of the master, with characters given by masters to servants or apprentices, and with the unlawful interference with servants to prevent them from entering into or completing a contract of service, etc.

Note.—(b) Rhodesia—Apprenticeship: By Ord. 1, 1899 the provisions of certain Cape Acts are *mutatis mutandis* to apply as to the apprenticeship (to the Superintendents, etc., of educational institutions) of Native children (the Cape Acts applying generally).

Note.—(c) The Orange River Colony Ordinance 7 of 1904 distinguishes between White servants and Coloured servants. In this respect it follows the Natal Act. See 2, sub-sec. 2, defines "Coloured servant" and Part III of the Ordinance deals specially with Coloured servants as differentiated from White servants, while the provisions of Parts I and IV are applicable to both and follow closely the Cape and Transvaal enactments.

The following points may be noted:—

(a) The Ordinance does not deal with apprentices, but see Chapter XXXV "Apprenticing Coloured Children".

(b) The duration of the written contract is two years (Sec. 31).

(c) A parent or guardian may contract for the service of a child together with his own (Sec. 34).

(d) Resident Magistrates and Special J.P.'s have jurisdiction in case of offences committed by Coloured servants.

(e) The offences of Coloured servants are practically the same as in the Natal Act.

3. REGISTRATION OF NATIVE SERVANTS IN PIETERMARITZBURG AND DURBAN, NATAL (21, 1888).

(a) The Town Council of these Boroughs are authorised to establish by By-laws a system of registration of Natives or persons belonging to uncivilised races resident and employed or seeking employment in those Boroughs—penalties being authorised for the contravention of the By-laws.

(b) The By-laws may make provision for a charge for each entry in register and for the registration of contracts between master and servant.

(c) Any one employing a Native, or person of uncivilised race, not provided with a registration ticket, liable to a penalty.

(d) Fines to go to account of the Borough revenues. The provisions of the Act (of which some of the provisions are here given) do not apply to Europeans.

(e) The By-laws passed by the Pietermaritzburg Town Council, except Natives registered under the togt system (see par. 6 hereof) and others, from the operation of the By-laws, provide for the wearing of badges, and a charge of 1s. for registering each person and providing the badge, and for the keeping of a correct list of all registered servants convicted of theft or other serious offences; and require the entry (in a book) of the name, description and address of each person registered, who must always wear his registration badge.

4. Act 49, 1901 (Natal) seeks to "facilitate the identification of Native Servants" Certain provisions thereof follow:—

(a) No person may offer himself for engagement, or (save as excepted) continue in employment, as a servant, or to be registered as a togt labourer (see Sec. 7 hereof) or under Law 21, 1888, without obtaining the pass provided for in the Act; and the intending employer before engaging a Native servant must require the production of his pass—referred to as an identification pass (Sec. 5). The pass granted under Law 48, 1884, serves as an identification pass.

(b) Pass Officers provided for, to whom application has to be made for the pass. Such officer may in his discretion withhold pass till satisfied that it ought to be granted and in case of doubt may require the applicant to be accompanied by his Kraal Head or some accepted person to testify to identity, etc. (Secs. 7—10).

(c) A pass not to be granted where the applicant is already under a contract of service; and not to be granted to any female or to a male child under 15 years of age, without the consent of husband, parent or guardian (Secs. 10 and 11).

(d) A register of identification passes to be kept (Sec. 12).

(e) The Native to exhibit his pass whenever called upon to do so by his master or a police officer; if he lose the pass he can obtain a temporary pass without payment or a new pass on payment—the temporary pass not to be available for a new contract of service (Secs. 6, 12, 14 and 15).

(f) The master has to keep a labour book in which to copy the identification pass of every Native he employs other than registered togt labourer; and if any master employs a Native without requiring the production of his identification pass, or copying it into his labour book, he has no remedy against the servant under the principal Act (40, 1894) (Secs. 12 and 13).

(g) In case of conviction of serious (specified) crimes the Registrar of the Court to inform the Pass Officer who makes a note thereof against the entry of registration, etc. (Sec. 17). Compare herewith note (B) in the next succeeding paragraph (5) hereof.

(h) The Act does not apply to Natives rendering service upon the farm on which they live to a landlord in lieu of rent (Sec. 3).

Note.—In certain details Act 49, 1901 has been amended by Act 3, 1904.

(5) RHODESIA (Ord. 16, 1901).

(a) Registration of Contract: By Section 3, no contract of service is valid unless it has been registered at the office of the Registrar of Natives, who must satisfy himself that the Native understood its terms. The Contract (if registered) must specify not only the names of employer and servant, but the term of service and rate of wages, etc.

(b) Certificate of service: Such a certificate is given to the Native on registration, the stamp thereon being 1s. to be borne by employer (Sec. 4).

(c) Certificate of discharge: The contract of service is not to be enregistered, unless the native produces to the Registrar a certificate of service with his last employer, or a written certificate of discharge from such employer—unless the Registrar is satisfied that the Native had not previously been employed in service or is satisfied as to the explanation of non-production of certificate of service or discharge given by the Native (Sec. 5).

(d) At the expiration of the service the master must endorse on the certificate of service the fact of its termination or fulfilment, etc. (Sec. 6); and

(e) A penalty attaches to the employment of a Native without registration of the contract (Sec. 8).

Note A.—The Certificate of service is *prima facie* proof of the facts therein stated.

Note B.—Observe, that the employer cannot employ a Native under any contract requiring registration, without getting the contract registered, and registration cannot take place without production of the last contract of service or a certificate of discharge.

6. LAW No. 15, 1871: To facilitate the obtaining of labour (Natal):—

(Certain provisions of this law are noticed in the "Labour Agents" article; other provisions may conveniently be here noticed, though as in other cases reference must be made to the text to ascertain the full scope and contents of the Law, and to those responsible for or acquainted with its administration to ascertain to what degree and with what results the Law is operative).

(a) Where it is agreed that the employer is to pay a bonus to the labourer before the signing of the contract of service the Magistrate or other authorised officer is required to receive on account of the labourer the said sum, or such part thereof as he may be requested by the contracting parties to receive. Such a contract must be registered by the Magistrate and the sum received deposited at interest in the Savings Bank (Secs. 2 and 3).

(b) Failing objection by the Master the sum is paid out to the servant on completion of service (Sec. 4), (the bonus being thus apparently, in effect, conditional upon, and so an inducement to secure, due fulfilment of service).

(c) In the event of a dispute and its being referred to the Magistrate, and of the annulment of contract of service by the Magistrate, or if the Master object to the servant receiving the bonus, the Magistrate decides as to the awarding of the bonus (or part thereof) and what is not paid to servant is returned to Master (Sec. 5).

(d) Labour Statistics etc.:—See note (a) at the end of this Sec. (6).

I. Persons wanting servants may apply to the Magistrate in writing—stating the number required, the period and wages of service, etc.; and Magistrate causes natives in district to be informed of the obtainable employment (Secs. 6 and 7).

II. So, servants wanting employment may make application to Magistrate and get information as to persons wanting servants, etc.

III. Labour returns to be sent to Colonial Secretary and "where supply and demand are unequal at more than one "magistracy" statement to be published showing the place and nature of excess of demand or supply (Secs. 9 and 10).

(e) Introduction of Servants by Government:—

I. Where there is "a considerable deficiency of servants", the Lieut. Governor may provide for the introduction of servants from beyond the borders, and for their return after at least one year's service in Natal.

This intention has to be notified, and special application for servants to be made to the Magistrate, accompanied by a deposit of 10s., any unexpended part of which is ultimately returned to the applicant (Secs. 10—14).

II. As to labourers being "deemed servants of introducer till they have contracted with other persons" (Sec. 16) and the furnishing by Magistrate of messengers to safely conduct labourers to their destined Magistracy (Sec. 17), (noticed in Sec. 20 of Article "Labour Agents")—these sections apply also to labourers introduced by Government overland.

(f) Contracts to supply native labour in lieu of rent by Natives residing on lands being private property.

I. Where there is a contract for labour other than or additional to that of the contractor, the contract must specify the number of servants, times of employment and amount of wages, and whether rations to be supplied—and Magistrate may attest contract; but his attestation not necessary for its validity, though in the absence of such attestation the employer is under the responsibility of proving that the other contracting party had had full and correct explanation of the contract (Sec. 20).

II. Wages are to be paid to the servant actually working unless otherwise agreed (Sec. 21).

III. The person contracting for the supply of labour to be liable for the whole of wages and rations as contracted though he may not employ the labour—provided there be no neglect or refusal to work on the part of servant or no willingness to bind him or her self to another employer (Sec. 22).

IV. The contractor liable for damages arising from his failure to supply servants as contracted; any action for breach of contract, instituted by either contracting party to be tried in Magistrate's Court within 3 months from date of cause of action (Secs. 23 and 24).

V. When a contract to supply labour is accepted by the owner etc. of land as rent for use of land, and damages are awarded to the extent of £10, that sum shall be considered rent and recoverable as such, and when the sum exceeds £10, only £10 is so considered and the balance is recoverable in the usual way (Sec. 25).

VI. Verbal contracts of service or to supply labour not binding for more than one year and written contracts for more than three years (Sec. 26) Compare Sec. 2 (b) hereof.

VII. Disputes between natives regarding such contracts are adjudicated upon by Magistrate as Administrator of Native Law and not otherwise and are not subject to review except before the Supreme Chief (Sec. 28).

Note (a).—By Sec. 59 of the Glen Grey Act (Cape: 25, 1894) the district Council has to receive applications for labour from out of the district and to arrange for the despatch of labourers taking employment where their services are required. Regulations are authorised for the registration of persons capable of labour etc.

Note (b):—the contract to supply native labour in lieu of rent—see (f) above—is not apparently met with in the legislation of the other Colonies; and without a knowledge of its inception, working and effect one could not presume to offer any observations thereon.

7. THE TOGT LABOUR SYSTEM IN BOROUGHES (Natal 28, 1902).

(a) Town Councils of certain Boroughs may make By-laws for the purposes of the Act;

"Togt man" means a day labourer or a person employed in service otherwise than under monthly or longer engagement, or a jobber, and applies only to Natives (Sec. 1).

(b) Upon the promulgation of By-laws under the Act by the Town Council of Pietermaritzburg or Durban, Sir Benjamin Pine's Proclamation of 27 March 1874 ceases to apply (where by natives not being landowners or in monthly or yearly service in those Boroughs were prohibited from living in those towns unless they accepted the position, wore the badge and paid the monthly licence of a jobber, "togt" man, or day labourer. The terms of the Proclamation are not further summarised herein (Sec. 2).

(c) No Native may live in any Borough adopting By-laws under the Act unless he is:

I. A proprietor or renter of house or land therein; or

II. In the monthly or yearly service of a resident therein; or

III. registered under the By-laws as a "togt" man.

But exempted are:—

A.—A Native resorting to a town in connexion with judicial proceedings, or

B.—By direction of his chief, or

C.—In the course of any lawful employment or service, or of any domestic or other business requiring a visit to the town.

Note (a): The proof of the exemption rests on the Native;

Note (b): A Native remaining in the Borough for more than five days must be registered as a "togt" man (Sec. 3).

(d) The By-Laws may provide for:—

- I. The registration of togt men and wearing of badges by them;
- II. Their residence in compounds and the licensing of private compounds etc. and the supervision of compounds, etc.;
- III. The fees to be charged for registration of togt men and for their residence in compounds, etc.;
- IV. The taking service of togt men by the day under fixed conditions and wages;
- V. The exclusion of any Natives from any of the provisions of these By-laws.

(e) A licence fee of £3 per annum may be charged by the Town Council for each private compound. The granting or refusal thereof is in the absolute discretion of the Town Council; revenues derived under the Act must be applied towards the purposes of the Act.

(f) After compounds have been provided for the accommodation of togt men, no person shall house or harbour them elsewhere (Sec. 7) As to "Compound overseers" see Transvaal Proc. 38, 1901, noted in Ch. II. B. Article "Labour Agents". Compounds are also referred to in (Cape) Act 5, 1899, Sec. 12 of article "Native Locations".

Note.—A comparison may here be briefly made with:—

I. The Native Reserve Location Act, (Cape, 1902, see Article "Native Locations" 5 (a), (8)—under which the dwellings are provided by the Government, which provides for the collection of rent; under the Togg Act the Local Authority apparently provides the accommodation and collects the rent or fees therefor.

II. Law 8, 1893 (Orange River Colony)—under which again as in Natal the administration is in the hands of the Local Authority alone. In all of them, however, the principle seems to be accepted that persons not in employment of a master as servants shall reside under supervision in a locality fixed and appointed.

PASSES.

*University of Fort Hare
Together in Excellence*

1. A "Pass Law" of one kind or another is common to all the Colonies. The earliest still in force—that of the Cape, Ord. 2 of 1837—was probably intended to add to the public security on the borders, whilst the Natal Ord. (4, 1855) purports to guard against the disturbance of peace and amity with the neighbouring Chiefs. To-day "pass" legislation or regulation is doubtless not unconnected with the idea of repressing "vagrancy," facilitating the control and supply of labour, and preventing stock-theft, while in the O.R.C., the Transvaal and Natal the pass system also in effect serves to produce some small revenue.

2. IN THE CAPE COLONY Ord. 2, 1837, is entitled "Ordinance for the more effectual prevention of crimes against life and property within the Colony," and Sec. 4 specifically enacts that native "foreigners" should not enter or be in the Colony without a pass, or contrary to the conditions of his pass e.g., he should not be wandering about without occupation, etc., etc.

Act 22, 1867, still speaks of "Native Foreigners", and does not greatly enlarge the scope, on this matter, of the previous legislation. (But notice that the form of "Pass" attached to the Act makes reference to removal and description of stock, and that a description of the person has to be filled in.) It is suggested that the above enactments are in practice not much acted on now-a-days, the Transkeian pass regulations probably serving all necessary purposes in one respect, while the Cattle Removal Acts (14, 1870; 20, 1889; 12, 1891) deal with the removal of stock.

3. (a) The enactments of the other Colonies (including the Transkei) refer to natives generally, though by Proc. 92, 1903, (Transkei) the word "native" includes not only African aboriginal Natives, but also any "Arab, Indian or other Asiatic" as regards the Transkei.

The Transkeian regulations are at once extremely short and quite simple.—"Every resident of any of the Transkeian Territories leaving the same shall be provided with a pass, signed by a Resident Magistrate or by his order,"... "and any Native entering must be similarly provided with a pass," and no charge is made for the pass. (The different Proclamations are brought up in Proc. 109, 1894, p. 213 of Dr. Theal's collection.)

(b) The Basutoland rules are also concise: Every resident of Basutoland on leaving must have a pass signed by the Resident Commissioner or one authorised by him thereto; every native (domiciled out of Basutoland), seeking to enter, requires a pass signed by a competent

Officer or authorised person in Cape, Natal or O.R.C. (Sec. 6, Chapter: "Hut Tax, Pounds and Passes," Proc. 2 B, 1884; and Secs. 1—4, Proc. 3 B, 1884.) There are penalties for contravention.

(c) The reference in Transvaal is to Natives entering the Colony from beyond the borders thereof, travelling from place to place within the Colony, or departing therefrom. (Proc. 37, 1901, amended by Ord. 27, 1903, and Regulations under Procl. Admn. No. 18 of 1903.)

(d) In Natal the principal Law (48, 1884) and the Rules thereunder, refer to Natives entering and leaving the Colony. (See also Law 52, 1887,—and see Pt. 11, Act 1, 1899, as to removal of cattle.)

(e) In Rhodesia all males of 14 years and over, both of whose parents were aboriginal African Natives (Ord. 12 of 1904, Sec. 2) are registered and carry certificates of registration. This applies to both indigenous and immigrant Natives (Ord. 10 of 1902, Secs. 8, 6), except such of the latter as carry a regular pass from another territory, in which case such pass is endorsed by a pass officer (Ord. 10 of 1902, Sec. 3 (2)) or are merely crossing the territory to or from work, etc (Ord. 12 of 1904, Sec. 8)

Separate passes are issued to remove or travel out of each Native district (or to seek employment (Ord. 10 of 1902, Secs. 8—12, 13 (1))).

In the larger townships all contracts of service are registered (Ord. 16 of 1901, Sec. 3).

(f) In O. R. C. apparently not only Natives entering or travelling in the Colony or residing in towns but even Natives on the countryside require passes (see Chap. 133, Law 8, 1893; Law 4, 1895; and Law 8 of 1899).

(g) Thus, entry without a pass seems prohibited in Transkei, Basutoland, O. R. C., Transvaal and Natal.

4. CERTAIN FEATURES in these Laws deserve notice.

Stock Theft:—The Cape Acts hereon have already been noticed. In the O. R. C. (by Sec. 50, Chap. 133) officials issuing the pass must be satisfied, by inspection or the certificate of the person's master, as to the stock, and even a coloured woman driving stock or conveying produce requires a pass. (Sec. 3, Law 4, 1895).

In the Transvaal the "ordinary travelling pass" refers to stock or property "in his possession". (See form No. 1 G. annexed to Regulations).

In Natal Ord. 4, 1855, makes reference to "cattle", which however do not seem to be referred to in the later regulations.

In Rhodesia passes to remove or travel detail the stock to be driven. (Here also, as in the Cape form of 1867, there is a description of the Native).

General: In Rhodesia the whole basis of the pass system is the general registration. Passes to remove or travel are supplementary to this; while the registration of contracts of service in townships is incidental.

5. REVENUE.

In the Cape Colony and Transkei there does not appear to be express provision for payment for a pass.

In the O. R. C. a pass for a coloured person entering or leaving the Colony bears a stamp of 1s., a pass for one travelling about in the Colony on his own business beyond the limits of the ward where he is resident is stamped 6d. (under Sec. 49, Ch. 133).

In Transvaal for the "ordinary travelling pass" the native pays 1s., (Sec. 4, Regulations); in Natal (by Law 52, 1887) a fee of 1s. is payable in respect of each pass issued under Law 48, 1884; (G.N. 655, 1899, notifies that the "pass" rules under 48, 1884, do not apply to the District of Maputa in the Province of Zululand).

In Rhodesia the only fee exacted from Natives is one of 1s. for replacing a lost pass (Ord. 10 of 1902, Sec. 29) Employers are liable for a fee of 1s. per month of service, charged in townships on contracts of service (Ord. 16 of 1901, Sec. 4)

6. SERVICE AND LABOUR.

The encouragement hereof is indicated in some of these enactments, e.g.—

Cape Colony. Under Act 22, 1867 (Sec. 5) after the penalty for the contravention of the law has been satisfied, the Magistrate is to grant a pass to a Native Foreigner who wishes to return to the performance of his contract or is able to find an employer.

In O. R. C. it is coloured persons travelling about the Colony on their own business who require the pass, though apparently where he is in service a pass from "a white master" suffices, and presumably no stamp is required thereon. (Sec. 12, Ch. 133, and compare here-with Sec. 49 thereof).

In Transvaal no pass may be granted to a native who, to the Magistrate's knowledge, is under an unexpired contract of service, without the employer's consent; and the official has to make enquiries of any native applying for a pass to seek work or for an endorsement on pass to return, whether his contract of service has expired. (Secs. 17 and 18 of Regulations).

In Natal the like provisions obtain as to applicants for an outward pass. (Secs. 21 and 22 of Rules, G.N. 363, 1899).

In Rhodesia passes to seek employment are obtained from Pass Officers or Registrars Ord. 10 of 1902, Sec. 8 (2) and Ord. 16 of 1901, Sec. 2). On taking service the certificate of registration is endorsed by the employer, who also fills in certain details regarding service (Ord. 10 of 1902, Sec. 13 (1)). In the larger townships the Native must appear in person before a Registrar, who must satisfy himself that the terms of the contract are clearly understood and voluntarily accepted; these are stated on the contract of service pass handed to the Native and also on a counterfoil retained for reference (Ord. 16 of 1901, Sec. 3). It is the Registrar's further duty "as far as possible to assist Natives in obtaining employment," and "generally to aid, advise, and protect them in their transactions with Europeans" (Ord. 16 of 1901, Sec. 2). In either case the employer endorses discharge without which no further pass can be taken out (Ord. 10 of 1902, Secs. 13 (1), 21, 22, 31 (9), and Ord. 16 of 1901, Sec. 7). These provisions do not apply to Natives living on a farm and employed by its owner or tenant (Ord. 10 of 1902, Sec. 13 (3)).

7. ENFORCEMENT OF REGULATIONS

(a) Inspection of pass, apprehension of native:—

In Cape Colony not only Justices and Police Officers but also landowners or landoccupiers may demand production of pass and if necessary apprehend a native for conveyance to Magistrate etc. (Sec. 8, 22, 1867.)

In O. R. C. under Sec. 11, Chap. 133 "any inhabitant" may apparently detain a coloured person passing through the Colony without a pass, which person has then to be sent to a Magistrate etc.; whilst under Sec. 2, Law 8, 1899, the male coloured person residing on a farm is compelled, on request, to produce his residential pass to a Justice, Field Cornet or Mounted Policeman.

In Transvaal any native found wandering abroad without a pass or travelling otherwise than as therein indicated may be apprehended not only by an authorised officer but "by any person upon whose property he is found" and must be brought before the nearest competent officer (Reg. 6).

These "Social-police" powers and functions do not seem to be enjoined and authorised in Natal.

In Rhodesia no Native may refuse to produce his pass or passes if called upon to do so by a police officer or other authorised official (Ord. 12 of 1904, Sec. 6). Any property owner may arrest a native found without a pass upon his property (Ord. 10 of 1902, Secs. 12, 24, and Ord. 12 of 1904, Sec. 4).

(b) Railway Tickets:—

In O. R. C. and Transvaal no railway ticket may be issued to a native unless he is provided either with a pass properly stamped and issued (O. R. C.) or with a permit note or pass duly issued. (Sec. 8, Law 4, 1895, and Sec. 9 of the Regulations).

In Rhodesia no railway ticket may be issued to a Native not in possession of a proper pass, certificate, or permit (Ord. 10 of 1902, Sec. 14).

(c) Employer's duty:—In Transvaal a person may not employ a native not provided with a proper pass (Reg. 7). (See also in Natal, Sec. 13, Act 49, 1901, and see Sec. 4, Art. "Master and Servant").

In Rhodesia a person may not employ a Native without a certificate of registration, duly discharged by last employer, if any, and a pass to seek employment or a discharged contract of service (Ord. 10 of 1902, Secs. 13 (1), 26 (2), 31, (7), (8), and Ord. 16 of 1901, Sec. 8).

(d) Identification:—It has already been pointed out that in Cape Colony the prescribed form of pass has reference to the height, marks, etc., of the person receiving the pass; (and see in Natal, Sec. 4 of Art. "Master and Servant", respecting Act 49, 1901, "to facilitate identification, etc.")

In Rhodesia certificates of registration bear identification numbers, thumb-marks, and detailed description, as registered (Ord. 10 of 1902, Sec. 4). Contracts of service bear detailed description, also retained on counterfoils (Ord. 16 of 1901, Sec. 3). Passes to remove, etc., bear name and registration number (Ord. 10 of 1902, Sec. 7).

Penalties:—(See Ord. 10 of 1902, Secs. 26, 27, 31, 34; Ord. 12 of 1904, Secs. 5, 6, and Ord. 16 of 1901, Secs. 6, 7, 8, 9, 10, (4), 11, 12).

Chiefs and Headmen are responsible for their Natives securing registration certificates (Ord. 10 of 1902, Sec. 6 (2)).

Assuming that the "pass" system is founded on good policy, it would seem that some such provisions as are herein indicated—especially those in (b) and (c)—ought to prove useful in aiding in the efficient administration of the law. (On the question of policy reference may be made to "The Natives of South Africa" edited by the "South African Native Races Committee" (John Murray) at p. 241, in which book these and other native questions are discussed; as to the correctness of the views therein indicated, those who have expert and informed knowledge can best judge, and no opinion is here expressed as to the views there indicated).

8. THE ISSUE OF PASSES.

In Cape Colony, O. R. C., Transvaal and Natal, the principle seems to be accepted that within limits and for certain purposes a note, or permit, or pass, or written authority from the employer shall serve as a pass. e.g. Cape, Sec. 4, Ord. 2, 1837; O. R. C., Sec. 11, Ch. 133; and Sec. 3, Law 4, 1895; and Sec. 1, Law 9, 1899; TRANSVAAL, Sec. 3 of the Regulations; NATAL, Amended Rule 12 (b) and (f) and see (h); G.N. 431, 1899

In Rhodesia certificates of registration and passes are issued by Pass Officers, appointed by the Administrator, but while in European employ the employer's pass to travel is necessary and sufficient (Ord. 10 of 1902, Secs. 10, 15 (8)). Contracts of service are issued by Registrars of Natives; these constitute a pass to move within the township, but between 9 p.m. and 5 a.m.; a pass signed by the employer is also required (Ord. 16 of 1901, Sec. 9 (d)).

9. DISCRETION AS TO PASS ISSUING.

(a) In TRANSVAAL the official has a discretion as to issue of passes, and his refusal to issue must be by him reported to the Native Commissioner or Magistrate, whilst the Commissioner for Native Affairs has full authority in every case to order the issue or refusal of a pass (Secs. 13—15 of Regulations).

(b) In NATAL, similarly, the Magistrate has discretion to refuse, but must report any refusal to the Secretary for Native Affairs who may (subject to the provisions of the law) give such directions as he thinks fit. (Secs. 8 and 9 of Rules. G.N. 363, 1899, under Law 48, 1884).

(c) In Rhodesia discretion to issue or refuse passes to remove or travel is vested in the Pass Officer (Ord. 10 of 1902, Sec. 18); but refusal must at once be reported for sanction of the Chief Native Commissioner (Ord. 10 of 1902, Sec. 19). The Administrator has full power in every case to direct the issue or refusal of a pass (Ord. 10 of 1902, Sec. 20). Passes to remove from a Native district are issued subject to approval by the Administrator in Council (Executive). There is no discretion in the issue of certificates of registration, nor in that of contracts of service, to Natives whose passes are in order.

10. EXEMPTIONS AND EXCEPTIONS.

Cape: See Sec. 9, Act 22, 1867, and Sched. A. Act 39, 1887.

O. R. C.: Ord. 2, 1903.

Transvaal: Proc. 35, 1901 and Ord. 28, 1902.

Natal: Law 28, 1865.

Rhodesia: (Ord. 10 of 1902, Sec. 15). Exemption passes are issued by the Chief Native Commissioner only.

(See also Article on Exemptions).

Note I:—Further or other legislation respecting passes is to be found in Secs. 3, 4 and 6 of Article "Master and Servant" (Natal Legislation), and Article "Labour Agent, Labour Districts", e.g. Chap. II A. 3. See also Article "Taxation" 5 (c) (O. R. C.)

Note II:—Law 3, 1885 (Transvaal) if, as seems to be the case, still in force, provides for a certain registration of Coolies, etc. (These and other matters relating to Coolies, Arabs, etc., are to be found on pages 92—97 of the Pamphlet embracing certain Laws etc. relating to Natives and Coolies in the Transvaal, and are not here further discussed or comparatively noted).

"LABOUR AGENTS"—LABOUR DISTRICTS' LABOUR TAX.

CHAPTER I.

Labour Agents.

(Acts etc. Cape 6, 1899; Transkei: Proc. 101, 1899 and 191, 1902; Natal: Act 46, 1901; Transvaal: Proc. 38, 1901 and Regs. published under Government Notice No. 1195 of 1903 (Gazette of 23rd October, 1903) which supersede the Regulations contained in Schedule A of Proclamation 38 of 1901; Basutoland: Proc. 17, 1903. Rhodesia: Ord. 9, 1899. Bechuanaland Protectorate: Proc. 6, 1899).

1.—(a) DEFINITIONS:

I. Cape (sec. 2) "Labour Agent" (hereinafter in this article referred to as L. A.) for the purposes of the Act means any person who himself, or by runners or messengers, in his own name or otherwise, for the purpose of work or labour beyond the borders of the Colony, procures or attempts to procure, plies, seeks for or engages Natives, or contracts to supply Natives to be employed in labour beyond the borders of the Colony.

II. The Transkeian enactment is similar (Sec. 1 Proc. 101).

III. Transvaal: The Preamble refers to the expediency of regulating the procuring of Natives to work within or beyond the borders of the Transvaal, but note further as to the definition: L. A. means a person who himself, or through Agents or Messengers (the word "runner" is not used) procures, etc., Natives to be employed in work within the Transvaal (Sec. 2 Proc.), (thus, while the definition largely follows the wording of the Cape Sec. 1, the work for which they procure Natives is within the Transvaal).

IV. Natal Sec. 4 largely follows the above definitions in its definition of the word "tout"—save that the locality of the work is not specified; but Sec. 6 prohibits "touting" for service to be performed "outside" the Colony.

V. Rhodesia: "Agent means a Labour Agent holding a license as such under this Ordinance" (Sec. 2).

(L. A. in this article connotes Tout and Agent also, unless otherwise indicated).

VI. In the Bechuanaland Protectorate there does not seem to be a formal definition.

(b) SCOPE. Note.—In Cape and Transkei the Native is procured for work without the border of those territories, and this seems also to be the case in the Bech. Protectorate. In Natal procuring for outside work is prohibited. In Transvaal the preamble is general—work within or beyond the borders; but the definition of L.A. only refers to internal employment, and as the regulations (in terms of which the Proclamation becomes operative) deal with L. A.'s, it would appear that external employment is not as yet contemplated, though the Proc. (Sec. 1) expressly authorises the Administrator to make regulations to control the procuring of Natives for external work also. In Rhodesia one may apparently engage Natives to work either within or without the Territory (Sec. 3).

2.—(a) RUNNERS, specifically dealt with in Cape and Transkei in addition to Labour Agents (Cape Sec. 4, Transkei Sec. 1 Proc. 191), the Transkeian Sec. allowing the Magistrate to refuse the permit, if he is not satisfied as to the character of the proposed "runner."

(b) Vicarious responsibility for runners, in Cape (Sec. 6) and Transkei (Sec. 4 Proc. 191) L. A. held liable for acts done by his runner (and See Natal Sec. 17 par. 2) for an analogous liability under a specific section.

3.—(a) ACTING FOR LABOUR AGENT WITHOUT PERMIT. In Cape Colony (sec. 5) any person procuring, etc., Native Labourers for work beyond the Colony on behalf of a L.A., without having a permit (as in Sec. 4) is to be deemed a L.A. (as in Sec. 2).

So Transkei: Sec. 3 Proc. 191.

So in Natal (sec. 5) any person employed to procure Natives is to be deemed a L.A. (Tout):

(b) **Procuring Labour without acting as L.A.:** In Natal, Transvaal and Rhodesia the internal labour supply is kept in view, either exclusively or concurrently (the enactments in Cape and Transkei being otherwise), hence in these Colonies we find appropriate provisions for protecting the person who procures labour for his own purposes or is not making a business thereof, e.g. Natal (Sec. 5), protecting one 'merely incidentally employed to engage servants for domestic, farm or other personal service for his employer, and (who) shall also satisfy the Court that he was not in any way making a business of procuring Natives, or acting for or in the business of a tout.

Transvaal. Sec. 2 (Proc.): providing that the term L.A. "shall not include any person who procures or engages or conducts Natives for his own *bona fide* domestic or personal service or business exclusively; provided that the total number of Natives so employed by him does not exceed twenty at any one time".

Rhodesia. See Sec. 3 (1) and (2) of Proc., providing that no license is required by (1) a manager of any farm, mine, etc., as to Natives engaged for the purpose of work on such farm, mine, etc., under his management; or by (2) a clerk or servant of such manager, etc. acting by his direction for the above purpose.

4.—(a) HOW TO OBTAIN LICENCE.

I. Cape: Sec. 7 (1) and (3). Application to be made in writing for certificate (to obtain a licence) to the Permanent Head of Native Affairs Department, or other appointed officer, who if he sees fit, and if he is satisfied that the applicant represents a registered company or an approved employer of labour (see Sec. 9) may grant a certificate authorising the issue of a licence. (The applicant has to specify in what Colony the Natives proposed to be engaged are to be employed Sec. 7 (2) and has to fix a *domicilium citandi et executandi* in the Colony.)

II. Transkei, Secs. 2 and 4 Proc. 101 licence to be obtained from Magistrate subject to approval of Chief Magistrate; so also in

III. Natal, Secs. 7—9; licence to be taken out from Magistrate; from his refusal, appeal lies to the Secretary for Native Affairs.

IV. Transvaal: Sec. 2 Regs. A. Applications to be made on printed form to Commissioner for Native Affairs, or an officer appointed by him, direct or through the Native Commissioner of the district in which the applicant seeks to exercise his calling; (in the case of one wishing to act as a travelling conductor of Natives, to the Native Commissioner, and if there be none, to the Resident Magistrate of the district in which the journey is to begin).

B. With the licence there must be a statement giving various particulars, e.g. a copy of the agreement between applicant and his employer, the place where the Native is to work, the name and location of Native Chief (if any) where labourers are sought to be engaged (and further particulars in the case of one conducting Natives or receiving for conduct Natives recruited beyond the borders), particulars of previous licence.

C. If application be made through a Native Commissioner or Magistrate, his confidential report must accompany (see Secs. 3 and 7 Regs).

V. Rhodesia: Secs. 4 and 5. Chief Native Commissioner or other authorised officer may grant or refuse licence.—An appeal lies to Administrator against refusal.

VI. Bech. Protectorate: License to be taken out from the office of an Assistant Commissioner (Sec. 1).

Note.—Re I—VI. Throughout there is apparently a discretion as to the issue of the licence, subject to such appeal as appears from the foregoing.

(b) **RENEWALS:** These also apparently a matter of discretion (see Cape Sec. 7 (4); Transkei Sec. 4, Proc. 101; Transvaal Sec. 8 and 9 Regs.; Rhodesia Sec. 4; B. Prot. Sec. 2. It is presumed that the renewal is in Natal also a matter of discretion).

5. (a) **THE LICENCE:** The amount payable for the licence for each year:—

In Cape Colony and in Transvaal—£15 (or half if licence issued after 1st July) (Sec. 3) (Sec. 6 Regs.).

In Transkei and in Natal £5 for one year or portion of a year (Sec. 3 Proc. 101)—(Sec. 10).

In Natal Licence not to have any effect or validity outside the Magisterial District in which it is granted.

(In the above Colonies the "year" is taken as ending Dec. 31st.) In the Bech. Prot. the licence—to be taken out annually—is for one year from date of issue and £5 is payable thereon by the licensee (Sec. 2).

In Rhodesia the licence—to be taken out annually—endures for one year from the date of issue, and there is payable (Sec. 7):—

On a licence to engage labour for work within the Territory	£ 1
Do. do. do. for employment without it	£50

(The policy involved in the difference between these amounts is evident.)

Note.—Natal Sec. 11 provides that the licence is not transferable—that is so in every case presumably.

(b) THE RUNNER'S PERMIT—Amount payable on:—

Cape Colony and Transkei 5s. for each year ending 31st Dec., or half that amount if issued after 1st July (Sec. 4 Cape; Sec. 2 Proc. 191 Transkei).

(See Cape Sec. 4 and Transkeian Sec. 1 Proc. 191 as to permit becoming available for another district than that therein named by endorsement of the Magistrate.)

6. THE SECURITY (a) Amount, etc. thereof:

I. Cape: On getting the certificate (see par. 4a I hereof) the applicant must deposit with Permanent Head £100, or find approved security to that amount (Sec. 15)

The Security to remain and be kept up to value during pendency of licence.

The Permanent Head (or other Officer) entitled to require on renewal or at any other time, other security (Sec. 16).

The Security to be returned on cancellation or lapse of licence (three months after such event). (Sec. 17.)

II. In the Bech. Prot. also the L. A. either deposits £100 or gives security in that sum to the satisfaction of the Asst. Commr. (Sec. 3 and 4).

III. Transvaal.—Applicant at time of making application to deposit security to amount of £100 to satisfaction of officer to whom application is made and no licence to be granted till such security be deposited (Regs. Sec. 2 (2) and 4).

IV. Rhodesia.—Applicant for a licence firstly "to engage labour for work within the Territory", deposits £100; Secondly, to engage labour for employment without it, deposits £250, or, in either case, provides approved sureties to a bond for the amount. The bond to endure or money to be retained during the currency of licence and for 6 months thereafter and amount to be kept up (Secs. 8, 9 and 10).

(In Transkei and Natal this security does not seem to be required.)

(b) Availability thereof:

I. Cape:—To satisfy judgment obtained by labourer or fine imposed (Sec. 18).

II. Transvaal:—"To satisfy all charges and fines for which he may become liable" (Regs. 2).

III. Rhodesia:—"To satisfy damages awarded or penalties incurred (Sec. 8).

IV. Bech. Protect.:—"To satisfy judgment for damages (and costs) obtained by Native (Sec. 7).

In Cape, Rhodesia and Bech. Prot. the security must be kept up after any deductions, and presumably this obtains in Transvaal also.

7. (a) CANCELLATION OR REVOCATION OF LICENCE.

I. Cape: See Secs. 7 (5) (a-f) 18, 19—21, e.g. licence may be cancelled on proof of the following:—

A. Engaging labourers for employment in a Colony not named by him (See par 4 (a) I);

B. Neglect or refusal to send in returns under Sec. 12 or wilfully making false returns (see par. 14 below);

C. Failure to enter into a written contract before a Magistrate (in terms of regulations) with every Native labourer engaged by him in a district where this Act is in operation (see Sec. 13, and par. 9 hereof);

D. Failure to give the notification required by Sec. 14 (see par. 10 hereof). Failure to find the proper security, etc. (see Sec. 16 and par. 6 (a) I hereof);

E. Misconduct, making his continuance as L.A. undesirable (Sec. 7 (5—a-f)). These grounds for cancellation come in (not altogether happily perhaps) in a Sec. relating to the conditions of L.A.'s licence—(no cancellation to be declared without full enquiry and a certificate from Permanent Head—the L.A. having an opportunity of being heard);

F. Failure to keep up the security after deduction made therefrom (Sec. 18);

G. Misrepresentation as to employment (Sec. 19) (see par. 10 hereof);

H. Inducing a servant to leave his service (Sec. 20) (see par. 15).

I. Employment of deserting servant (Sec. 21) (see par. 15).

II. Transkei:—substantially as G, H, and I above (Secs. 8, 9 and 10 Proc. 101).

III. Natal:—substantially as H and I above—involving liability to forfeiture (Secs 17, 18).

IV. Transvaal:—See Secs. 10, 13—17, Regs.:—

Grounds for cancellation:—

A. Conviction followed by imprisonment (Sec. 10 (1) Regs);

B. Conviction for contravention of any law relating to Native Labour or Native passes (Sec. 10 (1));

C. Cancellation or suspension of licence in another Colony (Sec. 10 (1));

D. Substantially as E above (Sec. 10 (3));

E. Inducing or attempting to induce Native Chief to bind himself to provide Native Labour (Sec. 13 Regs.);

F, G and H. Substantially as G, H and I above (Secs. 14—16);

I. Licence determines when licence holder ceases to be employed by the person whose name appears on the license (Sec. 17 to which reference should be made for provisions regarding licence fees).

V. Rhodesia.—For revocation or forfeiture of licence. See Secs. 11, 19 and 20:—
Revocation may ensue on:—

A. Substantially as E (Cape) and D (Transvaal) above (Sec. 11);

B. Conviction of contravention of this Ord. (compare B Transvaal) Sec. 11;

C. Conviction followed by imprisonment (no option of a fine) or failure to pay fine (Compare A Transvaal) Sec. 11;

D. Failure to keep up full amount of security after deduction of penalties (Sec. 11) (Compare Cape F);

E and F. Substantially as H and I (Cape) or G and H (Transvaal) (Sec. 19 and 20).

VI. Bech. Protect.—An Assistant Commissioner may revoke any such licence on the ground of the Agent's misconduct (Sec. 5) and the licence is also revoked by failure to keep up the security (Sec. 4).

Note.—It will be observed that (Cape) H and I (viz:—respecting the inducing, etc. a servant to leave his service and the employing, etc. of a deserting servant) are common to all the enactments on this subject, save those in the Bech. Prot. apparently. The Natal Act seems to stand alone in enacting that in a charge under Sec. 17 (for inducing servant to leave his service, etc.) it is no defence that the accused did not know that the person induced was in service or employment,—a somewhat unusual and stringent provision which should not be lightly adopted.

(b) FORFEITURE OF RUNNER'S PERMIT.

Cape Sec. 6 and Transkei Sec. 4 Proc. 191 provide that for conviction of an offence under the Act (or the Regulations Proc. 191) the runner's permit is forfeited *ipso facto*

8. EMPLOYER OF L.A.

I. Cape:—The certificate for the granting of a licence (see par. 4 (a) I) only to be used to one representing a registered company or approved employer of labour in one of the Colonies specified by L.A.; publication to take place in the Gazette from time to time of such companies and employers (Sec. 9).

II. Transvaal:—The licence here is only issued to engage Natives for one employer, registered company or association of employers who or which must be registered under regulation 16, and the district for which it is issued has to be specified. To operate in any other district, the permission is needed of the Native Commissioner or Magistrate—which, if granted, must be endorsed on the licence (Sec. 11, Reg.) Every employer must (Sec. 18) inform the Commissioner when L.A. leaves his service.

9. (a) WRITTEN OR REGISTERED CONTRACT OF SERVICE.

I. Cape.—Written contracts of service may by regulations be required to be entered into with the labourer specifying *inter alia*, rate of wages, terms of service, nature of work, place of employment and name of employer, etc. This contract to be entered into in triplicate before the Magistrate, etc., one part being kept by him (or other officer) one by L.A. and one by the labourer (Sec. 13). Such regulations have already apparently been issued.

II. Natal.—Every employer to whom Natives are supplied by L.A. must before they enter his service, take them before a Magistrate or J.P., who enregisters in a special book with the requisite particulars the contract of each Native and hands the certificate of registration to the employer (Sec. 13);

The wages of every Native supplied by L.A. must be paid in full no deduction being made for Native's debt to the L.A. or for fees (Sec. 14).

(On Natives entry into service the contract between him and L.A. ceases Sec. 12).

III. Rhodesia:—No contract made by L.A. with Native for employment beyond the limits of Rhodesia to be binding upon the Native unless registered at the office of the Native Commissioner of the District, who prior to registration must satisfy himself that the Native understands the terms of employment. The entry in the book regarding the contract must specify:—

- A. The name of agent or employer;
- B. The Native's name;
- C. The date of registration;
- D. The date of commencement and terms of service;
- E. The rate of wages and when payable;
- F. The place where the contract is to be performed (Sec. 12 Ord. 9, 1899).

Before registration L.A. or employer must make deposit to cover cost of stamps or deposit stamps (Sec. 14).

Upon registration the Native Commissioner to deliver to Native a stamped certificate of service (Sec. 15).

10. MISREPRESENTATION.

A Penalty for misrepresentation of the conditions of service is provided by Sec. 19 (Cape), Sec. 8 Proc. 101 (Transkei) and Sec. 14 (Regs. Transvaal) (See also par. 7 (a) I, G, H and IV F hereof). See also Ch. II 3b hereof as to enquiry in Transvaal whether the Native's service in a Labour District is voluntary).

11. (a) ACTING AS L.A. WITHOUT LICENCE.

This is prohibited under a penalty by Sec. 10 (Cape), Sec. 5 Proc. 101 (Transkei) which (Sec. 10 and 5) also penalise such acting as L.A. after the expiry of term of licence, Sec. 15 (Natal), Sec. 22 (Transvaal) (which imposes a penalty for acting as L.A. in any other place or manner than as specified in licence) Sec. 21 (Rhodesia) and Sec. 8 (Bech. Protectorate).

(b) EMPLOYMENT OF UNLICENSED PERSON AS L.A.—This prohibited in Transvaal (Sec. 24 Regs.).

12. FURTHER PENALTIES, e.g.:

(a) For non-production of licence on demand by J.P., etc. (Cape Sec. 11; Transkei Sec. 6 Proc. 101; Natal Sec. 19; Transvaal Sec. 20 Reg., Rhodesia Sec. 18).

The Cape and Transkeian Secs. also refer to non-production of runner's permit.

(b) For failure to deliver up cancelled licence (Cape Sec. 8; Transkei Sec. 5 Proc. 191; Trans. Sec. 23 Regs.)

(c) For inducing a servant to leave his service (Cape Sec. 20; Transk. Sec. 9 Proc. 101; Natal Sec. 17; Transv. Sec. 15 Regs., Rhod. Sec. 19).

(d) For employment etc. of deserting servant, (Cape Sec. 21, Transk. Sec. 10 Proc. 101; Natal Sec. 18; Transv. Sec. 16 Regs., Rhod. Sec. 20).

13. NOTIFICATION OF ARRIVAL.

L.A. taking Native labourers from Cape Colony for employment in another Colony must there notify to the appointed person the date of labourers' arrival, together with names of persons by whom and places at which they are employed (Cape Sec. 14).

14. MONTHLY RETURNS.

These must be furnished by L.A. to Magistrate of the district whence Native labourers have been procured, and must show:

I. The names and residences of labourers.

II. The names of employers or employers' agents.

III. Terms of contract or conditions of employment (Cape Sec. 12; Transk. Sec. 7 Proc. 101).

15. L.A.'s LICENCES—TRANSVAAL.

Lists to be published in Gazette from time to time of licences issued, suspended, determined or cancelled (Sec. 19).

16.—(a) EXCLUSIVE RIGHTS IN DISTRICT—TRANSVAAL:—Not to be granted for any district to L.A. in Transvaal (Sec. 13 Regs.).

(b) CHIEF'S CONCESSION OR CONTRACT binding himself or people to provide Native labour, not to be valid (Transvaal Sec. 13).

17. EXEMPTIONS.

I. Cape Colony and Transkei:—The Act not to apply to recognised Headmen or other Government officers lawfully collecting labourers to proceed beyond the borders for work (Sec. 22; Sec. 11 Proc. 101); save as to certain matters set out in par. 7 (a) I, G, H and J. hereof.

II. Natal.—The Act not to apply to any person "engaged solely by and in the immediate service of His Majesty's Imperial or Colonial Government" (Sec. 21). Exemption only applies locally and not to adjoining Colonies.

III. Transvaal; Save as to the payment of licence fees, Government Officers or agents lawfully engaged in collecting or conducting labourers for work not exempt from the operation of the Regulations (Sec. 21)

18. FINES—INFORMER—RHODESIA.

The Court in Rhodesia when imposing a fine for contravention of regulations under Ord.: 9, 1899, may award half thereof of the informer.

19. REGULATIONS.

In Cape Colony, Transvaal and Rhodesia, power to make regulations is given by the respective enactments.

20. TO FACILITATE THE OBTAINING OF LABOUR.

Natal. Certain sections of Law 15, 1871. (To facilitate the obtaining of labour) should be briefly noticed in this connection.

By Sec. 15 the Lt.-Governor may grant a licence free of charge to approved persons to introduce labourers overland—the application to be made to the Secretary for Native Affairs and the licence to state the rate of wages to be given. Unlicensed introduction is prohibited. Until the labourers so introduced have entered into contracts of service with other persons they are considered the servants of the introducer (Sec. 16). The Magistrate on application, furnishes messengers for the safe conduct of the labourers to the office of the Magistrate of the county where their services are required, where they may enter into contracts of service (Sec. 17). If such labourer chooses an employer other than the one who made the agreement as to their introduction, the former is bound to pay the cost of introduction, and 10 per cent. thereon to the person who had agreed as to their introduction.

21. For the Basutoland provisions regarding Labour Agents, etc., see High Commissioner's Proc. No. 17 of 1903.

CHAPTER II.

Labour Districts and Compound Overseers.

A.—Labour Districts.

1. LABOUR DISTRICT.

Means “any area proclaimed as such, etc.” (hereinafter referred to as L.D.), (Sec. 4 Transvaal Proc. 37 of 1901, amended by Ord. 27 of 1903).

(a) In each L.D. Inspectors of Natives may be appointed, charged with the duty of *inter alia*:

I. Enquiring into and redressing or reporting to the Commissioner for Native Affairs grievances complained of by Natives employed in the L.D. Compare par. 6, Act 34, of 1888, as to the appointment, powers and duties of the Protector of Natives at the Cape (see also Note at the end of this Chapter);

II. Enquiring into and determining breaches of discipline and minor contraventions of Regulations, etc., by such Natives, etc.;

III. Hearing and determining disputes of a civil nature between such Natives. Where the dispute has reference to money alleged to be due, the employer may discharge an order by the Inspector for payment and deduct the amount from wages due to the Native against whom the order was made (Sec. 5).

(b) The employer must afford facilities for the investigation by Inspector.

(c) Inspector's powers, e.g. to examine witnesses on oath and impose certain fines (Sec. 6)

(d) No other deductions (save by order of Court) may be made from Native's wages.

2. GUARD ROOMS.

May be established at every Pass Office in a L.D. for detention of Natives suspected of desertion (Sec. 10).

3. REGULATIONS FOR LABOUR DISTRICTS:—

Of these some may be noticed:

(a) Identification Labour Passports must be obtained by every Native residing in, or coming from beyond the borders of, the Transvaal to work in a L.D., the record in this passport to be *prima facie* evidence of the facts therein recorded (Reg. 21).

(b) Labour Agents. Regs. 22 and 23 deal with the Native accompanied by a L.A. Before such Native gets his passport the official satisfies himself by enquiry of the former that the service is voluntary, etc. (otherwise Native may be sent home at expense of L.A. or his employer); the L.A. has to accompany the Native to obtain the passport, the registration of which contains the name of employer and terms of service (fee 1s.), (Regs. 22 and 23).

(c) The Native not so accompanied must get his passport and thereafter has six days in which to find an employer, and the latter must within three days get the passport registered (Fee 1s.) If no employer is found, the passport is endorsed to return home or to another L.D. (Reg. 24).

(d) Being in L.D. without a passport, or failure to get the endorsement or to leave after endorsements subjects Native to a penalty (Reg. 24).

(e) Engagement of Native by employer—After such engagement the latter retains the pass and procures a monthly pass for Native (fee 2s.). To travel in L.D. beyond the town of residence the Native must have a permit from his employer (See Article "Passes" e.g. Sec. 6). The employer is responsible for the procuring or renewal of the monthly pass and the safe custody of the passport (Reg. 25, 27 and 28).

(f) Day labourers may take out a passport at official's discretion and then receive the monthly pass (Provisions as to ricksha pullers follow (Reg. 28).

(g) The agreed period of service not to exceed one working year without sanction of the Commissioner for Native Affairs—Contract may be renewed or fresh contract made. Such renewal or re-making to be endorsed on passport (Reg. 30).

(h) Death, etc., of Native. Passport of deserted or deceased Native to be sent to official with particulars. Deaths to be registered in passport office (Reg. 33).

(i) Employer's Register. The employer of more than 20 Natives has to keep an account of the number of Natives employed (noting deaths or desertions); the number of contracts new or expired (Reg. 35).

(j) Transference: Permission required where employer wishes to transfer men temporarily to another L.D. where he has work to be done (Reg. 36).

(k) Natives discharged from gaol—particulars of offence to be supplied to the registry office, as also in cases where a fine has been inflicted (Reg. 40).

(l) Resthouses for accommodation—charge 1s. a day (Reg. 41).

(m) Penalties. These provided in different sections, e.g. Where Native wrongly deals with, or gives falsely any of the particulars in use upon passports, etc. (Reg. 24); where Native already under contract of service knowingly enters another's service, or employer knowingly takes into service one already bound by contract of service (Reg. 31); where Native deserts or misconducts himself in his work (the misconduct, etc. is laid down in terms substantially similar to what is set out in Secs. 2 and 4 Cape Act. 18, 1873 and Secs. 26 and 28 Natal Act 40, 1894, Reg. 32); when a person wrongfully withhold a passport from Native or defrauds him of wages, etc. (Reg. 37); where a person engages a Native without the proper passport, etc. (Reg. 38).

B.—Compound Overseers.

1. Defined as meaning and including "any person having the charge.... or superintendence of fifty or more Natives employed to work in any Labour District" (Sec. 2, Proc. 38, 1901) Transvaal.

2. CERTAIN PROVISIONS OF THE REGULATIONS.

(a) Licence necessary to act as Compound Overseer—fee £1 a month for period not exceeding 12 months—recommendation from employer necessary (Secs. 1 and 3);

(b) Licence may be refused by Commissioner for Native Affairs—and issue gives no right to renewal (Secs. 4 and 5).

(c) Cancellation may follow on conviction of holder of crime, etc. or misconduct (Sec. 6).

(d) List of licences to be issued in Gazette (Sec. 8).

(e) Unlicensed person not to be employed as Compound Overseer (Sec. 9).

(f) Duties of Compound Overseers: e.g. to see that all Natives employed in his compound possess register labour passports.... etc. (Sec. 12).

(Reference may again here be made to Sec. 6 of Act 34 of 1888, referring to the Protector of Natives and Inspector of Compounds for Griqualand West, this officer having to see as to the observance of all duties towards the Natives in question imposed by law, etc.)

CHAPTER III.

Labour Tax.

1. The Glen Grey Act—Cape Colony (Secs. 33—36, Act 25, 1894) provides that:

(a) Male Natives residing in the district, capable of working, in the Magistrate's opinion, must pay a yearly tax of 10s.; unless the Native satisfies the Magistrate either that for at least three months during the preceding year he has been in service or employment beyond the borders of the district, or that he has been in service or employment beyond those borders for three years in all (consecutively or otherwise).

In the latter case he is exempt from further payment of the tax and receives a ticket to that effect from the Magistrate (Section 33).

(b) Exemptions:—

I. Natives possessing lands in freehold or under quitrent tenure;

II. Natives satisfying the Magistrate as to their inability to leave the location in order to obtain work;

III. Natives who with the Magistrate's permission have *bona fide* been in service or employment within the district for at least three months during the preceding year at an adequate wage;

IV. Members of a Location Board or District Council during their year of office;

V. Natives exempted after three years' service as set out in (a) hereof (Secs. 33 and 34.)

(c) Application of proceeds; to the establishment and maintenance of schools, for the education of the Natives in trades and agricultural labour (Sec. 35).

(d) Recovery of arrear tax. If tax unpaid for three months, the Magistrate issues a warrant for the amount. If by sale on such warrant or by reason of there being no property, the amount be not recovered, the defaulter becomes liable to penalties of fine or imprisonment (to imprisonment for a period not exceeding 12 months in the case of a second conviction). But on payment of the amount and costs or on showing excellent sufficient grounds therefor, the defaulter becomes relieved from the operation of the section (Sec. 36).

Note.—It is perhaps a debateable question (but beyond the scope of these notes) whether payment of a tax should be enforced by imprisonment. Observe, however, that the concluding words of Sec. 36 (d) above) give the Magistrate a considerable discretion.

NATIVE COURTS - ADMINISTRATION OF JUSTICE.

1. INTRODUCTORY.

Natal seems to have the most elaborate judicial system, having special reference to natives; the Cape does not differentiate. Again, in all the Colonies save the Cape and (apparently) the Transkei the Chief has or may have certain judicial powers. In the Transkei the Governor (by Act 26, 1894) may appoint two Assessors to sit with the Chief Magistrate as a Court of Appeal in cases where all the parties concerned are Natives; but there is no indication that either of these Assessors has to be a Native (Compare hereon Sec. 2, Proclamation 23rd July, 1895, and Sec. 11, Proc. 10 June, 1891, of Rhodesia). (See also generally:—NATAL: Law 26, 1875; Law 44, 1887; Act 49, 1898 and the short Amending Act 47, 1901; TRANSVAAL: Law 4, 1885. Amended by First Volksraad Resolution of 25th August 1894, Art. 1481, 1488 and 1489 (Native Laws Pamphlet p. 50); Proc. 21 of 1902, Secs. 56—63; Proc. 40, 1902; Ord. 3, 1902; Ord. 29 and Ord. 44 of 1902; Ord. 16, 1903 (respecting inquests); BASUTOLAND: Secs. 4, 8 and 12, Regs. 2 B. 1884 Rhodesia: Secs. 9, 10 and 11, Proc. 10 June, 1891 and Secs. 50 and 51, Orders in Council 20 Oct. 1898; Bech. Protect.: Proc. 10 June, 1891, Secs. 9, 10 and 11.

2. NATIVE LAW.

This seems applicable in all the Colonies except the Cape and the O. R. C.; but the phraseology employed is not, and would not be, uniform.

(a) In BASUTOLAND e.g. it is provided that in any suits or proceedings, Civil or criminal, in any Court, to which all the parties are natives, and in all actions whatsoever before a Native Chief, native law may be administered. (Observe the use of the word "may" and see next clause hereof). See Sec. 12 Regs. 2 B. 1884.

(b) In the TRANSKEI there is a similar provision as to civil suits and proceedings. See Sec. 23, Proc. 110 of 1879 and the corresponding sections of corresponding Proclamations; and see Article hereof on "Native Law and Custom"; where attention is drawn to the dictum of the Chief Justice in Sekelini vs. Sekelini (18 March, 1904) regarding the effect to be given to the word "may" (as in certain cases at least, equivalent to "shall").

(c) In the TRANSVAAL:—

I. By Sec. 2, Law 4, 1885, "the laws, habits and customs hitherto observed among the natives shall continue to remain in force" as long as they are not inconsistent with the recognised principles of civilization; and by Sec. 5 of the same law "all matters and disputes of a civil nature between Natives shall be dealt with according to the provisions of this law and not otherwise, and in accordance with native laws, at present in use and for the time being in force, in so far as the same shall not occasion evident injustice or be in conflict with the accepted principles of natural justice."

(Note:—It is conceived that the wording of this section is somewhat liberal and gives a wide discretion to the Magistrate, having regard to the possible effect of the words in italics taken in conjunction with those immediately succeeding them, which in themselves give considerable discretion, (See also Sec. 2 already noticed and see par. (d) hereof).

II. In the Witwatersrand Native Court (see below) any civil suit or proceeding may be dealt with according to native law and custom, and if the parties are subject to different laws the law applicable to defendant governs. (Sec. 58, Proc. 21, 1902).

(d) In Natal:—

I. By Sec. 80, Act 49, 1898, all civil Native cases have to be tried according to Native Law and custom, save so far as otherwise specially provided, "*or as may be of a nature to work some manifest injustice*", or be repugnant to the settled principles and policy of natural equity"; save that civil cases arising out of trade transactions of a nature unknown to native law are to be dealt with according to the ordinary Colonial Law etc.

(Note:—As to the words in italics see note to (c) I. hereof; it is conceived that the provision as to trade disputes is usefully inserted).

II. Sec. 63 of Act 49, 1898, (Chapter IV, which specially refers to Zululand) gives to Chiefs jurisdiction according to Native Law in criminal cases committed by natives of their own tribes—murder and certain other specified crimes being excepted. (See also Sec. 3 (b) hereof).

(e) In the BECH. PROT.—Sec. 9, Proc. 10 June, 1891, provided that "in every matter wherein *by consent* jurisdiction is exercised by any such Court. . . . the decision shall follow the laws and customs of the natives concerned, in so far as they are applicable; provided that if such laws or customs conflict or are not clearly proved, or if such laws or customs should be found to be incompatible with peace, order and good government, the Court may decide in accordance with the law which would regulate the decision if the matter in dispute concerned persons of European birth or descent," but now the words, in italics (by consent) have been struck out in terms of Proc. 12 of 1898.

(Note:—It is respectfully suggested that the wording of this section deserves consideration as possibly indicating a safe direction in which, and a proper purpose for which, the Magistrates discretion should operate, though some special reference to trade disputes, as in the Natal Law, might it is conceived be a useful addition. Note also that this section seems to contemplate that the native law should be a matter of evidence, whereas the relative enactments in other Colonies seem to leave it open to the Magistrate (as (e.g. in the Transvaal) to take judicial cognisance of native law. Under Sec. 70, Proc. 28, 1902 (Transvaal) the Magistrate has to take evidence of native custom, and may supplement it from his own knowledge. This rule deserves some consideration, though one would, in any event, guard against a too rigorous application thereof, and bear in mind throughout that *de minimis non curat lex*).

(f) In RHODESIA the above Sec. 9, Proc. 10, June 1891, used, at least, to be operative and is still printed in "The Statute Law of Southern Rhodesia" (Vol. 1 p. 71) but reference

should now rather be made to Secs. 50 and 51 of the Order in Council of 20 Oct. 1898 providing that in civil cases the Magistrates' Courts are "guided by native law so far as that law is not repugnant to natural justice or morality, or to any Order made by Her Majesty in Council or to any Proclamation or Ordinance." It is not clear that the earlier enactment still holds good for Rhodesia.

3. THE CHIEFS.

These have jurisdiction in

(a) **BASUTOLAND**—when so appointed; and they try criminal or civil cases, the manner and extent of their authority being defined by Rules which the Resident Commissioner has authority to make. But the Chief has no authority to adjudicate upon a suit to which a European is a party—save with the consent of all parties concerned. And where a European has so agreed to submit to the Chief's jurisdiction he forfeits that right of appeal from the Chief's decision which would otherwise be available to a party, to the Court of the Resident Commissioner, in the last resort, locally. (See Secs. 4 and 8, Regulations 2 B.B. 1884). See (d) hereof.

(b) **NATAL**—In civil cases, as already noted in Art. "Native Law". Part I (c) Chap. IV—(See Secs. 49, etc., Sched. Law 19, 1891); and Sec. 54, Art 49, 1898, provides that the Governor may prescribe the territorial jurisdiction of the Chiefs, who (by Sec. 46 of the said Schedule) are *ex officio* Judicial Officers.

Boundaries: Though not strictly relevant, note that natives are deemed to be under the Chief within whose boundaries they reside. See hereon and on other "boundary" questions Secs. 5, etc., Act 40, 1896.

In **ZULULAND** the Chief has original jurisdiction in all Civil Native cases where the parties or at least the defendants are members of their tribe, except apparently in cases respecting, or arising in connection with, Christian marriages. (Sec. 62, Act 49, 1898.)

(c) **TRANSVAAL**, where Sec. 4, Law 4, 1885, speaks, among others, of a Native Chief "appointed by the Government" having power to decide civil disputes between natives belonging to the tribe; but it does not, of course, appear from the law whether such have been appointed nor does there seem to be any re-affirmation of this provision in the later enactments hereon.

(d) **BECH. PROTECT.**, where Sec. 10, Proc. 10 June, 1891, empowers the Resident Commissioner to appoint a Native Chief, on his request, to try criminal or civil cases, within assigned limits and subject to the sanction of the High Commissioner, the Resident Commissioner having power to make the necessary rules. Here again the Chief may not try a case where a European is a party save by consent of all the parties (see (a) hereof).

(Note.—As to Rhodesia see Sec. 2 (f) as to the applicability nowadays of that Sec. 10, Proc. 10, June, 1891, to Rhodesia. For the rest, there seems to be no enactment on the subject. As to British Bechuanaland (Cape Colony) see Sections 31 and 32 Proc. 2 B.B. 1885, conferring on Chiefs a certain jurisdiction in civil and criminal matters—this not being abolished by Act 41, 1895—See Sec. 16 thereof.)

4. BY SECTION 50, Order in Council of 20th October, 1898 (Rhodesia) and by Sec. 11, Proc. 10 June, 1891, the Judge Magistrate or Commissioner may call in the aid of Assessors in a Native case. (Native Assessors in Rhodesia, Native or European Assessors in the Bech Protect.) In the Bech. Protect. the Commissioner or Magistrate records any dissent of any Assessor.

5. NATIVE COURTS.

I. **Natal:** The principal Act (49, 1898), has elaborate provisions hereon. For these the Act itself must be referred to. Certain somewhat miscellaneous observations follow.

(a) "A Native exempted from the operation of Native Law shall be deemed to be a Native within the meaning of this Act for the purposes of a civil case involving rights under Native Law, to which he is a party," but for the rest the "exempted" native is not one within the meaning of the Act; "Native Case" means a civil case in which all the parties are natives or a criminal case in which the accused is a native. (Sec. 5, Act 49, 1898). These two explanations show to whom the Act applies.

The Act is divided into five chapters: "Introductory: Native High Court: Magistrates' Courts and Courts of Native Chiefs: Clauses specially relating to the Province of Zululand: Miscellaneous."

(b) Certain cases are excepted from the meaning of "Native Cases", e.g. insolvency proceedings, cases involving questions of ownership of land or relating to the franchise or to marriage, etc., etc. (See Sec. 6).

(c) The Native High Court: This seems special to Natal. (See Ch. II of the Act). There are 3 Judges—one at least to be an Advocate of 7 years standing—tenure of office, salary, etc. are provided for—Sittings at Pietermaritzburg and Eshowe with provisions for special sessions by appointment of the Governor (Secs. 16 and 18).—No trial by Jury (Sec. 19).—Where one Judge sits, he is deemed to be sitting in Circuit with jurisdiction extending to the whole Colony (Secs. 22 and 23).—The jurisdiction of the Supreme Court, broadly speaking, excluded where jurisdiction is given to the Native High Court (Sec. 26).—The Native High Court has extended jurisdiction to punish crime, but cannot sentence to death (Secs. 29 and 30). Further Secs. 38 and 39 deal with civil cases—indicating e.g. which cases may in the first instance be brought before the full Court and when an appeal lies from the Circuit to the full Court—while other Sections deal with questions of execution, etc. pending appeal, rights and mode of appeal, costs and officers of the Court.

(d) Magistrates' Courts and Courts of Native Chiefs (Chap. III).

Note.—If any person other than a native is allowed to intervene, the case ceases to be dealt with as a native case; the native cases are kept separate and registered separately from other cases. (Sec. 51)—Magistrates being substituted for Administrators of Native Law (Secs. 48—50).

(As to the administration of Native Law, see also Secs. 250, etc., Schedule, Act 19, 1891 and Secs. 14 and others. Act 40, 1896, and Sec. 3, Law 44, 1887, etc.)

Appeal.—From the Chief's decision an appeal lies to the Magistrate, a small fee being paid to the former for his appearance to explain his reasons. (His deputy may appear in his stead.) (Sec. 56.) From the Magistrate there is an appeal to the Circuit Court or Native High Court—save that, except in certain specified civil cases or where the sentence exceeds certain limits in a criminal case, leave to appeal must be obtained from the Superior Court. The principles to be observed in appeal are found in Section 82. The Act does not interfere with the right to appeal to the King in Council (Sec. 83). Reference may here be made to (Cape) Act 32 of 1898, regarding "Appeals from the Courts of the Chief Magistrate in the Native Territories to the Supreme Court."

Advocates and Attorneys of the Supreme Court may appear in the Native High Court, but bills of costs are to be taxed according to a special tariff (Sec. 76).

All the proceedings at the trial or hearing of Native cases have to be translated into Zulu (Sec. 75).

II. TRANSVAAL. (See *Lawyer 1885*, and Rules for Courts of Native Commissioners and Subcommissioners under Secs. 8 and 14 thereof, (assuming these Rules to be still of full force and effect), and Ord. 3, 1902, etc., etc.)

A. Law 4, 1885.—The President was empowered to appoint Commissioners over Natives in Districts where the Volksraad considered this necessary, the Landdrost being *ex officio* Commissioner in other Districts (Sec. 3) and see Rules 1 and 2. Ord. 3, 1902: and now the Governor may in any District appoint Native Commissioners and Sub-Commissioners, who enjoy and exercise the jurisdiction and powers conferred on the Commissioners etc. under Law 4, 1885. (Secs. 1 and 2, Ord. 3, 1902.) These Commissioners, etc. are *ex officio* Resident Justices of the Peace within their Districts save within "an area of twenty miles from the place in such District at which the Court of Resident Magistrate is established". (Sec. 3) Jurisdiction (See Sec. 4, Law 4, 1885)—to decide all civil disputes between Natives in their district (as to Chief's jurisdiction, see Sec. 3 (c) hereof, and such civil matters as are referred to the Commissioner, etc. by white persons against a native, the latter being dealt with as far as possible in accordance with the ordinary law (Sec. 4).

Further the Commissioners have jurisdiction in the case of minor crimes, etc. (See Sched. to the Law and Ord. 44, 1902) the maximum penalty being a fine of £10, or three months imprisonment, or twenty-five lashes (Sec. 6 of Law.)—but Ord. 3, 1902, provides that lashes can only be imposed for a second offence and inflicted after confirmation by a Judge (Sec. 4).

(See also Secs. 16 and 18, Ord. 29, 1902, (Game Preservation).

It would appear that a native can only appear by Advocate, Attorney or Agent by leave of the Government—(Rule 3); separate books have to be kept for civil and criminal cases (Rule 4); a special tariff is found in Rule 5; no formal summons is necessary, a written notice by the Commissioner, etc. sufficing (Rule 8); the attendance of witnesses dealt with (Rules 10 and 11), etc., etc.

Serious Crimes: these to be investigated and dealt with according to the existing laws (Sec. 11 of Law and Rules 26 and 27).

Appeal.—An appeal from the Commissioner's decision apparently lay to the Superintendent of Natives and the President apparently had a general power to review all decisions.

under Law 4 (Secs. 4 and 7 and Rules 20, etc.). (See also Sec. 3, Law 44, 1887, Natal.) By Proc. 32, 1901, the Commissioner for Native Affairs now enjoys and exercises the privileges and jurisdictions formerly vested in the Superintendent of Natives.

B. Further Provisions: By Sec. 9, Law 4, 1885, cases of homicide, assault, etc. occasioned by sedition among or fights between natives may be dealt with by the Commissioner for the District, where the State Attorney, after consultation with the Superintendent of Natives, has deemed this expedient; and Sec. 10 deals with the case where there has been such a homicide, etc. and the President is satisfied that it was committed by Natives and that there is a conspiracy to evade giving evidence or to screen the offender, in which case he was empowered to impose a fine on the tribe (Sec. 10). Compare herewith Sec. 1, Act 47, 1903, Natal.

C. Resident Justices of the Peace:—The Law 7, 1894, has reference to Resident J.P.'s (See Secs. 9, 11 and 12 as to his jurisdiction now enjoyed by Native Commissioners, etc., Sec. 3, Ord. 3, 1902 and Ord. 15 of 1902).

D. Witwatersrand Native Court: This Court has jurisdiction to try all contraventions by "coloured persons" of any law applicable exclusively to such persons, and all offences by such persons against any provisions of the Master and Servants Law; and all disputes of a civil nature within the jurisdiction of a Magistrate. (Sec. 57, Proc. 21, 1902—and see the extension of the jurisdiction, by Proc. 40, 1902, to contraventions of Native Passes Proc. 1901, and of the Master and Servants Law, where either complainant or accused is a coloured person. See also, as to inquests, Ord. 16, 1903.) As to the procedure before this Court, see Sec. 58—where a definition of Native is also given.

E. The Judiciary and the Executive: Note the power of the President or Governor to fine the tribe—Sec. 10, Law 4, 1885 (Transvaal) and Sec. 6, Law 44, 1887, (Natal); and the power given to the President or Secretary for Native Affairs (with the sanction of the Governor) to review or amend, etc. the proceedings or judgment in a case coming from the Native Commissioner or Administrator of Native Law: Sec. 7, Law 4, 1885 (Transvaal) and Sec. 3, Law 44, 1887 (Natal).

This in one sense seems to approach to a blending of the executive and judicial functions; but note that the President and the Governor respectively were declared to exercise all the power and authority which by Native Law were enjoyed by the Paramount Chief (Sec. 7, Law 4, 1885, Transvaal, and Sec. 7, Law 44, 1887, and Chap. II, Sched. Law 19, 1891, Natal.) (Those respective Sections 7 gave the power of deposing a Chief, etc.).

F. Protection of the Native: Sec. 8, Law 44, 1887, protects a Native against a judgment being given against him in a Court of Law on a liquid document of debt, unless it bears an endorsement by a Magistrate or J.P. certifying to the signature, etc.

CATTLE THEFT.

1. The Natal Act hereon (Act 1, 1899) is a comprehensive measure. With it may be compared e.g., the Cape Acts 14, 1870; 20, 1889, etc. (as to cattle removal) and the Stock Theft Act 35, 1893, as also certain sections of the Transkeian Penal Code (Cape Act 24, 1886) as amended by Act 41, 1898.

Note, however, that the Cape Acts are general in their application; the Natal Act, while not formally expressed to be applicable only to Natives, in various particulars seems to have reference to them alone, or to Asiatics as well as Natives (Sec. 29).

Some observations follow regarding certain provisions of the law herein.

2. While Sec. 6 has a general provision as to the necessity of a pass for the removal of cattle, (compare Sec. 7 thereof etc. and Sec. 2 of Cape Act 14, 1870) Sec. 16 specially provides for the arrest of Natives removing cattle without passes.—

I. Any Magistrate, constable or proper officer or person specially authorised by the Magistrate, may arrest, as also any toll-bar keeper, or any landowner through whose land any cattle may pass, while on his lands:

If the arrestor is not satisfied as to the cattle etc., the cattle are to be impounded and the native may be arrested and, if arrested, must be handed over to the authorities (Sec. 16)

II. The inhabitants of a kraal may arrest a Native who fails to satisfy them that he is lawfully driving cattle past the kraal; and report of the arrest and detention of cattle has to

be forthwith made to the Magistrate or Police. (Sec. 17). A Native Chief or Headman detaining cattle brought into his district under suspicious circumstances must also forthwith notify the detention to the Magistrate or Police (Sec. 18).

III. Wrongful impounding of cattle or arrest of a native under colour of this Act is dealt with in Secs. 19 and 20, which provide for compensation, whilst malicious procedure constitutes an offence under the Act. Violently resisting an arrest of a native or an impounding of cattle is made an offence by Sec. 21 (Compare Secs. 9—11 of the Cape Act 14, 1870, which however, only applies in such districts as the governor may proclaim).

IV. Exemptions, etc.—Sec. 27 sets out various circumstances under which there is exemption from arrest or detention, unless there are reasons for believing the horse etc., to have been stolen.

By Sec. 26 of the Act, Part II thereof does not apply to cattle in the possession of the Natal Police Force or to cattle removed by Europeans over a limited area or used by Europeans under a saddle or for conveyance, while Secs. 10 and 11 provide for certificates exempting a native from the necessity of a pass in respect of cattle used for riding or draught purposes.

(Note: Secs. 19, 20, 21 and 24 apply to Asiatics as well as to natives).

3. PURCHASE OF CATTLE.

(a). Before purchasing from, or selling etc. on behalf of, a Native or Asiatic removing or driving cattle, the persons so taking part in the transaction respecting such cattle must demand the appropriate pass, and the person receiving the cattle must retain the pass and deliver a copy thereof to the Native etc., noting thereon the cattle he has received etc. (See Part III of Act Secs. 30—33, Sec. 36 provides for the dealing in cattle with natives by butchers, auctioneers, etc. These Secs. 30—33 and 36 apply to Asiatics as well as to Natives).

(b). In the Transvaal no one may acquire stock by purchase, barter, or in any other way from Coloured persons, without a certificate from a Justice of the Peace or two residents of substantial means, certifying that the transferors are entitled to transfer such stock. (See Sec 29 of Ord. No. 6 of 1904.)

4. PROVISIONS AS TO SPOOR.

(Note: the word "spoor" is explained in the respective interpretation Sec. (5) of Act 1 1899 (Natal) and the Transkeian Penal Code).

Here the elaborate provisions of Sec. 40 of the Natal Act and Sec. 1, Act 41, 1898 (amending and substituted for, Sec. 200 of the Transkeian Penal Code) should be compared. They run largely on parallel lines and in both a leading and underlying principle seems to be that the head of the kraal is responsible for the value of stolen cattle, the spoor of which is traced to such kraal.

Note, however, that where by the Natal Act (Sec. 40, Sec. (b) and (c), the person preventing a search or wilfully causing the obliteration of the spoor, or refusing to aid in following the spoor etc., is guilty of an offence, the Transkeian Sec. 1 (Act 41, 1898) makes him responsible for the value of the stolen animal; and again where the spoor cannot be traced to any specific kraal, but is lost on any lands, the responsibility for the value of the stolen cattle devolves on the heads of the adjacent kraals—the assessment being made by the Magistrate; the amount of the assessment going, in the Cape Colony, to compensate the owner of the cattle,—in Natal, into the public revenue.

Note, further, that the Natal Act (Sec. 40 and 41) makes the provisions as to the spoor applicable not only where the spoor which is traced is that of the stolen cattle, but where it is that of the person removing the same, or of an animal used in driving the cattle. This provision would seem to be reasonable where the spoor has initially *per se* been adopted as a partial and significant index to liability.

Note, also that the Natal Act (Sec. (a) Sec. 40) requires corroborative evidence that the theft was committed—a requirement no doubt implied, in the Cape Act, in the term "stolen cattle", but nevertheless one conceives usefully inserted in this connexion.

Both systems provide for the punishment of one fraudently creating a spoor (Natal, Sec. 42; Cape, Sec. 201).

The affixing of liability on the kraal head is doubtless owing to the fact that he is, in intendment of law, owner of the property belonging to his kraal (see Natal Law 19, 1891 Sec. 68—and presumably the same principle underlies the Cape enactment, though not seemingly a matter of statutory enactment there).

5. Part VI of the Natal Act deals with the "responsibility of suspected kraals". For the procedure and principle herein reference may be made to the several Secs. (43—52); The Cape Act seems to have no provisions of a similar kind. One observes that in Sec. 49 the Magistrate has to be "satisfied" in Sec. 51 he has to be "fully satisfied"—a variance of phraseology which seems to suggest a rather nice metaphysical distinction. It will also be observed that the penalty under these sections is imposed by the Governor in Council.

6. HARBOURING CATTLE STEALERS, Etc.

If any inhabitant of a Native Kraal, etc. knowingly harbours, etc. a person who has stolen or killed cattle, or prevents his apprehension or assists him to escape, he commits an offence against the Act; and where it appears that some inhabitant so acted, but the individual cannot be identified, the Head of the Kraal is deemed guilty of an offence against the Act Part VII, Natal

This provision does not appear to be found in the legislation of the other colonies; and the clause respecting the ultimate liability of the kraal head may perhaps be deemed deserving of critical consideration.

7. EVIDENCE, TRIAL AND COMPENSATION (NATAL).

Part VIII Act 1, 1899; Cape Act 35, 1893).

There are various provisions in these two Acts which though important are not here summarised; and reference must be made to the text of the Acts themselves especially with regard to the procedure to be followed, etc.

But it is important to notice *inter alia*:

(a) That the Natal Act on some few points in Part VIII refers to natives alone, the Cape Act is of general application throughout apparently;

(b) That in both Acts the Legislature has made provision for what may be termed, in a way, a statutory presumption of guilt (Secs. 54 and 55 Natal Act; Secs. 28 and 29 Cape Act); by providing:—

I. (Natal) that where there is reasonable evidence that cattle have been stolen, and any portion of such cattle or of any other cattle is found in the possession or on the premises or in the house or kraal (or its immediate vicinity) of any person, and it is not made to appear to the Court that such person lawfully came by the same or was without knowledge of the same being on his premises, etc., or had not assented thereto, such person may be found guilty of the theft of that or other cattle, belonging to a person known or unknown.

It is presumed that under the circumstances, reasonable evidence of the stealing being forthcoming, the accused must make it appear that he came lawfully by the cattle, etc., etc., (see also Sec. 55). If this be so, a similar principle in essence is found in

II. the Cape Sec. 28 which provides that if there are reasonable grounds for believing that a person is, or has been, in unlawful possession of stock or produce, he may be apprehended without warrant by a Justice of the Peace, Field Cornet, landholder, or P.C., and conveyed before a Resident Magistrate having jurisdiction and if it be found that he is, or has been in possession of such stock; and cannot give a satisfactory account thereof to the Magistrate, he is to be deemed guilty of the crime of theft of stock or produce.

III. A similar principle seems to be discerned in Sec. 29 (Cape)—this section giving to any J.P., F.C., landholder or P.C., power to make search where a person is "reasonably" suspected of having in any sack, etc., any produce, carcase, etc., of slaughtered stock.

Note:—It will be observed that the Legislature in neither case creates a new crime; it merely to some extent under given conditions and at a certain stage shifts the onus of proof from the Crown to the accused, and (at the Cape) gives more liberal powers of apprehension and search.

IV. Certain other sections may be briefly noticed: e.g.,

In both a penalty attaches for the purchase on receipt of stolen stock without reasonable cause for belief in the title of the person selling or delivering the stock (and the onus as to this belief is on the purchaser or receiver) (Secs. 65, Natal and 22, Cape).

Again, "the onus is upon any person found on any farm, or part of a farm enclosed by a fence, or in a kraal, if charged under Section 25, (i.e., for entry with intent to steal) to show that he did not enter with intent to steal" (Tredgold's Handbook—Sec. 26) Compare Natal Sec. 64.

Further, both Acts embody the principle that the Court before whom the case is tried may after conviction award certain compensation to the owner of the stock for damage sustained and expenses incurred by reason of the stealing.

At the Cape the Magistrate may also do this after committal—but execution is not to issue where the accused gives security to abide the result of his trial or confirmation of the sentence passed, etc. (Natal Sec. 58, Cape Secs. 8 and 9).

In Natal there does not appear to be any provision for this civil judgment save after conviction; and it is provided that any person ordered to pay such compensation may appeal to the Supreme Court or the Native High Court against such order—the verdict or sentence in respect of the criminal charge apparently remaining unaffected. At the Cape the civil judgment (if initially correct in form) seems to stand or fall with the criminal judgment—assuming of course that the requirements of the Act have been complied with.

Further, both Acts confer upon J.P.'s, F.C.'s, and certain police officers the right to search, or grant authority for searching buildings, huts, etc., for stolen stock on reasonable grounds of suspicion (Natal Sec. 73; Cape Sec. 33).

8. Among points of difference are the following:—

I. On the apprehension, etc., of a Native in Natal charged with cattle stealing, etc., the Magistrate causes his property to be attached (except what may be required to support those dependent on him); this attachment comes to an end upon the acquittal of such native, or where no order as to compensation is made against him (Sec. 56).

II. Where the thief is a Native or Asiatic lad under 14 years of age the Court may impose on his father or guardian a fine not exceeding the value of the cattle stolen or killed and may further order him to pay compensation in the same way as if such father or guardian had himself been convicted of the theft (Sec. 63). These two provisions (I and II) do not seem to be found in the Cape enactment. (Note: At the Cape it has been held* that "where a child has been convicted of theft, it is not competent for the Magistrate to give judgment against the parent of the prisoner for damages as compensation to the owner of the stolen property". This may be taken as showing that where there is no special statutory provision, as in Natal, the sins of the child cannot be visited upon the parent by way of a claim for compensation).

MARRIAGES BETWEEN NATIVES.

CHAPTER I.

Marriages not by Christian Rites, etc.

Cape Colony (British Kaffraria): Ord. 10, 1864.

Transkei: Proc. 110, 1879, Sec. 30—36: Proc. 112, 1879, secs. 30—36: Proc. 140, 1885, secs. 29—35; Proc. 340, 1894 (Pondoland).

Basutoland: Proc. 2 B. 1884.

Natal: Act 19, 1891, Sched. Ch. X.

Transvaal: Law 3, 1897; and legalising enactments: Proc. 31, 1902 and Ord. 29, 1903, Proc. 26, 1902 (divorce).

Rhodesia: Ord. 2, 1901.

Note I:—In none of these cases, especially that of Natal, does the article profess to be exhaustive.

Note II.—The Transvaal Law (3, 1897) does not quite correctly come into this Chapter; but as it deals, *inter alia*, with marriage between Natives, who are not Christians, it is included in this Chapter—although the inclusion may not be logically very defensible. (It will be observed that that Law does not regulate, or apparently legalise, any marriage entered into according to Native Custom and usage simply).

* Queen vs. Obani, 3 E.D.C. 333.

1. CAPE COLONY:

It may be useful to draw attention to the judgment of the Chief Justice (Cape) in *Ngqobela v. Sihele*, decided in 1893 (10 Juta, p. 346) where the learned Chief Justice points out (as to the Cape Colony) that "Provision is made by Act No. 16 of 1860 for the appointment of marriage officers for solemnising the marriage of persons professing the Mohammedan faith according to the Mohammedan customs and usages, *but no similar provision exists for marriages according to Native customs and usages*. The only mode in which a valid marriage can be contracted between natives in this Colony is before a minister of religion, or a lay marriage officer, with previous publication of banns or notice, or failing these by special license. A union therefore founded only upon native usages and customs *within the Colony proper* is not a marriage, whatever rights may by special legislation have been given to the offspring of such a union in respect of the distribution of the property left by their parents upon their death. In the absence of special legislation recognising such a union as a valid marriage, Courts of Law are bound—however much they may regret it—to treat the intercourse, I will not say as immoral, but as illicit". (The italics are the transcriber's).

The British Kaffrarian Ordinance No. 10 of 1864, however, appears to recognize as valid in the territory formerly known as British Kaffraria, the marriage of a Kafir, Fingo or Tambookie according to the custom of his tribe, unless there had been previously contracted by him a marriage, according to the Christian religion or before a Magistrate, and such marriage was still subsisting.

The decision in *Ngqobela v. Sihele* was on appeal from the Magistrates Court of Glen Grey, and the marriage whose validity was in issue was celebrated in Tembuland. The British Kaffrarian Ordinance was not referred to during the case, and it is submitted that the words "the Colony proper" exclude British Kaffraria.

2. TRANSKEI AND BASUTOLAND:

The different provisions in the relative Transkeian Proclamations herein are similar and can be noticed together. They do not deal solely with marriages according to Native Customs, and their effect is shortly, *inter alia*—

(a) In the Transkei the following marriages are in all respects valid and binding and "have the same effect upon the parties to the same and their issue and property, as a marriage contracted under the marriage laws of the Cape Colony": to wit, any marriage:

I. celebrated by a minister of the Christian Religion, according to the rites of the same,

II. celebrated by civil marriage officers duly appointed,

III. celebrated by ordinary Kaffir or Fingo forms, provided it be duly registered within three months by the Magistrate of the District. Here again, however, an extract from the Chief Justice's judgment in the above case may conveniently follow:—"The effect of the Proclamation, No. 140 of 1885, is to dispense with the solemnities required by the laws of the Colony proper in the case of natives electing to marry in Tembuland according to their own customs. If they so elect, they may either register the marriage or leave it unregistered. If they register the marriage it has the same effect as a marriage contracted under the law of the Colony. If they do not register the marriage it remains valid, but its effect must be judged by the Native customs of the territory, so far as those customs are consistent with the nature of the marriage union". (It has already been pointed out that the different Transkeian Proclamations are of similar tenour, and accordingly it is submitted that these remarks may be taken to apply to marriages by Native custom and usage in any part of the Transkeian Territories).

See also Proclamation 145, 1887, extending to the Transkei certain Cape Acts (16 of 1860 and 9 of 1882).

a. In Basutoland the validity of marriages I and II (above) is set out in similar terms as in the Transkei, but no such reference seems to be made to class III—though a marriage by Basuto custom is registrable (Sec. 2, Chapter "Marriages", Proc. 2. B, 1884). Note:—Sec. 1 of that Chapter renders it unlawful for any person to compel a woman to enter into a contract of marriage, or to marry against her wish. (This chapter of the Proclamation 2. B. is in this article referred to as "Chapter").

b. Divorce, etc., Transkei: These questions to be heard before Chief Magistrate in accordance with law in force in Cape Colony.

(Special provision in respect of divorce questions arising out of marriages celebrated before the promulgation of the Proclamation—these to be decided by Resident Magistrate.)

c. Persons married according to Native Custom in the Transkei may register only their first marriage, so long as the first registered wife is living, etc.

d. A marriage registration fee of 2s. 6d. provided for in both Transkei and Basutoland whether the marriage be by Christian rites, before a Marriage Officer, or according to Native Custom (Sec. 36, Proc. Transkei and Sec. 4 of Chapter).

Note:—It will be observed that the Proclamations do not enter into details; there is no attempt to explain the nature of the contract or the incidents of a marriage according to Native Customs; no procedure is prescribed, no lobolo is dealt with, no special grounds for divorce are set out.

(By the Transvaal Proclamation 25, 1902, the question of divorces is tried in the ordinary Courts, as in Transkei; and in all the enactments registration of the marriage is provided for. The Transkeian Law is not further alluded to in this Article.)

e. Basutoland: Any person married by Basuto custom may register the first marriage at the office of the Magistrate of the district of celebration and also at the same time register the dowry or cattle (if any) given in consideration of any such marriage—but the registration must take place within a month of marriage (Sec. 2 of Chapter).

Note:—Apparently then the dowry is not essential to the validity of the marriage. If it be the same in substance as lobolo, then comparison may be made with what is set out on Sec. 7 hereof, lobolo being essential in Rhodesia but apparently only a normal incident of marriage in Natal.

NATAL OR RHODESIA.

(a) NATAL: 1. The marriage is valid if entered into in accordance with Native Law and custom as defined in the code (Sec. 146, Sch. Ch. X).

2. A contract for life unless valid cause for determining it intervenes (Sec. 147).

III. Its essentials are (a): consent of father or guardian of intended wife—not to be unreasonably withheld—or Administrator of Native Law (hereinafter in this article styled Ad. N. Law) may give consent (Sec. 152), (b): consent of father or kraal-head of intended husband if legally necessary, (c): a declaration in public to the Official Witness by intended wife on the marriage day that she consents to the marriage. (Sec. 148.)

(b) ORANGE RIVER COLONY: Marriage by Native Custom is not recognized by law (except so far as it applied in the annexed Baralong Territory by Chapter XVI). Section 28 of the Marriage Law, No. 26 of 1899, recognizes, however, certain rights of inheritance by the offspring of "heathen marriages," and also the paternal power of heathen parents over children born of such marriages, "where it shall be proved that the parents regarded one another as husband and wife."

Otherwise there is no distinction in the Law of Marriage between Coloured persons and Whites.

(c) RHODESIA: Marriages of Natives according to Christian rites are not subject to the provisions of Ordinance 2, 1901.

4. PROCEDURE

(a) Natal.—

After agreement as to marriage the day of celebration has to be reported by kraal head [Chief] etc., and he directs the official witness to be present. The latter has to enquire as to intended wife's willingness; and if she refuse consent or seem unwilling, he prohibits the ceremony, if necessary takes woman under his protection and reports to the Ad. N. Law. Within 30 days of celebration the official witness and husband must proceed to Office of Ad. N. Law for the registration of the marriage (Secs. 149—151) Note:—Observe the enquiry into the intended wife's wishes.

(b) Rhodesia.—

The parties to the intended marriage, the girl's (or woman's) father or guardian and the tribal Chief (or a Headman deputed by him) must appear before the Native Commissioner or other official, who satisfies himself (1) that lobolo has been delivered in terms of the Ordinance and (2) that the girl or woman consent to the marriage. If the conditions have been duly observed, the official declares the marriage legal and registers it; if not, the girl or woman is not allowed to leave the guardianship of her parents or guardian (Sec. 5, Ord. 2, 1901).

(c) Transvaal.—

See Introductory Note II for the remark there made as to the Transvaal Law:

I. Application must be made to the appointed "person" and there must be a certificate from parents, guardians or Chief or (in the case of Christian Natives) from the Minister of their Church that "there is no hindrance to the proposed marriage".

II. That appointed person must before the solemnization satisfy himself that the man has complied with the laws affecting Natives (e.g. the Pass Law), and in the case of a woman that 300 days have elapsed since the dissolution of the previous marriage.

III. He must "clearly and emphatically" explain to parties the significance of the marriage and ask each party separately whether he knows of any obstacle to their proposed marriage—and thereupon declares them to be married.

IV. The solemnization must take place between 8 a.m. and 4 p.m. in the presence of two male witnesses over the age of 16 years (Secs. 2, 4, 5, 7, Law 3, 1897).

5. RELATIONSHIP.

In Natal a man may marry the sister of his wife (Sec. 153).

6. THE REGISTER: REGISTRATION.

(a) Natal:—

Either party receives free of charge a certificate of the marriage upon registration thereof, the marriage registers are open to inspection of those interested, free of charge (Secs. 155, 159).

(b) Transvaal:—

Registers to be kept by Marriage Officers, duplicates being forwarded to the Superintendent of Natives (now presumably to the Commissioner). Parties get a certified copy free of charge, others paying 2s. 6d. therefor (Sec. 13).

(c) Rhodesia:—

The "necessary particulars" have to be recorded in the Register by the official (Sec. 6 (3)).

7. LOBOLO.

(a) Natal:—

Secs. 157 and 158 relate to declarations respecting the lobolo whence derived and whether in respect thereof a debt rests upon the house about to be established etc., and the registration of such particulars, etc.

(b) Rhodesia:—

Sec. 2 defines lobolo as "the delivery of stock or its equivalent in other property, or payment in cash, by or on behalf of an intended husband to the parent or guardian of an intended wife". The Natal definition is practically identical (Sec. 23, Sch. Law. 19, 1891), Natal sec. 178, allows the lobolo to be represented by other property instead of cattle.

(c) The amount thereof:—

In both Natal and Rhodesia there are maximum limits, these vary greatly:—

I. In Natal:

For a hereditary Chief there is no limit (and now, Sec. 10, Act 40, 1896, the Governor may place an appointed Chief on the same footing); for an appointed Chief in charge of a tribe—20 head of cattle, and so down to the ordinary native—10 head (Sec. 178). (see Sec. 171 as to lobolo upon the re-marriage of a divorced woman and see also Sec. 172).

II. In Rhodesia:

A Chief in charge of a tribe: 5 head of cattle. Other natives: 4 head (Sec. 4).

In both Colonies there may be seizure or confiscation of cattle in excess of the lawful limit—and in Rhodesia there is a penalty of fine or, (and) imprisonment (Nat. Sec. 180: Rhodesia Sec. 6).

(d) In Natal:

I. The delivery of lobolo binds the recipient, on just occasion to befriend the woman in validation of whose marriage it was delivered. (As to validation of marriage notice the repeal of sub-sec. (d) of Sec. 148; and see Sec. 3, Rhodesia. See (e) of this section—below).

II Where the wife dies without issue within a year of her marriage, the husband may claim a portion of the lobolo, not to exceed three-fourths, from the father or guardian of his late wife (Sec. 181). For further provisions reference may be made to Chap. XII of the Code (Sch. Act 19, 1891 and to Sec. 1, Act 13, 1894).

(e) In Rhodesia:

I. Lobolo is necessary to the validity of a marriage (Sec. 3), (Observe that the Natal sub-section (d) of Sec. 148 making the delivery of lobolo essential to a native marriage has been repealed—other sections, however, still seem to assume its being a regular incident of, if not essential to, the marriage).

II. Section 7 provides a penalty for inducing a native girl to leave her parents, and harbouring her as his wife or intended wife, if the provisions of the Ordinance be not complied with.

8. SOLEMNIZATION OF MARRIAGE (Transvaal).

(a) Ministers of coloured persons having the right to solemnize marriages under Law 3, 1897, may do so on production of a certificate that the provisions of the law have been complied with and must in 8 days give notice to the certifying official (Sec. 6);

(b) The marriage may be "consecrated" in a Church (on a certificate of due observance of the requirements of the law) if the parties or one of them belongs to a Church, etc. (Sec. 8)

(c) Proc. 31, 1902, and Ordinance 39, 1902, legalise certain marriages between coloured persons.

9. DIVORCE.

This may conveniently be noticed in this place; and here again the Natal Law, Chap. XI of the Code has detailed provisions on the subject.

I. The grounds for divorce:

A. Natal. In the case of a man seeking divorce:—

(a) Adultery.

(b) Continued refusal to render conjugal rights.

(c) Wilful desertion.

(d) Continued gross misconduct.

(e) Becoming the subject of any criminal sentence carrying five years' imprisonment.

Provided there be no connivance of wife's adultery on his part.

In the case of a wife, (d) above, is omitted, and two other grounds are added, viz. cruelty and continued absence for five years.

B. Transvaal:

The grounds laid down by the general law (Sec. 10).

(The Rhodesian Ord. does not appear to have any provision on the subject).

II. Further provisions:—

A. Natal:

(a) The divorce has to be preceded by an attempt at reconciliation (Sec. 166).

(b) In case of dissolution of marriage (whether upon actions for divorce or nullity) there must be a "return of cattle or their equivalent, by the father or guardian of the woman to the husband"—save where the dissolution was in consequence of the husband's misconduct (Sec. 168).

(c) The Act provides for directions as to the guardianship of the divorced wife, custody of the children, etc. (Secs. 169 and 170).

B. Transvaal:

Sections 11 and 12 provide penalties for bigamy and for the case of a marriage officer who knowingly celebrates a bigamous marriage.

10. NULLITY OF MARRIAGE: NATAL.

(Sec. 173). The grounds for a declaration of nullity are:

- (a) Insanity at the time of marriage.
- (b) Impotence.
- (c) The absence of any of the essentials of a marriage, (as defined in Section 148—see Sec. 3 (a) III hereof).
- (d) Where the woman was at the time of the marriage the lawful wife of another man. (In the Transvaal there seem to be no special provisions as to nullity of marriage in the Law 3, 1897).

11. ACTIONS FOR DIVORCE AND ANNULMENT: NATAL.

Between natives married according to Native Custom must be instituted in the Court of the Ad. of N. Law (Sec. 174).

CHAPTER II.**Marriages by Christian Rites, etc.****NATAL:**

(a) Law 46, 1887, Sec. 1 enables Natives, subject to the provisions of this Law, to be married under the provisions of Ord. 17, 1846—provided that a person appointed a marriage officer under Clause 12 of that Ordinance may not solemnize a marriage between natives who are not exempt from the operation of Native Law;

(b) A Marriage by Christian Rites is one solemnized by a Minister of Religion, duly authorised thereto, under the provisions of Ordinance 17, 1846 (A proviso has reference to the declaration when the ceremony is not that of the Church of England (Sec. 3);

(c) Declarations:—

Natives wishing to be married by Christian Rites must apply to the Magistrate of the Division etc., in which they or the intended bride reside for a license; and before obtaining this they must subscribe certain declarations—the first containing a declaration regarding various specified particulars as to name, age, father's name, Chief's name, exemption (or non-exemption) from Native Law, any previous marriage etc., (Sched. A) the Magistrate certifying at the foot thereof that he has explained the nature and obligation of the marriage contract to the subscriber; the second being a declaration by the native that the nature etc. of the marriage contract and the liability to prosecution for bigamy have been duly explained to such native (Sec. 2).

For false declaration Section 4 provides a penalty.

(d) Fee and Licence.—After the fee payable on marriage licences under this Law (10s.; Sec. 16) has been paid, and the above declarations duly made, the Magistrate gives his licence (Sec. 2 and Sched. C), this licence remaining in force for three months only.

(e) Consent.—Where the woman is not exempted from the operation of Native Law, the consent of her father or (in case of his death) her guardian is requisite to the issue of the licence; but should such father or guardian be dead, absent from the Colony or of unsound mind etc., or the consent unreasonably withheld, there may be a

(f) Petition to the Governor.—Who may if he think fit authorise the marriage by order in writing (Secs. 5 and 6).

(g) Licence essential.—Where the Natives (or one of them) are subject to Native Law, they may not be married without the license, nor may any Minister solemnize the marriage without it; and after solemnization he must transmit to the Registrar General copies of the licence and the duplicate original (Sec. 8).

(h) The above provisions do not apply where both the parties are exempted from the operation of Native Law (Sec. 9).

(i) Ante-Nuptial Contracts.—Where the male Native is exempted from the operation of Native Law, the parties may enter into such a contract in the ordinary way (Sec. 10).

(j) Native Law.—When the husband is subject hereto, the marriage does not remove either of the parties from the operation of this law (Sec. 11).

(k) Jurisdiction.—Actions for divorce in the case of persons married under this Law must be brought under the ordinary law (Sec. 12), (See Sec. 10 of Chap. I hereof).

(l) Consequences of Marriage under this Act.—The widow or widower may not again marry by Native Custom after a marriage under this Law, nor may the children of such a marriage marry according to Native Law or Custom (Secs. 14 and 15).

(Note: Act 44 of 1903 regulates, *inter alia*, the application for licence by Ministers to solemnize marriages between Natives, their duty in the matter of the keeping of Registers, etc.)

ADMINISTRATION OF ESTATES— SUCCESSION—WILLS.

1. (a) In Cape Colony, Natal and Transvaal the estates of certain deceased native persons are administered and the devolution thereof regulated, by Native custom and usage. (As to succession under the Glen Grey Act, See Sec. 11 hereof (below). As to Orange River Colony (Baralong Estates—Ch. 56)—See below Sec. 3)

(b) Native Usage.—In Cape Colony and Transvaal this custom or usage is taken to be that of the tribe to which the deceased belonged and so becomes a question of fact: in Natal, the Code of Native Law is operative, and so the usage becomes a matter of enactment. (Cape: Act 18, 1864; Natal: Sched. Law 19, 1891, Secs. 97 *et seq.*; Transvaal: Proc. 28, 1902).

(c) In Cape Colony, by Secs. 2, 5, Act 18, 1864, the Governor may by Proclamation define the custom or usage to be observed and lay down rules of procedure in that connexion; but apparently there is no such proclamation.

(d) In the Territory formerly called British Kaffraria by the British Kaffraria Ordinance No. 10 of 1864 the succession to Kafirs, Fingos or Tambookies resident or domiciled in that territory and married according to Native Custom follows the custom of the tribe. The same rule applies on decease intestate without leaving a widow or direct issue.

(e) In Natal, again, by Act 1, 1901, where any question arises as to the "general heir" (See Sec. 98, Sch.) of a deceased Chief in charge of a tribe it has to be decided by the Supreme Chief (i.e. the Governor) whose decision is final. But in this case, before deciding, he must have before him (through the Secretary for Native Affairs) a report by three expert advisers appointed by the Governor-in-Council. The Courts are precluded from adjudicating on any question or dispute as to such heirship.

2. PERSONS AFFECTED BY THE ABOVE LAW.

(a) In Cape Colony:—Natives who hold certificates of citizenship under Act 17, 1864, and Natives domiciled in a proclaimed Native Location (Preamble and Section 6), but not apparently other Natives. This limitation becomes important when we recollect that Act 17 of 1864 has seemingly become obsolete in present-day practice.

(b) In Natal (apparently):—Natives subject to the operation of Native Law.

(c) In Transvaal:—Any Native who had not during his life time contracted a lawful marriage or who, being unmarried, is not the offspring of persons lawfully married—where the said natives die intestate (Proc. 28, 1902, Sec. 70).

(d) Orange River Colony:—Persons in the Ward Moroka (formerly the Baralong Territory) who at the annexation thereof were living therein in a state of polygamy (Ch. 56, Sec. 1).

3. ORANGE RIVER COLONY—BARALONG ESTATES.

Ch. 56, provides:—

I. That all children born of natives in polygamy living in Moroka Ward, at the date of the annexation of the Barolong territory, have equal rights as heirs of their father, or of relatives on the father's side provided that any such native may dispose of his estate by father, or of relatives on the father's side, provided that any native may dispose of his estate by last will (Sec. 2).

II That unless excluded by lawful contract, community of property should be considered to exist—and in case of polygamy one half should belong to the husband and the other to the wives jointly (Sec. 3).

(Note:—In a Cape Case the question was raised whether there had been community of property under Griqua Law; and there the Chief Justice inclined to the view that a modified form of community existed in regard to land *vide* Fortuin's Executor vs. Abrahams 14 S. C. R. p. 21).

III. Where no provision has been made with regard to the inheritance of estates of deceased Natives the High Court is to order an equitable distribution of the estate of the deceased native (Sec. 5).

(Note:—It will be observed that there does not appear to be any fixed principle underlying this last provision; and one ventures to remark that the idea thereof would not be adopted in other than special cases; for it seems advisable to lay down by way of enactment the principles or system on which the Court should act.)

4. LETTERS OF ADMINISTRATION.

These are unnecessary by the Cape and Transvaal provisions—though the latter provides for the interference of the Master where the Commissioner for Natives reports that the “persons concerned in the estate, according to native usages and customs,” desire that an executor *dative* should be appointed (Sec. 71). By the Cape sec. 3 the Master is not called upon to interfere. As to Natal—Sec. 5 (c), below).

5. DISPUTES REGARDING DISTRIBUTION OF PROPERTY.

(a) If such arise among his relatives or reputed relatives the Magistrate (Cape Colony) or Commissioner of Natives (Transvaal) is to determine the question according to Native usages or customs, the Commissioner having to summon the parties concerned before him and to take and record evidence, which he “may” supplement from his own knowledge.”

(b) Appeal to Superior Court:—In the Transvaal the Commissioner's decision is declared to be subject to appeal; in Cape Colony it has been held that there is no appeal—though a review is competent on the grounds mentioned in certain specific Ordinances (*viz.* Nos. 40 and 73—per De Villiers C.J. in *Tabatu vs. Tabatu*, 5 Juta 328).

(c) As to Letters of Administration and the determination of disputes the Natal Law (Sec. 7, Act 7, 1895) is similar to that of the Cape, the “Magistrate's” functions being discharged by the “Administrator of Native Law”.

6. SUCCESSION—NATAL:—

(a) Intestate Succession: Letters of Exemption:—

A. Native not exempted from Native Law: Where such a one dies, his estate is to be administered under Law 19, 1891, (The Code of Native Law) even though the heirs hold letters of exemption under Law 28, 1865; and the Supreme Chief (Governor) may define the usage to be observed in the administration and the procedure to be followed as to the appointment of Executors, etc. (Sec. 13, Act 7, 1895).

B. Where the Native holds a letter of exemption: the distribution of his estate follows the ordinary law, even though the heirs are not exempted from Native Law (Sec. 14).

(b) Native Law—Natal: Chapter IX of Law 19, 1891, is entitled “Inheritance and Succession”. Therein we find provisions as to “heirship”, the devolution of kraal property (devolving upon males only), succession to house property, etc., the reverting of kraal or house property to the Supreme Chief failing male heirs. etc.

7. IMMOVEABLE PROPERTY—THE DISPOSING AND DEVOLUTION OF—NATAL.

Act 7, 1895 regulates this, and certain provisions are indicated:—

(a) Testamentary Succession: The Section 97 of the Code (Law 19, 1891) says that “testamentary succession is unknown, and no native may under Native Law make a will except under Law 12, 1864”. For the latter Law, Act 7, 1895, must be now read; but the general principle enunciated remains unimpaired apparently—and the general principle so enunciated seems not to be found in the legislation of the other Colonies.

But the important qualification remains that

(b) Act 7, 1895, makes provision for natives subject to the operation of Native Law to dispose of their immovable property by will or codicil:—

I. The will, etc., must be read over and explained to the testator by an Administrator of Native Law in the presence of two witnesses—further provisions as to signing, etc., and witnessing following (Sec. 4).

II. The Administrator records on the will, etc. his certificate as to the explaining thereof (Sec. 5 and Sched.).

III. Provision is made for the transfer of property, before the Registrar of Deeds, by the Executor (Testamentary or Dative)—subject to any special conditions in the deed of grant or deed of transfer—upon production of the will, or, in case of intestacy, of an approving certificate from the Administrator of Native Law (Sec. 8).

IV. On failure of heirs, the immovable property of a Native reverts to the Supreme Chief.

(Other provisions refer to wills by Native women, etc.—and see Secs. 5 (d) (A) and (B); and 6 hereof).

Note I.—This Act seems to deserve consideration. To one speaking without experience or knowledge of its administration and operation it would seem to be calculated to check the disposing by will of land without due comprehension of the transaction or contrary to the real wishes of the testator. (Compare with this restriction the prohibition of alienation in the Glen Grey Act—See Article on “Native Locations”).

Note II.—(See Sec. 7 (b) III). In Cape Colony there seems to have been some technical difficulty in the past about affecting transfer where the Magistrate had certified as to the person entitled to land belonging to the Estate of the deceased, under Act 18, 1864, and the Supreme Court has been applied to for, and has granted, an order authorising the transfer (see e.g., *re Maheshwe*, 5 Juta, p. 330). The Natal Law (see Sec. 7 (b) III hereof) seems intended to provide for such a case (Sec. 8, Act 7, 1895).

8. REGULATIONS—EXECUTOR DATIVE—NATAL.

Under Sec. 13, Act 7, 1895, the Supreme Chief may make various Regulations under the Act (see Sec. 6 (a) A hereof); and by Sec. 1, Proc. No. 20, 1896, it is provided that in any estate in which there is immovable property and where there is no will, or no executor thereunder named, or willing and capable of acting, the “Court of the Administrator of Native Law having jurisdiction may appoint any suitable person to be executor dative” and there are certain subsidiary provisions.

9. SUCCESSION DUTIES.

(a) Under Sec. 4, Act 18, 1864 (Cape) succession duty is claimable by the Civil Commissioner where the amount or value of the succession entails payment of duty under Act 5, 1864. The aforementioned Transvaal and Natal Legislation appears to make no reference to this (See also (Cape) G.N. No. 864, 1891—cited in Chief Justice Maasdorp’s book on “Succession” etc. at p. 73).

(b) In the Bechuanaland Protectorate Proc. No. 4, 1895, deals with the duties on succession to property; but Sec. 18 expressly provides that nothing in that Proc. should apply to “the property of a deceased native who at the time of his death belonged to any native tribe, community or people so far as such property shall be administered and distributed according to the law, customs or usages of the tribe, community or people to which the deceased belonged”.

10. IN THE TRANSKEI:

“In the event of the death of any person, married by a Minister of the Christian Religion, or by a Marriage Officer, or according to Kaffir or Fingo forms, and registered in the manner provided in the Regulations under the said Proclamations (i.e. 37th and 38th Regs., Proc. 110, 1879 and the corresponding Regulations, Proc. 112, 1879 and Proc. 140, 1885), or of a person who has died leaving a will, or other testamentary writing, made according to the law of the Colony of the Cape of Good Hope the Cape Law of Succession applies; and, whereas the prior Proclamations (cited above) provided that the Chief Magistrate should act when the Master was named in the relative Cape enactments, Proc. 207, 1899, provides that the Master may act in cases transferred to him by a Chief Magistrate.

11. UNDER THE GLEN GREY ACT:

(Sec. 24, Act 25, 1894 and see Sec. 8, Act 15, 1899) "the allotment and other immovable property of every registered holder shall not be capable of being devised by will, but upon his or her decease shall devolve upon and be claimable according to the rule of primogeniture of one male person to be called the heir"—who has to be determined according to a table there set out. Then Sec. 25 (25, 1894) enables the Magistrate to enquire and make such order as he thinks fit where a registered holder desires to disinherit his heir for gross misconduct, incapacity to deal with the property, or insanity or idiocy.

MISCELLANEOUS MATTERS.

(In this article, certain matters, not elsewhere dealt with, are summarily noticed).

I. APPRENTICESHIP OF NATIVE CHILDREN.

(1) Not specifically dealt with as such in Cape Law, the provisions as to apprentices relating alike to white and native (coloured) children.

(2) In Rhodesia, Ord. 1, 1899, deals with the apprenticing of Native children, and, *mutatis mutandis* and with certain modifications, applies thereto the provisions of the Cape Law. The Cape enactments referred to are cited in the commencement of the article "Master and Servant"; here it is only sought to indicate some few provisions bearing on the subject.

Note.—(a) The contract of apprenticeship to be in writing (Sec. 1, Chap. III, Act 15, 1856—Cape).

(b) A distinction is drawn between destitute children and those not destitute.

Those not destitute, being over 10 and under 16 years, may be apprenticed by their fathers, etc. till they attain the age of 21, due provision being made for maintenance, etc., and instruction; a child under 10, not being in a state of destitution, only to be apprehenticed where the Magistrate in whose presence the contract has to be executed, attests that it appears to be for the benefit of the child (Sec. 3).

Apparently the period of apprenticeship, where it is as a domestic or agricultural servant, may not extend beyond the attainment, in case of a female of 16 years, and in case of a male of 18 years (Sec. 2).

(c) Destitute children are apprenticed by the Magistrate, after due enquiry, to a relative or some other fit and proper person, till the age of 18 or 16 (in the case of male or female respectively); notice being given in the Gazette of the names of apprentice and person to whom he is apprenticed, and provision being made for maintenance, etc., instruction, and (in a proper case) wages (Secs. 6, 7, and 8).

(d) A minor of the full age of 16 or upwards may (provide he consent thereto) be apprenticed for a period not exceeding 5 years to a trade requiring art or skill—the Magistrate being *ex officio* guardian of such minors where they have no parents or guardians discoverable in Cape Colony (Secs. 4 and 5).

(e) Other sections deal with the effect on the contract of apprenticeship of the death or insolvency or change of residence of master (Secs. 2, 3, 6 and 7, Chap. IV) or the marriage of female apprentice (Secs. 12 and 13); with the jurisdiction of magistrates (Chapter V) as to e.g. punishment of the apprentice, compensation to be made by him for damage, etc. to property (Sec. 13) cancellation of contract of apprenticeship (Secs. 14, 15, 24).

(f) By Act 18, 1873, (Secs. 2—7) punishments are provided for various acts of misconduct, but these do not apply to apprentices under the age of 16 years.

(g) By Act 8, 1889, it is provided that a juvenile offender under 16 years of age may, in lieu of other punishment, be apprenticed to some useful trade or occupation till he attain his 21st year or for a shorter period—and details follow as to the execution of the contract, etc.

3. Chapter 35 of the O.R.C. Code deals with the apprenticeship of coloured children.

The landdrost empowered to apprentice coloured children who may lawfully be apprenticed—up to the age of 21 (boys) and 18 (girls) (Sec. 1). Such children are: orphans who are unprovided for and children deserted by their parents or whose parents consent to the apprenticing (Sec. 4). The contract can be cancelled by a competent court for ill treatment, etc.

There is no provision apparently for the apprenticing of youthful offenders as in the Cape and Rhodesian enactments, but it is provided (Sec. 5) that the child must be educated in the reformed Christian religion.

II. ARMS AND AMMUNITION.

(1) CAPE COLONY: Here no person may sell, give, etc., or grant a permit authorising the sale, gift, etc. of firearms, gunpowder, etc., to a person who is known or believed to belong to a Native tribe beyond the boundaries of the Colony without permission of the Colonial Secretary or Secretary for Native Affairs or a person duly authorised to give permission (Sec. 3 Act 13, 1877) (See also Sec. 6, Ord. 81, 1830) Sec. 3, Act 13, 1877, *mutatis mutandis* applies in Basutoland, also Sec. 1, B 12 Feb. 1889.

(2) NATAL: Law 5, 1859, prohibits the gift or sale, etc. of guns, gunpowder, etc. to a person of the Native tribes of the Colony or of the adjacent "countries" (Sec. 1); nor may such native person possess firearms or powder without the Lieut. Governor's permission; such firearms etc. if found in such native's possession to be forfeited (Secs. 2 and 3); Magistrates, J.P.'s, F.C.'s and Policemen may stop a Native in unauthorised possession of the gun etc., and seize the same etc. (Sec. 4).

Note also Law 12, 1862, providing *inter alia* that a Native may not for his own use bring gunpowder into Natal overland, and that a Magistrate may not grant a permit to obtain gunpowder, cartridges, etc., to a Native or Hottentot, except with special permission (Secs. 3 and 11).

See also Act 15, 1901, as to the granting with the approval of the Secretary for Native Affairs, of a permit to purchase a limited supply of gunpowder, not exceeding 2 lbs. per annum, to a Native Chief, who has the written permission of the Governor to keep a gun.

(3) TRANSVAAL: Sec. 29 of Ord. No. 13 of 1902, empowers the Commissioner for Native Affairs to grant a licence to any Native Chief or Headman to possess arms. No person may sell, barter, exchange or deliver arms to any Native who does not hold such a licence.

(4) RHODESIA: (a) Sec. 80, Order in Council of 20 Oct., 1898, permits of the imposition of disabilities in respect of the supply of arms, ammunition and liquor (and see Sec. 23 Order of July 1894).

(b) The Regulations of Nov. 1897 deal with the possession of arms by Natives and Asiatics, "Asiatics" including all Chinese, Indians and Malays, or their descendants. Natives and Asiatics, unless excepted or exempted under Secs. 7 and 8 of the Regulations, not to possess arms or ammunition without permission in writing of the Administrator (Sec. 2 and see Sec. 3); J.P.'s have powers of ordering search for arms etc., on reasonable grounds of belief as to concealment thereof (Sec. 4); if found, the arms etc. are forfeited, and possessors liable to penalty, if possession unlawful etc. (Sec. 5); provision made for permits (to carry a gun and limited amount of ammunition) to a Native or Asiatic in regular service, whilst the Administrator in Council may grant letters of exemption to any Asiatic (Secs. 7 and 8).

(5) BECH. PROTECT.:—By Sec. 5 of Proc. 12 Dec. 1892, Natives are not required to take out a gun license; and by Proc. 15 Nov. 1893, the Resident Commissioner, Assistant Commissioner and Magistrate are empowered to grant permits to purchase ammunition, not exceeding a certain amount, to any Native in the lawful possession of a gun, certain particulars having to be entered on the permit (Sec. 4).

A fee payable for permit (5s. for the purchase of cartridges, 2s. 6d. for that of gunpowder, etc.); the purchase only to be made from a licensed dealer; and a penalty attaching to the production of a forged certificate (see Sec. 4) by a Native making application for a permit (Secs. 6, 7 and 9).

Note.—The Cape prohibition as to selling or giving guns refers to Natives without the Colony; the Natal prohibition extends to the Native within her gates and prohibits (as do the Rhodesian Regulations) the possession of guns by such Native. Rhodesia stands alone apparently in applying the prohibition to both Natives and Asiatics.

III. DANCES ("ABAKWETA" AND "INTONJANE").

These in Cape Colony prohibited within proclaimed districts—the owner, occupier or lessee—of any land permitting etc. the holding of the prohibited dance being liable to a penalty Magistrates, J.P.'s, F.C.'s etc., being empowered to take steps to prevent the holding of the dance and a penalty attaching to the taking part therein after warning (See Cape Act 16, 1891).

IV. EDUCATION OF NATIVE CHILDREN.

The Cape, O.R.C., Natal and Rhodesia deal specifically with the education of Native Children; the provision in the two former being one for local purposes however, while in the two latter it is general.

1. At the Cape the Glen Grey Act (25, 1894, Sec. 35) provides for the devoting of the proceeds of the Labour Tax to the education of Natives of the district in trades and agricultural labour, and in the O.R.C. the legislation regarding Witzieshoek (Law 10, 1892 and Law 9, 1899, Sec. 9) provides for an annual payment of 3s. 6d. in respect of each hut (those too indigent to pay being excepted), the proceeds being handed over to the Missionary Society of the Dutch Reformed Church to be used for the education of the coloured children.

2. In Natal, Law 1, 1884, in terms seeks to promote the education of the Native Population, and inter alia, imposes on the Council of Education the duty of establishing Schools for the education of the Native children and of framing rules, etc. in that behalf; two members of the Council are to have knowledge of Zulu language and customs; the Council has at its disposal such portion of the fund under the charter for native purposes as may be placed at its disposal by the Governor, together with any grant by the legislature, etc. and provision is made for an Inspector of Native Education, who must know Zulu. Among the subjects of instruction are "The elements of industrial training" and "Reading and writing in the Zulu language."

3. In the Transvaal, under Sec. 1 of Ord. No. 7 of 1903, the Lieutenant-Governor may provide out of Public Revenue for the payment of grants towards the establishment and maintenance of Native Schools.

(4) In Rhodesia, Order "B" attached to Ord. 18, 1899, sets out the conditions on which aid will be granted from the public funds to Native Mission Schools among these being the condition that at least two hours daily must be devoted to industrial training—the annual grant apparently not to exceed £50.

V. FENCING LAW (NATAL).

By Act 29, 1894 "all Native Locations and all lands administered by the Natal Native Trust, and all lands conveyed to or vested in any Corporation or person or persons in public trust for Natives" are made subject to the "Fencing Law, 1887"; and by Act 12, 1897 that Fencing Law is made to extend to the whole Colony—the preamble of Act 12, 1897 pointing out that "the fencing of the Locations is being carried out throughout the Colony".

Cape: By Sec. 11, Act 15, 1891 ("The Fencing Law Amendment Act") "Government to recover any sums paid under Act in respect of native locations on Crown Lands" (marginal note)—the procedure to be followed being laid down in the section.

Transvaal: The occupiers of huts in any Native Location on Crown Land are jointly liable to contribute to such expenditure as may be incurred upon fencing under the Ordinance No. 7 of 1904, (Sec. 15).

VI. LOCAL RESTRICTIONS, ETC.

1. TRANSVAAL.

(a) By Volksraad Resolution, 25 Sep. 1871, art. 104, coloured persons other than those in service with the erfholders etc., are not allowed to congregate on erven in towns.

(b) Under the "Regulations for towns in the South African Republic" we find:

That coloured persons are prohibited from walking on the sidewalks of the streets, or any stoep serving as a sidewalk (36).

That they may not enter or go about a town improperly clad (compare herewith Law, 10, 1895, O. R. C.), (38).

That they may not reside in places abutting on the public street in any town or village etc. (39).

(c) By F. V. Resolution, 14th Oct. 1897, Art. 1522, the Government was instructed to arrange for certain separate compartments in railway carriages for coloured persons.

2. IN THE CAPE COLONY powers of imposing restrictions may be conferred by Local Act: e.g. The East London Municipality Act (11, 1895), see e.g. Sec. 5 thereof setting out matters upon which regulations may be made e.g. fixing "parts of streets or open spaces or pavements of the same on which Natives or Asiatics may not walk or be" (Sub-sec. 30).

But this is merely given as an illustration of the way in which, given the statutory powers, the Local Authority may enforce restrictions; for this memorandum does not purport to collate such local regulations, the existence of which must not however be ignored.

VII. MORALITY, OFFENCES AGAINST.

The Cape Act 36, 1902, forbids sexual intercourse for gain between a white woman and an aboriginal native (Sec. 34). Sec. 35 forbids under a heavy penalty the procuring a white woman for such intercourse and Sec. 36 makes the keeper of a brothel in which such intercourse has to his knowledge taken place liable to a like penalty.

In Natal there is similar legislation (*vide* Sec. 16, Act 31, 1903)—save that as regards the intercourse between white woman and coloured man (Cape Sec. 34) the Natal Bill omits the reference to gain.

In the Transvaal intercourse between a white woman and a coloured man is forbidden. (See Sec. 19 of Ord. 46 of 1903).

VIII. PUBLIC DECENCY.

In Orange River Colony Chap. 142 and Law 10, 1895, deal with the going naked of Natives on railways, public roads, towns, villages or at a farm-house where white people reside.

IX. PUBLIC SECURITY, Etc.

Incitement of natives to rebellion is dealt with in the case of Basutoland by Proc. 18, 1899 and in that of the Bechuanaland Protectorate by Proc. 17, 1899. (Notice in this connexion the old Cape Acts 26, 1857 and 29, 1864, as to emissaries from "Kaffirland" delivering in the Cape Colony messages dangerous to the public peace.)

X. REGISTRATION OF BIRTHS AND DEATHS.

NATAL: (See Act 5, 1896, Act 25, 1902 and Regulations made thereunder.)

1. Marriages of Natives by Christian rites under Law 46, 1887, come under the provisions of the "Registration Law, 1867".

2. Registration of births and deaths (Note: This enactment is expressed to amend the code of Native Law.)

(a) The Kraal Head has to report to the Official witness births and deaths in the kraal within three days; and Official Witness to report to Magistrate within 30 days the births or deaths in his district—receiving a fee of 1s. for each birth or death reported (Secs. 1, 2, and 3 Act 25, 1902 and Regs. 1, 2, 4, 5).

(b) A Register of births and deaths has to be kept at the office of the Magistrate containing the particulars prescribed by Regulations—which the Governor may make (Secs. 4 and 5, Regs. 3 and 6). The Magistrate may appoint an Officer to register (Reg. 9).

(c) In the case of children born in a borough, the child's father or (if illegitimate) its mother has within 30 days to furnish necessary particulars to Magistrate; and in case of a death in borough the occupier of the house where death occurred or some person present thereat, etc. has to give him these particulars (Regs. 14 and 15).

(d) Magistrate to furnish monthly returns to Secretary for Native Affairs (Reg. 16).

Note.—The Register contains *inter alia*, the names of kraal head and chief.

XI. VACCINATION OF NATIVES.

1. NATAL: (a) The procedure laid down by Law 3, 1882, does not apply to Natives.

The Law, however, empowers the Governor to enforce compulsory vaccination among natives when he thinks it desirable; by regulations (to be framed by him) to declare how the vaccination shall be carried out; and to appoint medical and other officers to carry it out, no public vaccinator to receive more than 6d. for vaccination from a Native (in addition to any remuneration allowed by Government).

(b) Under this law there have been Proclamations: Proc. 11, 1893:—

The Vaccinator to charge Native a fee of 6d. for every Native successfully vaccinated, and to send in monthly returns; Natives to attend (on pain of fine) for vaccination after notice at fixed centres; Magistrate or Administrator of Native Law to appoint vaccination officers from among his Native Patrol Police, which latter give notice to Chiefs and Headmen of the attendance of the District Vaccinator.

The Chiefs and Headmen directed to see that the Natives attend. The Natives, 8 days after vaccination, to attend for examination. Chiefs and Headmen refusing to carry out lawful orders of Vaccinator to be reported to Magistrate or Administrator, who investigates and forwards report of investigation, etc. (with his recommendation) to Secretary for Native Affairs for decision of Supreme Chief.

(c) Proc. 12, 1894 (To make Rules for the vaccination of Natives in Boroughs and Townships):—

Magistrate in co-operation with Mayor or Chairman of Local Board to appoint one or more Vaccinators, and Vaccination Officers from among the Police.

All Natives seeking registration under any Registration Law or seeking to take out a togt badge must satisfy Vaccination Officers that they have been vaccinated or otherwise submit to vaccination.

Natives in gaol to be vaccinated, unless previously vaccinated. Vaccination centres to be appointed; notices to attend these to be served on Natives in borough or township; such Natives to attend on pain of penalty and submit to vaccination (unless they satisfy the Vaccinator that they have been previously vaccinated); thereafter they attend on 8th or 9th day after vaccination for examination, and are revaccinated if previous vaccination unsuccessful.

Vaccinators to receive 6d. for every Native successfully vaccinated.

(d) Proc. 26, 1894 (Supplementary to above Proclamations);

Vesicles not to be destroyed;

Vaccination Officers empowered to remove lymph therefrom.

2. TRANSVAAL:

Proc. 23, 1901: This sets forth the Regulations in force in Labour Districts; providing for the submission by Mining Companies of the name of a medical practitioner authorised to endorse Certificates of Vaccination on district passes. The duties of such medical Officer are indicated, fresh examination being required where the medical officer is of opinion that there has been no vaccination within the preceding 3 years.

Medical Officers appointed by Government attend at pass offices to vaccinate Natives applying for district passes, unless these have been vaccinated during the preceding five years. No monthly pass to issue to a Native whose District pass does not bear an indorsement of vaccination, etc., etc.

Note.—In Natal the Chief and Headmen are directed to aid in the carrying out of the law. In the Transvaal the Mining Companies have to submit the name of their medical practitioner and the rule as to monthly passes would no doubt help to secure the enforcement of the law.

XII. XANTHIUM SPINOSUM.

NATAL: Law 38, 1874, deals with the eradication of this weed (burrweed) and *inter alia* (in Sec. 4) makes the inhabitants of the nearest kraal or any of them, liable to the penalty in case the weed is found growing and bearing seed within the limits of a Native Location, or on Crown Land occupied by Natives; and Act 20, 1901, applies the provisions of the above law to the *Xanthium Strumarium* (See Art. "Native Locations" Sec. 9 as to Cape and Transkei).

TRANSVAAL: See Law 4 of 1897; art. 3.

XIII. TRANSKEI—MISCELLANEOUS PROVISIONS.

(a) Imprisonment of Natives for debt.

The execution creditor to pay 7d. a day for rations, etc. for native debtors, or on a higher scale where the District Surgeon considers a more generous diet necessary (Proc. 275, 1903).

(b) Execution of sentences.

A Court may direct that a supply of grain sufficient for the requirements of debtor and family for 12 months be protected against seizure.

(c) Pounds.—The Sections 76–80 (Schedule) Proc. 408, 1896 deal with trespass in Native Locations; and *inter alia* recognise the Native Custom that when the owner is known and is in the same or an adjoining location or in the immediate neighbourhood, the proprietor of the cultivated lands trespassed on must take the trespassing stock to such owner; and if he refuse to pay the damages legally claimable (under Sec. 76) the stock can be impounded. Further provisions and a penalty are also found.

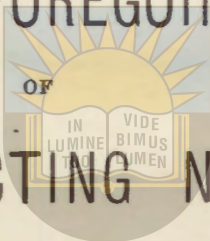
(d) **Forests.**—Any person squatting, building a hut, etc. or making a clearing, etc. in or within 20 yards of undemarcated Forests, without authority, may be summoned to show cause against his eviction (Sec. 13); native occupiers of land entitled to remove head loads of dry wood for fuel and grass for thatch from demarcated forests and dry wood and other minor forest produce from an undemarcated forest, for *bona fide* use, not for sale (Secs. 9 and 14); wattles, poles, etc., may, under a permit, be removed for their own use from an undemarcated forest by native occupiers of land (Sec. 15 and see Sec. 16); natives may get permits to hunt in an undemarcated forest—unauthorised hunting prohibited (Sec. 18); the right to graze cattle without fee on demarcated or undemarcated forests limited to native occupiers of land in the district grazing their own cattle (Sec. 42); to clear by burning a bolt or space near a forest, notice to be given to the Forest Officer or private proprietor or Headman of Location, according to circumstances (Sec. 48); the Headman, among others empowered to demand production of authority or license for any act done within a forest subject to the Forest Regulations (Sec. 58) (Proc. 185, 1903).

Note.—So far as one is aware, there are no corresponding regulations on this head, specifically dealing with Natives, in other Colonies.



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SUMMARY OF FOREGOING DIGEST
OF
LAWS AFFECTING NATIVES.



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Prepared for the South African Native Affairs Commission by MR. ADVOCATE
A. J. MCGREGOR, of the Cape Colony Bar, Cape Town.

DEFINITION OF NATIVE—

CAPE COLONY.	TRANSKEI.	BASUTOLAND.	NATAL.
No statutory definition of Native (as to special definitions, see e.g. Sec. 27, Act 17, 1864).			"Natives" mean all members of the aboriginal races of Africa, South of Equator, &c. (unless exempted). Law 14, 1888.

NATIVE LAW—

1. General Principles:— (a) Duly registered voters exempted (see Act 39, 1887). (b) Ministers of Gospel and persons possessing educational qualification exempted from operation of certain laws (Act 39, 1887).			Persons exempted from operation of Native Law after application duly made to Governor and granted (under Law 28 of 1865). Governor may refuse or grant prayer.
2. Administrative Details:— Liability to pay hut tax remains.			Applicant to give information re family, property, chief, &c., and his ability to read or write. Non-Native resident to furnish a certificate that applicant is a fit and proper person. Oath of allegiance to be taken; affidavit in support of application.

NATIVE LAW (AND CRIMINAL (NATIVE) LAW).—

1. Native Law:— Not codified or applied.	Not codified, but partially applied. (See below as to Penal Code.)	Applied, not codified.	Codified and applied (see Sched. to Law 19, 1891).
2. Principles underlying Application:—	Magistrate has discretion where suitors are Natives, in civil proceedings.	Magistrate may administer where suitors are Natives both in civil and criminal cases.	Native Law and custom to be applied in civil cases unless manifest injustice would result.
3. The Chief—Jurisdiction:— Limited jurisdiction in Brit. Bechuanaland (Cape Colony). See Sections 31 and 32 Proc. 2 B. B. 1885 and Sec. 16, Act 41, 1895. See Sec. 3 Article "Native Courts."		Have jurisdiction when so appointed; and try criminal or civil cases; save where Europeans are party (unless by consent).	Tries all civil cases (except divorces); takes cognizance of crime. (Chiefs in Zululand have special jurisdiction in criminal and civil cases).
4. Native Courts:—		See above.	Elaborate provisions in Act 49, 1898. Questions respecting marriage, insolvency, ownership of land, franchise not deemed "Native cases." (Civ. = Native High Court (3 judges) Magistrates' Courts and Courts of Native Chiefs. (Act 49, 1898). Native High Court cannot sentence to death.

—(COLOURED PERSON).

ORANGE RIVER COLONY.	TRANSVAAL.	RHODESIA.	BECHUANALAND PROTECTORATE.
"Coloured persons"—a man or woman of a native tribe in South Africa, &c., &c. (Sec. 8, Law 8, 1893.)	"Native"—a male over 14 both of whose parents are members of some aboriginal race of Africa.	"Native"—any person not of European descent who is a native of South or Central Africa. (Sec. 3. Order in Council 20 Oct., 1898.)	"Native" includes half-castes, &c. See Article "Liquor Legislation" (b) (and Sec. 11 Proc. 4 April, 1892, &c.)

—(EXEMPTION FROM OPERATION OF).

Exemption is from operation of Pass Law. Application to Lieut. Governor (under Ord. 2, 1903) who may refuse or grant it; may be made by persons holding educational qualifications and Christian Ministers.	Exemption is from Pass Law or such laws as Administration may notify. Application to Commissioner for Native Affairs, who may refuse or grant it; may be made by persons holding educational qualification and Christian Ministers and persons exercising profession or trade. (See also certificate to artisans, &c. in service—under Ord. 28, 1902.)		
Information as to ordination (in case of a Minister); certificate as to educational qualification; certificate of Magistrate, A.R.M. or J.P. that applicant is fit and proper person. Oath of allegiance to be taken; and affidavit in support of application.	As in Orange River Colony—(Save as to certificate of being a fit and proper person.)		

—NATIVE COURTS.—(Summary of Two Articles).

As in Cape.	Not codified; applied so far as consistent with justice, etc.	As in Transvaal.	Not codified; applied so far as consistent with order, etc.
	To be applied in civil cases.	Magistrates to be guided by it in civil cases.	To be applied (as above.)
	Chiefs "appointed by the Government" have jurisdiction—Law 4, 1885.	Qu as to Rhodesia.	As in Basutoland.
	Native Commissioners have jurisdiction in case of minor crimes and (apparently) in all civil disputes between Natives. The Witwatersrand Native Court has certain jurisdiction e.g. in respect of contraventions of laws applicable to coloured persons, etc.		

CAPE COLONY.	TRANSKEI.	BASUTOLAND.	NATAL.	ORANGE RIVER COLONY.	TRANSVAAL.	RHODESIA	BECHUANALAND PROTECTORATE.
5. Criminal Law—Criminal Procedure:—	Transkeian Penal Code (Act 24 of 1886) applies generally; purports to be a code (but see Sec. 269); omits certain matters dealt with in Natal Code.		Part II of Natal Code (Sched. to Law 19, 1891) is headed "Criminal Procedure"—does not <i>eo facto</i> purport to be a code of substantive criminal law.				
6. Criminal Law—Unlawful Assembly:—	Assembling of 5 or more persons (Sec. 91 and Act 21, 1886).		Assembling of more than 5 persons (§ 273, &c. of Sched.) and Sec. 12, Act 11, 1896, as to "faction fighting," and Act 47, 1903, as to combinations to shield from justice.				
7. Criminal Law—Witchcraft:—	Witchcraft dealt with in Sections 171–175 (and see Sections 14 and 15 General Regulations, Proc. 110, 1879).		Witchcraft dealt with in chap. xxi. of Sched.			Witchcraft dealt with in Ord. 14, 1899.	

NATIVE LOCATIONS. (N.L. = Native Location in this Summary).

Transkei

Natal

O.R.C.

T.V.

1. Definitions of Native Locations :— N.L. on Crown Land defined Sec. 7, Act 37, 1884. "Private Location" defined Sec. 2, Act 30, 1899. "Native Reserve Location" defined Sec. 1, Act 40, 1902.	N.L. on private property defined Sec. 2 Sched. Proc. 125, 1897. (Compare Cape Sec. 2, Act 30, 1899.)	University of Fort Hare Together in Excellence	"Location" = settlement of Natives on private lands under Proc. 14th Oct., 1896. Sec. 2 "Native Regulations" of 25 Nov., 1898. N. L. defined § 1 Proc. 14th Oct., 1896.
2. Rough classification of N.L. (mainly as to Cape Colony) :— (a) N.L. under Acts 8, 1878 and 40, 1879 (authorising quitrent tenure). (b) N.L. under Act 25, 1894 (Glen Grey Act). (c) N.L. under Act 37, 1884—as to N.L. on Crown Lands and Private Property. (d) N.L. under Act 30, 1899—on Private Property. ((c) and (d) may be taken to be normal types in Cape—See also Regulations G.N. 642, 1899). (e) Native Labour Locations under Act 5, 1899 on "proclaimed areas" where Natives engaged in mines, &c. (f) Native Reserve Locations under Act 40, 1902—near urban areas, for Natives employed in city, &c. (g) N.L. in Municipalities—See Sec. 30, Act 37, 1884; Sec. 28, Act 30, 1899; Sec. 2, Act 20, 1891 and Sec. 3, Act 12, 1893. (h) Certain old established N.L.'s : e.g. Kama's Location; (see helpful observations in Cape case of <i>Kama v. Col. Government</i> 15 S.C.R. 47) and Locations in Peddie (now apparently administered under ordinary law respecting N.L.'s on Crown Land.) These old-established N.L.'s not further considered—others noticed again below.	(c) & (d): Reference made to N.L. both on Crown and on private land. Proc. 125 of 1897, 314 of 1897, 125 of 1903. (Cape legislation largely followed).	(c) and (d): See Ord. 2, 1855; and generally, Act 37 of 1896, and regulations made thereunder, See G.N. 697, 1896, and 49, 1902.	
		(d) See, incidentally, Sec. 9 &c., Law 4, 1895 (as to number of native households allowed on the farm).	(d) Proc. 14 Oct. 1896 provides for locating of Natives on private property.
		(g) Locations of coloured people within limits of local authorities dealt with by Law 8, 1898.	(g) See Ord. 4, 1893.
		(c) See V. R. Resol. Act 1322 (6 Sep. 1898) as to offer of locations by Government to Kafir tribes; and see Act 1569 of V. R. Resol. of that date.	
		(d) See, incidentally, Sec. 2 &c., Law 21, 1895, as to number of householders allowed on private property.)	
		(g) See V. R. Resol. of 25 Sep. 1871, Art. 104; and Sec. 12, Proc. 28, 1901, empowering Sanitary Boards to lay out places within their jurisdiction as N. L.'s for residence of Natives not being in service and lodging on employer's premises. As to <i>Cholies</i> see Sec. 2, Law 3, 1885.)	

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CAPE COLONY.	TRANSKEI.	BASUTOLAND.	NATAL.	ORANGE RIVER COLONY.	TRANSVAAL.	RHODESIA.	BECHUANALAND PROTECTORATE.
3. Certain Provisions in N.L. Legislation:— (a) <i>Establishment.</i> Licence to be taken out annually by owner for private location. (Sec. 3, Act 30, 1899.) (b) <i>Removal of Natives.</i> By order of Magistrate. (Sec. 20, Act 37, 1884.) (c) <i>Supervision.</i> Inspector supervises—has powers of Field Cornet or Constable—consent necessary to creation of new homestead, &c. (Act 37, 1884 and Sec. 1 Regulations G.N. 642, 1899.) (d) <i>Register.</i> To be kept of huts, occupants, cattle, &c.—by Inspector under Act 37 and by the owner under Act 30. (Sec. 12—15, Act 37, 1884 and Sec. 8, Act 30, 1899.) (e) <i>Arable, Pasturage, Cattle.</i> A subject of legislation or regulation. Inspector deals with unregistered cattle; Headman allots arable in location. (See citations in Article.) (f) <i>Miscellaneous Provisions—see details and citations in Article: e.g.:</i> Provisions as to:—Location Boards, licence, theft repression, Scotch thistle and burrweed, &c.	(a) Governor's leave necessary to establish N. L. on private property. (Sec. 3, Proc. 125, 1897, and Sec. 3, Proc. 314, 1897.) (b) As in Cape. (Sec. 3, Proc. 125, 1897.) (c) Magistrate seems to be supervisor (Headman acts with his approval.) (d) Owner to send correct register (as in Cape) to Magistrate. (Sec. 6—8, Proc. 125 and Proc. 314.) (e) Magistrate can prohibit cultivation of arable if necessary; Headman allots arable (see Art.). (f) Theft repression, scab, beacons preservation, burrweed, &c.		(a) No Native to remove into location without consent of Secretary Natal Native Trust. Rule 1, G. N. 697, 1896. (b) By Magistrate if coming into location without consent. (Rule 3, G. N. 697, 1896.) (c) Governor makes rules re control, &c. Inspectors act thereunder and Chiefs have their duties also. (See Act 37, 1896, and Sec. 4, G. N. 49, 1902.) (d) Magistrate to keep record of "consents" given to reside. (Sec. 8, G. N. 697.) (e) Magistrate can prohibit cultivation—as in Transkei—the Chief allots arable. (see Art.). (f) Outspans, theft repression, burrweed, &c.			(a) Private person may locate on property heads of Native families not less than 7. (\$ 1 Proc. 14 Oct., 1896.) (b) Consent of Chief Native Commissioner necessary to removal. (Sec. 2.) (c) Chief Native Commissioner plays active part in location administration. (e.g. see Sec. 3.) (e) Chief Native Commissioner determines allotment of arable. (See Article.) (f) Native labour on location, &c.	
4. N.L's. in Municipalities:— See citation in 2 (g) hereof. Acts provide for appointment of Inspector of N.L. by governing body. &c. For "Curfew Regulations," see Sec. 2, Act 30, 1895.				Law 8, 1893, provide for supervision of own location and residential place for residents, &c.	Boards under Sec. 12, Proc. 28, 1901, may make regulations for supervision of locations.	By Ord. 4, 1893, Inspectors may be appointed of N.L's. in Municipalities, &c. "Curfew Regulations" — see Sec. 10 (2) Ord. 16, 1901.	
5. Native Labour Locations:— See par. 2 (e) hereof and Article. Established by Proclamation—operation of ordinary Location Acts suspended—Manager of Mine has to keep register specifying huts, occupants, cattle, provisions as to inspector, theft of cattle, ejectment, &c. (Act 5, 1899).							
6. Native Reserve Locations:— See par. 2 (f) hereof and Article. Natives employed as servants, or those exempted under Act or under Act 39, 1887, not obliged to reside therein. Government provide dwellings at a rental, &c. <i>Note.</i>—Paternal character of administration and regard paid to sanitary considerations. (Act 40, 1902).			Compare the "Tog" Labour System in Natal. (See Article "Master and Servant," paragraph 7).				
7. N.L's. and Land Tenure:— (See Article "Land Tenure" also). See Act 40, 1879: approving of individual tenure and authorising titles to lots in locations on quitrent tenure. This principle not followed up in later legislation. Glen Grey Act: titles issued to, but holder not to alienate or pledge his interest nor to subdivide or sublet allotment; land deemed (for franchise purposes) to be held on communal tenure.							

CAPE COLONY.	TRANSKEI.	BASUTOLAND.	NATAL.	ORANGE RIVER COLONY.	TRANSVAAL.	RHODESIA.	BECHUANALAND PROTECTORATE.
<i>Glen Grey Act</i> (See also article on Native Locations).— <i>Title Deed</i> issued subject to statutory condition; and so holder holds by statutory title. Property liable to execution for debt subject to Sec. 26 (prohibition of alienation without consent of Governor). Land cannot be devised by will (Sec. 24). <i>Commonage</i> reserved for use of holders in Location; right reserved to Governor of taking materials; control of commonage in Location Board.	<i>Right of allotting land</i> vested in Governor—land to be divided into districts for allotment by Chief Magistrate. <i>No Title</i> issues on such allotment. Grants to Missions, traders and farmers, etc. (Proc. 103, 1900, and 136, 1902) seemingly exceptions to general rule that land not to be granted away. But Native can acquire land from one already possessing title (e.g. as in Umtata).	Communal tenure apparent.	Natives not entitled to own land in locations (Act 37, 1896.)	Coloured persons born of lawful marriage between coloured father and white mother or white father and coloured mother may own fixed property and children may inherit. (Sec. 1 and 3 chap. 34.) "Bastards" may get title under certain conditions (Law 16, 1894).	Title to land vested in a responsible representative of the Government.	Native may acquire land like a non-native (Sec. 83, Order in C. 20 Oct., 1898). But contract for alienating etc., land to be made before Magistrate, etc. Land to be assigned to Natives under Sec. 81 and 82 of above Order in C.—but seemingly no title issues. (See also Sec. 10, High Court's Proc. No. 18 of 1898.)	Communal tenure—though concessions heretofore made to white men. ("Natives of South Africa," p. 310.)
 LIQUOR LEGISLATION.							
1. The Term Native or Coloured Person—for purposes of this Act—definitions or phraseology:— (a) Aboriginal Natives of S.A. (Act 28, 1883.) (b) Any "Kafir, Fingo, Basuto, Damara, Hottentot, Bushman or Koranna." (Act 28, 1898.) (c) Any "Kafir, Fingo, Zulu, Mosuto, Damara, Hottentot, Bushman, Bechuana, Koranna or any other aboriginal Native of South or Central Africa." (Act 40, 1902.)	"Prohibited person" includes all Kafirs, Basutos, Bechuanaas, and others of the Bantu race, as well as all Hottentots, Korannas, Bechuanaas, Indians, Griquas, Asiatics, coloured persons, and those partially or wholly descended from any of the above, &c., &c. (Proc. 238, 1902.)		All members of the aboriginal races or tribes of Africa South of the Equator, and Griquas, Hottentots, &c., and any person whose parents come under the description of Natives, &c. "Indians" also included among the prohibited persons.	Coloured persons" are	As in O.R.C.	Any person being, or being a descendant of, an aboriginal Native of Africa.	Any aboriginal Native belonging to any Native tribe—and includes half-castes, and Indians.
2. The term "Liquor":— Includes Kafir beer. (This may be made on private land with consent of owner, etc.)	Includes Kafir beer.		Does not necessarily include Kafir beer.	See Transkei. Also includes "eau-de-cologne."	Includes Kafir beer and eau-de-cologne. (The Lt.-Governor may authorise the supply of Kafir beer to employees under certain conditions—exemption as to certain Kafir beer in certain locations, &c.)	No direct reference to Kafir beer, apparently.	Includes "eau-de-cologne." Proclamation does not apply to supply of Kafir beer by the Native producer.
3. Total Prohibition:— (a) Not generally enacted—but Licensing Court may impose very substantial restrictions. (b) May be enforced at Lady Frere and obtains in Native Reserve Locations and areas under Secs. 21 and 22, Act 20, 1883.	Enforced—save where prohibited person produces permit from Magistrate; introduction without permission prohibited.	Enforced. Introduction of liquor without permission prohibited.	Enforced—Save as to certain exemption in case of Indians consuming liquor on premises and of liquor supplied for medicinal purposes.	Enforced (certain special provisions regarding Kafir beer.)	Enforced.	Enforced—Exemptions as in Natal as to Indians.	Enforced. Introduction of liquor without permission prohibited.
4. Unlawful Possession—Penalty for:— Not provided for in principal Act, but under Act 28, 1898, (Sec. 7.)	Penalty.		Penalty.	Penalty.	Penalty.	Penalty.	Penalty.
5. Agent obtaining Liquor for Native:— Liable to penalty (28, 1898).	Penalty.			Penalty.		Penalty.	
6. Master, &c., obtaining Liquor through Servant (Native, &c.)			European may obtain liquor through Native or Indian upon signed order, dealer giving Native, &c., a return pass.	Dealer may deliver liquor on written application of master, bottle to be "properly secured by a cork."		Provisions somewhat analogous to those in Natal.	<i>Bona fide</i> Native servant may possess liquor on behalf of his master.

CAPE COLONY.	TRANSKEI.	BASUTOLAND.	NATAL.
7. The serving of Liquor by Coloured Person or Native:—			Prohibited.
8. Exemptions (See also under 3 above):— Statutory, under Act 39, 1887.			May be granted by Executive in favour of Indians or Natives.
NOTE :—Further provisions relate to beer drinking parties, burden of proof, punishments, &c.)			

ORANGE RIVER COLONY.	TRANSVAAL.	RHODESIA.	BECHUANALAND PROTECTORATE.
Prohibited.	Prohibited.		
		May be granted by Executive in favour of Indians.	As in Rhodesia.

LOCAL SELF-GOVERNMENT-

(GLEN GREY ACT AND PROC. 352, 1894).

1. Location Boards (under Glen Grey Act):— Each Location under control of Board of 3—appointed by Governor—must be landholders.	(Councils, par. 5 below, can deal with locations.)		
2. District Councils:— In each Field-cornetcy, the Location Board select 3 for recommendation to Governor. On failure to nominate, Governor appoints. Governor further nominates 6 members. Office vacated for various reasons, e.g.: Ceasing to hold land. Conviction of offence, &c. Magistrate, <i>ex officio</i> , Chairman and additional member. (Total members = 13). Functions—advisory, members recording opinions on subjects introduced by Chairman.	Headmen in each District nominate 4, for recommendation to Governor. On failure to nominate, Governor appoints. Governor further nominates 2 members. Office vacated for various reasons, e.g.: Ceasing to be Headman. Conviction of offence, &c. Magistrate—as in Cape. (Total members = 7). Functions—as in Cape.		
3. General Council (Transkei):—	Business practically conducted as in Dist. Council. Composed of Chief Magistrate, District Magistrate, 2 members nominated by each District Council, and 4 by Governor.		
4. Rates:— I. Rate not exceeding 2d. in £, on property owned otherwise than under Act, for purposes of Act. II. Rate of 5/- payable by every registered holder and every other male adult capable of labour, exclusive of those owning land under ordinary title. Fine, &c., for non-payment. Appropriation of Rates—payment of officers, construction of roads and bridges, and other specified objects.	Governor may levy annual rate of not less than 10/- payable by each occupier, alone or with his family, of land or hut. Fine, &c., for non-payment. Appropriation—as in Cape.		
5. Powers of Councils (Transkei):—	Works approved by Governor may be carried out by General Council or delegated by it to District Council. Either Council may also deal with certain specified matters, e.g., control of locations, regulation of grazing rights, &c.		
6. Labour Bureau:— District Council receives applications for labour.	General Council receives applications for labour.		



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CAPE COLONY.	TRANSKEI.	BASUTOLAND.	NATAL.	ORANGE RIVER COLONY.	TRANSVAAL.	RHODESIA.	BECHUANALAND PROTECTORATE.
No express exclusion of Natives from franchise; <i>note</i> : educational test, and that communal or tribal occupation of land <i>per se</i> does not qualify. (Sec 17, Act 14, 1887).	As in Cape.		<i>Express differentiation.</i> Natives excluded from franchise, unless in possession of certificate (under Law 11, 1865); by Law 2, 1883, persons subjected to special laws or tribunals not entitled to vote, unless possessing letters of exemption under Sec. 6. <i>See</i> those laws for conditions under which certificate or exemption obtainable; by Act 8, 1896, Natives or descendants of Natives of countries without Parliamentary Franchise excluded unless exempted under Act.			See remarks for Cape Colony. (High Court Proclam., 25 Nov. 1898—and see Sec. 4 and 5.)	

TAXATION—(HUT TAX ; POLL TAX ; CONSOLIDATED TAX).

1. Nature and Amount of Tax :— Hut Tax, 10/- annually. (Special Divisional Council rate may be levied.	Hut Tax, 10/- annually.	Hut Tax, 20/- annually.	Hut Tax, 14/- annually.	Poll Tax, 20/- annually. (Hut Tax, 10/- annually—in Witziesshoek).	Consolidated Tax, 40/- annually.	Native Tax payable—£1 for every adult male Native, and 10/- for each wife or reputed wife after the first.	As in Transkei.
2. On what or by whom payable :— Payable on all huts—on private and Crown Land—landowner or occupier liable.	On each hut occupied by person or family, payable by Native to whom allotment has been made.	On every hut occupied, and on each wife, whether occupying separate hut or not.	On every hut occupied by Native.	Poll Tax, 20/- on each male coloured person between 18 and 70. (Exemptions). Hut Tax, 10/- on every occupied hut (Witziesshoek).	Payable by every adult male aboriginal Native domiciled in Transvaal; and further 40/- payable for each wife additional to first wife.	(See above).	On hut occupied by male of full age.
3. Collection :— Magistrate can sue. Remedy by attachment of goods.	Headman to assist. Remedy by attachment.	Payable in grain or stock.	Governor may appoint Collectors and make rules.	(Witziesshoek). Chief to assist Commandant in collection; penalty for non-payment.	Governor appoints Collectors: He may take payment in grain or stock; Native chiefs to co-operate. Penalty as in O.R.C.	By Collectors. Penalty for non-payment.	By Collectors. May accept payment in grain or stock. Penalty as in O.R.C.
4. Exemptions :— Male adults incapable of service, and certain landowners and lessees.	Indigent lepers.		Certain Natives having only one wife, &c.	Certain coloured persons paying quitrent. Coloured persons on diggings (See par. 5 (c) of Digest).		Exemptions for indigence, disease, &c.	For incapacity for service.

SQUATTING AND

—CONGREGATING OF NATIVES.

1. Squatting on Crown Land (Government Land) by Natives or Coloured Persons:— Cape Legislation not specially directed to this.			Penalty on squatting without permission of Government (Sec. 2, Ord. 2, 1855 and Sec. 3, Law 41, 1884.) Law 41, 1884, provided for collection of rent £1 per hut annually, thereafter £2 by Act 48, 1903—subject to modification of amount by Governor (Law 41, 1884 and Act 48, 1903 only to apply to Zululand if Proclamation extend them.) Squatters may be removed on notice (Sec. 4, Law 41, 1884.)	Squatting on Government or Town Land without written permission specifying names of people, stock, &c. (Sec. 19, Chap. 183 Code.)	Foreign Native Tribes prohibited from squatting in S.A.B. G.N. No. 50, Local Laws 1881. (p.1014.)	Native Commissioner to assign land for huts, gardens, &c., and no new huts to be built, &c. without his consent. (Sec. 10 Native Regulations. H. Com. Proc. 25, Nov. 1898—and see Sec. 81, Order in Council of 20 Oct., 1898.)
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CAPE COLONY.	TRANSKEI.	BASUTOLAND.	NATAL.
2. Squatting and Congregating of Natives on private land :—			Where squatter without initial permission to reside on land, Magistrate orders removal forthwith; if initial lease, &c., removal after notice and time to collect growing crops. (Sec. 3, Ord. 2, 1855).
3. Permit List :—			
4. Mission Stations, &c. :—			
5. Vagrancy in Boroughs :—			Persons wandering after certain hours, &c., not giving good account of themselves, in certain boroughs, are offenders under Law 15, 1869.

MISSION—

	Grants by Governor for mission work—subject to specific conditions. See Proc. 75, 1903.		Natal Native Trust—the trustees of Mission Reserves mentioned in Sched. Act 49, 1903; these to be kept for occupation solely by Natives—various provisions in Act e.g., as to leasing sites for Churches, &c., to Missionary bodies, power of Governor to set apart reserve for occupation by Native converts and to make rules, &c., &c.
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MASTER AND SERVANT—
(For List of various Acts, &c., in different

1. The Law of Master and Servant : No special law for Natives exclusively.	See Cape.		Act 40, 1894.
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ORANGE RIVER COLONY.	TRANSVAAL.	RHODESIA.	BECHUANALAND PROTECTORATE.
Vagrancy dealt with in sections 12 and 30 Chap. 133. Only 5 heads of families ordinarily allowed on a farm. Coloured persons over 60, not having children fit for work, and single coloured persons hired by owner not deemed heads. Greater number (than 5) only allowed after enquiry by Landdrost—never to exceed 15—special tax on families beyond 10. (Chap. 133, and sections 9, &c., Law 4, 1895). Native owner may keep 2 families; in Moroka 3—with consent. (Sec. 21, chap. 133.)	Normal number of families allowed is 5 for each farm owned. Beyond this consent of Government required, maximum number being 25. Native owner may also keep 5 families, with permit from Superintendent of Natives, &c.		
Landowner to keep list of persons and their stock on farm. (Sec. 26, Chap. 133.)	Landowner to give permit to families residing on farm. (Sec. 7, Law 21, 1895).		
Law re squatting not to apply to recognised mission stations, land granted to Chiefs for residence or public diggings, &c. (Sec. 23, Law 4, 1895.)	Old recognised Mission Stations to transfer their ground as Locations to Superintendent of Natives. (F.V.R. Resol. 3, Oct., 1895.)		

—RESERVES.

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—LAW AS TO.

Colonies see Introduction to Article in Digest.)

Ord. 7, 1904.	See Cape.	Besides general law (Ord. 5, 1901) certain specific provisions (Ord. 16, 1901).
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MASTER AND SERVANT— (For List of various Acts, &c., in different

CAPE COLONY.	TRANSKEI.	BASUTOLAND.	NATAL.
2. Points of difference, Cape and Natal, &c : (a) Cape Act deals with apprentices. (b) Duration of written contract—5 years. (Sec 5, ch. 2, Act 15, 1856.) (c) Where there is incapacity of service owing to illness, wages payable for one month of incapacity. (d) Mother entitled to make contract for child's services in absence of father. (Sec. 12, ch. 2, Act 15, 1856.) (e) Special J.P. has jurisdiction. (f) Absence owing to imprisonment may be added to original term of service. (g) Complaint to be lodged within 1 month.			(a) Act 40: no reference to apprentices apparently. (b) Duration of written contract—36 months. (Sec. 8.) (c) Where incapacity owing to illness, no wages beyond what already earned. (Sec. 15 and 16.) (d) In father's absence guardian contracts. (Sec. 19.) (e) J. P. authorised by Governor has jurisdiction. (f) Absence arising from desertion may be added as well. (g) Complaint to be lodged within 3 months.
3. Registration—Natal and Rhodesia :—			Law 21, 1888, deals with registration of Native servants and registration of contracts in Maritzburg and Durban. (See 39 Article) those Boroughs having power to make bye-laws. Act 49, 1901 has provisions to facilitate the identification of Native servants—servant seeking engagement or continuing in employment requiring the "pass" under this Act, etc. See also Act 3, 1904.
4. Togg men, Compounds, etc. :— Compounds referred to in Cape, Act 5, 1899.			Act 28, 1902, deals with "Togg" men (day labourers, jobbers, etc.) and their registration, etc. : and bye-laws may provide for their residence in compounds and the licensing of private compounds.
5. Labour Statistics, etc. :— See Sec. 59, Glen Grey Act (25 of 1894) as to applications for labour and regulations authorising registration of persons capable of labour.			Law 15, 1871 (Natal), deals <i>inter alia</i> with labour statistics—applications to Magistrate for labour (by master or servant) and the sending of labour returns to Colonial Secretary (Sec. 6, 7, 9 and 10) etc.
PASSES—			
1. Those requiring passes :— "Native Foreigners" (Ord. 2, 1837, and Act 22, 1867—latter referring also to stock and description of person). But see Cattle Removal Acts.	Every "resident" leaving Transkei, and every Native entering it. (See Proc. 109, 1894). "Native" includes Arab, Indian, &c. (See Proc. 92, 1903).	Every "resident" on leaving, and every Native not domiciled in Basutoland, seeking to enter. (Sec. 6. Chap. "Hut tax—Passes," Proc. 2 B, 1884.)	Natives entering or leaving Colony. (Law 48, 1884, and regulations thereunder.)
2. Stock, mention of :— See Act 22, 1867—above.			

—LAW AS TO.—Continued. Colonies see Introduction to Article in Digest.)

ORANGE RIVER COLONY.	TRANSVAAL.	RHODESIA.	BECHUANALAND PROTECTORATE.
		(b) NOTE.—Contract of service with Native requires registration. (Ord. 16, 1901.)	
		By Ord. 16, 1901, the Registrar of Natives registering a contract of service of Native servant (see above) to satisfy himself that Native understands its terms ; a certificate of service is given to Native ; registration not to take place without production of last contract of service or certificate of discharge, etc., etc. (Vide § 5 of Article on "Master and Servant.")	
PASSES.			
Coloured persons entering or travelling in Colony, and certain coloured persons residing in towns, or on farms. (Chap. 133 ; Law 8, 1893 ; Law 4, 1895 ; Law 8, 1899.	Natives entering, travelling within or departing from the Colony. (Proc. 37, 1901, amended by Ord. 27, 1903, and regulations thereunder).	Males of 14 years and over, both of whose parents were aboriginal African Natives, are registered and carry certificates of registration. Passes issued to those removing out of Native District, &c.	
Official issuing pass to be satisfied as to stock. (Sec. 50. ch. 133.)	"Ordinary travelling pass" refers to stock. Form No. 1 G. (with Regulations.)	Passes to remove or travel detail stock to be driven.	

CAPE COLONY.	TRANSKEI.	BASUTOLAND.	NATAL.
3. Revenue :—			1/- payable on passes issued under Law 48, 1884—(Law 52, 1887).
4. Service and labour—Encouragement of :— See Sec. 5, Act 22, 1867 (pass to Native Foreigner wishing to find employer, &c.)			No outward pass to be granted to Native while under contract of service, &c. (Sec. 21 and 22. Rules, G.N. 363, 1899).
5. Enforcement of Regulations :— Inspection of pass and apprehension of Native (Sec. 8, Act 22, 1867). J.P.'s, Police, landowners, &c., may apprehend.			
6. Issue of Pass, Permit, &c. :— For certain purposes, employer may give a note, permit, pass or written authority (see reference to laws in Article), in Cape, Natal, O.R.C., Transvaal, and Rhodesia.			(See Cape).
7. Discretion to Issue :—			Magistrate has discretion—subject to directions of Secretary for Native Affairs. (Sec. 8 and 9 Rules, G.N. 363, 1899.)
8. Exceptions and Exemptions :— See references to specific laws in Article, and Article on "Exemptions."			

LABOUR—

(Cape Act 6, 1899; Transkei Proc. 101, 1899, and 191, 1902; Basutoland Proc. 17, 1903; Natal Act 46, 1901;

1. Definitions :— Labour Agent (=L.A.)=person procuring Natives for labour beyond Colony (Sec. 2). "Runners" for L.A. also dealt with (Sec. 4.)	As in Cape. (Sec. 1, Proc. 191.)	L. A. = "Tout." Definition substantially as in Cape, without mention of place of service. "Touting" for service without Colony forbidden (Sections 4 and 6.)
2. Acting for L.A. without permit, &c. :— One so acting deemed L.A. (Sec. 5).	As in Cape.	Any person employed to procure Natives deemed a L.A. One not exercising business of Tout protected. (Sec. 5.)
3. To obtain licence—(throughout, apparently, a matter of discretion—as also seemingly renewals thereof) :— By application to Permanent Head of N. A. Department, &c. Applicant to represent registered Company or approved employer of labour. (Sec. 7.)	From Magistrate subject to approval of Chief Magistrate (Sec. 2 and 4, Proc. 101).	From Magistrate (Appeal to Secretary for Native Affairs). (Sec. 7—9.)

—PASSES.—Continued.

ORANGE RIVER COLONY.	TRANSVAAL.	RHODESIA.	BECHUANALAND PROTECTORATE.
1/- on pass for entering or leaving, 6d. on inland pass. (Sec. 49, chap. 133.)	1/- on "ordinary travelling pass." (Sec. 4 Regulations).	Fee of 1/- for replacing a lost pass.	
One travelling in Colony on his own business requires pass; if on master's business, his pass sufficient, and no stamp thereon apparently. (Sec. 12 and 49; chap. 133.)	No pass to Native still under unexpired contract of service without consent of employer, &c. (Sec. 17 and 18 of Regulations.)	Passes to seek employment obtainable from Pass Officers, &c. (See Sec. 6 of Digest—Article "Passes").	
"Any inhabitant" may detain coloured person passing through State without pass. (Sec. 11, chap. 133.)	Native may be apprehended by person on whose property he is found, as well as by Police. (Reg. 6.)	Native to produce pass if called upon by Police Officer, &c. Owner of property may arrest Native without pass on his property.	
	(See Cape).	(See Cape).	
	Official has discretion, full authority resting with Commissioner for Native Affairs. (Sec. 13—15 Regulations.)	Pass Officer has discretion: refusal must be reported to Chief Native Commissioner. Administrator has full power to issue or refuse pass.	

—AGENTS.

Transvaal Proc. 38, 1901 (and Regs.) under Gov. Notice 1195 of 1903; Rhod. Ord. 9, 1899; B. Prot. Proc. 6, 1899).

L. A. : Definition in essence as in Cape, save that procuring of Natives is for work within Transvaal. (Sec. 2.)	Agent=L. A. holding licence under Ord.
L. A. does not include person engaging Natives for bona fide personal business, number not exceeding 20. (Sec. 2.)	Farm or Mine Manager engaging labour—no licence needed (Sec. 3 (1) and (2).)
Application to Commissioner for N.A., &c. (Sec. 2, Regulations). Applicant to represent one registered employer or Company. (Sec. 16, Regs.)	Chief Native Commissioner appeal to Administration (Sec. 4 and 5).
	From Assistant Commissioner (Sec. 1).

LABOUR—

(Cape Act 6, 1899; Transkei Proc. 101, 1899, and 191, 1902; Basutoland Proc. 17, 1903; Natal Act 46, 1901;

CAPE COLONY.	TRANSKEI.	BASUTOLAND.	NATAL.
4. The Licence :— £15 or half if issued after 1st July (annually). (Sec. 3). 5s. for runners permit, annually.	£5 for year or part of year. (Sec. 3, Proc. 101). 5s. annually for runner's permit.		£5 as in Transkei. (Sec. 10.)
5. Security :— £100 or approved security (Sec. 15).			
6. Cancellation or Revocation of Licence :— For misconduct, misrepresentation, contraventions of, or omissions under, the Act. See Art. 7 of Digest, and Sec. 7 (5), 18—21.	Misrepresentation, &c. (Secs. 8, 9, 10. Proc. 101).		Misconduct, &c. (Secs. 17 and 18.)
7. Contract in writing :— Regulations apparently now require this (See also Sec. 13).			Magistrate or J.P. to register particulars of contract of service. (Sec. 13.)
8. Acting as L.A. without Licence :— Prohibited in Cape, Transkei, Natal, Transvaal, Rhodesia, and Bechuanaland Protectorate.	(See Cape.)		(See Cape.)
9. Misrepresentation of Conditions of Service :— Penalty in Cape, Transkei, Transvaal.	(See Cape.)		
10. Exemptions :— Headmen or other authorised Government Officers collecting labourers for work beyond border exempted. (Sec. 22.)	As in Cape. (Sec. 11, Proc. 101.)		Persons engaged solely by or in service of Government exempted. (Sec. 21.)
LABOUR DISTRICTS, ETC.—			
1. Labour Districts (only applies in Transvaal) :—			
2. Compound Overseers (only applies as such in Transvaal) :—			
3. Labour Tax (Cape Colony) :— (See Article "Labour Tax," Chapter III). Glen Grey Act No. 25, 1894. See Article and Act for Scope and Provisions of this Law, and exemptions thereunder.			

—AGENTS.—Continued.

Transvaal Proc. 38, 1901 (and Regs.) under Gov. Notice 1195 of 1903; Rhod. Ord. 9, 1899; B. Prot. Proc. 6, 1899).

ORANGE RIVER COLONY.	TRANSVAAL.	RHODESIA.	BECHUANALAND PROTECTORATE.
	£15, as in Cape. (Sec. 6, Regs.)	£1 per year from date of issue if for labour within Territory, otherwise £50. (Sec. 7.)	£5 per year from date of issue. (Sec. 2.)
	Security to amount of £100. (Regs. Sec. 2 (2) and 4.)	£100 or sureties or £250 or sureties according as labour within or without Territory. (Sec. 8, 9 and 10.)	£100 or approved security. (Sec. 3 and 4.)
	Conviction, misconduct, contravention, &c. (Secs. 10, 13—17. Regs.)	Misconduct, contravention, &c. (Secs. 11, 19 and 20.)	Misconduct, &c. (Sec. 4 and 5.)
		Contract to be registered before Native Commissioner. (Sec. 14 and 15.)	
	(See Cape.)	(See Cape.)	(See Cape.)
	(See Cape.)		
LABOUR TAX.			
	Labour District = Any area proclaimed as such. (Sec. 4. Proc. 37, 1901, amended by Ord. 27, 1903), dealing <i>inter alia</i> with <i>Inspectors of Natives</i> , and <i>Regulations for Labour Districts</i> .		
	Compound Overseer = Any person having charge of 50 or more Natives in Labour District. (Sec. 2, Proc. 38, 1901). <i>Regulations as in Proc.</i>		

CAPE COLONY.	TRANSKEI.	BASUTOLAND.	NATAL.
1. Legislation respecting Cattle Theft :— The relative Cape Acts (14 of 1870, 20 of 1889 and 35 of 1893 and the Transkeian Penal Code) not specifically directed to Natives.			Natal Act (1 of 1899) is, as regards certain sections, directed to Natives, or to Natives and Asiatics.
2. Pass or Certificate for Removal of Stock :— Certificate required for removal of stock beyond 10 miles. (Sec. 2, Act. 14, 1870).			Pass required for removal—unless within restricted limits. (Secs. 6 and 28).
3. Powers of arrest conferred :— Impounding of Stock—under Sec. 5, Act 14 of 1870. Arrest of person (under Sec. 2, Act 20 of 1889) by Field-cornet, J.P., Police Officer, Landowner on his land, &c.			Impounding of Stock (Sec. 12). Arrest of Natives, without passes (Secs. 16 and 17), by Magistrate, Constable, landowner on his land, or the inhabitants of a kraal.
4. Wrongful arrest—malicious impounding—forcible interference with Stock :— Compensation for stock wrongly impounded (Sec. 9, Act 14 of 1870). Penalty for malicious impounding (Sec. 10). Penalty for forcible interference with stock proceeding to pound or rescue of impounded stock (Sec. 11).			Wrongful impounding of stock or arrest of Native entail compensation (Sec. 19). Malicious impounding or arrest is an offence. (Sec. 20). Violently resisting arrest of Native or impounding of cattle and rescue of impounded cattle, &c., is an offence under Sec. 21.
5. Provisions as to Spoor :— See Transkeian Penal Code and Sec. 1 of 1898. (a) Person refusing to aid in following spoor and so causing loss of spoor, or who by wilful obstruction, &c., causes loss of spoor is liable for value of stolen animal. (Sec. 1, Act 41, 1898). (b) The spoor relied on is that of the stolen cattle. (Sec. 1). (c) Where spoor not traced to specific kraals adjacent kraals responsible—amount of assessment (made by Magistrate) going to compensate owner. (Sec. 1).			(a) Person preventing search or wilfully obliterating spoor or refusing to aid in following spoor is guilty of offence. (Sec. 40). (b) Apparently the spoor of person removing the cattle also relied upon. (Secs. 40 and 41). (c) As in Cape—save that amount of assessment goes into public revenue. (Sec. 40).
6. Trial and Compensation (Cape Act 35, 1893; Natal 1 of 1899) Statutory Presumptions :— (a) Person believed to be in unlawful possession of stock, &c., may be apprehended, &c., on failure to give satisfactory account, is to be deemed guilty of theft. (Sec. 28). (b) Being found on enclosed part of farm or in kraal not proceeding by road, throws onus on person found. (Sec. 26).			(a) Conviction may follow on possession of stolen cattle, or portion thereof, or its being found on person's premises, unless it be made to appear to Court that person lawfully came by the same or was ignorant that it was on his premises. (Secs. 54 and 55). (b) Substantially as in Cape if person there without permission. (Sec. 64).

-THEFT, ETC.

[illegible]

CAPE COLONY.	TRANSKEI.	BASUTOLAND.	NATAL.
7. Compensation for damage from stealing:— Magistrate may award after committal. (Secs. 8 and 9).			Compensation only after conviction. (Sec. 58).
NOTE.—Natal: Attachment of property of Native charged with theft of cattle. (Sec. 56). Natal: Father's liability for theft by son under 14 if Native or Asiatic (Sec. 63); <i>accus</i> Cape. Transvaal: Certificate from J.P. or 2 residents of substantial means required in order to purchase stock from coloured persons. (Sec. 29, Ord. 6, 1904).			

MARRIAGES BETWEEN NATIVES.

(See Article on Marriage f

71. BY NATIVE CUSTOM.

the Relative Legislation.)

1. Marriage by Native Custom :— No provision in law for marriage according to Native customs (See Act 16, 1860 for Mohammedan Marriages), but see Ord. 10, 1864, as to British Kaffraria (Sec. I of Article "Marriages").	Marriage celebrated by Kafir or Fingo forms, and registered within three months ranks as ordinary legal marriage. If not so registered, still valid, but effect is according to Native customs, &c. Only first marriage registrable, if first registered wife still alive. (See Proclamations cited in Article).	Marriage by Basuto custom, (if the first marriage) is registrable (within 1 month) as such. (Sec. 2, Ch. "Marriages," Proc. 2, 13, 1884).	Marriage according to Native law and custom valid. (Sec. 146, code); is a civil contract; consent of wife (declared to official witness) and of husband essential; (if legally necessary) registration within 30 days. (Sec. 146—152).	No special provisions (but see Sec. 23 Law 26, 1894, as to an implied quasi-recognition of "heathen marriages.")	Law 3 of 1897 deals with "lawful" marriages (not simply according to Native custom)—see further below.	Ord. 2, 1901, deals with marriages according to Native custom—appearance before Native Commissioner of parties, girl's father and Chief or Headman; official to be satisfied that <i>lobolo</i> has been delivered, thereupon declares marriage legal and registers.	No special provisions herein apparently.
2. Divorce and Nullity :—	Cases of divorce to be heard before Chief Magistrate where marriage registered. (Sec 32, General Regulations, Proc. 110 of 1879).		See Ch. xi of Code, and par. 97, Article for grounds of divorce (not wholly uniform for husband and wife respectively): <i>e.g.</i>, adultery, &c.; after dissolution (save where such caused by husband's misconduct) cattle to be returned. Grounds for nullity, (<i>ibid</i>) <i>e.g.</i>, insanity at time of marriage. Above actions tried before Administrator Native law.				
3. <i>Lobolo</i> : (Delivery of stock &c., by or for intended husband to parent, &c., of intended wife Sec. 23 Natal Code; Sec. 2 Ord. 2, 1901, Rhodesia) :—		Dowry or cattle (if any) given in consideration of marriage may be registered.	Not necessary to validity of marriage; declarations <i>re lobolo</i> to be placed on record as part of registration; part thereof may be reclaimed, on death of woman within year without issue; maximum limits fixed. (Secs. 148, 157, 158, 171, 172, 178, 181, &c).			Necessary to validity of marriage. (Sec. 3.) Maximum limits for <i>lobolo</i> fixed. (Sec. 4.)	

MARRIAGES BETWEEN NATIVES—

CAPE COLONY.	TRANSKEI.	BASUTOLAND.	NATAL.
May be married in ordinary mode.	As in Cape.	As in Cape.	Regulated by Law 46, 1885. Natives may, subject to provisions thereof, be married under Ord. 17, 1846 (i.e., a marriage by Christian rites) obtaining licence from Magistrate, after making statutory declarations (fee 10/-); the above not applying where both Natives exempt from Native Law. Where husband subject to Native Law, parties not exempted by marriage. Ante-nuptial contract permissible where male exempt from Native Law. Divorce is under ordinary law.

—II. NOT BY NATIVE CUSTOM.

ORANGE RIVER COLONY.	TRANVAAL.	RHODESIA.	BECHUANALAND PROTECTORATE.
	See Law 3, 1897. Application to be made to person "appointed" by Government who requires certificate from parents, &c., or Chief or (in case of Christian Natives) from Minister, that there is no hindrance to marriage, and must satisfy himself that statutory requirements of Pass Law, &c. (Sec. 4) have been satisfied; explains significance of marriage before solemnising same (Sec. 5); authorised Ministers may, after certificate from appointed person, consecrate marriage in church (Sec. 8). Divorce is under ordinary law—Proc. 25, 1902.		

ADMINISTRATION OF ESTATES—(SUCCESSION—WILLS).

1. Certain Estates administered and devolve according to Native usage:— Estates of Natives holding certificates of citizenship under Act 17, 1864, and of Natives domiciled in proclaimed Native Locations administered and devolve according to Native usage (Preamble and Sec. 6, Act 18, 1864). See also Brit. Kaffraria Ord. 10, 1864.		Estates of persons subject to Native Law administered under Code of Native Law (Sched. Law 19, 1891)—those heirs exempted from Native Law. (See chap. ix. Code.)	Certain <i>Burulong</i> Estates administered under Chap. 56 of Code. Community of property deemed to exist unless excluded (Sec. 3); children born in polygamy have equal rights as heirs of father—provided that Native may dispose of property by will (Sec. 2.)	Estates of Natives not having been lawfully married or not progeny of Natives so married, where such Natives die intestate, administered according to Native usage. (Sec. 70, Proc. 28, 1902.)	Native succession according to laws or usages of tribe of deceased tacitly recognised in Sec. 18, Proc. 4, 1895. (Otherwise apparently Cape Law applies: Sec. 1, Proc. 19, Nov., 1891.)
2. Native usage, custom or law—how determined:— Usage a question of fact (Sec. 2 and 3, Act 18, 1864), in respect to tribe to which deceased belonged; Governor may define usage (Sec. 5)—this apparently not done.		Usage a matter of enactment (Code). (As to general heir of deceased Chief in charge of tribe, see Sec. 93 Code.)	High Court to order equitable distribution where no provision made regarding inheritance of estates of deceased Natives (Sec. 4, Ch. 56.)	Usage a question of fact. (Sec. 70, Proc. 28, 1902.)	Law or usage apparently a question of fact. (See above).
3. Disputes regarding distribution:— Magistrate to determine question according to Native usage—no appeal, only review, therefrom.		Administrator of Native Law decides controversies. (Sec. 7, Act 7, 1895.)	See above.	Commissioner for Natives determines according to Native usage. Appeal to Supreme Court. (Sec. 70.)	
4. Letters of Administration:— Unnecessary.	In event of death of person legally married, or of person leaving will duly made, Cape Law of Succession applies. Master (not Chief Magistrate) acting in cases transferred to him by a Chief Magistrate. (See Sec. 37, Proc. 110, 1879, &c., and Proc. 207, 1899.)	Under Sec. 13, Act 7, 1895, Supreme Chief may make regulations as to procedure to be observed, and the appointment of executors dative where there is immovable property in estate. No letter of administration from Registrar of Deeds necessary. (Sec. 7, Act 7, 1895.)		Unnecessary unless Commissioner for Natives reports that persons concerned desire appointment of executor dative. (Sec. 71.)	
5. Immovable property—devolution of:— Under Glen Grey Act (25 of 1894) cannot be devised by will. See as to devolution Sec. 24, Act 25, 1894, and Sec. 8, Act 15, 1894.		Natives may dispose of immovable property by will—to be explained to testator by Administrator N. Law, &c., &c. (Sec. 4 and following sections Act 7, 1895.)			
6. Succession Duties:— Claimable by C.C. in certain cases (Sec. 4, Act 18, 1864).					Sec. 18, Proc. 4, 1895, provides that no duties claimable where distribution follows Native law and usage.

CAPE COLONY.	TRANSKEI.	BASUTOLAND.	NATAL.
1. Apprenticeship of Native Children :— (Not specifically directed to Natives—certain provisions voted, owing to application in Rhodesia) : Contract of apprenticeship to be in writing ; distinction between destitute and non-destitute children—latter between ages of 10 and 16 may be apprenticed by father ; former apprenticed by Magistrate till age of 18 or 16 (in case of male or female, respectively) ; juvenile offender under 16 may be apprenticed to a useful trade up to 21. (Act 15, 1856 and 8, 1889, &c.)			
2. Arms and Ammunition :— No one may sell, give, &c., firearms, gunpowder, &c. to person belonging to Native tribe beyond boundaries without permission. (Sec. 3, Act 13, 1877—and see Sec. 6, Ord. 81, 1830).		Cape Act 13, 1877, applies <i>mutatis mutandis</i> in Basutoland. 1 B. 12 Feb., 1889.	Sale, gift, &c. of guns, gunpowder, &c., to Native prohibited ; he may not possess firearms, &c., without permission. (Law 5, 1859, and see Law 12, 1862). As to permit to buy gunpowder to Native Chief, see Act 15, 1901.
3. Education of Native Children :— Proceeds of Labour Tax (Glen Grey Act, Sec. 35) to be devoted to education of Natives of district in trade, agricultural labour, &c.			Law 1, 1884, provides for schools for education of Native children and funds in support thereof—industrial training &c., to be taught, also Zulu (reading and writing).
4. Fencing Laws :— See Sec. 11, Act 15, 1891 : right of Government to recover sums paid under Act in respect of Native Locations on Crown Lands.			Native Locations and lands administered by Natal Native Trust, &c., made subject to "Fencing Law, 1887."
5. Morality—Offences against :— Cape Act 36, 1902. White woman and aboriginal Native : Sexual intercourse between these prohibited.			For Natal see Act 31, 1903, for analogous provisions.
6. Vaccination of Natives :—			Governor may enforce compulsory vaccination among Natives—who must attend after notice—vaccinator to charge Native 6d. for vaccination, &c. (Proc. 11, 1898). See Proc. 12, 1894, for vaccination of Natives in Boroughs, &c. (Procls. under Law 3, 1882).

(Cape, Transkei, Basutoland, Natal, Orange River Colony.

For the subjects mentioned below, reference must be made to Article on "Miscellaneous Provisions"—Dances, Local Restrictions, Public Decency, Public Security, Registration of Births and Deaths, Natives for Debt, Execution of Sentences, Pounds and Forests).

—PROVISIONS.

ORANGE RIVER COLONY.	TRANSVAAL.	RHODESIA.	BECHUANALAND PROTECTORATE.
Orphans unprovided for, and children deserted by parents or with consent of latter may be apprenticed by Landdrost up to 21 (boys) or 18 (girls). (Chap. 35 Code).		The provisions of the Cape Act as to apprenticing of children applied <i>mutatis mutandis</i> to the apprenticeship of Native children to superintendent or master of technical school, model farm, &c., in Rhodesia. (Ord., 1899).	
	Commissioner for Native Affairs may grant licence to Native Chief or Headman to possess arms. Sale of arms to other Natives prohibited. (Sec. 29 Ord. 13, 1902).	Natives and Asiatics (unless excepted or exempted) not to possess arms or ammunition without the Administrator's permission—provisions for permits (to carry gun and ammunition) to Native or Asiatic in service, &c. (Regulations of 15 Nov., 1897).	Natives not required to take out gun licence. (Sec. 5, Proc. 12, Dec., 1892). Officials may grant permits for purchase of ammunition. (Proc. 15, Nov. 1893).
	Lieut.-Governor may provide grants for schools out of public revenue. (Sec. 1, Ord. 7, 1903).	Aid from public funds to Native mission schools on condition, <i>inter alia</i> , of industrial training. (Order B, Ord. 18, 1899).	
	Occupiers of huts in Native Location or Crown Lands jointly liable to contribute to cost of fencing under Ord. 7, 1904.		
	See Sec. 19, Ord. 46, 1903—for certain analogous provisions.		
	Mining Companies to submit name of medical practitioner authorised to endorse certificate of vaccination or passes—medical officers appointed by Government attend at Pass Offices to vaccinate—endorsement of vaccination on district pass before monthly pass to be issued to Native. (Proc. 23, 1901).		

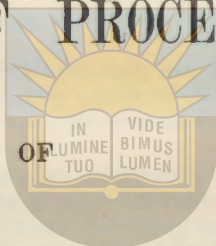
—Transvaal, Rhodesia, Bechuanaland Protectorate).

—in the Digest—no tabulated summary of the Digest being here given :—

—Xanthium Spinosum ; Also Miscellaneous Provisions obtaining in Transkei (as to : Imprisonment of

Appendix B.

MINUTES OF PROCEEDINGS



SOUTH AFRICAN NATIVE AFFAIRS
COMMISSION.

MINUTES OF PROCEEDINGS.

FIRST SESSION.

CAPE TOWN, 29th September, 1903.

1. The Chairman and Delegates appointed on the Commission for the purpose of enquiring into the Affairs and Administration of Natives in South Africa assembled at 11 o'clock a.m. at the House of Assembly Committee Room, No. 18, Houses of Parliament, Cape Town.

2. There were present :—Chairman : Sir Godfrey Lagden, K.C.M.G. ; Cape Colony Delegates : Mr. Walter E. M. Stanford, C.B., C.M.G., Mr. F. R. Thompson, M.L.A. ; Natal Delegates : Mr. Samuel Olaf Samuelson, the Hon. Marshall Campbell, M.L.C. ; Transvaal Delegates : Mr. J. C. Krogh, Mr. J. A. Hamilton ; Orange River Colony Delegates : Captain Quayle Dickson, D.S.O., Mr. S. Jacobz ; Basutoland Delegate : His Honour H. C. Sloley ; Rhodesian Delegate : Sir Thomas Scanlen, K.C.M.G. Secretary : Mr. H. M. Taberer.

3. The Chairman read His Excellency the High Commissioner's Commission, dated 22nd September, 1903, appointing the Commission, and Sir Godfrey Lagden, K.C.M.G., as Chairman ; also a letter from the High Commissioner, I.S. No. 4424 03, dated the 21st September, 1903, on the subject of the scope and lines of procedure of the Commission's enquiry.

4. The Chairman, in the name of His Excellency the High Commissioner, extended to the Delegates a hearty welcome, and shortly outlined the history of the appointment of the Commission and the lines upon which he considered it should proceed to prosecute the enquiry.

Reference was made to the Bloemfontein Conference, which sat during the month of March, 1903, as being the genesis of the present Commission, and, in pointing out the range and importance of the work before them, the Chairman referred to the more important resolutions bearing on the Native question passed at that Conference, and traversed the subject from various points of view.

The Chairman directed the Secretary to lay before each of the Members of the Commission a copy of the resolutions on Native Affairs passed at the Bloemfontein Conference.

5. Mr. Campbell called attention to a clerical error in his Commission, in which he is distinguished as an "M.L.A." instead of as an "M.L.C."

6. The Commission having deliberated,
Resolved,—

- (a) That voting shall be by individuals and not by States.
- (b) That five of the Commission form a quorum.
- (c) That the Chairman have a casting vote only, and that in the event of the absence of the Chairman, and any other Delegate taking the Chair, such Delegate shall retain his deliberative vote as well as exercise the casting vote.
- (d) That the Commission shall sit daily, Saturdays excepted, from 10 a.m. to 12.45 p.m. in the morning, and from 2.15 p.m. until 4 p.m. in the afternoon, and that all the public holidays be observed.
- (e) That the Press and public be not admitted to the meetings of the Commission.
- (f) That condensed minutes of the previous day's proceedings be submitted every morning by the Secretary for confirmation by the Commission.
- (g) That the Secretary be empowered to employ such clerical assistance, typists, shorthand writers, etc., as may be necessary, at reasonable rates, and to disburse all expenses necessary to the Commission, and to charge the same to the respective Governments represented on the Commission.

7. The Chairman announced the appointment of Mr. Taberer as Secretary to the Commission.

8. Resolved,—That the Secretary to the Commission receive an allowance of three guineas a day, independent of salary.

9. The Chairman referred to the terms of reference, and dwelt particularly upon the subject of evidence, the necessity for it, the class of and method of taking it, and the value to be attached to it.

After a general discussion, Mr. Samuelson read a pamphlet detailing subjects which he considered should be dealt with by the Commission. The Chairman permitted Mr. Samuelson to lay this pamphlet on the table, and instructed the Secretary to lay copies before each member of the Commission.

10. Mr. Stanford moved, and it was resolved,—That the Commission do now adjourn until to-morrow morning, when the question of the supply and sale of liquor to Natives be considered.

The Commission thereupon adjourned at 3.30 p.m.

30th September, 1903.

1. All the Members of the Commission were present.
2. Minutes of previous meeting were read and confirmed.
3. The Chairman suggested that before proceeding with the discussion raised by Mr. Stanford on the subject of the prohibition of the sale of liquor to Natives, a decision be arrived at as to the various heads of information which is required by members of the Commission before they will be in a position to proceed either with the discussion or with the examination of witnesses.

After general and lengthy discussion, this was unanimously agreed to.

Resolved,—That the Chairman, with Messrs. Stanford and Samuelson, Sir Thomas Scanlen and Mr. H. C. Sloley, form a Sub-Committee to formulate a list of subjects on which information is to be invited from the various Governments.

4. The Chairman submitted the report of the Sub-Committee recommending that the following form the list of subjects on which information is to be invited from the various Governments, viz.:—

- (1) Population :—European, Native, Aboriginal, Coloured and Asiatic.
- (2) Distribution of Native population on farms, towns, Government reserves, locations on private lands.
- (3) Condition of occupation, if any.
- (4) Area under reserve for Native occupation.
- (5) Taxation :
 - (a) Direct.
 - (b) Indirect (with explanatory notes as to consumption of dutiable goods) and other contributions.
 - (c) Amount paid in direct taxation.
- (6) Native labour returns, with explanatory notes.
- (7) Schedules and copies of laws and regulations specially applicable to Natives, and form of legislation.
- (8) Qualification for franchise and voters' list.
- (9) Statistics, if any, as to polygamy.
- (10) Educational system and returns.

Resolved,—That the Delegates of the various Governments be requested to supply the information asked for.

5. The Commission having deliberated,

Resolved,—That a Sub-Committee, presided over by the Chairman and consisting of Mr. J. A. Hamilton, Mr. S. O. Samuelson, Mr. Stanford, Mr. H. C. Sloley, and Sir Thomas Scanlen, be appointed with an instruction to draw up and submit a programme of preliminary procedure for the Commission.

6. The Secretary read letter, dated 30th September, 1903, from the Secretary for Native Affairs' Department, Cape Town, forwarding (in part) twelve sets of the following documents :—

- (a) Pamphlet containing Proclamations, Notices and Regulations in force in the Native Territories of the Cape Colony on the 28th July, 1896.
- (b) Acts and Proclamations relating to the Administration of Native Affairs in the Cape Colony, including the Transkeian Territories.
- (c) Pamphlet containing the Glen Grey Act, No. 25 of 1894, and the Amending Act, No. 15 of 1899, together with the various Proclamations and Government Notices providing for the Disposal of Lands and the Administration of Local Affairs in the District of Glen Grey.
- (d) All most important Proclamations and Government Notices promulgating Regulations for the Administration of the Native Territories subsequent to 28th July, 1896.
- (e) Pamphlet embodying Proclamations and Government Notices relating to the Establishment of Councils for Administration of Local Affairs and the Granting of Allotments in the Transkeian Territories.
- (f) South African Treaties, Conventions and Agreements and State Papers existing on the 1st of September, 1898 (G81—'98).

The letter further stated that the Clerk of the Cape House of Assembly had kindly consented to place a few copies of the Report and proceedings, with appendices, of the Government Commission on Native Laws and Customs (G4—'83) at the disposal of the Commission.

The Secretary was instructed to suitably acknowledge the receipt of these documents, and to distribute copies to each of the Members of the Commission.

The Commission rose at 3 p.m.

1st October, 1903.

1. All the Members of the Commission were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Chairman read and laid on the table the report of the Sub-Committee appointed yesterday (Wednesday, 30th September, 1903) to draft and bring up a programme of preliminary procedure, as follows :—

Your Committee recommends :—

- (1) That witnesses be called at the discretion of the Commission and examined on the following subjects, viz. :—
 - (i) Land Tenure.
 - (ii) Marriage Laws and Customs : Succession and Inheritance.
 - (iii) Local Self-Government.
 - (iv) Franchise.
 - (v) Native Labour.
 - (vi) Education, Religion and Industrial Training.
 - (vii) Native Laws and Administration.
 - (viii) Taxation.
 - (ix) Liquor Prohibition.
- (2) That application be made to the Secretary to the Prime Minister for the attendance of official witnesses, and that the expenses of all witnesses from the Cape Colony be paid at the tariff rate adopted by the Cape House of Assembly.
- (3) That the Chairman be authorised to arrange for a legal practitioner to draw up a comparative statement of the principles of the different laws now in force affecting Natives in the several States in South Africa.
- (4) That all witnesses from the Cape Colony be called to and heard in Cape Town.
- (5) That the Commission shall sit at certain points to be selected in other territories for the purpose of hearing evidence.
- (6) That a circular letter be sent to the various Governments inviting replies to questions on Native affairs from such officials and others as may be deemed desirable.

After discussion,

Resolved,—That the Commission proceed to the consideration of the report seriatim. On Clause (1) sub-section (i), the Chairman, in reply to Mr. Thompson, stated that it was competent under this clause to suggest witnesses.

After discussion,

This sub-section put and agreed to.

Sub-section (ii) put and agreed to.

On sub-section (iii), resolved,—That this clause should read “Administration of Local Affairs.”

Sub-sections (iv) and (v) put and agreed to.

On sub-section (vi), resolved,—To insert after the word “religion” in parenthesis “its influence on the character and well-being of the Natives.”

Sub-section (vii) having been put, resolved,—That this clause read as follows :—“Laws affecting Natives and their Administration. Tribal System.”

On sub-section (viii), resolved,—to add the following sub-divisions :— (a) Direct ; (b) Indirect (with regard to the consumption of dutiable goods) and other contributions.

On sub-section (ix), resolved,—To omit “Prohibition” and substitute “Traffic.”

On the suggestion of the Chairman it was resolved,—That the following be a new sub-section :—“The Status and Condition of the Native ; his Earning Power and Resources.”

Mr. Samuelson having brought up the question of the definition of the word “Native,” the Chairman requested the Delegates to furnish the Secretary with the various definitions of the word obtaining in the several States they represent, in order that the subject may be brought up for discussion at an early date.

Clause (2) was amended to read as follows :—“That application be made to the Secretary to the Prime Minister for the attendance of official witnesses, and that the expenses of all witnesses heard in the Cape Colony whilst the Commission is sitting therein be paid at the tariff rate adopted by the Cape House of Assembly.”

Clause (3) was then put and agreed to.

Clauses (4) and (5) put and negatived.

Clause (6) put.

Discussion ensued.

Resolved,—That clause (6) (now clause 4) read as follows :—

That a circular of questions be prepared, to be sent to whom the Commission may select and supplied to whoever may apply for it, and that the gist of such circular be made public.

The Chairman instructed the Secretary to arrange for the registration of all replies to the above-mentioned circular and that summaries of such replies be made for the information of members.

The recommendations by the Sub-Committee as amended were adopted as follows :—

- (1) That the following be the subject-heads under which witnesses are to be examined :
 - (i) Land Tenure.
 - (ii) Marriage Laws and Customs, Succession and Inheritance.
 - (iii) Administration of Local Affairs.
 - (iv) Franchise.
 - (v) Native Labour.
 - (vi) Education, Religion (its influence on the character and well-being of the Natives) and Industrial Training.
 - (vii) Laws affecting Natives and their Administration. Tribal system.
 - (viii) Taxation : (a) Direct. (b) Indirect (with regard to the consumption of dutiable goods) and other contributions.
 - (ix) Liquor Traffic.
 - (x) The Status and Condition of the Native. His Earning Power and Resources.
 - (2) That application be made to the Secretary to the Prime Minister for the attendance of official witnesses, and that the expenses of all witnesses heard in the Cape Colony whilst the Commission is sitting therein be paid at the tariff rate adopted by the Cape House of Assembly.
 - (3) That the Chairman be authorised to arrange for a legal practitioner to draw up a comparative statement of the principle of the different laws now in force affecting Natives in the several States in South Africa.
 - (4) That a circular of questions be prepared, to be sent to whom the Commission may select and supplied to whoever may apply for it, and that the gist of such circular be made public.
4. Resolved,—That the same Sub-Committee frame the schedule of questions and submit them for the approval of the Commission.
5. Mr. Stanford then withdrew the 1st motion of the 29th ult., standing in his name, viz., to consider the question of the sale and supply of liquor to Natives.
6. The Commission then proceeded with the examination of witnesses.
- Mr. Edwards Ebenezer Dower (Chief Clerk in the Native Affairs Department, Cape Colony), examined. *Together in Excellence*
- The Commission rose at 4 p.m.

2nd October, 1903.

1. All the Members of the Commission were present.
2. The minutes of the previous meeting were read and confirmed with certain amendments.
3. Resolved,—That copies of all reports by Sub-Committees be laid before Members of the Commission.
4. Resolved,—That for the purpose of taking evidence in the Cape Colony, the Committee sit at the following centres, viz., Cape Town, Kimberley, King William's Town and Umtata.
5. Resolved,—That the Cape Delegates, Messrs. Stanford and Thompson, be asked to furnish the Commission with a list of witnesses in the Cape Colony to be examined, such list to be open to addition by any Member of the Commission.
6. Resolved,—That Tuesday, 6th inst., be set aside for the purpose of considering the schedule of questions to be submitted by the Sub-Committee appointed on the 1st instant.
7. Examination of witnesses :
Mr. Edwards Ebenezer Dower, further examined.
The Commission rose at 4 p.m.

7th October, 1903.

1. All the Members of the Commission were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Chairman stated that the Sub-Committee appointed to draft the schedule of questions for circulation was unable to complete its work yesterday, but would continue at intervals so as not to interfere with the general work of the Commission.
4. The Cape Colony Delegates, Messrs. Stanford and Thompson, submitted and laid on the table a list of names of persons to be called to give evidence before the Commission at Cape Town.
5. Examination of witnesses :

Mr. E. E. Dower, further examined and put in :—

Comparative Tabular Statement showing the number of Registered Voters in the several Electoral Divisions of the Colony of the Cape of Good Hope, in the years 1899 and 1903, and giving Race Statistics (except in regard to Cape Town) for 1903.

Mr. C. J. Sweeney, Resident Magistrate, Malmesbury, examined.

The Commission rose at 4 p.m.

8th October, 1903.

1. All the Members of the Commission were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :

Mr. C. J. Sweeney, further examined.

Mr. Cornish Bowden, 2nd Assistant Surveyor-General, examined and put in copies of title deeds to allotments issued to Natives in Native Territories and other parts of South Africa.

Mr. N. Adams Lowe, Superintendent Native Location, Docks, Cape Town, examined.

The Commission rose at 4.10 p.m.

9th October, 1903.

1. All the Members of the Commission were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :

Mr. J. G. B. Heyneman, Acting Master of the Supreme Court, Cape Colony, examined.

Mr. J. B. Moffat, Civil Commissioner and Resident Magistrate, Middelburg, Cape Colony, examined.

Dr. T. Muir, C.M.G., LL.D., M.A., F.R.S., Superintendent-General of Education, Cape Colony, examined.

The Commission rose at 4.30 p.m.

12th October, 1903.

1. All the Members of the Commission, with the exception of Mr. Jacobz, were present.

2. The minutes of the previous meeting were read and confirmed.

3. The Sub-Committee appointed to draft a schedule of questions for circulation proceeded to present its report. After some discussion it was resolved to defer the consideration of this report and proceed with the examination of witnesses.

4. Examination of witnesses :

The Rev. J. J. McClure, of the Presbyterian Church, examined.

Mr. A. J. Robb, Assistant General Manager of Railways, examined.

The Venerable Archdeacon Lightfoot, examined.

5. Consideration of the Sub-Committee's report on draft schedule of questions was resumed, and the following adopted :—

- (1) With what Natives or Native tribes are you familiar? How long have you resided in South Africa?
- (2) What is your knowledge or experience of the employment or control of Natives or the administration of Native affairs?
- (3) Describe briefly the condition of land tenure obtaining among the Natives with whom you are best acquainted. What are your views on the land question as affecting the Natives? Do you favour the communal or individual system of land tenure? State your reasons for the views you hold.
- (4) State the laws and customs in regard to marriages obtaining among the Natives with whom you are best acquainted. Should the State recognise such marriages? If so, to what extent, and for what reasons? What are the influences upon the moral character, industry, and progress of the Natives (men and women) of
 - (a) Polygamy;
 - (b) The customs connected with Native marriages known as "ilobolo," "ikazi," and "bohadi"?
- (5) What are the existing laws of Native succession and inheritance with which you are acquainted? Are they satisfactory? If not, what changes do you suggest?

- (6) Is there in operation any special system, apart from tribal organisation, by which the Native people with whom you are acquainted administer their local affairs? If so, please describe it, and say with what results it operates. Suggest changes if you think any advisable.
 - (7) Are the Natives you are dealing with in these answers eligible to qualify as Parliamentary electors? If so, do Native voters exercise their rights intelligently and independently? Please state whether you are in favour of Parliamentary and municipal franchise for Natives, and if so, subject to what qualifications (property, wages and educational). Give your reasons.
 - (8) Is difficulty experienced in procuring a sufficient supply of Native labour? If this difficulty exists, is it diminishing or increasing, and, in your view, from what causes? Is farming or any local industry at present suffering from want of labour or from the cost of same? What are the rates of wages in the various classes of labour? Can the labour supply be increased by a change in the rate of wages?
 - (9) (a) What has been the effect of the education of Natives in respect to
 - (i) Industrial habits.
 - (ii) General usefulness.
 How far is industrial training desirable? What should it comprise? To what extent and for what reasons do you think education should be encouraged or supported by the State? What is your opinion of State-aided or other systems of education with which you are acquainted?
 - (b) What influence has the teaching of the Christian religion exercised upon the Native mind and character? Has it tended to advance their material welfare?
 - (10) In what respects do you consider the laws affecting Natives and their administration are faulty, and in what ways can you suggest amendment? If you are acquainted with the workings of any tribal systems state their advantages or disadvantages, and the extent to which Government recognition and support should be given?
 - (11) (a) Does the Native contribute fairly by direct and indirect taxation towards the State?
 - (b) What goods does he consume, and what does he contribute in forms other than taxation?
 - (12) Are you in favour of the total prohibition of the sale and supply of alcoholic liquors to Natives? Give your reasons.
 - (13) What is your opinion of
 - (a) The status and condition of the Native men and women compared with that of 20 years ago;
 - (b) Their present resources;
 - (c) Their earning power;
 - (d) Their cost of living?
 - (14) What, in your view, will, in future, become of the surplus Native population for which no reserved land may be available?
 - (15) Have you suggestions of a definite nature to offer on any other points?
7. Resolved,—That 100 copies of the foregoing circular of questions be sent to each of the Governments of the South African States, South of the Zambesi, with a request that these circulars be distributed to persons who, in the opinion of the authorities, are in a position to afford the Commission evidence of value.
- The Commission rose at 4.15 p.m.

13th October, 1903.

1. All the Members of the Commission, with the exception of Mr. Jacobz, were present.
 2. The minutes of the previous meeting were read and confirmed.
 3. Resolved,—That the Session of the Commission at Cape Town be closed not later than the 24th inst., and that on leaving Cape Town the Commission proceed to the Eastern Province of the Cape Colony.
 4. Examination of witnesses :
The Rev. W. Parkhurst, Principal Zonnebloem Native College, examined.
- The Commission rose at 1 p.m.

14th October, 1903.

1. All the Members of the Commission, with the exception of Mr. Jacobz, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The resignation of Mr. S. Jacobz, Delegate from the Orange River Colony, as a Member of the Commission, put in and accepted.

4. Examination of witnesses :

Sir Somerset French, K.C.M.G., Postmaster-General of the Cape Colony, examined, and put in :

- (1) Statement showing number of Savings Bank Accounts in names of Aboriginal Natives in the Cape Colony Proper and Native Territories (including Basutoland), the Amount to the Credit of such Accounts, the Average Value of each Account, the Largest Individual Account, and the Proportion of the Total to the Whole Sum Invested in the Post Office Savings Bank of the Cape Colony.
- (2) Statement of the Average Monthly Value of Money Orders issued and paid to Aboriginal Natives at the Principal Native Centres throughout the Cape Colony.

Bishop Coppin, of the African Methodist Episcopal Church, examined.

Dr. Jane Waterston, examined.

The Commission rose at 4 p.m.

15th October, 1903.

1. All the Members of the Commission were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :

The Rev. Father Bull, of Cape Town, examined.

The Rev. Allen Henry Attaway, of the African Methodist Episcopal Church, examined.

Canon Crisp, examined.

The Commission devoted the afternoon to visiting and inspecting the Ndabeni Location known as Uitvlugt at Maitland.

16th October, 1903.

1. All the Members of the Commission were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Secretary read a telegram from his Excellency the High Commissioner, notifying his approval of the appointment by the Lt. Governor of the Orange River Colony of Mr. J. B. de la Harpe as a Delegate to the Commission to replace Mr. S. Jacobz resigned.

4. Examination of witnesses :

Mr. W. R. Quinan, General Manager of De Beers Dynamite Factory, Somerset West Strand, examined.

Rev. Elijah Mdolomba, William Sipika, Ebenezer Makubalo, and William Tshefu, examined.

The Commission rose at 4 p.m.

19th October, 1903.

1. All the Members of the Commission were present.
2. The minutes of the previous meeting were read and confirmed.
3. William Alfred Roberts and William George Herbert, two representative coloured men from the Cape Peninsula, were presented before the Commission and were asked a few questions chiefly concerning their own position.
4. Resolved,—That Monday, the 2nd November, be the day upon which the Commission will meet for business at King William's Town.

5. Examination of witnesses :

Mr. H. W. Struben, examined.

Mr. P. R. Rabie, examined.

Mr. F. Z. Peregrino, examined.

The Commission rose at 4.30 p.m.

20th October, 1903.

1. All the Members of the Commission were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Chairman informed the Commission as to how far he had been able to arrange to obtain a comparative digest of South African legislation regarding Natives and Native affairs, and it was resolved :—

- (1) That the Chairman be requested to conclude arrangements with a legal practitioner for the purpose of obtaining a compendium with comparative notes of laws and regulations affecting Natives and Native administration in Southern Africa, and a digest of franchise laws in any country where two distinct races were provided for.
- (2) That a sum not exceeding three hundred guineas be approved provisionally for payment of fees: the ultimate charge, however, to be determined upon assessment of the value of the work.
4. Letter, dated October 17th, from the Postmaster-General, on the subject of Native Savings Bank Accounts and Native Linemen, was put in.
Letter from Mr. Oscar Roberts, of Springs, Transvaal, on Native labour question, was put in.
5. Examination of witnesses:
The Rev. J. Weeber, examined.
The Rev. H. Kling, examined.
The Commission rose at 1 p.m.

21st October, 1903.

1. All the Members of the Commission were present.
2. The minutes of the previous meeting were read and confirmed.
3. A memorandum showing the main points of difference between the land tenure system under Cape Colony Act 40 of 1879 and the Glen Grey Act, was read by the Secretary and laid on the table.
Resolved,—That a copy of the memorandum be supplied to each member of the Commission.
4. Examination of witnesses:
The Rev. J. C. Roux, examined.
Rev. Mdolomba and others, examined.
Mr. P. R. Malleson, examined.
The Commission rose at 4 p.m.

University of Fort Hare
Together in Excellence

22nd October, 1903.

1. All the Members of the Commission were present.
2. Minutes of the previous meeting read and confirmed.
3. Examination of witnesses:
Mr. J. D. A. Visser, examined.
Rev. Mdolomba and others, examined.
Hon. J. X. Merriman, examined.
The Commission rose at 4 p.m.

23rd October, 1903.

1. All the Members of the Commission were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses:
The Rev. Mdolomba and others, examined.
Mr. W. E. Wright, Assistant Resident Magistrate of Ndabeni Location, Uitvlugt, Cape Town, examined and put in copies of Regulations Nos. 112 and 214 of 1903, framed under Cape Colony Proclamation No. 40 of 1902.
The Commission rose at 4 p.m. and adjourned to re-assemble at King William's Town on the 2nd November.

KING WILLIAM'S TOWN, 2nd November, 1903.

1. The Commission met in the Drill Hall, King William's Town.
All the Members of the Commission, with the exception of Sir Thomas Scanlen, Col. Stanford, and Capt. Quayle Dickson, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses:
Mr. R. J. Dick, Special Magistrate, King William's Town, examined.
The Commission rose at 4 p.m.

3rd November, 1903.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, Col. Stanford, and Capt. Quayle Dickson, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
Mr. R. J. Dick, Special Magistrate, King William's Town, examination continued.
The Commission rose at 4 p.m.

4th November, 1903.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, Col. Stanford, and Capt. Quayle Dickson, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
Nathaniel Umhalla, Native Headman, examined.
The Commission rose at 3.15 p.m.

5th November, 1903.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
Native Headman Dom Toise and others, examined.
William Seti, Native Clerk in the Special Magistrate's Court, King William's Town, examined.
The Commission rose at 4 p.m.

6th November, 1903.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Secretary laid before the Commission and read a letter, dated the 6th November, 1903, from the Secretary, South African Native Congress, covering certain resolutions passed at an extraordinary meeting of representative Natives of the Eastern Province held on the 5th instant and requesting that the said resolutions be forwarded to His Excellency the High Commissioner.

Discussion ensued.

Mr. Samuelson moved,—That the receipt of this letter be acknowledged, and that the deputation be informed that the Commission regrets its inability to pursue the course suggested therein, and that the best means of attaining the object they have in view would be to address their communication to His Excellency the High Commissioner through the proper channel.

Col. Stanford moved as an amendment,—That the deputation be allowed to come before the Commission, and that they be informed that the letter addressed to the Commission will be forwarded to the Governor of the Cape Colony, to whom they should, in the first instance, have directed the same, in view of their opinion that the constitution of the Commission does not sufficiently meet their requirements.

After discussion, the amendment by Col. Stanford was put, and there voted :

For.	Against.
Col. Stanford.	All the other Members (Mr. Thompson being absent through illness).

The motion proposed by Mr. Samuelson was then put and carried.

Mr. Sloley moved, and it was resolved,—That the Chairman receive and address the deputation in terms of the letter which is to be forwarded in accordance with the spirit of the resolution proposed by Mr. Samuelson.

4. Examination of witnesses :
Mr. L. G. Tainton, Inspector of Native Locations, Keskama Hoek, examined.
Mr. J. G. Verity, A.R.M., Middledrift, examined.
The Commission rose at 4 p.m.

10th November, 1903.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.

3. The Commission by the Lieut.-Governor of the Orange River Colony, appointing Mr. J. B. de la Harpe a Delegate to the Commission of that Colony, was presented and laid on the table.

4. After a general discussion on the subject of the immediate future work and movements of the Commission, the examination of witnesses was proceeded with :

Mr. G. Whitaker, general merchant, King William's Town, examined.

Rev. P. K. Kawa, Native Missionary, examined.

Mr. R. W. Rose-Innes, solicitor, examined.

The Commission rose at 4 p.m.

11th November, 1903.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.

2. The minutes of the previous meeting were read and confirmed.

3. Examination of witnesses :

Mr. R. W. Rose-Innes, examination continued.

Mr. F. H. Ely, Inspector of Schools, examined.

The Rev. W. Stuart, Missionary, Free Church of Scotland, examined.

Mr. D. A. Hunter, of Lovedale Native Institution, examined.

The Commission rose at 4.10 p.m.

12th November, 1903.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.

2. In the temporary absence of the Chairman, Mr. Sloley was voted to the chair.

3. The minutes of the previous meeting were read and confirmed.

4. Examination of witnesses :

Mr. D. A. Hunter, examination continued.

5. At the conclusion of the examination of Mr. Hunter the Chairman took his seat.

6. The Rev. J. Harper, Missionary, Brownlee Mission Station, King William's Town, examined.

The Rev. J. Dwane, Ethiopian Order, examined.

The Commission rose at 3.40 p.m.

13th November, 1903.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.

2. The minutes of the previous meeting were read and confirmed.

3. Mr. Sloley drew the attention of the Commission to a paragraph in the "East London Dispatch" of the 13th November, in which the following comment upon the facilities by which Natives obtain liquor in large quantities is reported to have been made by the Honourable Mr. Justice Hopley in addressing the Jury at the conclusion of the Criminal Sessions at Kimberley, in November, 1903 : "So long as no restrictions were in force, so long would crimes of violence continue."

4. Examination of witnesses :

Joseph Tele, Headman of the Amagqunukwebe tribe, Middledrift, examined.

The Commission rose at 4 p.m.

16th November, 1903.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.

2. The minutes of the previous meeting were read and confirmed.

3. Resolved,—To recommend that the Secretary should, if practicable, be available during the recess for duties connected with the Commission and that the Chairman be asked to arrange accordingly.

4. Examination of witnesses :

J. Tengu Jabavu, editor of "Imvo," examined.

Mr. Robert Crowe, Debe Nek, examined.

Mr. R. J. Dick, Special Magistrate, King William's Town, examination continued.

The Commission rose at 4 p.m.

17th November, 1903.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.

2. The minutes of the previous meeting were read and confirmed.

3. Examination of witnesses :

Mr. R. P. Edmonds, farmer, Stutterheim District, examined.
 Mr. John Landrey, senr., farmer, King William's Town District, examined.
 Mr. E. Rein, Acting Registrar of Deeds, King William's Town, examined.
 The Commission rose at 12.45 p.m.

18th November, 1903.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
 The Rev. P. Mzimba, Moderator of the Native Presbyterian Church, examined.
4. At 12 noon the Commission proceeded to inspect the King William's Town Municipal Native Locations.

19th November, 1903.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
 Dr. W. A. Roberts, Acting Superintendent Lovedale Institution, examined.
 Mr. S. H. Roberts, Chief Inspector of Locations, Cape Colony, examined.
 The Commission rose at 1 p.m.

23rd November, 1903.

The Commission, with the exception of Sir Thomas Scanlen and Mr. Thompson, proceeded to Lovedale to inspect the Native Training Institution at that place.

24th November, 1903.

The Commission as above, on its return from Lovedale, inspected Mavuso's Location in the sub-district of Middelrift.

25th November, 1903.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the 19th, 23rd and 24th November were read and confirmed.
3. Owing to the non-appearance of the witness, Mr. Robert Warren, farmer, of Kei Road, to give evidence, the Commission rose at 10.30 a.m. and proceeded subsequently to East London to examine further witnesses and inspect the local Municipal Native Locations.

EAST LONDON, 26th November, 1903.

1. The Commission met in the Municipal Chamber, East London.
2. All the Members of the Commission, with the exception of Sir Thomas Scanlen and Col. Stanford, were present.
3. The minutes of the previous meeting were read and confirmed.
4. Examination of witnesses :
 Mr. C. O. Lloyd, Superintendent East London Municipal Native Locations, examined.
 The Commission rose at 12.15 p.m.

27th November, 1903.

The Commission inspected the East London Municipal Native Location.

30th November, 1903.

The Commission, with the exception of Sir Thomas Scanlen and Mr. J. C. Krogh, who was absent through illness, proceeded from Queenstown to Lady Frere, inspecting en route the Native allotments of ground under the Glen Grey Act.

LADY FRERE, 1st December, 1903.

1. The Commission met in the Court-house, Lady Frere.
All the Members of the Commission, with the exception of Sir Thomas Scanlen and Mr. J. C. Krogh, were present.
2. The Commission examined the books kept in connection with allotments held under the Glen Grey Act.
3. Examination of witnesses :
Mr. D. N. During, chief clerk to the C.C. and R.M., Lady Frere, examined.
Mr. F. C. Garstin, Acting C.C. and R.M., Lady Frere, examined and put in :
 - (i) Return of Title Deeds Cancelled under Glen Grey Act between the years 1896 and 1901.
 - (ii) Copy of letter to Secretary, Native Affairs Department, Cape Town, dated 6th May, 1903, on the "Working of Location Boards in the Glen Grey Division."
 - (iii) Copy of Report on Recommendations and Suggestions of Select Committee on Glen Grey Act, dated 14th October, 1903.
- Major Musgrave, Inspector of Locations, Lady Frere, examined.
- The Commission adjourned at 10.36 p.m.

2nd December, 1903.

1. The Commission, with the exception of Sir Thomas Scanlen and Mr. J. C. Krogh, proceeded from Lady Frere to Mount Arthur, where they inspected the Native garden allotments, and examined :
The Rev. D. B. Davis, Wesleyan Missionary, stationed at Mount Arthur.
2. On returning to Lady Frere, the examination of witnesses was continued :
Mr. G. F. Golding, farmer, Glen Grey District, examined.
Mr. E. Parker, trader, Lady Frere, examined.
3. Minutes of proceedings of 26th, 27th, 30th November, and of 1st December, were read and confirmed.
4. Resolved,—That page 99 of the Native Affairs Blue Book for 1903 (Revenue and Expenditure Glen Grey District Council) be printed as an annexure to the evidence.
The Commission rose at 5.10 p.m.

QUEENSTOWN, 4th December, 1903.

1. The Commission met in the Municipal Chamber, Town Hall, Queenstown.
All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission then considered and adopted the Interim Report.
4. After discussion,
Resolved,—That the Commission re-assemble at Kei Road, Cape Colony, on the 15th February next, for the purpose of proceeding to the Transkeian Territories.
The Commission closed the Session at 3 p.m.

SECOND SESSION.*BUTTERWORTH, 15th March, 1904.*

1. The Commission re-assembled and opened its second Session at Butterworth, in the Transkei, at 9.30 a.m.
All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
Mr. E. Gilbert Hall, surveyor, examined.
4. A meeting with the Chiefs, Headmen and representatives of the Fingo, Gaika and Gcaleka tribes living in the Butterworth, Nqamakwe, Willowvale and Kentani Districts was then held. Col. Stanford having introduced the Natives to the Commission, the Chairman addressed them, explaining the genesis, constitution and objects thereof, and inviting their representatives to speak on any of the subjects under consideration.
The following Natives thereupon addressed the Commission :
Veldman, Chief of the Fingos, Butterworth District.
Solomon Zazela, Headman of the Fingos, Nqamakwe District.
Mendinxiwa, Chief of the Gcalekas, Willowvale District.
Edmund Sandili, Chief of the Gaikas, Kentani District.
Mr. Martin William Liefeldt, R.M., Willowvale, Mr. William Brownlee, R.M., Butterworth, and Mr. Newton O. Thompson, R.M., Kentaui, were examined.
The Commission adjourned at 4.58 p.m.

16th March, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
Messrs. Liefeldt, Brownlee and Thompson, further examined.
The Rev. D. Stormont, Superintendent Blythswood Institution ;
Col. Henley, lawyer ;
Mr. M. Daly, general dealer and labour agent :
George Pamla, Native labour agent: were examined.
The Commission adjourned at 5.5 p.m.

UMTATA, 21st March, 1904.

1. The Commission assembled in the Chief Magistrate's Court, Umtata, at 9.30 a.m.
All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
Enoch Mamba, Native labour agent ;
Mr. Arthur William Heywood, Conservator of Forests, Transkei ;
Mr. A. W. Scott, Ex-Chief Magistrate, Pondoland ;
Mr. Thomas Lowry, general merchant, Umtata : were examined.
The Commission adjourned at 1.30 p.m.

22nd March, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
Mr. Robert Heathcote, lawyer, Umtata ;
Mr. Theodorus Kriel, farmer, Umtata :
Mr. William Waddell, butcher and ex-newspaper editor, Umtata ;
Mr. L. Dillon, Accountant to Chief Magistrate, Transkei : were examined.
4. A meeting with the Chiefs, Headmen and representatives of the Tembu and Pondo tribes, and of the Natives of Qumbu and Tsolo districts, was held. Colonel Stanford having introduced the Natives to the Commission, the Chairman addressed them in similar terms to those addressed to the Natives of Butterworth on the 15th instant.
Dalindyebo, Chief of the Tembus, Aaron Njikelana, Headman, Qumbu District, Umtshazi, Chief of the Pandomisi, Tsolo district, and Jikajika, Councillor of Western Pondoland, respectively requested that they should be afforded ample time wherein to consider the subjects upon which their opinions may be invited, and the Chairman asked them to consider the questions of land tenure, marriage laws, inheritance and succession, and liquor, and submit their views thereon to the Commission through their Chief Magistrate.

The Commission adjourned at 1 p.m. to proceed to Kokstad.

KOKSTAD, 28th March, 1904.

1. The Commission assembled at the Municipal Buildings, Kokstad, at 9.30 a.m.
All the Members of the Commission, with the exception of Col. Stanford and Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
Mr. Donald Strachan, farmer and general trader and Justice of the Peace, Umzimkulu, examined.
The Commission adjourned at 4 p.m.

29th March, 1904.

1. All the Members of the Commission, with the exception of Col. Stanford and Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
Mr. G. F. C. Humphrey and Mr. W. W. Pringle, farmers and representatives of Farmers' Congress, Kokstad ;

Mr. A. D. King, farmer, East Griqualand ;
 Mr. T. Coulter, Mayor of Kokstad, merchant ;
 Rev. C. Pamla, Native Wesleyan Missionary ;
 Mr. P. W. Leech, Chief Detective, East Griqualand ; were examined.
 The Commission rose at 4.30 p.m.

30th March, 1904.

1. All the Members of the Commission, with the exception of Col. Stanford and Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
 Mr. W. P. Leary, Magistrate, Mount Frere ;
 Rev. P. Hargreaves, Wesleyan Missionary, Kokstad ;
 George Moshesh, Basuto Chief, Matatiele District ;
 Major H. Sprigg, Magistrate, Bizana District ; were examined.
 The Commission rose at 4.30 p.m.

31st March, 1904.

1. Present : Messrs. F. R. Thompson, S. O. Samuelson, J. B. de la Harpe, J. C. Krogh, and H. C. Sloley.
 In the absence of the Chairman, Mr. H. C. Sloley was voted to the Chair.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
 Mr. J. C. Hargreaves, Magistrate, Mount Fletcher District ;
 Moiketsi, Chief of Bakwena Tribe, Johannesburg, Chief of Hlubi Tribe, Scanlen Lihana, Chief of Bahlokwa Tribe (Mount Fletcher District) ; Umsingapantsi, Baca Chief, Pata and Bakha, Hlangweni Chiefs (Umzimkulu District) ; Mngcisana and Rolobile, Baca Chiefs (Mount Frere District) ; Mfundisi, Xesibe Chief (Mount Ayliff District) ;
 C. G. de Bruin, Griqua, Kokstad ; were examined.
 The Commission adjourned at 4.35 p.m. to proceed to Pietermaritzburg, Natal.

University of Fort Hare
 PIETERMARITZBURG, 7th April, 1904.
Together in Excellence

1. The Commission met in the Municipal Chamber, Town Hall, Pietermaritzburg.
2. All the Members of the Commission, with the exception of Col. Stanford and Sir Thomas Scanlen, were present.
3. The minutes of the previous meeting were read and confirmed.
4. A telegram was read from Col. Stanford, one of the Delegates of the Cape Colony, dated April 5th, intimating that he would be unable to attend the sittings of the Commission for a considerable time, as he was detained in Cape Town on official business.

Resolved,—(a) That the Commission put on record their feeling of regret and disappointment at the temporary withdrawal of Col. Stanford, which they feel to be a grave loss to and a distinct weakening of the Commission and their hope that arrangements may be at once made by the Cape Government to enable Col. Stanford to continue his work on the Commission.

(b) That Mr. Thompson, the remaining Cape Delegate, be asked to forward a copy of this resolution to his Government.

(c) That the Chairman be asked to represent the matter to His Excellency the High Commissioner.

5. The continued absence of Sir Thomas Scanlen, the Delegate for Rhodesia, was brought to the notice of the Commission.

It was reported that Sir Thomas Scanlen had not been present at the sitting of the Commission since the 24th October last, and it was resolved :—

(a) That the Commission put on record their feelings of regret at the prolonged absence of Sir Thomas Scanlen and their hope that he may now be able to resume his work on the Commission.

(b) That a copy of this resolution be forwarded to Sir Thomas Scanlen for communication to his Government.

(c) That the Chairman be asked to represent the matter to His Excellency the High Commissioner.

6. Examination of witnesses :

Mr. S. Harrison, Assistant Under Secretary for Native Affairs, Natal, examined.
 The Commission rose at 3.15 p.m.

8th April, 1904.

1. All the Members of the Commission, with the exception of Col. Stanford and Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
Mr. S. Harrison, further examined, and put in return showing labour obtained from Natives under Section 36 Law 19 of 1901.
Mr. Justice Beaumont, Judge of the Supreme Court, Natal, examined.
The Commission rose at 4.5 p.m.

11th April, 1904.

1. All the Members of the Commission, with the exception of Col. Stanford and Sir Thomas Scanlen, were present.
The Chairman intimated that Mr. Thompson, owing to indisposition, would not be able to attend.
2. The minutes of the previous meeting were read and confirmed.
3. The Secretary read and laid upon the table :
 - (a) Letter of April 8th, from Mr. G. F. Plowman, *in re* visit by Commission to Nels Rust.
 - (b) Telegram dated 8th April from Private Secretary to Prime Minister, Cape Town, to Mr. Thompson, on the subject of Col. Stanford's absence from the Commission.
 - (c) Telegram dated 9th April from Sir Thomas Scanlen on the subject of his absence from the Commission.
 - (d) Letter dated 8th April from the Secretary, Natal Mine Managers' Association, offering evidence.
 - (e) Letter from Mr. R. W. Rose-Innes, dated April 3rd, regretting his inability to forward copies of his pamphlet on the Native Question for the use of the Commission.
4. Examination of witnesses :
Mr. S. Harrison, further examined, and put in Return of Native Births and Deaths for 1903 ; Return showing number of Native Huts, Kraals and Population.
Mr. J. Y. Gibson, Resident Magistrate, Pietermaritzburg, examined.
The Commission rose at 4.50 p.m.

12th April, 1904.

1. All the Members of the Commission, with the exception of Col. Stanford, Sir Thomas Scanlen and Mr. Thompson, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Mr. Hamilton introduced the subject of the admission of certain Press representatives to the sittings of the Commission, and notified his intention to bring forward a resolution thereupon on Friday next, the 15th instant.
4. It was resolved to set apart Wednesday afternoons in every week for deliberation upon the work of the Commission.
5. Examination of witnesses :
Mr. J. W. Shepstone, C.M.G., ex-Secretary for Native Affairs, and Judge of the Native High Court, Natal ;
Mr. H. C. Shepstone, C.M.G., ex-Secretary for Native Affairs, Natal ; were examined.
The Commission rose at 4.20 p.m.

13th April, 1904.

1. All the Members of the Commission, with the exception of Col. Stanford, Sir Thomas Scanlen, and Mr. Thompson, were present.
The Chairman also was absent through indisposition.
Mr. Sloley was voted to the Chair.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
Mr. G. A. de R. Labistour, Attorney-General, Natal, examined.
Mr. J. W. Shepstone, C.M.G., further examined.
4. The Secretary read a note from the Chairman, intimating that he had been summoned to Pretoria on urgent official business, and would be absent during the early part of the coming week.
The Commission rose at 4 p.m.

14th April, 1904.

1. All the Members of the Commission, with the exception of Col. Stanford, Sir Thomas Scanlen, and Mr. Thompson, were present.

The Chairman being absent, Mr. Sloley was voted to the Chair.

2. The minutes of the previous meeting were read and confirmed.

3. The Secretary read :

(a) Letter from the Acting Chief Magistrate, Transkeian Territories, dated Umtata, April 9th, covering replies by Pondos to certain questions put to them by the Commission at Umtata on 23rd March.

It was resolved that these replies be treated similarly to replies to circular questions.

(b) Letter from the Imperial Secretary, Johannesburg, dated April 9th, covering copies of telegrams from the High Commissioner, dated 9th April, to the Governor, Cape Town, and the Administrator, Southern Rhodesia, on the subject of the absence of Col. Stanford and Sir Thomas Scanlen from the sittings of the Commission.

4. Examination of witnesses :

Mr. H. C. Koch, Master of the Supreme Court, Natal ;

Mr. J. L. Masson, Surveyor-General, Natal ; were examined.

5. The Commission adjourned at 11 a.m. in order to attend, at the invitation of the Natal Legislature, the opening ceremony of the Natal Legislative Council and Assembly, and resumed its sitting at 12.30 p.m.

The Commission rose at 4.30 p.m.

15th April, 1904.

1. All the Members of the Commission, with the exception of Col. Stanford and Sir Thomas Scanlen, were present.

Owing to the absence of the Chairman, through indisposition, it was resolved that Mr. Sloley take the Chair until the Chairman was able to be present.

2. The minutes of the previous meeting were read and confirmed.

3. The Secretary read a telegram, dated 14th inst., from the High Commissioner to the Chairman relative to the appointment of an Acting Chairman during the projected temporary absence of Sir Godfrey Lagden from the Commission.

4. The Secretary was instructed to call for a return showing the number of private farms on which are established Native huts in excess of the number authorised by Section 6 of Natal Act No. 2 of 1855, and the number of such huts on each farm, the return to specify whether such farms are the property of Europeans or Natives, and in case of the former whether such farms are occupied by the landlord or not.

5. Resolved,—That Mr. Samuelson and Captain Dickson, with the Secretary, arrange, subject to approval by the Commission, for visiting a Native location, an European absentee landlord's farm occupied by Natives, and a location upon which irrigation works for the benefit of the Natives are to be found.

6. Mr. Hamilton moved,—That representatives of the Press be admitted to all sittings of the Commission at which evidence is taken, subject to the discretion of the Commission in particular cases.

After discussion there voted :

For the Motion.

Messrs. Hamilton, Thompson,
and Capt. Dickson.

Against the Motion.

Messrs. Sloley, Krogh, de la Harpe,
Campbell and Samuelson.

The motion was declared to be negatived.

7. Capt. Dickson notified that on Wednesday next, the 20th inst., he would move for discussion upon the movements of the Commission subsequent to the completion of its work in Natal.

8. The further examination of Mr. Justice Beaumont was postponed to enable the absentee members to be present thereat.

The Commission adjourned at 2.45 p.m.

18th April, 1904.

1. All the Members of the Commission, with the exception of Col. Stanford and Sir Thomas Scanlen, were present.

The Chairman being absent, Mr. Sloley took the Chair.

2. The minutes of the previous meeting were read and confirmed.

3. It was unanimously resolved that whenever the Chairman be absent from the Commission Mr. Sloley take the Chair.

4. Examination of witnesses :

Sir James Liege Hulett, M.L.A., tea planter and formerly Secretary for Native Affairs, examined.

The Commission rose at 4.15 p.m.

19th April, 1904.

1. All the Members of the Commission, with the exception of the Chairman, Col. Stanford and Sir Thomas Scanlen, were present.

Mr. Sloley in the Chair.

2. The minutes of the previous meeting were read and confirmed.

3. Resolved,—That the Commission do not sit on Friday, the 22nd inst., in order to enable the Members to accept the invitation by the Natal Minister of Agriculture to visit, with the members of the Natal Farmers' Conference, the Government Experimental Farm at Cedara.

4. Examination of witnesses :

Sir James Liege Hulett, M.L.A., further examined.

Sir Henry Elliot, K.C.M.G., Ex-Chief Magistrate of the Transkeian Territories, examined.

The Commission rose at 4 p.m.

20th April, 1904.

1. All the Members of the Commission, with the exception of the Chairman, Col. Stanford and Sir Thomas Scanlen, were present.

Mr. Sloley in the Chair.

2. The minutes of the previous meeting were read and confirmed.

3. The Secretary read a letter, dated 19th inst., from the Secretary to the Minister of Agriculture, detailing the arrangements made for the visit to the Government Experimental Farm.

4. Examination of witnesses :

Hon. F. R. Moor, M.L.A., farmer and ex-Secretary for Native Affairs, Natal, examined.

5. At the conclusion of the examination of the witness the Commission deliberated upon the following motion :—That at the conclusion of the Session in Natal the Commission do adjourn to meet in Pretoria on the 1st July next.

This was favourably received by the Commission, and the members, with a view to obtaining Sir Godfrey Lagden's views, appointed a Committee consisting of Messrs. Sloley, Thompson and Capt. Dickson to wait upon him and report.

6. Moved by Capt. Dickson :

(a) That the Secretary be instructed to communicate to the Press each day an *epitomé* of the proceedings of the Commission with a short *résumé* of the more important evidence laid before it.

(b) That the draft of the first proposed communication be laid before the Commission for approval.

In the course of discussion, Mr. Krogh pointed to the hour and the absence of a member and moved the adjournment, which was carried.

The Commission rose at 4.20 p.m.

21st April, 1904.

1. All the Members of the Commission, with the exception of the Chairman, Col. Stanford and Sir Thomas Scanlen, were present.

Mr. Sloley in the Chair.

2. The minutes of the previous meeting were read and, after amendment, confirmed.

3. The Committee appointed to interview Sir Godfrey Lagden reported that he concurred in the terms of the motion in regard to the adjournment of the Commission after the Session in Natal.

The motion,—That at the conclusion of the Session in Natal the Commission do adjourn to meet in Pretoria on the 1st July next,—was thereupon put and carried unanimously.

4. The following resolution standing in Capt. Dickson's name was thereupon put :

(a) That the Secretary be instructed to communicate to the Press each day an *epitomé* of the proceedings of the Commission with a short *résumé* of the more important evidence laid before it.

(b) That the draft of the first proposed communication be laid before the Commission for approval.

There voted :

For the motion.

Capt. Dickson, Messrs. Sloley,
Hamilton and Thompson.

Against the motion.

Messrs. Campbell, Samuelson,
Krogh and de la Harpe.

The Chairman recorded his casting vote against the motion, which was therefore negatived.

5. Resolved, upon the motion of Mr. Thompson,—That following upon the above resolution no communication whatever be made to the Press by any member or official of the Commission without consent of the Commission expressed by formal resolution.

6. Examination of witnesses :

Mr. P. A. Barnett, Superintendent of Education, Natal ;

Mr. R. Plant, Inspector of Native Education, Natal ; were examined.

The Commission rose at 4 p.m.

25th April, 1904.

1. All the Members of the Commission, with the exception of the Chairman, Col. Stanford and Sir Thomas Scanlen, were present.

Mr. Sloley in the Chair.

2. The minutes of the previous meeting were read and confirmed.

3. The Secretary read :

(a) Letter from Imperial Secretary, Johannesburg, dated 16th April, forwarding copy of telegram from the Governor, Cape Colony, on the subject of the absence of Col. Stanford from the Commission.

(b) Letter from Imperial Secretary, Johannesburg, dated 20th April, forwarding copy of telegram from the Administrator, Southern Rhodesia, respecting the absence of Sir Thomas Scanlen from the Commission.

(c) Letter from the Rev. J. Scott recommending that Mr. J. Marwick, of Richmond, be invited to give evidence before the Commission.

4. The Secretary laid on the table for perusal by Members :

(a) A letter, written 27th December, 1902, by Mr. J. W. Shepstone, C.M.G., to "The Natal Witness" on the Native Question.

(b) Copies of Minute by the Statistical Officer, Natal, giving an analysis of the Parliamentary voters in Natal.

5. Examination of witnesses :

Mr. A. Shepstone, C.M.G., Magistrate, Vryheid ;

Mr. A. P. Smith, ex-Clerk to the Natal Native Trust ; were examined.

6. Resolved,—That the Secretary be instructed to make arrangements for a visit by the Commission to Zululand along the line of railway to the terminus.

The Commission adjourned at 4 p.m.

26th April, 1904.

1. All the Members of the Commission, with the exception of the Chairman, Col. Stanford, Sir Thomas Scanlen and Mr. Hamilton, were present.

Mr. Sloley in the Chair.

2. The minutes of the previous meeting were read and confirmed.

3. Examination of witnesses :

Mr. C. W. B. Scott, solicitor, Maritzburg, Natal ;

Mr. E. A. O. Schwikkard, farmer, Newcastle, Natal ; were examined.

The Commission rose at 4 p.m.

27th April, 1904.

1. All the Members of the Commission, with the exception of the Chairman, Col. Stanford, Sir Thomas Scanlen and Mr. Hamilton, were present.

Mr. Sloley in the Chair.

2. The minutes of the previous meeting were read and confirmed.

3. Examination of witnesses :

Mr. G. M. Rudolph, C.M.G., ex-Magistrate, Natal, examined.

4. It was proposed by Capt. Dickson and carried unanimously,—That a Finance Committee be appointed, consisting of Messrs. Campbell, Thompson, Sloley, Hamilton and the mover, to examine the accounts of the Commission and report from time to time ; Mr. Sloley to be the convener.

Proposed by Mr. Samuelson and carried unanimously,—That no alteration in the date of re-assembly of the Commission in Pretoria as resolved on the 21st inst. be contemplated excepting at a meeting in Pretoria on the date determined upon for re-assembly.

5. The Commission deliberated upon the evidence heard and rose at 4 p.m.

28th April, 1904.

1. All the Members of the Commission, with the exception of the Chairman, Col. Stanford, Sir Thomas Scanlen and Mr. Hamilton, were present.

Mr. Sloley in the Chair.

2. The minutes of the previous meeting were read and confirmed.

3. Examination of witnesses :

Hon. C. D. Uys, M.L.C., farmer, Natal ;

Hon. C. J. Labuschagne, M.L.C., farmer, Natal ;

Mr. A. K. Murray, farmer, Natal ; were examined.

The Commission adjourned at 3.40 p.m.

29th April, 1904.

1. All the Members of the Commission, with the exception of the Chairman, Col. Stanford, Sir Thomas Scanlen, Mr. Krogh and Mr. Hamilton, were present.

2. The minutes of the previous meeting were read and confirmed.

3. The Sub-Committee appointed on 15th inst. to arrange for visiting certain locations, etc., recommended,—That Table Mountain be visited on the day after completing the taking of evidence in Maritzburg, and that the question of visiting the irrigation works be discussed at the completion of the Commission's work in Durban.

4. The Secretary read a letter, dated 27th inst., from the Attorney-General, Natal, requesting a copy of the evidence given by him before the Commission for perusal by the Natal Minister of Justice.

Moved by Mr. Thompson and seconded by Mr. Samuelson :

That the Attorney-General be informed that his request cannot be complied with.

During discussion upon the motion the Acting Chairman pointed out that the members present did not constitute a quorum and consideration thereon was postponed.

5. Examination of witnesses :

Mr. Justice Boshoff, Judge of Natal Native High Court ;

Hon. E. A. Brunner, M.L.A., Eshowe, Zululand ;

Rev. J. Scott, Missionary, United Free Church of Scotland, Impolweni, Natal ; were examined.

The Commission rose at 4 p.m.

University of Fort Hare
Together in Excellence
2nd May, 1904.

1. All the Members of the Commission, with the exception of the Chairman, Col. Stanford and Sir Thomas Scanlen, were present.

Mr. Sloley in the Chair.

2. The minutes of the previous meeting were read and confirmed.

3. Resolved,—That the Commission visit Table Mountain on the day after the completion of evidence taken in Maritzburg, and that the question of the visit to the irrigation works be considered during the Session at Durban.

4. Examination of witnesses :

Mr. H. Wiltshire, M.L.A., Representative of the Mine Managers' Association, Natal ;

The Hon. Justice Finmore, Judge Supreme Court, Natal ;

Miss H. E. Colenso, Missionary, Natal ; were examined.

The Commission rose at 4.45 p.m.

3rd May, 1904.

1. All the Members of the Commission, with the exception of the Chairman, Col. Stanford and Sir Thomas Scanlen, were present.

Mr. Sloley in the Chair.

2. The minutes of the previous meeting were read and confirmed.

3. The Secretary read and laid on the table :

(a) Letter, dated 25th April, from the Accountant to the Chief Magistrate, Transkeian Territories, covering list of Transkeian Magistracies, with dates of last registration made at each for the purpose of hut-tax collection.

(b) Letter, dated 27th April, from the Accountant to the Chief Magistrate, Transkeian Territories, enclosing list of Transkeian Chiefs and Headmen, with the respective subsidies paid to them annually by Government.

4. Capt. Dickson notified that on Wednesday, 4th inst., he would move :

That in future no motion be brought forward except as an unopposed motion, unless notice be given at some previous sitting of the Commission, so that same can appear on the agenda for the day.

5. Examination of witnesses :

- Mr. J. Rethman, M.L.A., farmer, Natal ;
 Mr. J. S. Mason, merchant, Chairman and Representative of the Maritzburg Chamber of Commerce, Natal ;
 Mr. J. King, farmer, Natal ; were examined.
 The Commission rose at 4.10 p.m.

4th May, 1904.

1. All the Members of the Commission, with the exception of the Chairman, Col. Stanford and Sir Thomas Scanlen, were present.

Mr. Sloley in the Chair.

2. The minutes of the previous meeting were read and confirmed.

3. Proposed by Mr. Hamilton, seconded by Mr. Thompson, and carried unanimously :

That no payments on account of allowances be made to Members of the Commission when absent from the sittings of the Commission without the authority of the Finance Committee.

4. Examination of witnesses :

Simeon E. Kambule, Native farmer, and Josiah Gumede, representing the Amangwani Tribe, Natal, were examined.

5. The Secretary read :

(a) Letter from Walter H. Acutt, dated 3rd May.

(b) Letter from Chief Clerk, Attorney-General's Office, Natal, withdrawing the application for copy of the evidence given before the Commission by the Attorney-General.

(c) Minute from the Secretary for Native Affairs, Transvaal, covering letter received from the Secretary, Rand Pioneers, making enquiries in respect of the publication of evidence given before the Commission.

The Secretary was instructed to place the letter from the Rand Pioneers on the agenda paper for Wednesday, 11th inst.

6. Resolved, upon Capt. Dickson's motion :

That in future no motion be voted upon, except as an unopposed motion, unless notice thereof has been given at some previous sitting of the Commission, so that same can appear on the agenda paper for the day.

The Commission rose at 4.50 p.m.

5th May, 1904.

1. All the Members of the Commission, with the exception of the Chairman, Col. Stanford and Sir Thomas Scanlen, were present.

Mr. Sloley in the Chair.

2. The minutes of the previous meeting were read and confirmed.

3. Examination of witnesses :

Hon. H. D. Winter, M.L.A., farmer, Natal ;

Mr. Louis Viljoen, farmer, ex-Field-cornet, Commandant and Native Commissioner, Utrecht District, Natal ;

Johannes Kumalo, Native Chief of Christian Natives, Driefontein, Klip River Division, Natal, with six followers ; were examined.

The Commission rose at 4.15 p.m.

6th May, 1904.

1. All the Members of the Commission, with the exception of the Chairman, Col. Stanford, and Sir Thomas Scanlen, were present.

Mr. Sloley in the Chair.

2. The minutes of the previous meeting were read and confirmed.

3. Examination of witnesses :

Petros M. Maling, Native farmer, Newcastle ;

Micah Kunene (representing Timothy Gule, Chief and farmer, Dundee Division) ;

Mr. R. C. Samuelson, solicitor, Maritzburg ; were examined.

4. The Secretary read letter, dated 4th May, from Stephen Mnini, Chief of Edendale, expressing desire to give evidence before the Commission.

Resolved,—That Stephen Mnini be given an opportunity of tendering his evidence in Durban, since it was impossible to hear him in Pietermaritzburg.

5. Resolved,—That the report of the Select Committee (No 7 of 1862) appointed by Lieut.-Governor Scott, of Natal, on the subject of granting to Natives documentary tribal titles to land, together with annexures, be printed for the information of Members of the Commission.

The Commission rose at 4.35 p.m.

9th May, 1904.

1. All the Members of the Commission, with the exception of Col. Stanford and Sir Thomas Scanlen, were present.

2. The minutes of the previous meeting were read and confirmed.

3. Mr. Thompson, on behalf of the Members, welcomed the Chairman's return to health and to the Commission and expressed appreciation of the sympathetic and able manner in which, during the Chairman's absence, Mr. Sloley conducted the proceedings of the Commission.

Sir Godfrey Lagden and Mr. Sloley acknowledged the expressions with thanks.

4. Mr. Hamilton notified that on the 10th May he would move :

That this Commission is of opinion that the evidence given before it should be accessible to the Press and public of South Africa immediately upon the completion of the printing of each volume of such evidence and its issue to the Members of the Commission.

5. Examination of witnesses :

Mr. W. N. Armstrong, clerk, Natal Native Trust :

Mark S. Radebe, Native storekeeper and journalist; were examined.

The Commission rose at 4.8 p.m.

10th May, 1904.

1. All the Members of the Commission, with the exception of Col. Stanford and Sir Thomas Scanlen, were present.

2. The minutes of the previous meeting were read and confirmed.

3. Resolved,—That the visit to Table Mountain, as determined upon by resolution on 29th April, be abandoned.

4. Mr. Hamilton, as he notified on the 9th instant, moved :

That this Commission is of opinion that the evidence given before it should be accessible to the Press and public of South Africa immediately upon the completion of the printing of each volume of such evidence and its issue to the Members of the Commission.

During discussion Capt. Dickson pointed out that the witness summoned to give evidence was waiting and moved that consideration of this motion be postponed.

This was carried.

5. Examination of witnesses :

Mr. J. W. McKenzie, farmer and contractor, Richmond, Natal :

Mr. Cheere Emmett, ex-Native Commissioner and now farmer, Vryheid District, Natal ;

Swaimana Ka Zipuku, Chief Mapumulo Division: were examined.

Mr. S. Harrison, Assistant Under-Secretary for Native Affairs, Natal, was further examined, and put in "Statement showing on a Graduated Scale the Strength of Huts and Chiefs resident in Natal (including the Province of Zululand) and the Northern Territories," and a list of the Returns submitted by the Native Affairs Department, Natal, to the South African Native Affairs Commission.

The Commission rose at 5.50 p.m.

11th May, 1904.

1. All the Members of the Commission, with the exception of Col. Stanford and Sir Thomas Scanlen, were present.

2. The minutes of the previous meeting were read and confirmed.

3. The Secretary brought to the notice of the Commission certain material alterations made by the Hon. H. D. Winter in the proof of his evidence, which was submitted to him for correction, and was instructed to recall Mr. Winter before the Commission.

4. Examination of witnesses :

Mr. F. R. Bennett, Magistrate, City Court, Pietermaritzburg, Natal, examined.

5. The Commission resumed the postponed consideration of Mr. Hamilton's motion of the 10th instant.

After lengthy deliberation the motion in the following amended form was put :

(a) That this Commission is of opinion that the evidence given before it should be accessible to the Press and public of South Africa immediately upon the completion of the printing of each volume of such evidence and its issue to the Members of the Commission, provided that such publication be not made till after the 1st July next.

(b) That, in pursuance of the above resolution, all existing volumes of evidence be published as soon as possible.

- (c) That a copy of the resolution be forwarded to His Excellency the High Commissioner to take such action thereon as he may think fit.

There voted :

For the Motion.

Messrs. Hamilton, Thompson,
Sloley and Capt. Dickson.

Against the Motion.

Messrs. Samuelson, Campbell,
Krogh and de la Harpe.

The Chairman recorded his casting vote in favour of the motion, which was therefore carried.

6. The Secretary was instructed to inform the Secretary for Native Affairs, Transvaal, that the letter forwarded by him from the Secretary, Rand Pioneers, Johannesburg (which was read on the 4th inst.), will be laid before the Commission for consideration.

7. Capt. Dickson notified that at the commencement of the next Session of the Commission he would move :

- (a) That the Secretary be instructed to communicate to the Press each day an *epitomé* of the proceedings of the Commission with a short *resumé* of the more important evidence laid before it.
- (b) That the draft of the first proposed communication be laid before the Commission for approval.

8. Mr. Thompson notified that on the first Wednesday after assembly of the Commission in Durban, he would move :

That the discussion be re-opened as to when and where we are to meet on our re-assembling for the third Session of the Inter-Colonial Commission on Native Affairs.

The Commission rose at 4.25 p.m.



1. All the Members of the Commission, with the exception of Col. Stanford and Sir Thomas Scanlen, were present.

2. The minutes of the previous meeting were read and confirmed.

3. Resolved,—That the Chairman be authorised to frame a covering letter to the High Commissioner setting forth briefly the reasons given by the Members who voted "Aye" and "No" on Mr. Hamilton's motion of 11th instant.

4. Examination of witnesses :

Mr. S. B. Woollatt, Principal Veterinary Surgeon, Natal ;

Inspector W. J. Clarke, Criminal Investigation Office, Pietermaritzburg, Natal ;

Rev. W. A. Goodwin, Church of England Theological Tutor, Pietermaritzburg, Natal ; were examined.

5. The Hon. H. D. Winter appeared before the Commission and satisfactorily explained the alterations made by him in the proof of his evidence.

The Commission adjourned at 4.15 p.m., to re-assemble at Durban on the 17th instant.

DURBAN, 17th May, 1904.

1. The Commission met in the Municipal Chamber, Town Hall, Durban.

All the Members of the Commission, with the exception of Col. Stanford, Sir Thomas Scanlen, Mr. J. A. Hamilton and the Hon. Marshall Campbell, were present.

2. Resolved,—That Mr. G. A. Godley be appointed to act as Secretary to the Commission during the temporary absence of the Secretary, Mr. H. M. Taberer, on very urgent private affairs.

3. The minutes of the previous meeting were read and confirmed.

4. The Acting Secretary read :

(a) Telegram from Col. Stanford regarding date of re-assembly.

(b) Telegram from the Secretary, Prime Minister, Natal, regarding accommodation to Members and staff in Durban.

5. Examination of witnesses :

Supt. Alexander, Superintendent Borough Police, Durban, examined.

6. The Chairman submitted a draft dispatch to His Excellency the High Commissioner covering copy of resolution passed on the 11th May.

After discussion the consideration of the draft dispatch was postponed until the next day to enable Mr. Marshall Campbell to be present.

Mr. J. C. C. Chadwick, Acting Chief Magistrate, Durban, examined.

The Commission adjourned at 4 p.m.

18th May, 1904.

1. All the Members of the Commission, with the exception of Col. Stanford, Sir Thomas Scanlen and Mr. J. A. Hamilton, were present.

2. The minutes of previous meeting were read and confirmed.

3. The Chairman announced that a statement of accounts was now ready and, in compliance with a resolution passed on the 27th April, he requested Mr. Sloley to convene a meeting of the Finance Committee for examination of same.

4. The Commission discussed the question of certain alterations made by Mr. Donald Strachan in the proof of his evidence.

After deliberation, the following motion was put,—That the alterations made by Mr. Donald Strachan in the proof of his evidence be allowed to stand.

There voted :

For the Motion.

Messrs. Campbell, Sloley
and Krogh.

Against the Motion.

Capt. Dickson, Messrs. S. O. Samuelson
and J. B. de la Harpe.

The Chairman recorded his casting vote against the motion, which was therefore lost.

5. The Chairman read a letter from Inspector W. J. Clarke, suggesting that certain questions and replies in his evidence should not be printed.

It was unanimously decided that Inspector Clarke's evidence should be printed in full.

6. The Chairman read a letter from the Town Clerk, Durban, inviting the Commission to visit the Umlaas Waterworks on Friday, 27th inst.

The Acting Secretary was instructed to inform the Town Clerk that the Members regretted their inability to avail themselves of the invitation.

7. Examination of witnesses :

Rev. Father Schrimph and Rev. T. Langa, representatives of the Trappists' Institution at Mariannhill, were examined.

8. The Acting Secretary was instructed to furnish Members with copies of all resolutions passed by the Commission on the subject of accounts.

9. The Chairman read a letter from the Prior of the Trappists' Monastery, inviting the Commission to pay a visit to Mariannhill.

It was decided to postpone consideration of the invitation until a later date.

10. The Commission resumed consideration of the draft despatch to His Excellency the High Commissioner covering copy of resolution passed on the 11th May.

The letter was discussed seriatim and finally approved.

11. On the motion of Mr. Thompson the question of the date and place of assembly for the third Session was reconsidered and it was resolved,—That the date be as approximately near to the 1st August as possible and that the place of meeting shall be at Pretoria with the object of proceeding to Rhodesia *via* Delagoa Bay.

12. The Acting Secretary read a letter from Supt. Alexander requesting the correction of certain figures given in his evidence.

The Acting Secretary was instructed to inform Supt. Alexander that there was no objection to this being done.

The Commission adjourned at 4.4 p.m.

19th May, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, Col. Stanford and Mr. J. A. Hamilton, were present.

2. The minutes of the previous meeting were read and confirmed.

3. Examination of witnesses :

Mr. Edwin Essery, land agent and farmer ;

Mr. J. Kirkman, sugar planter ;

Dr. W. H. Addison, junior, District Surgeon, Umlazi Division ; were examined.

The Commission adjourned at 3.50 p.m.

20th May, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, Col. Stanford and Mr. J. A. Hamilton, were present.

2. The minutes of the previous meeting were read and confirmed.

3. The Chairman read a letter from Mr. James Stuart requesting permission to read a paper before the Commission prior to the taking of his evidence.

The Acting Secretary was instructed to inform Mr. Stuart that Members would prefer to take his evidence *viva voce* and to request that copies of his paper be supplied for circulation to Members prior to the date fixed for the hearing of his evidence.

4. Capt. Dickson gave notice that he would move on Wednesday, the 25th :

That the resolution passed on September 29th, 1903, regarding accounts, be rescinded, and that all matters dealing with finance be dealt with by the Finance Committee appointed on April 27th, 1904.

5. Examination of witnesses :

Mr. Justice Beaumont, Judge of the Supreme Court, Natal, further examined.

Col. Friend Addison, sugar planter ;

Hon. R. Jameson, M.L.C., merchant, Natal ; were examined.

The Commission adjourned at 4.20 p.m.

25th May, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, Col. Stanford and Mr. J. A. Hamilton, were present.

2. The minutes of the previous meeting were read and confirmed.

3. Examination of witnesses :

Mr. C. R. Saunders, C.M.G., Chief Magistrate and Civil Commissioner, Zululand, examined.

4. Resolved,—That the Commission do sit on Saturday morning, 28th inst., for the purpose of taking evidence.

5. Resolved,—That the control of all finance and prospective outlay in future be vested in the Finance Committee appointed on April 27th, 1904.

The Commission adjourned at 4.20 p.m.

26th May, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen and Col. Stanford, were present.

2. The minutes of the previous meeting were read and confirmed.

3. The question of the proposed visit to Zululand was discussed, and it was resolved,—That the Commission do visit that territory, and that Mr. Campbell be requested to make the necessary arrangements.

4. Examination of witnesses :

Mr. R. H. Beachcroft, Magistrate, Newcastle ;

Mr. H. Bazley, sugar planter ;

Rev. Father Bryant, Roman Catholic Missionary ; were examined.

The Commission adjourned at 4.35 p.m.

27th May, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen and Col. Stanford, were present.

2. The minutes of the previous meeting were read and confirmed.

3. Mr. Campbell reported that arrangements had been made for the Commission to visit Zululand.

It was decided that the itinerary of the visit should be left to the Natal Delegates to arrange.

4. Examination of witnesses :

Rev. F. Suter, Missionary, South African General Mission ;

Rev. F. R. Roach, Missionary, Church of England ;

Mr. R. Dives, mining engineer ; were examined.

The Commission adjourned at 5.15 p.m.

28th May, 1904.

1. All the Members of the Commission, with the exception of Col. Stanford and Sir Thomas Scanlen, were present.

2. The minutes of the previous meeting were read and confirmed.

3. The return of Mr. H. M. Taberer, the Secretary to the Commission, was noted.

4. The Chairman read a letter, dated 25th inst., from His Excellency the High Commissioner on the subject of the suggested publication of the Commission's evidence.

5. Resolved,—That the Commission leave Durban for Zululand on Thursday, the 2nd June.

6. Examination of witnesses :

Martin Lutuli, Native farmer and ex-Chairman, Natal Native Congress, examined.

7. Owing to the indisposition of Mr. M. Matthews, Magistrate, Dundee, Natal, the hearing of his evidence was at his request postponed until Monday, the 30th inst.

The Commission adjourned at 1.30 p.m.

30th May, 1904.

1. All the Members of the Commission, with the exception of Col. Stanford and Sir Thomas Scanlen, were present.

2. The minutes of the previous meeting were read and confirmed.

3. The Secretary laid before the Commission a number of alterations suggested by the Rev. Father Schriumpf to his evidence, and it was resolved that Messrs. Samuelson and Krogh deal with these.

4. Examination of witnesses :

Mr. M. Matthews, Magistrate, Dundee Division, Natal :

Mahashi ka Somanyala, (Chief Siziba), Makiyana ka Ndonga, and Ntubane ka Mlonyeni (Chief Makewung), representing Natives living on property of the Natal Land and Colonisation Company :

Mr. Frederick Rathbone, ex-trader and farmer, Natal, and representing Inanda Farmers' Association ;

Mr. G. H. Hulett, attorney and representing Inanda Farmers' Association ; were examined.

Mr. Hulett put in a written statement which was admitted as part of his evidence.

At 6.45 p.m. it was resolved that the Commission adjourn to meet at 9.15 a.m. on the 31st inst.

31st May, 1904.

1. All the Members of the Commission, with the exception of Col. Stanford, Sir Thomas Scanlen and Mr. Campbell, were present.

2. The minutes of the previous meeting were read and confirmed.

3. The Secretary read :

(a) Letter, dated 17th May, from the Acting Under-Secretary for Native Affairs, Natal, stating the returns of farms in Natal, showing the extent to which Section 6, Ordinance 2 of 1885 had been complied with, and which were asked for by the Commission, were not available.

The Secretary was directed to reply enquiring if the information could not be obtained.

(b) Letter, dated 29th May, from the General Manager of Railways, Natal, submitting programme of arrangements made for the visit of the Commission to Zululand.

The Secretary was directed to write requesting that the making of arrangements be postponed till receipt of further communication from the Commission during the afternoon.

4. A letter, dated 30th May, with enclosures from Miss H. E. Colenso, of Natal, was circulated for perusal by Members.

5. Examination of witnesses :

Mr. G. H. Hulett, further examined :

Native Chief Ndunge and others, Amacele tribe, Umlazi Division, Durban County ;

Mr. James Stuart, Assistant Resident Magistrate, Durban ; were examined.

Mr. Stuart put in a paper entitled "The Voice of the People," which it was determined should form an annexure to his evidence.

6. The Chairman read two telegrams received by him from the Prime Minister, Natal, dated the 30th and 31st May, on the subject of the Commission's proposed visit to Zululand, and

Mr. Hamilton moved :

That the programme for the visit to Zululand be carried out, except that in deference to the request by the Prime Minister of Natal, no witnesses be called there.

There voted :

For the Motion.
Messrs. Hamilton, de la Harpe
and Capt. Dickson.

Against the Motion.
Messrs. Sloley and Thompson.

The motion was therefore carried.

7. Resolved,—That a visit to the Inanda Mission Institution be included in the itinerary of the visit to Zululand.

8. Resolved,—That the invitation from the Prior of the Trappists' Monastery, Mariannhill, to visit that institution, be accepted for Monday, the 6th June.

At 6.20 p.m. the Commission adjourned, to meet on the 1st June, at 9.30 a.m.

1st June, 1904.

1. All the Members of the Commission, with the exception of Col. Stanford and Sir Thomas Scanlen, were present.

2. The minutes of the previous meeting were read and confirmed.

3. The Secretary was directed to acknowledge the receipt of Miss Colenso's letter of 30th ult., and to cause copies thereof to be handed to Members of the Commission.

4. The Secretary was authorised to proceed with the printing of Mr. Advocate McGregor's Digest of Laws affecting Natives in the various States in British South Africa, and to hand proofs thereof to the Members of the Commission for necessary corrections.

5. Examination of witnesses :

Chief Stephen Mnini, Chief Stephen Kuzwayo, Chief Solomon Xaba, Chief Jabez Molife, Natives, of Edendale, Natal ;

Cleophas Kunene, editor "Ipepa lo Hlanga," Natal ; were examined.

6. The Commission considered and adopted the Second Interim Report.

7. Mr. Sloley moved, and it was unanimously resolved, that the Commission place on record its appreciation of the services of the Secretary, Mr. Taberer, and of his conduct of the financial and other arrangements of the Commission.

The Commission closed its second Session at 6 p.m.

2nd June, 1904.

Messrs. Campbell, Samuelson, Krogh, Hamilton, de la Harpe, Sloley and Capt. Dickson represented the Commission on the visit to Zululand, returning on the 4th June.

6th June, 1904.

Messrs. Sloley, Hamilton and Capt. Dickson visited the Trappists' Institution, Mariannhill.

THIRD SESSION.

SALISBURY, 29th August, 1904.

1. The Commission re-assembled and opened its third Session at Salisbury, Rhodesia, at 2.30 p.m.

All the Members of the Commission, with the exception of Col. Stanford and Mr. Hamilton, were present.

2. The minutes of the previous meeting were read and confirmed.

3. The Chairman briefly addressed the Members of the Commission and circulated a memorandum to Members relative to preparation of the Draft Report.

Capt. Dickson gave notice of a motion upon the subject to be brought forward on Wednesday, the 31st August.

4. Mr. Campbell handed in copy of an extract of a speech made by Sir Godfrey Lagden in the Transvaal Legislative Council, as reported in the "Johannesburg Star" of 26th July, and enquired whether the Chairman had been correctly reported.

The Chairman stated that in an attack made upon him as Commissioner for Native Affairs in the Transvaal his policy in Native matters was compared with that obtaining in the Cape Colony and Natal, and that being compelled to defend himself he spoke as was reported in the extract handed in and in doing so he had not made use of any information he may have gained as Chairman of the Commission.

6. The Commission deliberated upon the witnesses to be summoned to give evidence in Salisbury.

7. Resolved,—That at Salisbury the Commission sit daily from 9.30 a.m. to 12.45 p.m. and from 2.15 p.m. to 4 p.m.

8. Mr. Samuelson gave notice that on Wednesday afternoon, the 31st inst., he would move :

That the High Commissioner's letter of 8th July, 1904, to the Chairman of the Commission, be considered.

The Commission adjourned at 3.50 p.m.

30th August, 1904.

1. All the Members of the Commission, with the exception of Col. Stanford and Mr. Hamilton, were present.

2. The minutes of the previous meeting were read and, after amendment, confirmed.

3. Capt. Dickson handed in the following motion, which he gave notice to move on Wednesday, August 31st :—

That the Commission having considered the memorandum presented to them by the Chairman is of opinion that the drafting of a Report is premature until after the completion of enquiries and a perusal of the digest of the replies received.

That this Commission further expresses the opinion that this Session should not break up until the final Report has been presented to the High Commissioner,

4. Mr. Samuelson called attention to the "Rhodesian Times" of 29th August, 1904, containing a notice by the Secretary regarding the Commission and asked that the fact be recorded that no general notice of the Commission's sittings in Rhodesia had been given to the public and that no invitation is in the said notice proffered to persons who may desire to offer evidence before the Commission.

5. Mr. Samuelson gave notice that when the High Commissioner's letter of 8th July to the Chairman came up for consideration he would move :

That it be an instruction to the Chairman of the Commission to acknowledge His Excellency the High Commissioner's letter to him dated 8th July, 1904, and appearing in a Transvaal "Gazette Extraordinary" of the 11th July, and in so doing to respectfully submit :

- (i) That if there has been any delay in the despatch of the duties which the Commission has been appointed to perform, it has been entirely due to the Chairman's attendance as a member of the Transvaal Executive Council, at two Sessions of the Legislative Council, the first commencing in December, 1903, and the second in June, 1904.
- (ii) That the Commission respectfully submits for His Excellency's information :
 - (a) Copy of a resolution passed at Queenstown, fixing the 15th February, 1904, as the date on which the Commission should re-assemble at Kei Road in the Cape Colony, after an adjournment necessitated by the Chairman's duties in the Transvaal. The Session was not commenced until the 11th March, at Kei Road.
 - (b) Copy of a resolution passed in Durban on May 18th, 1904, fixing the 1st August, approximately, as the date on which the Commission should re-assemble at Pretoria for the purpose of proceeding to Rhodesia for its third Session. This Session was not commenced until the 29th August at Salisbury.

The Commission finally begs respectfully to say :

- (1) That the Natal Native Affairs Commission appointed on the 25th September, 1852, signed its report on 26th October, 1853.
- (2) That the Cape Colony Native Affairs Commission appointed on 15th September, 1880, only signed its report on December 29th, 1882.
- (3) That the 2nd Natal Native Affairs Commission appointed on 5th December, 1881, signed its report on 1st September, 1882.
- (4) That the duties of these three Commissions were confined to single Colonies, whereas the duties of this Commission embrace the whole of British South Africa, and that the investigation of this Commission should be no less thorough and exhaustive if the accurate information is to be acquired as the instructions to the Commission direct.

6. Mr. Campbell called attention to a reported interview between Mr. Thompson and a newspaper correspondent at Port Elizabeth, on June 4th last, and proposed :

That a record of the fact be made in the minutes.

Carried.

7. Examination of witnesses :

Rev. Dr. Wilder, American Missionary, Melsetter ;

Mr. W. S. Taberer, Acting Chief Native Commissioner, Mashonaland ;

Mr. W. E. Edwards, Native Commissioner, M'Rewa District, Mashonaland ; were examined.

The Commission adjourned at 4:10 p.m.

31st August, 1904.

1. All the Members of the Commission, with the exception of Mr. Hamilton and Mr. Krogh (absent through illness), were present.

2. The minutes of the previous meeting were read and confirmed.

3. The Chairman, on behalf of the Members, welcomed the return of Col. Stanford to the Commission.

4. Examination of witnesses :

Mr. H. J. Deary, Representing the Salisbury Chamber of Commerce ;

Col. Raleigh Grey, C.M.G., Representing the Salisbury Chamber of Mines ;

Sir Marshal Clarke, K.C.M.G., Resident Commissioner, Southern Rhodesia ; were examined.

5. The Secretary read the High Commissioner's letter, dated 8th July, 1904, to the Chairman, and Mr. Samuelson moved the resolution of which he gave notice on the 30th August.

After deliberation Mr. Samuelson withdrew his motion and proposed :

That the Chairman, Col. Stanford and Mr. Sloley draft a reply to the High Commissioner's letter.

Carried.

6. The question of the examination of Native witnesses from Mashonaland was raised by Mr. Samuelson, and Sir Thomas Scanlen stated that he had enquired of the authorities and had been informed that there were no Natives of sufficient importance who could with advantage be called, but that arrangements would be made if practicable to get representative Native witnesses at Bulawayo.

7. Capt. Dickson moved the resolution standing in his name, of which he gave notice on the 30th August, concerning the memorandum upon the drafting of the report presented by the Chairman to the Members.

After deliberation, Capt. Dickson withdrew his motion.

8. The future movements of the Commission having been discussed, the Commission adjourned at 4.25 p.m.

1st September, 1904.

1. All the Members of the Commission, with the exception of Mr. Hamilton and Mr. Krogh, were present.

2. The minutes of the previous meeting were read and confirmed.

3. Examination of witnesses :

The Rev. John White, Wesleyan Missionary, Mashonaland ;

Sir Marshal Clarke, K.C.M.G., further examined.

Mr. W. H. Brown, Representative of the Mashonaland Farmers' Association ;

Colonel J. W. Fuller, Chief Staff Officer, B.S.A. Police ; were examined.

The Commission adjourned at 4.40 p.m.

2nd September, 1904.

1. All the Members of the Commission, with the exception of Mr. Hamilton and Mr. Krogh, were present.

2. The minutes of the previous meeting were read and confirmed.

3. The draft reply to the High Commissioner's letter of 8th July was read and approved.

4. Examination of witnesses :

The Rev. J. McKendree Springer, Methodist Episcopal Church, Old Umtali ;

Mr. G. Duthie, Director of Education, Rhodesia ; were examined.

The Commission adjourned at 12 noon to re-assemble at Bulawayo on Thursday, the 8th inst.

BULAWAYO, 8th September, 1904.

1. The Commission met at the Grand Hotel, Bulawayo, at 2.15 p.m.

All the Members of the Commission, with the exception of Mr. Hamilton, were present.

2. The minutes of the previous meeting were read and confirmed.

3. The Secretary read :

(a) Letter, dated 6th September, from the Chief Secretary, Salisbury, enclosing copy of letter, dated 2nd September, from the Acting British Vice-Consul at Beira, on the subject of Laws and Regulations affecting Natives in Portuguese East Africa.

(b) Letters from the Secretary, Rhodesian Chamber of Mines, dated 3rd September, forwarding copies of a memorandum and annexures for submission to the Commission.

4. On the motion of Mr. Sloley, it was resolved,—That the Commission do sit for deliberation at 8.15 p.m.

5. Examination of witnesses :

Mr. H. J. Taylor, Chief Native Commissioner, Matabeleland ;

Mr. C. L. Carbutt, Native Commissioner, Matabeleland ;

Native Chiefs Gambo and Sikombo ; were examined.

Mr Taylor handed in copies of the Specimen Agreement drawn up, in terms of Section 4 of High Commissioner's Proclamation of 14th October, 1896, and of that drawn up between the British South Africa Company and the Fingo immigrants.

6. Resolved,—That the Commission close its sitting at Bulawayo on Monday, the 12th, and leave for Mafeking on Tuesday, the 13th.

7. On the motion of Mr Campbell, it was resolved,—That the Commission do sit at Cape Town for the consideration of the Report.

8. Resolved,—That Messrs J. W. Sauer, M.L.A., W. P. Schriener, and representatives of the Eastern Province Farmers' Association, in addition to the Rev. Dr. Stewart, be invited to give evidence before the Commission at Cape Town.

9. Resolved,—That Mr. Graham Greene and Chief Badirili Montsion of the Barolong be called to give evidence at Mafeking in addition to those witnesses already summoned.

10. Resolved,—That one day be spent visiting the compounds at Kimberley.
11. Resolved,—That from Kimberley the Commission do proceed to sit at Bloemfontein to hear the evidence of witnesses from the Orange River Colony and thence proceed to Basutoland.
12. Resolved,—That the future movements of the Commission be advertised in the papers of the Orange River Colony and the Transvaal.
- The Commission adjourned at 10.30 p.m.

9th September, 1904.

1. All the Members of the Commission, with the exception of Mr. Hamilton, were present.
 2. The minutes of the previous meeting were read and confirmed.
 3. Examination of witnesses :
Col. W. Napier, farmer ;
The Rev. C. D. Helm, London Missionary Society, Hopefontain ;
Mr. H. M. Jackson, Native Commissioner, Fort Usher ;
Mr. H. Marshall-Hole, Civil Commissioner, Bulawayo ;
Mr. P. D. Crewe, Representing the Matabeleland Landowners' and Farmers Association ;
The Rev. Father Barthelemy, Society of Jesus, Bulawayo : were examined.
- The Commission rose at 3.30 p.m.

10th September, 1904.

1. All the Members of the Commission, with the exception of Mr. Hamilton, were present.
 2. The minutes of the previous meeting were read and confirmed.
 3. Examination of witnesses :
The Rev. M. Mokgatho, African Methodist Episcopal Church ;
Baleni and Gwabo, Matabele Natives ;
Mr. J. Kerr, merchant and ex-Mayor, Bulawayo : were examined.
- The Commission rose at 12.35 p.m.

12th September, 1904.

1. All the Members of the Commission, with the exception of Mr. Hamilton, were present.
 2. The minutes of the previous meeting were read and confirmed.
 3. The Chairman laid before the Members a memorandum on the subject of the visit to Basutoland.
- It was decided to defer consideration of the subject until the Commission arrives at Mafeking.
1. Examination of witnesses :
The Rev. J. W. Leary, Church of England Missionary, Matabeleland ;
Mr. E. A. Hull, farmer, Matabeleland ;
Mr. P. L. Jenkins, Representing Rhodesia Chamber of Mines ; were examined.
- The Commission adjourned at 11.30 p.m., to re-assemble at Mafeking.

MAFEKING, 15th September, 1904.

1. The Commission re-assembled in the Town Hall, Mafeking, at 9.30 a.m.
- All the Members of the Commission, with the exception of Sir Thomas Scanlen and Mr. Hamilton, were present.
2. The minutes of the previous meeting were read and confirmed.
 3. Examination of witnesses :
Mr. Jules Ellenberger, Assistant Commissioner, Bechuanaland Protectorate ;
Native Chief Khama, Bamangwato Tribe ;
Mr. E. Rowland, Chairman Water Works, Mafeking ;
Native Chief Badirile Montsioa, Baralong Tribe, Bechuanaland ;
Solomon Plaatje, editor Native newspaper "Koranta" or "Bechuana Gazette", Mafeking ; were examined.
- The Commission rose at 4.10 p.m.

16th September, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen and Mr. Hamilton, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Chairman's memorandum on the subject of the visit to Basutoland was discussed. No motion thereon being proposed, the matter was allowed to drop.
4. Resolved,—That the Commission leave Kimberley on Monday afternoon, the 19th September, for Bloemfontein.
5. Resolved,—That the Commission leave Bloemfontein in time to sit at Maseru on Monday, the 26th inst.
6. The names of the witnesses to be called from the Orange River Colony and Basutoland having been read, the Commission adjourned at 10.40 a.m., to meet at Bloemfontein on Wednesday, the 21st September.

19th September, 1904.

The Commission visited and inspected the Native compounds at the diamond mines in Kimberley.

BLOEMFONTEIN, 21st September, 1904.

1. The Commission assembled in the Board Room, C.S.A.R. Offices, Bloemfontein, at 10 a.m.
- All the Members of the Commission, with the exception of Sir Thomas Scanlen, Messrs. Thompson and Hamilton, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
Mr. J. G. Fraser, M.L.C., barrister and attorney, Bloemfontein ;
The Rev. J. D. Goronyane, Native Wesleyan Minister ;
J. M. Nyokong, Native farmer, Thaba 'Nchu ;
Mr. Hugh Gunn, Director of Locations, Orange River Colony ; were examined.
The Commission rose at 1 p.m.

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22nd September, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, Messrs. Thompson and Hamilton, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
Mr. W. S. Whitworth, mine manager, Koffyfontein ;
Mr. R. Dickie, farmer and storekeeper, Thaba 'Nchu ;
Mr. A. Wilson, farmer, Thaba 'Nchu ;
The Rev. Canon Orford, President Orange River Colony Native Teachers' Association, and with him the Rev. J. Motshumi ;
Mr. J. W. Hancock, Inspector, Bloemfontein Municipal Native Location ;
The Rev. James Scott, Wesleyan Minister, Bloemfontein ;
Mr. G. H. Turvey and Mr. J. M. van Reenen, farmers, Ladybrand ; were examined.
4. Mr. Thompson took his seat in the Commission during the afternoon.
The Commission rose at 4.45. p.m.

23rd September, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, Messrs. Sloley and Hamilton, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
Mr. C. H. Wessels, farmer and ex-Chairman, Free State Volksraad ;
The Rev. H. Grützner, German Lutheran Missionary, Bethany ;
The Rev. B. Kumalo and others, representing the Orange River Colony Native Vigilance Association ;
Mr. H. F. Gill, Chairman of the Bloemfontein Chamber of Commerce ; were examined.
4. Resolved,—That, if practicable, the Commission proceed from Bloemfontein to Basutoland on Sunday morning, the 25th instant.
The Commission adjourned at 1 p.m.

MASERU, 26th September, 1904.

1. The Commission assembled in the Council Chamber, Maseru, Basutoland, at 10 a.m. All the Members of the Commission, with the exception of Sir Thomas Scanlen and Mr. Hamilton, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
Lerothodi, Paramount Chief of the Basuto, and with him, Chiefs Jonathan, Theko, Maama, Mojela, Leshoboro, Peete, Masupha, Malebanye, Letlatsa, Thulo and Raboroko ; Mr. G. R. Hobson, Chairman Basutoland Chamber of Commerce, Maseru ; were examined.

The Commission adjourned at 4.30 p.m.

27th September, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen and Mr. Hamilton, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
The Rev. Canon S. Weigall, Church of England Missionary, Basutoland ;
The Rev. R. H. Dyke, French Protestant Missionary, Basutoland ; were examined.

The Commission adjourned at 12.30 p.m., to meet in Pretoria on Monday, the 3rd October.

PRETORIA, 3rd October, 1904.

1. The Commission assembled in the Government Building, Pretoria, at 10 a.m. All the Members of the Commission, with the exception of Sir Thomas Scanlen and Mr. Hamilton, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
Mr. W. Windham, Secretary for Native Affairs, Transvaal ;
Mr. E. H. Hogge, Resident Magistrate, Middelburg, Transvaal ;
The Rev. M. M. Makone, the Rev. S. J. Mabote, and the Rev. J. Z. Tantsi, African Methodist Episcopal Church ; were examined.

The Commission rose at 4.25 p.m.

4th October, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen and Mr. Hamilton, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
Mr. G. G. Munnik, farmer, Pietersburg ;
Mr. R. K. Loveday, M.L.C., Pretoria ;
Mr. E. P. A. Meintjes, Pretoria ;
The Rev. S. J. Brander, the Rev. S. R. Mgoado, and the Rev. J. M. Mpila, Ethiopian Catholic Church in Zion, Pretoria ; were examined.

The Commission rose at 4.10 p.m.

5th October, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen and Mr. Hamilton, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
Mr. Theophilus Shepstone, C.M.G., Mr. A. H. Malan, Mr. G. J. W. du Toit, Mr. H. A. Baily, Mr. P. J. Riekert, and Mr. C. E. Fourie, Delegates from the Transvaal Agricultural Union, were examined.

The Commission rose at 4.15 p.m.

6th October, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen and Mr. Hamilton, were present.
2. The minutes of the previous meeting were read and confirmed.

3. Examination of witnesses :

Mr. A. M. Miller, Swaziland ;

The Rev. W. E. C. Clarke, Inspector Native Education, Transvaal ;

The Rev. E. Creux, Swiss Missionary, Transvaal ; were examined.

4. The subject of the indexing of the Commission's evidence was deliberated upon and it was ultimately resolved,—That a Sub-Committee consisting of Col. Stanford, Capt. Dickson and Mr. Sloley investigate the matter and report.

5. The future movements of the Commission were discussed, and it was resolved that any motion thereon should be deferred to a later date.

The Commission adjourned at 4 p.m.

7th October, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen and Mr. Hamilton, were present.

Mr. Sloley was voted to the Chair, during the short absence of the Chairman.

2. The minutes of the previous meeting were read and, after amendment, confirmed.

3. Col. Stanford on behalf of the Sub-Committee appointed to investigate and report upon the subject of the indexing of the evidence stated that the Sub-Committee recommended that the arrangements be forthwith made for the indexing of the evidence and suggested that Mr. Garrett of Cape Town be employed for the purpose.

After discussion it was proposed by Col. Stanford and seconded by Mr. Campbell :

That the Secretary be empowered to communicate with the Secretary to the Prime Minister of the Cape of Good Hope and apply for the services of Mr. Garrett of the Law Department to compile an index of the evidence recorded for this Commission, such index to be completed, if practicable, by the end of next month (November).

Carried unanimously.

4. Capt. Dickson, acting Chairman of the Finance Committee, reported that the matter of the indexing of the evidence had occupied the attention of the Finance Committee who had decided to refer it to the Commission.

5. Examination of witnesses :

Mr. C. Radloff, farmer, Orange River Colony ;

Mr. L. C. Francis, timber merchant, Pretoria ;

Mr. E. F. Bourke, M.L.C., Pretoria ;

Natives James Mama and John Makwe, Pretoria ; were examined.

The Commission rose at 4.40 p.m.

10th October, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen and Mr. Hamilton, were present.

2. The minutes of the previous meeting were read and confirmed.

3. Examination of witnesses :

Native Chiefs Siripa Mulota (Mlechi Tribe, Zoutpansberg District), Solomon Makapan (Bagathla Tribe, Pretoria District), Daniel More (Bakwena Tribe, Rustenburg District), Kibi Leboch (Malaboch Tribe, Zoutpansberg District), Malukutu (Bapedi Tribe, Middelburg District), Jacob Mogale (Bapedi Tribe, Middelburg District), Dedrick Mogale (Bapo Tribe, Rustenburg District), Herman Selon (Bakwena Tribe, Rustenburg District), August Mokhatle (Baphokeng Tribe, Rustenburg District) ;

The Rev. Canon Farmer, Pretoria ;

Mr. Fabian Ware, Director of Education, Transvaal ; were examined.

The Commission rose at 4.5 p.m.

11th October, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen and Mr. Hamilton, were present.

2. The minutes of the previous meeting were read and confirmed.

3. Examination of witnesses :

Mr. T. L. Schriener, M.L.A., Cape Colony ;

Mr. H. Everard, M.L.C., farmer, Carolina, Transvaal ; were examined.

The Chiefs who were present the previous day were recalled.

The Commission adjourned at 4.30 p.m. until 10 a.m. on Thursday, the 13th October.

JOHANNESBURG, 13th October, 1904.

1. The Commission assembled in the Wanderers' Hall, Johannesburg, at 10 a.m. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
 Dr. L. G. Irvine, Mine Medical Officer, Johannesburg ;
 Mr. S. A. M. Pritchard, Chief Inspector, Native Affairs Department, Transvaal ;
 Mr. T. J. M. Macfarlane, General Manager, Witwatersrand Native Labour Association ;
 Mr. T. C. M. Nourse, Johannesburg ; were examined.
 The Commission adjourned at 4 p.m.

14th October, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
 The Right Rev. Bishop of Pretoria ;
 Mr. Harold Strange, President of Transvaal Chamber of Mines ;
 The Rev. Edward Tsewu, and five other Natives, Independent Presbyterian Church of Johannesburg ; were examined.
 The Commission rose at 4.30 p.m.

17th October, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
 Mr. W. Kidger Tucker, C.M.G., representing the Rand Pioneers, Johannesburg ;
 Mr. W. Potts, Mr. P. Greathead, Mr. H. A. Baily, representing the Transvaal Landowners' Association ;
 The Rev. H. D. Goodenough, American Board of Missions, Johannesburg ;
 Paulus Molatje and eight other Natives, representing the Transvaal Basuto Committee, Saul Msane, Compound Manager, Jubilee and Salisbury Gold Mining Companies, and Solomon Kumalo, Assistant Compound Manager, Langlaagte Deep ; were examined.
 The Commission adjourned at 5.25 p.m.

18th October, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, and Col. Stanford, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Secretary read :
 (a) Letter from Mr. T. L. Schreiner, M.L.A., dated 13th October, asking that certain further opinions of his be appended to his evidence.
 It was resolved,—That the Commission adhere to its rule not to incorporate evidence upon which no examination was held, and that Mr. Schreiner's letter be acknowledged and he informed that his letter has been laid before the Commission.
 (b) Letter from Mr. E. Sivewright, dated the 11th October, on the subject of the issue of liquor to Natives.
 (c) Letter from the Secretary to the Transvaal Game Protection Association, dated 14th October, asking when the Chairman of the Witwatersrand Branch of the Association would be allowed to give evidence on the subject of game laws as affecting Natives.
 The Secretary was instructed to reply that the subject was one for the consideration rather of the local Government than for the Commission.
4. Examination of witnesses :
 Inspector F. Mavrogordato, Criminal Investigation Department, Johannesburg ;
 Mr. David Forbes, Junr., mine manager, Transvaal ;
 Mr. Howard Pim, accountant, Johannesburg ; were examined.
 The Commission adjourned at 3.45 p.m., to meet in Cape Town at 9.45 a.m. on the 3rd November.

CAPE TOWN, 3rd November, 1904.

1. The Commission assembled at the House of Assembly Committee Room No. 18, Cape Town, at 9.45 a.m.
2. All the Members of the Commission, with the exception of Sir Thomas Scanlen and Mr. Hamilton, were present.
3. The minutes of the previous meeting were read and confirmed.
4. The Secretary read :
 - (a) Letter from Mr. W. P. Schreiner, dated 21st October, 1904, intimating his inability to give evidence before the Commission.
 - (b) Letter from the Rev. A. Casalis, of Morija, Basutoland, with reference to the printing of proceedings of the Commission at Maseru during the examination of the Basuto Chiefs, together with reply thereto by the Secretary.

It was resolved that the action of the Secretary be approved.

5. Examination of witnesses :

The Rev. Dr. J. Stewart, Superintendent Lovedale Mission Institution, examined.

6. The Representatives of the Farmers' Central Association not having appeared to give evidence, the Commission adjourned at 2.40 p.m.

4th November, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Examination of witnesses :
The Hon. J. W. Sauer, M.L.A., Cape Town ;
Mr. H. Collins, farmer, Alice, Representative of the Central Farmers' Association ; were examined.
4. Col. Stanford gave notice that after the completion of the taking of evidence he would move :

That in the opinion of this Commission it is desirable in the best interests of the European and Native voters of the Cape Colony to provide for a system of separate voting. That for this purpose the Cape Colony, except the District of Glen Grey and the Transkeian Territories together with that District, be formed into two Native Constituencies, the former returning two Members to the House of Assembly, and the latter one ; the two constituencies combined to return one Member to the Legislative Council.

5. Captain Dickson gave notice that he would move a resolution on the subject of the procedure to be adopted during the consideration of the Report.
- The Commission adjourned at 4 p.m.

7th November, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
 2. The minutes of the previous meeting were read and confirmed.
 3. Captain Dickson withdrew the motion of which he gave notice on the 4th November on the subject of procedure during the consideration of Report.
 4. Examination of witnesses :
Bishop C. S. Smith, Bishop A. M. E. Church, Cape Town, examined.
Col. W. E. M. Stanford, C.B., C.M.G., was permitted to give evidence correcting certain misstatements which had been made by witnesses in the Transkei during his absence.
 5. It was resolved that the Commission now close the taking of evidence.
 6. Mr. Sloley moved, and it was resolved, That a Sub-Committee consisting of the Chairman, Col. Stanford, Mr. Samuelson and the mover be appointed to prepare proposals as to the order of treatment of subjects of reference and their sub-heads.
- At 12.45 p.m. the Commission adjourned till 10 a.m. on the 8th November.

8th November, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Chairman, on behalf of the Sub-Committee appointed to prepare proposals as to the treatment of the subjects of reference, reported that the work had not been completed and the Commission adjourned till 2.15 p.m.

4. The Commission having assembled at 2.15 p.m., the Sub-Committee's proposals as to the treatment of the subjects of reference were laid before the Members. The Commission deliberated thereon and adjourned at 4.10 p.m.

10th November, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

11th November, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

14th November, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

15th November, 1904.

1. All the Members of the Commission were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

16th November, 1904.

1. All the Members of the Commission were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

17th November, 1904.

1. All the Members of the Commission were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

18th November, 1904.

1. All the Members of the Commission were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

21st November, 1904.

1. All the Members of the Commission were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

22nd November, 1904.

1. All the Members of the Commission were present.
2. The minutes of the previous meeting were read and confirmed.

3. A Sub-Committee consisting of the Chairman, Col. Stanford, Capt. Dickson, Messrs. Sloley, Hamilton and Samuelson was appointed to bring up Draft Report.
4. The Commission in deliberation on Report.

23rd November, 1904.

1. All the Members of the Commission were present.
 2. The minutes of the previous meeting were read and confirmed
 3. The Secretary laid before the Commission certain amendments to his evidence made by the Hon. J. W. Sauer, M.L.A.
- Mr. Sloley and Capt. Dickson, who were appointed a Sub-Committee to consider and report upon the amendments, recommended to the Commission that the amendments be accepted.

On being put to the Commission the recommendation was carried, Messrs. Thompson and Samuelson dissenting.

4. The Commission in deliberation on Report.
5. At 3 p.m. the Commission went into Committee to draft resolutions upon the subjects for report.

24th November, 1904.

1. The Commission in Committee.

25th November, 1904.

1. All the Members of the Commission were present.
 2. The minutes of the previous meeting were read and confirmed.
 3. Draft resolutions drawn up by the Commission in Committee were read.
- Consideration thereon was postponed.

28th, 29th, 30th November, 1st, 2nd, 3rd December, 1904.

1. The Commission in Committee.

5th December, 1904.

1. All the Members of the Commission were present.
2. The minutes of previous meetings were read and confirmed.
3. The Commission in deliberation on Report.

6th December, 1904.

1. All the Members of the Commission, with the exception of Capt. Dickson, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

7th December, 1904.

1. All the Members of the Commission, with the exception of Capt. Dickson, were present.
2. The minutes of the previous meeting were read and confirmed.
3. It was unanimously resolved to print the written replies to questions circulated by the Commission and issue them as part of the records.
4. Resolved,—That the Commission for the future commence its sittings at 9.30 a.m. daily and that it do sit on Saturdays till 12.45 p.m.
5. The Committee in deliberation on Report.

8th December, 1904.

1. All the Members of the Commission, with the exception of Capt. Dickson, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

9th December, 1904.

1. All the Members of the Commission, with the exception of Capt. Dickson, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

10th December, 1904.

1. All the Members of the Commission, with the exception of Capt. Dickson, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

12th December, 1904.

1. All the Members of the Commission were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

13th December, 1904.

1. All the Members of the Commission were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

14th December, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, who was called away on urgent public duty, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.
4. At 12.45 p.m. the Commission was deliberating on "the Definition of a Native" when Capt. Dickson moved :
That the Commission do proceed to vote upon the subject.
There voted for Capt. Dickson's motion :

For.	Against.
Capt. Dickson,	Messrs. Sloley, Hamilton,
Mr. de la Harpe.	Krogh and Campbell.
(Col. Stanford, Messrs. Thompson and Samuelson being absent).	
5. At 3.50 p.m. the Commission went into Committee on Report.

15th December, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission went into Committee on Report.

16th December, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in Committee on Report.

17th December, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
 2. The minutes of the previous meeting were read and confirmed.
 3. The Commission in Committee on Report.
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19th December, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
 2. The minutes of the previous meeting were read and confirmed.
 3. The Commission in Committee on Report.
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20th December, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
 2. The minutes of the previous meeting were read and confirmed.
 3. Resolved,—That from Friday, 23rd December, to Wednesday, 3rd January, inclusive, the Commission go into Committee on Report.
 4. The Commission in Committee on Report.
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21st December, 1904.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
 2. The minutes of the previous meeting were read and confirmed.
 3. The Commission in Committee on Report.
-

University of Fort Hare
22nd December, 1904.
Together in Excellence

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
 2. The minutes of the previous meeting were read and confirmed.
 3. Resolved,—That the Commission do resolve itself into Committee on Report until 9.30 a.m. on the 4th January, 1905.
-

4th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
 2. The minutes of the previous meeting were read and confirmed.
 3. Capt. Dickson drew attention to the non-arrival of the files of the "Voice of Missions" promised by Bishop Smith, of the African Methodist Episcopal Church, when giving his evidence before the Commission.
It was resolved that the attention of Bishop Smith be drawn to this by letter.
 4. The Commission adjourned till 9.30 a.m. on the 5th January, and sat in Committee on Report.
-

5th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Secretary reported that he had written to Bishop Smith, of the A. M. E. Church, drawing his attention to the non-arrival of the files of the "Voice of Missions" which he had undertaken to supply, and that Bishop Smith had verbally replied to the effect that he was leaving for America and would make the necessary enquiries on arrival there.
4. The Commission in Committee on Report.

6th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in Committee on Report.

7th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in Committee on Report.

9th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

10th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

University of Fort Hare
11th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

12th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

13th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

14th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

16th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

17th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Colonel Stanford moved :
That the "Resolutions" and "Records of Divisions" be treated as part of the Minutes of Proceedings, which are to form an Appendix to the Report.

There voted :

For the Motion.

Col. Stanford, Capt. Dickson,
Messrs. Sloley, Thompson,
Krogh, de la Harpe and
Hamilton.

Against the Motion.

Messrs. Samuelson and Campbell.

4. The Commission in deliberation on Report.

18th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

19th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. It was unanimously resolved,—That the memorandum by the Registrar-General of the Cape Colony, dated 18th January, 1905, in respect of the registration of children born of parents married by Native custom, be printed among the Appendices to the Report.
4. Resolved unanimously,—That Resolution No. 36 be expunged from the records.
5. The Commission in deliberation on Report.

20th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

21st January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

23rd January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

24th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. Resolved,—That the following be substituted for Resolution No. 36, which was expunged on the 19th inst. :

- (a) The Commission disapproves of the creation or existence in any British Colony or Possession in South Africa of a separate and independent Judicial Court or Courts to deal with Native cases, except as hereinafter set forth, outside the jurisdiction of the Supreme Court of such Colony or Possession. It recommends that subject to the regulations of the Court there should be a right to appeal to and review by the Supreme Court in all Native cases, civil and criminal, tried in any other Court, under Colonial Law, Statutory or Common.
 - (b) That in civil cases or disputes arising purely upon Native law and custom, and in which both parties to the suit are Natives, special Native Courts of Appeal now established should continue to exercise the powers of final decision conferred upon them by the Legislature, subject to the distinction drawn above between cases tried under Native law and custom and cases tried under Colonial law, and provided always that the Supreme Court shall retain its powers of review.
 - (c) That revision of and appeals against verdicts and sentences in criminal cases in any lower Court, should be by or to a Judge or Judges of the Supreme Court.
4. The Commission in deliberation on Report.

25th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

26th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

27th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. The Commission in deliberation on Report.

28th January, 1905.

1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.

2. The minutes of the previous meeting were read and confirmed.
 3. The minutes of the Finance Committee meetings to date were read before the Commission and signed by the Chairman, who, on behalf of the Commission, expressed appreciation of the work done by the Committee.
 4. The Commission in deliberation on Report.
 5. Resolved,—That the Secretary order 5,000 copies of a popular issue of the Report to be distributed to the various Governments in the ratio of the proportion of their respective contributions to the general expenses of the Commission.
 6. Col. Stanford moved the following resolution, which was carried unanimously :
The Commission places on record its appreciation of the ability, unremitting attention to the work of the Commission, and personal courtesy towards Members shown by the Chairman in the discharge of the responsible duties devolving upon him.
 7. Col. Stanford moved the following resolution, which was carried unanimously :
The Commission records a hearty vote of thanks to the Secretary for the efficient manner in which he has discharged the onerous duties of his office, and his excellent arrangements for the work of the Commission at the various centres at which it has met.
- It was resolved,—That copies of these two resolutions be forwarded to His Excellency the High Commissioner, for his information.
8. Capt. Dickson moved the following resolution, which was carried unanimously :
The Commission records a hearty vote of thanks to Mr. Sloley and Col. Stanford for the able manner in which they occupied the Chair at times during the Chairman's absence.



1. All the Members of the Commission, with the exception of Sir Thomas Scanlen, were present.
2. The minutes of the previous meeting were read and confirmed.
3. At 2 p.m. copies of the final Report were laid before Members for perusal.
4. At 6.45 p.m. the Report was signed by all the Members, Sir Thomas Scanlen having telegraphed authority for the affixing of his signature thereto.
5. The Chairman thereupon declared the Commission to be dissolved.



SCHEDULE OF RECORDED VOTING

University of Fort Hare
Together in Excellence
ON

REPORT.

RESOLUTIONS.

8th November, 1904.

Land Tenure.

MOTION NO. 1.—(COL. STANFORD).

Recognising the attachment of the Natives to, and the present advantages of, their own communal or tribal system of land tenure, the Commission does not advise any general compulsory measure of sub-division and individual holding of the lands now set apart for their occupation, but recommends that movement in that direction be encouraged, and that where the Natives exhibit in sufficient numbers a desire to secure and a capacity to hold and enjoy individual rights to arable plots and residential sites on such lands, provision should be made accordingly under well-defined conditions.

Carried unanimously (Sir Thomas Scanlen being absent).

Messrs. Samuelson and Campbell voted for the motion with the reservation to re-open the subject in the event of the object of the following conditions not being attained in subsequent resolutions of the Commission :—

- (a) To effectually retain such lands for the Natives.
- (b) To secure that such tenure shall not confer political rights.

17th November, 1904.

AMENDED MOTION NO. 1A.

Resolved :—

Giving effect to Resolution No. 1, the Commission recommends that the conditions upon which individual tenure should be granted in respect of location and reserve land now held by Natives under the communal system, should include the following :—

I. The right of permanent occupation, subject to the following principal reservations :—

(1) Liability to forfeiture on account of :—

- (a) Conviction for rebellion, treason, or sedition.
- (b) Failure to beneficially occupy.
- (c) Failure to punctually pay such rent or tax as may attach to the land.
- (d) Second conviction for stock theft.

(2) The right of resumption of the whole or any portion of the lands for public purposes, or for the general public good, subject to due compensation in land or otherwise.

- (3) All rights to minerals and precious stones.
- (4) The payment of an annual rent.

II. The limitation of the area of each holding to be determined by :—

- (1) Present occupation.
- (2) Quality of land.
- (3) In the absence of special circumstances, the limit to be approximately four morgen.

III. Mortgaging or pledging to be prohibited and to be invalid.

IV. Alienation or transfer not to be allowed without the sanction of Government.

V. Succession to be to the lawful heir subject to :—

- (1) The right of widows to use and occupy until re-marriage or death.
- (2) The heir who already occupies a holding electing to abandon that holding.

VI. The setting apart of a commonage.

VII. The holdings and commonage to be subject to all such duties and regulations as may be established with regard thereto.

VIII. The occupier's interest not to be liable to attachment in execution.

Messrs. Samuelson and Campbell agreed to the above, provided that the principle of one man one lot be adhered to and that no Native shall hold more than one lot, and that second conviction for cattle killing shall form one of the crimes carrying liability to forfeiture.

The above was an amendment to Col. Stanford's motion which read as follows :—

That on sub-division, in terms of resolution No. 1, of any lands recognised as Native locations or reserves, quitrent title should be issued on such terms and conditions as the Government concerned may deem just ; provided that no sale of any lot so held shall be permitted to have effect without the sanction of Government.

On 28th January, 1905, Col. Stanford moved the following as an amendment to sub-section (2) of section I., Resolution No. 1A. :—

The right of resumption of the whole or any portion of the lands for public purposes, subject to due compensation in land or otherwise.

There voted :—

For :

Col. Stanford.
Mr. Samuelson.
Mr. Campbell.
Mr. Sloley.
Mr. Krogh.
Mr. de la Harpe.
Capt. Dickson.

Against :

Mr. Hamilton.
Mr. Thompson.

(Sir Thomas Scanlen absent).

Carried.



Squatting.

MOTION NO. 2.—(CAPT. DICKSON).

The Commission is of opinion that the unrestrained squatting of Natives on private farms, whether as tenants or otherwise, is an evil and against the best interests of the country.

Carried *nem. con.* (Sir Thomas Scanlen absent).

16th November, 1904.

MOTION NO. 3.—(MR. HAMILTON).

The Commission recommends that no Natives other than *bona fide* servants of the owner or occupier with their families should be permitted to live on private lands, except under Government sanction and control ; and, further, that such sanction should only be given on proof that it is necessary or desirable, and, save in the case of labour tenants, be subject to an adequate annual licence to be paid by the owner or occupier of the land. The word "families" does not include adult sons unless they themselves are *bona fide* servants.

Agreed to.

Resolved that the following terms shall bear the meanings respectively assigned to them :—

- (1) "Private location" shall mean any number of huts or other dwellings on any private property occupied by one or more Native male adults, such occupants not being in the *bona fide* and continuous employment of the owner or occupier of such land in or about the farming operations, trade, business or handicraft by him carried on upon such land.
- (2) "Proprietor of location" shall mean the owner of any private property on which a private location is established, or the occupier, or representative in the district of any absentee owner or occupier, of such property.
- (3) "Labour tenants" shall mean any male adult in a private location who is *bona fide* required but not continuously employed by the proprietor of such location for the due working of his property in or about the farming operations, trade, business or handicraft by him carried on upon such property.

Resolved that the main principles contained in the resolution relating to locations on private property should be applied to Natives on Crown lands other than those duly set apart as Native reserves or locations, and that sanction for Native occupation on such Crown lands shall not be given unless an adequate rent is charged to the Native occupier, based upon the producing value of the land.

17th November, 1904.

Inheritance.

MOTION NO. 4.

The Commission is of opinion that in the case of a Native dying intestate the succession and inheritance to all land in his estate held under title in the form customary in South Africa should, unless otherwise provided in such title, be determined in accordance with ordinary Colonial law.

Carried.

Messrs. Samuelson and Campbell desired the words "as applicable to Europeans" to be inserted after the words "Colonial law."

18th November, 1904.

Purchase of Land.

MOTION NO. 5.—(MR. SLOLEY).

This Commission is of opinion that certain restrictions upon the purchase of land by Natives are necessary, and recommends :—

- (1) That purchase by Natives should, in future, be limited to certain areas to be defined by legislative enactment.
- (2) That purchase of land by tribes or collective purchase which may lead to tribal possession or occupation should not be permitted.

Col. Stanford moved as an amendment to clause (1) of Mr. Sloley's motion :—

That sufficient cause has not been shown before this Commission justifying it in advising that Natives be deprived of the privilege they at present enjoy individually to purchase land and hold it as private property in the Cape Colony, Natal and Rhodesia.

Mr. Samuelson moved as a further amendment to clause (1) of Mr. Sloley's motion :—

This Commission is of opinion that the purchase and lease of land by Natives should be permissible only in the case of Natives who may be subject only to the ordinary Colonial law as applicable to Europeans, and who have generally adopted civilised life and usages.

Mr. Hamilton moved as an amendment to clause (2) :—

That purchase of land which may lead to tribal, communal or collective possession or occupation by Natives should not be permitted.

On Mr. Samuelson's amendment to clause (1), there voted :—

For :

Mr. Samuelson.
Mr. Campbell.

Against :

Sir Thomas Scanlen.
Col. Stanford.
Capt. Dickson.
Mr. Thompson.
Mr. Sloley.
Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.

Negatived.

On Col. Stanford's amendment, there voted :—

For :

Col. Stanford.

Against :

Sir Thomas Scanlen.
Capt. Dickson.
Mr. Thompson.
Mr. Samuelson.
Mr. Campbell.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.
Mr. Sloley.

Negatived.

On Mr. Sloley's motion, clause (1), there voted :—

For :

Sir Thomas Scanlen.
Capt. Dickson.
Mr. Sloley.
Mr. Thompson.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.

Against :

Col. Stanford.
Mr. Samuelson.
Mr. Campbell.

Carried.

On clause (2), as amended by Mr. Hamilton, there voted :—

For :

Sir Thomas Scanlen.
Capt. Dickson.
Mr. Thompson.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.
Mr. Samuelson.
Mr. Campbell.

Against :

Col. Stanford.
Mr. Sloley.

Carried.

[NOTE.—The resolution therefore reads as follows :—

This Commission is of opinion that certain restrictions upon the purchase of land by Natives are necessary, and recommends :—

- (1) That purchase by Natives should in future be limited to certain areas to be defined by legislative enactment.
- (2) That purchase of land which may lead to tribal, communal or collective possession or occupation by Natives should not be permitted.]

University of Fort Hare
21st November, 1904.
Together in Excellence

Leasing of Land.

MOTION NO. 6.—(MR. HAMILTON).

That, in the opinion of this Commission, whatever principles govern the settlement of the question of the purchase of land by Natives should apply equally to the leasing of land by Natives.

There voted :—

For :

Mr. Sloley.
Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.
Mr. Thompson.
Capt. Dickson.
Sir Thomas Scanlen.

Against :

Col. Stanford.
Mr. Samuelson.
Mr. Campbell.

Carried.

Col. Stanford, Messrs. Samuelson and Campbell voted against the motion, for the reason that the Commission had already committed itself to a resolution respecting purchase of land by Natives with which they were not in accord.

Contracts of Tenancy.

MOTION NO. 7.—(MR. SAMUELSON).

The Commission is of opinion that contracts of tenancy exceeding one year should be in writing and duly attested.

Carried unanimously.

25th November, 1904.

Locations and Reserves.

MOTION NO. 8.—(MR. HAMILTON).

It is the opinion of this Commission :—

- (1) That the time has arrived when the lands dedicated or set apart, or to be dedicated or to be set apart, for Natives as locations, reserves, or otherwise should be defined and delimited and reserved for the Natives by legislative enactment.
- (2) That this should be done with a view to finality in the provision of land for the Native population, and that thereafter no more land should be reserved for Native occupation.
- (3) That without prejudice to existing legal titles no mineral rights should accrue to Native owners of land.

On clause (1), there voted :—

For :

Sir Thomas Scanlen.
Mr. Thompson.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.
Mr. Sloley.
Capt. Dickson.

Against :

Col. Stanford.
Mr. Campbell.
Mr. Samuelson.

Carried.

Col. Stanford was in favour of this motion, but appears as voting against it because he preferred the wording of an alternative motion which read as follows :—

That the time has arrived when the lands dedicated or set apart, or to be dedicated or to be set apart, for Natives, as locations, reserves, or otherwise should be defined and delimited and formally reserved for the Natives where this has not already been done.

On clause (2), there voted :—

For :

Sir Thomas Scanlen.
Mr. Thompson.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.
Mr. Sloley.
Capt. Dickson.

Against :

Col. Stanford.
Mr. Campbell.
Mr. Samuelson.

Carried.

On clause (3), there voted :—

For :

Mr. Hamilton.
Mr. Krogh.

Against :

Sir Thomas Scanlen.
Col. Stanford.
Capt. Dickson.
Mr. Samuelson.
Mr. Campbell.
Mr. de la Harpe.
Mr. Thompson.
Mr. Sloley.

Negatived.

[NOTE.—The resolution therefore reads as follows :—

- (1) It is the opinion of this Commission that the time has arrived when the lands dedicated or set apart, or to be dedicated or to be set apart, for Natives as locations, reserves, or otherwise, should be defined and delimited and reserved for the Natives by legislative enactment.
- (2) That this should be done with a view to finality in the provision of land for the Native population, and that thereafter no more land should be reserved for Native occupation.]

MOTION NO. 9.—(MR. THOMPSON).

That the right of occupation of the lands so defined and set apart shall be subject to a condition of forfeiture in case of rebellion.

There voted :—

For :

Sir Thomas Scanlen.
Col. Stanford.
Capt. Dickson.
Mr. Thompson.
Mr. Sloley.
Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.

Against :

Mr. Campbell.
Mr. Samuelson.

Carried.

Messrs. Samuelson and Campbell voted against clause (2) of Resolution No. 8, and Resolution No. 9, for the reason that the Commission had in clause (1) of Resolution No. 8 already committed itself to the principle of defining and delimiting and reserving land by *legislative enactment*, with which they were not in accord.

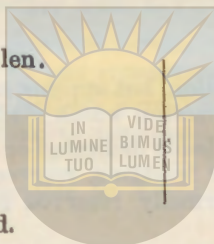
MOTION NO. 10.—(MR. HAMILTON).

That no mineral rights shall accrue to Natives in respect of such lands held in trust by Government.

There voted :—

For :

Sir Thomas Scanlen.
Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.



Against :

Col. Stanford.
Capt. Dickson.
Mr. Thompson.
Mr. Sloley.
Mr. Campbell.
Mr. Samuelson.

The motion was negatived.

Trustees to Native Lands.

MOTION NO. 11.—(MR. SAMUELSON).

Clause (1).—That where this has not been done already, all lands appropriated and set apart for the use of the Natives by Government should be vested in special trustees created for that purpose for the support, advantage or well-being of such Natives, and that such trustees should have the power to grant, sell, lease, mortgage or otherwise dispose of these lands or to purchase other lands for the support, advantage or well-being of the Natives as aforesaid.

There voted :—

For :

Mr. Samuelson.
Mr. Campbell.
Mr. Sloley.
Capt. Dickson.

Against :

Col. Stanford.
Sir Thomas Scanlen.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.
Mr. Thompson.

This clause was therefore lost.

Clause (2).—That it shall not be competent for any Government or trustees to add to or increase such lands.

There voted :—

For :

Mr. Samuelson.
Mr. Campbell.
Mr. Thompson.
Mr. Sloley.
Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.
Capt. Dickson.

Against :

Sir Thomas Scanlen.
Col. Stanford.

Clause carried.

Clause (3).—That it is undesirable to extend the system of officially or otherwise taking into trust, lands purchased by Natives, and that any land so held and acquired should be converted into individual holdings so soon as a desire for a change in that direction is manifested by those who can establish that they have proprietary rights in such land.

Carried unanimously.

[NOTE.—The resolution therefore reads as follows :—

- (1) That it shall not be competent for any Government or trustees to add to or increase such lands (*i.e.* lands appropriated and set apart for the use of the Natives by Government).
- (2) That it is undesirable to extend the system of officially or otherwise taking into trust, lands purchased by Natives, and that any land so held and acquired should be converted into individual holdings so soon as a desire for a change in that direction is manifested by those who can establish that they have proprietary rights in such land.]

Municipal Lands.

MOTION No. 12.

That so far as may be practicable, lands held by municipalities or other public bodies or societies which are occupied by Natives should be subject to regulations similar to those applicable to private or Crown lands, as already recommended by this Commission,

Carried unanimously.

Locations near Labour Centres.

MOTION No. 13.

The Commission recommends the creation, subject to adequate control, of Native locations for residential purposes near labour centres or elsewhere on proof that they are needed.

Carried unanimously.

University of Fort Hare
Together in Excellence

Mineral Rights.

MOTION No. 14.—(MR. HAMILTON).

That where Natives have any interest in mineral rights, such interest shall be inalienable and untransferable by such Natives, either by sale, lease or otherwise, without the consent of the Government.

There voted :—

For :

Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.
Sir Thomas Scanlen.

Against :

Col. Stanford.
Mr. Thompson.
Mr. Sloley.
Mr. Samuelson.
Mr. Campbell.
Capt. Dickson.

The motion was therefore negatived.

5th December, 1904.

Education.

MOTION No. 15.—(MR. SLOLEY).

The Commission is of opinion that education has been beneficial to the Natives of South Africa and that its effect upon them has been to increase their capacity for usefulness and their earning power, and therefore recommends :—

- (a) The continuance of Government grants in aid of Native elementary education.
- (b) That special encouragement and support by way of grants in aid be given to such schools and institutions as give efficient industrial training.
- (c) That a central Native college or similar institution be established and aided by the various States for training Native teachers, and in order to afford opportunities for higher education for Native students.

The Commission further recommends that it should be recognised as a principle that Natives receiving educational advantages for themselves or their children should contribute towards the cost :—in the matter of elementary education by payment of school fees or a local rate, and as to industrial training and higher education by payment of adequate students' fees.

The clauses of the motion were voted on separately and to the end of clause (c) carried unanimously.

In the last paragraph of the motion Capt. Dickson moved the insertion after the words "elementary education" of the words "and industrial training" and the deletion of the words "industrial training" from where they occur in the original motion.

There voted for the clause as amended by Capt. Dickson :—

For :	Against :
Col. Stanford.	Mr. Sloley.
Mr. Samuelson.	Mr. Hamilton.
Mr. Campbell.	Mr. Thompson.
Mr. de la Harpe.	Mr. Krogh.
Sir Thomas Scanlen.	
Capt. Dickson.	

The amendment was therefore carried.

Mr. Samuelson moved :—"That no grants or aid by Government be given to any school not under direct European control and management."

There voted :—

For :	Against :
Mr. Thompson.	Sir Thomas Scanlen.
Mr. Samuelson.	Col. Stanford.
Mr. Krogh.	Mr. Campbell.
Mr. de la Harpe.	Mr. Hamilton.
	Mr. Sloley.
	Capt. Dickson.

Mr. Samuelson's amendment was therefore negatived.

On the original motion as amended, there voted :—

For :	Against :
Sir Thomas Scanlen.	Mr. Thompson.
Col. Stanford.	
Capt. Dickson.	
Mr. Samuelson.	
Mr. Campbell.	
Mr. de la Harpe.	
Mr. Krogh.	
Mr. Hamilton.	
Mr. Sloley.	

(For the reason that he wished European control to be insisted upon in all Native education).

Carried.

[NOTE.—The resolution therefore reads :—

The Commission is of opinion that education has been beneficial to the Natives of South Africa and that its effect upon them has been to increase their capacity for usefulness and their earning power, and therefore recommends :—

- The continuance of Government grants in aid of Native elementary education.
- That special encouragement and support by way of grants in aid be given to such schools and institutions as give efficient industrial training.
- That a central Native college or similar institution be established, and aided by the various States for training Native teachers and in order to afford opportunities for higher education to Native students.

The Commission further recommends that it should be recognised as a principle that Natives receiving educational advantages for themselves or their children should contribute towards the cost :—in the matter of elementary education and industrial training by payment of school fees or a local rate, and as to higher education by payment of adequate students' fees.]

Education, Dispensaries, etc.

MOTION No. 16.—(MR. SAMUELSON).

The Commission is of opinion that where possible in schools for Natives there should be instruction in the elementary rules of hygiene.

The multiplying of District Surgeons and the establishing of dispensaries and hospitals in connection with Magistracies in Native areas would have a beneficial effect, not only for the restoration or preservation of health, but also for weaning the Natives from faith in witch doctors, diviners or soothsayers or men who profess to have supernatural power or knowledge whether as medicine men or otherwise.

Carried unanimously.

Christianity.

MOTION NO. 17.—(MR. SAMUELSON).

The Commission is satisfied that one great element for the civilisation of the Natives is to be found in Christianity.

The Commission is of opinion that regular moral and religious instruction should be given in all Native schools.

Carried unanimously.

6th December, 1904.

Native Marriage.

MOTION NO. 18.—(MR. SAMUELSON).

(1) That no marriage between Natives solemnised by Christian rites nor any civil marriage before a recognised marriage officer when the male Native is subject to special laws and tribunals or to Native law, shall remove either of the parties to such marriage from the operation of such laws, either in their persons or property.

(2) That no marriage by Christian rites should be permissible where a previous marriage by Native customs and usages exists and has not been annulled by the order of some competent Court.

(3) That any Native having contracted marriage by Christian rites who may, during the lifetime of his or her spouse, unless legally divorced under the ordinary law, contract another marriage under Native custom and usage should be held to have committed bigamy and be liable to prosecution and punishment.

(4) That it should be unlawful for any widower or widow who has contracted marriage by Christian rites to contract marriage afterwards by Native customs and usages.

(5) That it should be unlawful for the children of marriages by Christian rites to marry by Native customs and usages.

(6) That no minister of religion should solemnise a marriage between Natives without being licensed as a marriage officer.

Col. Stanford moved as an amendment to clause (1) :—

That it should be the endeavour of ministers of religion and civil officers who solemnise the rite of marriage between Natives, to satisfy themselves that such Natives, in Colonies in which the effect of Christian or civil marriage is to bring the administration of their estates within the Roman-Dutch law, fully realise the legal obligations which they are undertaking.

On this amendment there voted :—

For :

Sir Thomas Scanlen.
Col. Stanford.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.
Mr. Sloley.

Against :

Mr. Samuelson.
Mr. Campbell.

Carried.

On clauses (2), (3), (4) and (5), there voted :—

For :

Mr. Samuelson.
Mr. Campbell.

Against :

Mr. Sloley.
Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.
Col. Stanford.
Sir Thomas Scanlen.

Negatived.

On clause (6), on the motion that the words " between Natives " remain part of the clause, there voted :—

For :

Mr. Samuelson.
Mr. Campbell.

Against :

Sir Thomas Scanlen.
Col. Stanford.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.
Mr. Sloley.

Negatived.

On clause (6), as amended by the omission of the words " between Natives," there voted :—

For :

Sir Thomas Scanlen.
Col. Stanford.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.
Mr. Sloley.

Against :

Mr. Samuelson.
Mr. Campbell.

(Capt. Dickson and Mr. Thompson absent).

Carried.

[NOTE.—The resolution therefore reads as follows :—

- (1) That it should be the endeavour of ministers of religion and civil officers who solemnise the rite of marriage between Natives, to satisfy themselves that such Natives, in Colonies in which the effect of Christian or civil marriage is to bring the administration of their estates within the Roman-Dutch law fully realise the legal obligations which they are undertaking.
- (2) That no minister of religion should solemnise a marriage without being licensed as a marriage officer.]

University of Fort Hare
Together in Excellence

Church Separatist Movement.

MOTION NO. 19.—(COL. STANFORD).

That in the opinion of this Commission the Ethiopian movement, now represented by the African Methodist Episcopal Church, the Ethiopian Order in the Church of England, and numerous semi-organised schismatic fragments detached from every denomination operating to any considerable extent in this country, is the outcome of a desire on the part of the Natives for ecclesiastical self-support and self-control, first taking tangible form in the secession of discontented and restless spirits from religious bodies under the supervision of European missionaries without any previous external incitation thereto. Further, that upon the affiliation of certain of these seceders and their followings to the African Methodist Episcopal Church lamentable want of discrimination was displayed by the first emissaries to South Africa in the ordination to the ministry of unsuitable men.

That the Commission is not disposed to condemn the aspiration after religious independence, unassociated with mischievous political propaganda, but at the same time does not fail to recognise that in the case of a subject race such an aspiration misdirected on the one hand by the leadership of ignorant and misguided men, and repressed by misunderstanding or harshness on the other, might be fraught with the seeds of racial mistrust and discontent.

That the Commission cannot but regard with concern the fact that many who have been prominently connected with the movement in its various phases are men lacking in the breadth of view, wisdom and forethought necessary properly to foster and direct the fledgling ideals of a people just emerging from ignorance and barbarism into a state of semi-enlightenment.

That, reviewing these resolutions, the Commission would not advise any measure of legislative repression, unless unforeseen developments render it necessary, considering that effort should rather be directed toward securing efficient constitutional control and organisation in order that the influences at work may be wisely directed, and any individual cases in which pastors abuse the trust reposed in them, may be amenable to authoritative discipline. To this end the Commission would deprecate the recognition of detached secessionary fragments acknowledging no efficient central authority.

Carried unanimously.

Mission Work.**MOTION NO. 20.—(MR. THOMPSON).**

In the opinion of this Commission all the missionary work amongst Natives carried on in British South Africa should have the consent and support of each Government in each State, and that all Native mission work so permitted be carried on under the control of a European.

This was unanimously negatived (Mr. Thompson being absent through illness).

Native Press.**MOTION NO. 21.—(COL. STANFORD).**

This Commission considers that the Native press is a result of the educational advancement of the Natives, developing without restriction in the liberty of thought and speech permitted them under the British flag.

That the Native is naturally more ready to accept without reserve information conveyed through channels which he regards as peculiarly his own; and, seeing that the Native press has proved on the whole a fairly accurate chronicle of passing events, the result has been a wider dissemination of contemporary knowledge not only amongst those who read but through them amongst the illiterate masses.

That the press is at the same time valuable as an index to a certain aspect of Native thought, though not as yet a faithful guide to Native opinion as a whole, much of what appears being immaturely advanced, while the stolid good sense of the more experienced but less lettered men seldom if ever finds expression in print.

That while open criticism of a powerful and despotic Chief was rarely practised by the Natives in the past, a free press more or less in touch with European ideas could not be expected to maintain the same attitude towards our Government, and that the change need not be regarded as a symptom of disloyal tendencies, but rather as the result of a rapid assimilation of European methods before their objects are fully understood, or their privileges sufficiently appreciated to prevent occasional misuse by the unripe judgment of would-be political writers.

Carried unanimously.

University of Fort Hare
Together in Excellence

Native Political Organisations.**MOTION NO. 22.—(COL. STANFORD).**

In view of the progress of education, the Commission sees no occasion for repression of the desire shown by certain sections of the Natives to form societies for the promotion by constitutional means of what they believe to be their political interests. It considers, moreover, that so long as their deliberations continue to be conducted publicly, as at present, through the medium of the Native press and otherwise, the danger arising from any mistakes made is far less insidious and proportionately more easily met than the secret plotting carried on in less enlightened days.

Carried unanimously.

Marriage by Native Custom.**MOTION NO. 23.—(COL. STANFORD).**

In respect of marriages under Native custom, the Commission advises :—

- (a) That such marriages should not be accorded the status of a Christian marriage solemnised by a minister of religion or a civil marriage entered into before a marriage officer.
- (b) That all marriages under Native custom should be duly registered.
- (c) Recognition of the succession right of children.
- (d) That provision be made for the hearing and determination of claims arising under Native custom for restitution of "lobolo," or such portion thereof as may be deemed equitable where a husband is deserted without sufficient cause by his wife.

Clause (a) carried unanimously.

Mr. Sloley moved as an amendment to clause (b) :—

That the first marriage under Native custom should be duly registered.

There voted for this amendment :—

For :

Mr. Sloley.

Against :

Sir Thomas Scanlen.
Col. Stanford.
Mr. Samuelson.
Mr. Campbell.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.

The amendment was therefore negatived.

On the motion that the word "all" stand part of clause (b) there voted :—

For :

Col. Stanford.
Mr. Samuelson.
Mr. Campbell.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.

Against :

Sir Thomas Scanlen.
Mr. Sloley.

The word "all" therefore remains part of the clause.

On clause (b) being put, there voted :—

For :

Col. Stanford.
Mr. Samuelson.
Mr. Campbell.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.

Against :

Sir Thomas Scanlen.
Mr. Sloley.

Clause (b) carried.

Clause (c) was carried unanimously.

On clause (d) there voted :—

For :

Sir Thomas Scanlen.
Col. Stanford.
Mr. Samuelson.
Mr. Campbell.
Mr. Krogh.
Mr. Hamilton.
Mr. Sloley.

Against :

Mr. de la Harpe.

Clause (d) carried.

On the whole motion there voted :—

For :

Sir Thomas Scanlen.
Col. Stanford.
Mr. Samuelson.
Mr. Campbell.
Mr. Krogh.
Mr. Hamilton.
Mr. Sloley.

Against :

Mr. de la Harpe.

The original motion was therefore carried (Captain Dickson and Mr. Thompson being absent).

On 26th January, 1905, Capt. Dickson moved that section (d) of Resolution No. 23, which read as follows, be expunged :—

That provision be made for the hearing and determination of claims arising under Native custom for restitution of "lobolo," or such portion thereof as may be deemed equitable where a husband is deserted without sufficient cause by his wife.

There voted :—

For :

Capt. Dickson.
Mr. Krogh.
Mr. de la Harpe.
Mr. Samuelson.

Against :

Col. Stanford.
Mr. Hamilton.
Mr. Sloley.
Mr. Thompson.
Mr. Campbell.

(Sir Thomas Scanlen absent).

Negatived,

7th December, 1904.

Family Life and Habits.

MOTION NO. 24.—(MR. SLOLEY).

The Commission finds that education and contact with Europeans are beginning to effect a change in the family life and habits of that large section of the Native population who have not formally adopted Christianity or civilised ways of life. This change has taken the form of a movement towards a higher standard of comfort in the matters of housing, clothing and diet; and improvement in the position and treatment of women has been brought about by the influence of Christian and civilised views on the marriage question; and the labour of women has been much lightened by the introduction of the plough and other appliances.

The Commission considers that evidence has shown that polygamy is on the decrease, that Natives are gradually losing their faith in, and are resorting less to, witch doctors, and that, though still strongly attached to their Native customs as to cattle marriages, considerable change in the form of the dowry or "lobolo" has followed the destruction of the cattle by rinderpest.

Concurrently with these changes, certain demoralising influences have been at work. The inevitable relaxation of the stricter and more arbitrary of the tribal customs, though on the whole commendable, has been accompanied by a decrease of parental authority and a consequent assumption of independence by young men and women which has tended to the disregard of certain wholesome restraints upon misconduct.

The Commission, in view of these changes in the family life and habits of the heathen, recommends the encouragement of religion and education, the adoption of any measure calculated to preserve the inviolability of the marriage tie, the support of the authority of parents and guardians over minors, the enforcement of laws against immorality and drink, and the preservation of the Natives' sense of self-respect by sympathetic recognition of any legitimate aspirations, and by assistance in any well-regulated plans for their material welfare.

There voted on the motion :—

For :

Sir Thomas Scanlen.

Mr. Hamilton.

Mr. Sloley.

Mr. Campbell.

(Col. Stanford, Captain Dickson, Messrs. Thompson, Krogh, de la Harpe and Samuelson absent).

The motion was therefore carried.

"Lobolo."

MOTION NO. 25.—(MR. SAMUELSON).

This Commission is not of opinion that the Native custom of passing cattle known variously as "lobolo," "ikazi," and "bohadi" in connection with marriage by Native custom and usage should be prohibited by law; but recommends that it should be unlawful in the case of children of marriages by Christian rites, and that provision should be made that, after a date to be fixed, no Court shall take cognisance of suits originating directly or indirectly in claims for "lobolo," "ikazi," or "bohadi," as between the father or guardian of any Native woman or girl and her husband or his estate.

Moved as an amendment on behalf of Captain Dickson by Mr. de la Harpe :—

This Commission is of opinion that the Native custom of passing cattle known variously as "lobolo," "ikazi" and "bohadi" in connection with marriage by Native custom and usage should not be interfered with by prohibitory legislation, but be left to die out gradually as the outcome of an advance in civilisation. Evidence taken points to a tendency in that direction.

There voted on the amendment :—

For :

Sir Thomas Scanlen.

Col. Stanford.

Mr. Thompson.

Mr. de la Harpe.

Mr. Krogh.

Mr. Sloley.

Against :

Mr. Samuelson.

Mr. Campbell.

(Capt. Dickson and Mr. Hamilton absent).

The amendment was therefore carried and the original resolution fell,

On 26th January, 1905, Mr. Samuelson moved that the following form one of the resolutions of the Commission :—

That provision should be made that, after a date to be fixed, no Court shall take cognisance of suits originating directly or indirectly in claims for "lobolo," "ikazi" or "bohadi," as between the father or guardian of any Native woman or girl and her husband or his estate.

Mr. Hamilton moved the following amendment :—

It is unnecessary that provision should be made that after a date to be fixed, no Court shall take cognisance of suits originating directly or indirectly in claims for "lobolo," "ikazi" or "bohadi," as between the father or guardian of any Native woman or girl and her husband or his estate, as no Court within the knowledge of the Commission now takes cognisance of such cases.

There voted on Mr. Hamilton's amendment :—

For :

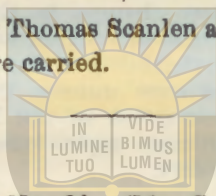
Col. Stanford.
Mr. Thompson.
Mr. Campbell.
Mr. Sloley.
Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.
Capt. Dickson.

Against :

Mr. Samuelson.

(Sir Thomas Scanlen absent).

The amendment was therefore carried.



Native Press.

MOTION NO. 26.—(MR. SAMUELSON).

The Commission considers that there should be a law to punish persons responsible for publications in the Native language creating distrust and animosity between the races or likely to produce conflict between them.

There voted :—

For :

Mr. Hamilton.
Mr. Samuelson.
Mr. Krogh.
Mr. de la Harpe.

Against :

Sir Thomas Scanlen.
Col. Stanford.
Mr. Thompson.
Mr. Campbell.
Mr. Sloley.

(Capt. Dickson absent).

The motion was therefore lost.

Reformatories.

MOTION NO. 27.—(MR. SAMUELSON).

The Commission is of opinion that reformatory institutions should be provided for Native youths convicted of crimes and sentenced to imprisonment, in which to undergo such sentences passed upon them, in order to prevent their mixing with and being contaminated by old criminals.

Carried unanimously (Capt. Dickson being absent).

Savings Banks.

MOTION NO. 28.—(MR. SAMUELSON).

The Commission is of opinion that Natives should be encouraged to use Government Savings Banks, and that steps should be taken to enable Natives in large centres of population to avail themselves of their use.

Carried unanimously (Capt. Dickson being absent).

8th December, 1904.

Polygamy.

MOTION NO. 29.—(MR. SAMUELSON).

The Commission is of opinion :—

(1) That polygamy generally is on the decrease throughout South Africa ; that this is due amongst other things to the increased cost of living, the loss of cattle, and the consequent increase of the difficulties in obtaining "lobolo" consideration, and the increase in the proportion of men marrying.

(2) The Commission is satisfied that considerable disadvantages in their advance towards Christianity result to the Natives from polygamy, which, however, is an old-standing and prevailing social institution amongst these people. The Commission does not regard it as among those customs which have to be put down with a strong hand, but looks forward to its gradual extinction by such means as greater spread of Christianity and of civilisation, by the labour of women being more than it is supplanted by that of men, and by the ordinary laws being voluntarily adopted ; and by "lobolo" being less regarded as a reliable and becoming source for acquiring cattle or other property.

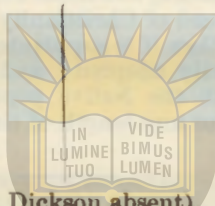
On the motion that the words "and the increase in the proportion of men marrying" stand part of the motion, there voted :—

For :

Sir Thomas Scanlen.
Col. Stanford.
Mr. Sloley.
Mr. Krogh.
Mr. de la Harpe.
Mr. Samuelson.
Mr. Campbell.

Against :

Mr. Thompson.
Mr. Hamilton.



(Capt. Dickson absent).

These words therefore remain part of clause (1), which was put and carried, there voting :—

For :

Sir Thomas Scanlen.
Col. Stanford.
Mr. Sloley.
Mr. Krogh.
Mr. de la Harpe.
Mr. Samuelson.
Mr. Campbell.

Against :

Mr. Thompson.
Mr. Hamilton.

(Capt. Dickson absent).

On the motion that the words "and by 'lobolo' being less regarded as a reliable and becoming source for acquiring cattle or other property" stand part of clause (2), there voted :—

For :

Mr. Campbell.
Mr. Samuelson.

Against :

Sir Thomas Scanlen.
Col. Stanford.
Mr. Sloley.
Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.

(Capt. Dickson and Mr. Thompson absent).

These words were therefore deleted.

Mr. Hamilton moved the addition, at the end of clause (2), of the following words :—
"and owing to the absence of any great surplus of women in the Native population, without which general polygamy is impossible for any length of time."

There voted :—

For :

Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.
Col. Stanford.
Sir Thomas Scanlen.

Against :

Mr. Campbell.
Mr. Samuelson.
Mr. Sloley.

(Capt. Dickson and Mr. Thompson absent).

The words therefore became part of clause (2) which read as follows :—

(2) The Commission is satisfied that considerable disadvantages in their advance towards Christianity result to the Natives from polygamy, which, however, is an old-standing and prevailing social institution amongst these people. The Commission does not regard it as among those customs which have to be put down with a strong hand, but looks forward to its gradual extinction by such means as greater spread of Christianity and of civilisation, by the labour of women being more than it is supplanted by that of men, and by the ordinary laws being voluntarily adopted; and owing to the absence of any great surplus of women in the Native population, without which general polygamy is impossible for any length of time.

Clause (2) as amended was thereupon carried unanimously (Capt. Dickson and Mr. Thompson being absent).

[NOTE.—The resolution therefore reads as follows :—

- (1) That polygamy generally is on the decrease throughout South Africa; that this is due amongst other things to the increased cost of living, the loss of cattle, and the consequent increase of the difficulties in obtaining "lobolo" consideration, and the increase in the proportion of men marrying.
- (2) The Commission is satisfied that considerable disadvantages in their advance towards Christianity result to the Natives from polygamy, which, however, is an old-standing and prevailing social institution amongst these people. The Commission does not regard it as among those customs which have to be put down with a strong hand, but looks forward to its gradual extinction by such means as greater spread of Christianity and of civilisation, by the labour of women being more than it is supplanted by that of men, and by the ordinary laws being voluntarily adopted; and owing to the absence of any great surplus of women in the Native population, without which general polygamy is impossible for any length of time.]

Taxation.

MOTION NO. 30.—(MR. THOMPSON).

That in the opinion of this Commission a uniform amount of hut tax be chargeable on all reserves and locations where the Natives are living under the tribal and communal system throughout the whole of British South Africa, and that £1 per annum per hut be the amount so chargeable as hut tax.

Sir Thomas Scanlen moved as an amendment that the words "a sum not exceeding £2" be substituted for the word "£1," and that the word "so" after "amount" in the last line be deleted.

There voted on this amendment :—

For :

Sir Thomas Scanlen.
Mr. Krogh.
Mr. Hamilton.
Mr. de la Harpe.

Against :

Col. Stanford.
Mr. Thompson.
Mr. Sloley.
Mr. Campbell.
Mr. Samuelson.

(Capt. Dickson absent).

The amendment was therefore lost.

Mr. Hamilton moved :—

That it is inconvenient to deal with any particular tax until the Commission has settled the general lines of taxation, and that the direct taxation of the Natives be under the following heads :—

- (a) Poll tax, and
- (b) Hut tax.

There voted :—

For :

Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.
Sir Thomas Scanlen.

Against :

Col. Stanford.
Mr. Thompson.
Mr. Samuelson.
Mr. Campbell.
Mr. Sloley.

(Capt. Dickson absent).

The motion was therefore negatived.

Mr. Campbell moved as an amendment to Mr. Thompson's motion :—

That in the opinion of this Commission a uniform amount of hut tax be chargeable on all locations set apart for occupation by Natives under the tribal and communal system throughout the whole of British South Africa, and that £1 per hut or dwelling per annum be the amount chargeable as hut tax.

On the motion that the word "£1" stand part of the amendment, there voted :—

For :	Against :
Col. Stanford.	Mr. Hamilton.
Mr. Sloley.	Mr. Krogh.
Mr. Thompson.	Mr. de la Harpe.
Mr. Samuelson.	Sir Thomas Scanlen.
Mr. Campbell.	

(Capt. Dickson absent).

The word "£1" therefore stands part of the amendment.

Mr. Krogh moved as a further amendment to Mr. Campbell's amendment :—

That in the opinion of this Commission the amount of hut tax to be chargeable on all locations set apart for occupation by Natives under the tribal and communal system throughout the whole of British South Africa, be a minimum of £1 per hut or dwelling per annum.

There voted :—

For :	Against :
Sir Thomas Scanlen.	Col. Stanford.
Mr. Hamilton.	Mr. Thompson.
Mr. Krogh.	Mr. Samuelson.
Mr. de la Harpe.	Mr. Campbell.
	Mr. Sloley.

(Capt. Dickson absent).

Mr. Krogh's amendment was therefore lost.

On Mr. Campbell's amendment being put, there voted :—

For :	Against :
Col. Stanford.	Mr. Hamilton.
Mr. Thompson.	Mr. Krogh.
Mr. Samuelson.	Mr. de la Harpe.
Mr. Campbell.	Sir Thomas Scanlen.
Mr. Sloley.	

(Capt. Dickson absent).

Mr. Campbell's amendment was therefore carried, and the original motion by Mr. Thompson fell, and Mr. Campbell's amendment became the substantive resolution.

12th December, 1904.

Native Political Representation.

AMENDED MOTION NO. 31.—(MR. SAMUELSON).

It is the opinion of the Commission :—

(1) That in the interests of both races, for the contentment of the Native population and better consideration of their interests, it is desirable to allow them some measure of representation in the Legislatures of the country ; that such representation should be granted on the following lines and recognise the following main principles :—

- (a) That no Native shall vote in the election of any member or candidate for whom a European has the right to vote.
- (b) That the extent of such representation, that is, the number of members to be granted to Native constituencies, shall be settled by each Legislature, and that at least one such seat should be created in each of the self-governing Colonies in South Africa now, and in each Colony or Possession as it becomes self-governing.

- (c) That in each Colony now self-governing, or when it becomes self-governing, there should be created an electoral district or districts in which Native electors only shall vote for the election of a member or members to represent them in the Legislature, and that there should be separate voters' list and separate candidates for Natives only, but that this should in no way affect the franchise, the voters' lists, or the representation of the European community within such districts.
- (d) That the qualification for the Native voter be the same as for the European.
- (2) That the qualification of the member or members to represent the Natives should be determined by each Legislature.

Carried unanimously.

[NOTE.—This motion was the outcome of three days' deliberation, during which many suggested amendments were proposed, and finally accepted by Mr. Samuelson in the above form.

On the 13th December, 1904, Capt. Dickson moved the addition of the above note to the motion, and there voted :—

For :
Capt. Dickson.
Sir Thomas Scanlen.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.
Mr. Sloley.
Mr. Thompson.

Against :
Mr. Campbell.
Col. Stanford.]

Taxation.



The Commission is of opinion :—

- (1) That it is necessary to impose direct taxation upon the Natives.
- (2) That direct taxation can best be imposed by means of a poll tax or hut tax.
- (3) That such tax should not be less than £1 per year, payable by every male adult Native, with an additional £1 for every wife after the first.
- (4) That the following be exempt :—
 - (a) Farm servants in *bona fide* and continuous employment.
 - (b) Natives domiciled within any urban area who pay local taxes.
- (5) This resolution to stand in the place of resolution on taxation passed on the 8th instant.

Clause (1) carried unanimously.

On clauses (2), (3) and (4a), there voted :—

For :
Sir Thomas Scanlen.
Col. Stanford.
Capt. Dickson.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.
Mr. Sloley.

Against :
Mr. Samuelson.
Mr. Campbell.

(Mr. Thompson being absent).

On clauses (4b) and 5, there voted :—

For :
Col. Stanford.
Capt. Dickson.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.
Mr. Sloley.

(Messrs. Samuelson, Campbell, Thompson and Sir Thomas Scanlen absent).
The motion was therefore carried.

[NOTE.—On the 13th November, 1904, Mr. Thompson moved :—

That the enumeration of the absentees during the votes upon motions be rescinded.

There voted :—

For :

Col. Stanford.
Mr. Thompson.

Against :

Sir Thomas Scanlen.
Capt. Dickson.
Mr. Samuelson.
Mr. Campbell.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.
Mr. Sloley.]

13th December, 1904.

Passes.

MOTION NO. 33.—(CAPT. DICKSON).

That travelling passes issued under the recognised regulations of any Colony or Possession should be in force till the journey has been completed, requiring only to be *viséd* if thought necessary, and without charge, on arrival at the first Pass Office in any other Colony or Possession.

• Carried unanimously.

Liquor.

MOTION NO. 34.—(CAPT. DICKSON).

- (1) (a) That the sale or supply of spirituous liquors to Natives should be prohibited.
- (b) That the manufacture of Kafir beer containing not more than 4 per cent. of spirit be permitted for home consumption; that the holding of Kafir beer parties on private property be under restrictions and in Native locations or areas in which Natives are congregated be regulated by Government; and that the sale of Kafir beer be prohibited.

(2) That in the opinion of the Commission the penalties for the contravention of the laws or regulations prohibiting the sale or supply of liquor to Natives should be uniformly severe throughout South Africa.

Clauses (1) (a) and (b) carried unanimously (Col. Stanford being absent, but supporting).

Clause (2) carried unanimously (Col. Stanford and Mr. Thompson being absent, but supporting).

MOTION NO. 35.—(MR. SAMUELSON).

The Commission is of opinion that no licence should be granted to sell or supply spirituous liquors within any Native location or reserve or in the proximity thereof, where the reasonable conclusion is that no remunerative business can be conducted without sale or supply of liquor to Natives.

Carried unanimously (Col. Stanford and Mr. Thompson being absent, but supporting.)

After deliberation, it was unanimously resolved to refer the sections styled "Tribal System," "Colonial Laws affecting Natives" and "Labour" of the subjects for report to the Report Committee.

24th January, 1905.

Appeal Courts.

MOTION NO. 36.

(1) The Commission disapproves of the creation or existence in any British Colony or Possession in South Africa of a separate and independent Judicial Court or Courts to deal with Native cases, except as hereinafter set forth, outside the jurisdiction of the Supreme Court of such Colony or Possession. It recommends that subject to the regulations of the Court there should be a right to appeal to and review by the Supreme Court in all Native cases, civil and criminal, tried in any other Court under Colonial Law, Statutory or Common.

(2) That in civil cases or disputes arising purely upon Native law and custom, and in which both parties to the suit are Natives, special Native Courts of Appeal now established should continue to exercise the powers of final decision conferred upon them by the Legislature, subject to the distinction drawn above between cases tried under Native law and custom and cases tried under Colonial law, and provided always that the Supreme Court shall retain its powers of review.

(3) That revision of and appeals against verdicts and sentences in criminal cases in any lower Court should be by or to a Judge or Judges of the Supreme Court.

Carried unanimously (Sir Thomas Scanlen being absent).

14th December, 1904.

Natives as Jurymen.

MOTION NO. 37.—(MR. SAMUELSON).

That in the opinion of this Commission Natives should not be empanelled as jurymen.

For :

Mr. Samuelson.
Mr. Campbell.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.
Capt. Dickson.

Against :

Mr. Sloley.

(Col. Stanford and Mr. Thompson absent).

Carried.

(Mr. Thompson expressed himself in favour of the resolution.

Col. Stanford expressed himself as against the resolution, preferring the matter to be left to ordinary laws and procedure in the Colonies).

Together in Excellence

Definition of "Native."

MOTION NO. 38.

In the absence of Sir Thomas Scanlen, Mr. Hamilton brought forward for discussion the recommendation of the Sub-Committee (consisting of Sir Thomas Scanlen, Col. Stanford and Mr. Samuelson) relative to the definition of the word "Native," which read as follows :—

We recommend for the purposes of the Report the word "Native" shall be taken to be an aboriginal inhabitant of South Africa and to include half-castes and their descendants by Natives.

Mr. Samuelson moved the deletion of the words "for the purposes of the Report" and there voted :—

For :

Col. Stanford.
Mr. Hamilton.
Mr. Samuelson.
Mr. Campbell.
Mr. Sloley.

Against :

Capt. Dickson.
Mr. de la Harpe.
Mr. Krogh.

Carried.

Mr. Hamilton moved the deletion of the word "South" after the words "inhabitant of" and the insertion of the words "south of the Equator" after the word "Africa," which was carried unanimously.

The amended motion was then put, reading as follows :—

We recommend that the word "Native" shall be taken to mean an aboriginal inhabitant of Africa, south of the Equator, and to include half-castes and their descendants by Natives.

There voted :—

For :
Col. Stanford.
Mr. Samuelson.
Mr. Campbell.
Mr. Hamilton.
Mr. Sloley.

Against :
Capt. Dickson.
Mr. Krogh.
Mr. de la Harpe.

The amended motion was therefore carried (Sir Thomas Scanlen and Mr. Thompson being absent).

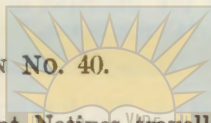
MOTION NO. 39.—(COL. STANFORD).

For the purposes of the Report the word "Native" is used by the Commission in the sense accepted in the several British Colonies and Possessions in South Africa.

Carried unanimously (Sir Thomas Scanlen, Messrs. Thompson and Krogh being absent).

Railway Accommodation.

MOTION NO. 40.



That while there is no desire to prevent Natives travelling by train in any class (first, second or third) for which they pay, provided there is separate accommodation for them, the Commission recommends that in the interests of goodwill and order and for the comfort of travellers of both races carriages of each class be set apart for Natives only and that tickets issued to them shall entitle them to travel only in such carriages.

There voted :—

For :
Mr. Thompson.
Mr. Samuelson.
Mr. Campbell.
Mr. Sloley.
Mr. Hamilton.
Mr. de la Harpe.
Capt. Dickson.

University of Fort Hare
Together in Excellence Against :
Col. Stanford.

(Sir Thomas Scanlen and Mr. Krogh absent).

Carried.

Col. Stanford, while agreeing from the social point of view in the suggested provision of separate carriages for Natives, holds that such matters are best left to local Administrations to deal with.

RECORDS OF DIVISIONS ON REPORT.

10th January, 1905.

Land Tenure.

In paragraph 81, in the sentence beginning with the words "In the first case then existing lines," Mr. Sloley moved that the words "evidence has been led before the Commission that" be omitted, and that the word "were" be substituted for "being"; the sentence to read: "In the first case then existing lines of occupation were recognised and in respect of later annexations the people were assured of full protection," etc.

There voted :—

For :

Col. Stanford.
Capt. Dickson.
Mr. Thompson.
Mr. Samuelson.
Mr. Campbell.
Mr. de la Harpe.
Mr. Sloley.

Against :

Mr. Hamilton.
Mr. Krogh.

(Sir Thomas Scanlen absent).

Mr. de la Harpe moved the insertion in the above paragraph of the words "to its satisfaction" after the word "Commission."

There voted :—

For :

Col. Stanford.
Capt. Dickson.
Mr. Samuelson.
Mr. Campbell.
Mr. de la Harpe.
Mr. Sloley.

Against :

Mr. Hamilton.
Mr. Krogh.

(Sir Thomas Scanlen and Mr. Thompson absent).

University of Fort Hare
Together in Excellence

11th January, 1905.

Individual Tenure.

Moved by Col. Stanford, that from section (2) of paragraph 157, which read as follows :—"The right of resumption of the whole or any portion of the land for public purposes or for the general public good, subject to due compensation in land or otherwise," the words "or for the general public good" be deleted.

There voted :—

For :

Col. Stanford.
Capt. Dickson.
Mr. Campbell.
Mr. Samuelson.
Mr. Sloley.
Mr. de la Harpe.

Against :

Mr. Hamilton.
Mr. Krogh.
Mr. Thompson.

(Sir Thomas Scanlen absent).

Squatting.

Col. Stanford moved that the following paragraph, immediately succeeding paragraph 181, be deleted :—

"It will be observed that whilst it is recommended that the private owner should pay an annual licence, it is not suggested that Government should do so in respect of Crown lands. This proved to be a matter of controversy in deliberation. On the one side it was urged that if Government were to be absolved from the full formalities it would tend towards carelessness and become a non-business-like transaction, whereas it was essential to be as thorough-going with Government land as with private land. On the other hand, there appeared incongruity in desiring a Government Department to vote and expend a large sum of money in order to pay it again into its own Treasury."

There voted :—

For :
Col. Stanford.
Capt. Dickson.
Mr. Sloley.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.

Against :
Mr. Campbell.
Mr. Samuelson.
Mr. Thompson.

(Sir Thomas Scanlen absent).

Col. Stanford moved, after section (5) paragraph 181, ending with the words "as already recommended by this Commission," the insertion of the following paragraph :—

"In connection with the foregoing resolution the Commission does not recommend that any Government should be regarded as liable for payment of an annual licence in respect of Natives occupying Crown lands."

There voted :—

For :
Col. Stanford.
Capt. Dickson.
Mr. Thompson.
Mr. Campbell.
Mr. Samuelson.
Mr. de la Harpe.
Mr. Krogh.
Mr. Sloley.

Against :
Mr. Hamilton.

(Sir Thomas Scanlen absent).

Mr. Hamilton moved, at the end of paragraph 182, the insertion of the following :—

"This proved to be a matter of controversy in deliberation. On the one side it was urged that if Government were to be absolved from the full formalities it would tend towards carelessness and become a non-business-like transaction, whereas it was essential to be as thorough-going with Government land as with private land. On the other hand, there appears incongruity in desiring a Government Department to vote and expend a large sum of money in order to pay it again into its own Treasury."

There voted :—

For :
Mr. Sloley.
Mr. Hamilton.
Mr. Krogh.
Mr. Thompson.

Against :
Col. Stanford.
Capt. Dickson.
Mr. Samuelson.
Mr. Campbell.
Mr. de la Harpe.

(Sir Thomas Scanlen absent).

Communal Occupation.

After full consideration, it was unanimously resolved, that the chapter "Communal Occupation," as amended by the Commission, form part of the draft Report.

(Sir Thomas Scanlen absent).

Minority Views.

It was unanimously resolved, that all minority views shall be inserted directly after the section to which they refer, being separated from the main Report by a dividing line and printed in smaller type.

(Sir Thomas Scanlen absent).

12th January, 1905.

Purchase and Leasing.

Resolved unanimously, that the chapter "Purchase and Leasing," as amended in Commission, form part of the draft Report.

(Sir Thomas Scanlen absent).

Vesting of Appropriated Land in Trust.

Resolved unanimously, that the section "Vesting of Appropriated Land in Trust" form part of the draft Report.

(Sir Thomas Scanlen absent).

Representation.

Unanimously resolved, that the chapter "Representation" form part of the draft Report.

(Sir Thomas Scanlen absent).

13th January, 1905.

Liquor.

Unanimously resolved, that the chapter "Liquor," passed by the Commission, form part of the draft Report.

(Sir Thomas Scanlen absent).



16th January, 1905.

Education.

Mr. Sloley moved the deletion from paragraph 336 of the following words :—

"The Commission realises that the Natives are comparatively small contributors to the revenue."

There voted :—

University of Fort Hare
Together in Excellence

For :
Mr. Sloley.
Col. Stanford.
Mr. Thompson.
Mr. Samuelson.
Mr. Campbell.
Capt. Dickson.

Against :
Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.

(Sir Thomas Scanlen absent).

Christianity and Morals.**Family Life and Habits.****Education.**

Unanimously resolved, that the following chapters form part of the draft Report :—
"Christianity and Morals," "Family Life and Habits," and "Education."

(Sir Thomas Scanlen absent).

17th January, 1905.

The Church Separatist Movement.**Native Press.****Native Political Associations.**

After consideration, the Commission unanimously adopted the following chapters as part of the draft Report :—"The Church Separatist Movement," "Native Press," and "Native Political Associations."

(Sir Thomas Scanlen absent).

Tribal System.

Mr. Samuelson moved the addition, in paragraph 218, after "is being gradually transferred to European Magistrates and Native Commissioners," of the following words :—

"the object being ultimately to entirely eliminate and remove this factor in Native administration as the Natives themselves show preference to civilised forms of government and a desire to abandon their own."

There voted :—

For :

Mr. Samuelson.
Mr. Campbell.
Mr. Krogh.

Against :

Col. Stanford.
Capt. Dickson.
Mr. Thompson.
Mr. de la Harpe.
Mr. Hamilton.
Mr. Sloley.

(Sir Thomas Scanlen absent).

18th January, 1905.

Mr. Hamilton moved, after paragraph 241, the addition of the following paragraph :—

"The Commission deprecates any tendency to impede or prevent Natives pleading their own cases in Court, and holds that Natives should nowhere be compelled to employ attorneys or agents-at-law, the matter to be left to their own free will. On the other hand, it favours the exclusion of attorneys or agents in cases between Native and Native tried under Native law, except in special cases where the Magistrate is satisfied that admission of an attorney is necessary."

There voted :—

For :

Capt. Dickson.
Mr. Thompson.
Mr. Samuelson.
Mr. Campbell.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.
Mr. Sloley.

Against :

Col. Stanford.

(Sir Thomas Scanlen absent).

Col. Stanford dissented from the latter half only of the above paragraph, beginning with the words "On the other hand."

Mr. Samuelson moved the insertion of the following paragraph :—

"The Commission is in favour of a systematic and complete registration of the male Natives in the Colonies and British Possessions in South Africa."

There voted :—

For :

Mr. Samuelson.
Mr. Campbell.
Mr. Hamilton.
Mr. Krogh.

Against :

Mr. Thompson.
Mr. Sloley.
Mr. de la Harpe.
Col. Stanford.
Capt. Dickson.

(Sir Thomas Scanlen absent).

19th January, 1905.

Urban Locations for Natives.

Mr. Hamilton moved the inclusion in this chapter of the following paragraph after paragraph 253 :—

"In connection with this question of urban locations for Natives, the following resolution already quoted in another place should be here referred to, and it is recommended that the principle thereof be adopted by defining an area within each municipality in which Natives may reside and hold property without being subject to location regulations :—

This Commission is of opinion that certain restrictions upon the purchase of land by Natives are necessary, and recommends :—

That purchase by Natives should, in future, be limited to certain areas to be defined by legislative enactment."

There voted :—

For :

Mr. Sloley.
Mr. Krogh.
Mr. de la Harpe.
Mr. Thompson.
Mr. Hamilton.
Capt. Dickson.

Against :

Col. Stanford.
Mr. Campbell.
Mr. Samuelson.

(Sir Thomas Scanlen absent).

Mr. Hamilton moved, that the following paragraph be inserted after the above :—

"In calling attention again to the following resolution, also already quoted in another connection, it is desired to point out that the absence of any accommodation near labour centres for wives and families of Natives at work there affects very adversely the supply of labour with respect both to the number of labourers and the length of their service. The general principles affirmed above in regard to locations as at present understood, apply so far as they are suitable to these suggested labour locations, but the following possible differences in the latter may be indicated :—A somewhat larger plot of land for each hut or building; greater distance from a town; a modification of the regulations to suit the conditions and circumstances of the Natives affected :—

The Commission recommends the creation subject to adequate control of Native locations for residential purposes near labour centres or elsewhere on proof that they are needed."

There voted :—

For :

Col. Stanford.
Capt. Dickson.
Mr. Thompson.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.
Mr. Sloley.

Against :

Mr. Samuelson.
Mr. Campbell.

(Sir Thomas Scanlen absent).

20th January, 1905.

Marriage by Christian Rites and by Civil Marriage Officers.

Mr. Samuelson moved, that at the end of chapter "Marriage by Christian Rites and by Civil Marriage Officers," the following be inserted :—

"The Commission is of opinion :—

- (1) That the question of marriages between Natives, either under common or Native law, in their relation to the contracting parties, their children, and succession to property, is one which should receive early and serious attention at the hands of South African Governments with a view to the attainment of uniformity in law and practice.
- (2) That it should be obligatory and precedent to marriages by common law that the contracting parties should be informed and should understand distinctly the nature and the legal effects of the marriage contract."

There voted :—

For :
Mr. Hamilton.
Mr. Krogh.
Mr. Samuelson.
Mr. Campbell.

Against :
Col. Stanford.
Mr. Thompson.
Capt. Dickson.
Mr. de la Harpe.

(Sir Thomas Scanlen and Mr. Sloley absent).

The Chairman gave his casting vote against the motion, which was therefore lost.

It was unanimously resolved, that the chapter "Marriage by Christian Rites and by Civil Marriage Officers," form part of the draft Report.

(Sir Thomas Scanlen, Messrs. Sloley and Samuelson absent).

Tribal System—Native Law and Custom—Administration.

Mr. Hamilton moved, at the end of paragraph 239, the following addition :—

"For these and other reasons it is recommended that in those Colonies and Possessions where it is not already the case, and so soon as local circumstances permit, Native men and women should be held to have attained their majority at the age of twenty-one years."

There voted :—

For :
Mr. Thompson.
Capt. Dickson.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.



Against :
Mr. Campbell.
Mr. Samuelson.
Mr. Sloley.

(Sir Thomas Scanlen and Col. Stanford absent).

Mr. Hamilton moved the insertion of the following paragraph after paragraph 239 :—

"In this connection there arises the question of how far the principle of family responsibility should be maintained in respect of the head of a family being liable for the payment of the debts of his adult children or *vice versa*. Already the tendency is to leave each man to answer alone for his own debts or torts. Much injustice is wrought by exacting payment from individuals no longer able, in view of changed conditions, to control the actions of those related to them, and the granting of majority and independence to young Native men and women as recommended above should be accompanied by sole responsibility being placed on them for their own debts and torts."

There voted :—

For :
Mr. Thompson.
Capt. Dickson.
Mr. de la Harpe.
Mr. Krogh.
Mr. Hamilton.

Against :
Mr. Campbell.
Mr. Samuelson.
Mr. Sloley.

(Sir Thomas Scanlen and Col. Stanford absent).

Messrs. Samuelson and Campbell disagreed with the above in so far as they recommended the adoption of an age of majority for women.

On these records being read for confirmation, Col. Stanford expressed his agreement with the above two paragraphs.

21st January, 1905.

It was unanimously resolved, that the chapter "Tribal System—Native Law and Custom—Administration" form part of the draft Report.

(Sir Thomas Scanlen, Messrs. Campbell, Thompson and Col. Stanford absent).

23rd January, 1905.

Labour.

Col. Stanford moved, in paragraph 370, the deletion, after the words "the bulk of these occupy land", of the words "for which they do not pay rent."

There voted :—

For :

Col. Stanford.
Mr. Thompson.
Mr. Campbell.
Mr. Samuelson.
Mr. Sloley.

Against :

Capt. Dickson.
Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.

(Sir Thomas Scanlen absent).

Mr. Hamilton moved, after the words "absence of incentive to labour," in paragraph 374, the addition of the section :—

"The easy terms on which they occupy the land."

There voted :—

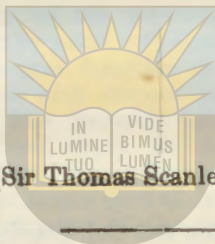
For :

Capt. Dickson.
Mr. Thompson.
Mr. Krogh.
Mr. de la Harpe.
Mr. Hamilton.

Against :

Col. Stanford.
Mr. Sloley.
Mr. Campbell.
Mr. Samuelson.

(Sir Thomas Scanlen absent).



University of Fort Hare
24th January, 1905.
Together in Excellence

Mr. Krogh moved, in the sentence (paragraph 381) "Economic pressure and the struggle for existence will certainly be felt by them or by many of them at no very distant date," the substitution of the word "would" for "will" and the addition after the word "date" of the words "if they had to pay adequately for the use of location lands occupied by them."

There voted :—

For :

Mr. Hamilton.
Mr. Krogh.

Against :

Col. Stanford.
Capt. Dickson.
Mr. Thompson.
Mr. Samuelson.
Mr. Campbell.
Mr. de la Harpe.
Mr. Sloley.

(Sir Thomas Scanlen absent).

Mr. Hamilton moved, in the same sentence, the insertion after the word "existence" of the words "are the true forces on which to rely."

There voted :—

For :

Mr. Hamilton.
Mr. Krogh.

Against :

Col. Stanford.
Capt. Dickson.
Mr. Thompson.
Mr. Samuelson.
Mr. Campbell.
Mr. de la Harpe.
Mr. Sloley.

(Sir Thomas Scanlen absent).

Mr. Hamilton moved, in the same sentence, the insertion of the word "not" between the words "certainly" and "be felt."

There voted :—

For :

Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.

Against :

Col. Stanford.
Capt. Dickson.
Mr. Thompson.
Mr. Samuelson.
Mr. Campbell.
Mr. Sloley.

(Sir Thomas Scanlen absent).

Mr. Hamilton moved, after the second section of paragraph 383, ending with the words "and punctually collected," the insertion of the following section :—

"The imposition of an annual rent on location land based on the producing value thereof or an equivalent increase in the hut tax."

There voted :—

For :

Mr. Hamilton.

Against :

Col. Stanford.
Capt. Dickson.
Mr. de la Harpe.
Mr. Thompson.
Mr. Samuelson.
Mr. Campbell.
Mr. Sloley.

(Sir Thomas Scanlen and Mr. Krogh absent).

Mr. Hamilton moved, after the second section of paragraph 383, as above, the insertion of the following section :—

"Close attention to the enumeration of huts liable to tax and the punctual collection of the tax thereon."

There voted :—

For :

Mr. Hamilton.
Mr. de la Harpe.

Against :

Col. Stanford.
Capt. Dickson.
Mr. Thompson.
Mr. Samuelson.
Mr. Campbell.
Mr. Sloley.

(Sir Thomas Scanlen and Mr. Krogh absent).

Mr. Hamilton moved, after the second section of paragraph 383, as above, the insertion of the following section :—

"The substitution of individual for communal tenure, with the right of sale as between Native and Native."

There voted :—

For :

Mr. Hamilton.

Against :

Col. Stanford.
Capt. Dickson.
Mr. Thompson.
Mr. de la Harpe.
Mr. Samuelson.
Mr. Campbell.
Mr. Sloley.

(Sir Thomas Scanlen and Mr. Krogh absent).

Unanimously resolved, that the chapter "Labour" form part of the draft Report.

(Sir Thomas Scanlen absent).

Preface.

Historical.

Unanimously resolved, that the chapters headed "Preface" and "Historical" form part of the final Report.

(Messrs. Sloley, Thompson, Samuelson and Sir Thomas Scanlen absent).

25th January, 1905.

Individual Tenure.

Mr. Hamilton moved the insertion, after section (7) of paragraph 162, of the following section :—

“The area of each commonage should be determined by existing use and requirements.”

There voted :—

For :	Against :
Col. Stanford.	Capt. Dickson.
Mr. Thompson.	Mr. Samuelson.
Mr. Hamilton.	Mr. Campbell.
	Mr. de la Harpe.

(Sir Thomas Scanlen, Messrs. Sloley and Krogh absent).

Land Tenure.

Unanimously resolved, that the chapter “Land Tenure” to end of “Squatting” form part of the final Report.

(Messrs. Sloley, Krogh, Thompson, Samuelson and Sir Thomas Scanlen absent).

Taxation.

Col. Stanford moved the deletion of the following paragraph :—

“Whatever difficulty there may be, in the absence of definite figures, in proving that the Natives' contribution to the revenue, namely :—

In Customs duty, estimated at	...	...	£451,855
In hut and poll tax, etc.	...	...	850,000
		Total ...	£1,301,855

viewed as taxation only, is a disproportionately small share of the total annual expenditure of the country which has to be raised by taxation from the people of the country, there is no difficulty in doing so when it is remembered that this sum includes all the return the Natives make to the State for the use and occupation of one hundred and forty one million (141,000,000) acres of land throughout South Africa. There is a large body of responsible opinion disclosed in the evidence in favour of this view.”

There voted :—

For :	Against :
Col. Stanford.	Mr. Hamilton.
Mr. Sloley.	Mr. Krogh.
Mr. Campbell.	Mr. de la Harpe.
Mr. Samuelson.	Mr. Thompson.
Capt. Dickson.	

(Sir Thomas Scanlen absent).

Col. Stanford moved the deletion of the following paragraph :—

“The Commission holds that the Natives have not contributed their full share of the burden of opening up and developing the country by roads, railways, posts and telegraphs and other means, in the benefits of which they participate, and that even in regard to the land they occupy they have been found wanting in the small beneficial use to the country which they make of it, their methods of cultivation being defective and wasteful and the results obtained by them from the soil unsatisfactory.”

There voted :—

For :	Against :
Col. Stanford.	Mr. Hamilton.
Mr. Thompson.	Mr. Krogh.
Mr. Samuelson.	
Mr. Campbell.	
Mr. Sloley.	
Capt. Dickson.	
Mr. de la Harpe.	

(Sir Thomas Scanlen absent).

Mr. Thompson moved the insertion, after the words “money is more easily earned by the Natives now than then” in paragraph 407, of the following paragraph :—

"The Commission holds that the Natives in regard to the land they occupy have been found wanting in the small beneficial use to the country which they make of it, their methods of cultivation being defective and wasteful and the results obtained by them from the soil unsatisfactory."

There voted :—

For :
Mr. Thompson.
Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.

Against :
Col. Stanford.
Mr. Samuelson.
Mr. Campbell.
Mr. Sloley.
Capt. Dickson.

(Sir Thomas Scanlen absent).

26th January, 1905.

Land Tenure—(Section Purchase and Leasing).

Mr. Sloley moved, in the paragraph reading "Of the minority of three who voted against this resolution when the subject was voted upon on the 18th November last, two voted for a resolution the effect of which was to prohibit the purchase and lease of land by Natives subject to other than the ordinary Colonial law applicable to Europeans, and who have not generally adopted civilised life and usages.", the deletion of the words "when the subject was voted upon on 18th November last,".

There voted :—

For :
Col. Stanford.
Mr. Thompson.
Mr. Sloley.
Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.
Capt. Dickson.

Against :
Mr. Samuelson.
Mr. Campbell.

(Sir Thomas Scanlen absent).

Col. Stanford moved the deletion of the paragraph :—"Of the minority of three who voted against this resolution, two voted for a resolution the effect of which was to prohibit the purchase and lease of land by Natives subject to other than the ordinary Colonial law applicable to Europeans, and who have not generally adopted civilised life and usages.".

There voted :—

For :
Col. Stanford.
Mr. Samuelson.
Mr. Campbell.

Against :
Mr. Thompson.
Mr. Sloley.
Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.
Capt. Dickson.

(Sir Thomas Scanlen absent).

Unanimously resolved, that the whole chapter "Land Tenure" as amended form part of the final Report.

(Sir Thomas Scanlen absent).

27th January, 1905.

Land Tenure—(Section Purchase and Leasing).

Mr. Sloley, as a matter of urgency, moved the deletion of the paragraph—standing in the final Report—which read as follows :—

"Of the minority of three who voted against this resolution, two voted for a resolution the effect of which was to prohibit the purchase and lease of land by Natives subject to other than the ordinary Colonial law applicable to Europeans, and who have not generally adopted civilised life and usages.".

After protest by certain members, on the ground that the discussion was out of order,

There voted :—

For :

Col. Stanford.
Mr. Sloley.
Mr. Campbell.
Mr. Samuelson.
Capt. Dickson.

Against :

Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.
Mr. Thompson.

(Sir Thomas Scanlen absent).

Land Tenure—(Section Individual Tenure).

Capt. Dickson moved, as a matter of urgency, that he be permitted to revert to the section "Individual Tenure" under the Chapter "Land Tenure."

There voted :—

For :

Col. Stanford.
Mr. Samuelson.
Mr. Campbell.
Mr. Sloley.
Capt. Dickson.

Against :

Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.
Mr. Thompson.

(Sir Thomas Scanlen absent).

Captain Dickson thereupon moved the deletion of the following sentence, in the paragraph following paragraph 161 :—“Yet, secondly, there is an underlying first principle of business which the Natives must and should learn to realise as they advance, viz., that, if they are to enjoy the assurance of their land and the benefits they seek under individual tenure, they must pay rents as Europeans do, based upon producing value.”

Mr. Hamilton desired that before voting on Capt. Dickson's motion his protest against the manner in which the Report is being dealt with be recorded.

There voted :—

For : *Together in Excellence*

Col. Stanford.
Capt. Dickson.
Mr. Samuelson.
Mr. Campbell.
Mr. Sloley.

Against :

Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.
Mr. Thompson.

(Sir Thomas Scanlen absent).

Col. Stanford moved the deletion of the following remaining portion of the paragraph following paragraph 161 :—

“It is not therefore possible for the Commission to name a rent. But in this connection two features are conspicuous. The first is that in instituting a new order, it is incomprehensible to Natives to extend to them differential treatment in assessing the value of holdings adjacent to each other. To do so is to invite suspicion and defeat confidence, and for these reasons it is incumbent to give considerable latitude to those charged with administration, so that no avoidable irritation need be caused for the sake of profit.”

There voted :—

For :

Col. Stanford.
Capt. Dickson.
Mr. Samuelson.
Mr. Campbell.
Mr. Sloley.

(Messrs. Hamilton, Thompson, Krogh and Sir Thomas Scanlen absent).

(Mr. de la Harpe did not vote).

Mr. Sloley moved, that in paragraph 161 the sentence “The fixing of rent is governed by a variety of considerations and is taken in general to be determined by” should be amended to read as follows :—

“The fixing of rent should be governed by a variety of considerations and in general be determined by”.

There voted :—

For :
Col. Stanford.
Capt. Dickson.
Mr. Samuelson.
Mr. Campbell.
Mr. Sloley.

Against :
Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.

(Mr. Thompson and Sir Thomas Scanlen absent).

On the motion that the sections "Individual Tenure" and "Purchase and Leasing" as amended do form part of the final Report,

There voted :—

For :
Col. Stanford.
Capt. Dickson.
Mr. Samuelson.
Mr. Campbell.
Mr. Sloley.

Against :
Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.

(Mr. Thompson and Sir Thomas Scanlen absent).

On the motion that the whole chapter "Land Tenure" as amended form part of the final Report,

There voted :—

For :
Col. Stanford.
Capt. Dickson.
Mr. Samuelson.
Mr. Campbell.
Mr. Sloley.

Against :
Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.

(Mr. Thompson and Sir Thomas Scanlen absent).



Tribal System—Native Law and Custom—Administration.

Unanimously resolved, that the sections "Urban Locations for Natives," "Appeal Courts," "Pass Laws and Travelling," "Native Jurymen and Assessors" form part of the final Report.

Taxation.

Mr. Hamilton moved, that in the sentence in paragraph 410 reading "The majority of the Commission are opposed to the idea of rent being charged to Natives on locations and reserves," the word "majority" be altered to "minority".

There voted :—

For :
Mr. Hamilton.
Mr. Krogh.
Mr. de la Harpe.
Mr. Thompson.

Against :
Col. Stanford.
Capt. Dickson.
Mr. Campbell.
Mr. Samuelson.
Mr. Sloley.

(Sir Thomas Scanlen absent).

Unanimously resolved, that the chapter "Taxation" form part of the draft Report.

(Sir Thomas Scanlen absent).

Unanimously resolved, that the chapter "Tribal System—Native Law and Custom—Administration" form part of the final Report.

(Sir Thomas Scanlen and Mr. Krogh absent).

28th January, 1905.

The Church Separatist Movement.

Native Press.

Native Political Associations.

Unanimously resolved, that the chapters "The Church Separatist Movement," "Native Press," and "Native Political Associations" form part of the final Report.

(Sir Thomas Scanlen absent).

Labour.

Col. Stanford moved the deletion of the word "easy" from section (5) of paragraph 374, reading "The easy terms on which they occupy the land."

There voted :—

For :

Col. Stanford.
Capt. Dickson.
Mr. Sloley.
Mr. Samuelson.
Mr. Campbell.

Against :

Mr. Hamilton.
Mr. Thompson.
Mr. Krogh.
Mr. de la Harpe.

(Sir Thomas Scanlen absent).

Mr. Samuelson moved the deletion of section (8) in paragraph 383, reading as follows :—"The abolition of all taxes or charges upon passes when travelling."

There voted :—

For :

Mr. Samuelson.
Mr. Campbell.
Mr. Krogh.

Against :

Col. Stanford.
Mr. Thompson.
Capt. Dickson.
Mr. de la Harpe.
Mr. Hamilton.
Mr. Sloley.

(Sir Thomas Scanlen absent).

Unanimously resolved, that the chapter "Labour" form part of the final Report.

(Sir Thomas Scanlen absent).

Education.

Unanimously resolved, that the chapter "Education" form part of the final Report.

(Sir Thomas Scanlen absent).

Representation.

Unanimously resolved, that the chapter "Representation" form part of the final Report.

(Sir Thomas Scanlen absent).

[NOTE.—The chapters styled "Introductory," "Definition of Native," "Family Life and Habits," "Christianity and Morals," "Marriage by Native Custom," "Marriage by Christian Rites and by Civil Marriage Officers," "Liquor," and "Taxation," passed automatically from the draft to the final Report.—H.M.T., Secretary].