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Reports of the Native Affairs Commission for the years 1921-1926

South Africa. Native Affairs Commission

1927
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take into account the importance of supplying Native labour readily and regularly to the farms.

" In this direction great blocks of land given up to Native occupation did not find favour. It was suggested at Louis Trichardt that the Native areas should rather march alongside European areas, indeed it was recommended by one delegate who spoke for an important Farmers' Association that European areas should infiltrate into Native Areas so as to secure the necessary labour.

" The Commission has previously definitely urged the Government that the Committee Areas should be set apart as Native Areas. As a result of its tour it finds that since these Areas were delimited important factors have arisen which cannot be disregarded. These have been indicated above and the Europeans consider them of such importance that the Commission does not think that it would be possible for any Government to put through legislation to set aside the Committee Areas for Native occupation—except with a programme of costly expropriation.

" The suggestion that another Land Commission be appointed is of little value as exactly the same results would ensue and unless the country is prepared to bear the cost of expropriation the Commission thinks that the next best course is for the Government to continue to regard the Committee Areas as potential Native Areas and by administrative means allow Natives to acquire land rights in those areas in such a manner as would result in process of time in voluntary segregation."

(2) *Natal :*

" The meetings were well attended, there being present throughout the tour a large proportion of influential and prominent men.

" The fullest publicity was given both to the time and place of meeting. As a result those interested in the questions to be considered had ample opportunity, and availed themselves of it to convene preliminary meetings in order to arrive at concerted decisions. Consequently, except that in smaller details the question of Native Land adjustments was approached from a local standpoint, on the bigger issues there was singular unanimity at all meetings.

" The key note of this unanimity was set at the Newcastle meeting at which no fewer than four members of the House of Assembly spoke.

" Standing out among the more or less unanimous opinions was the decision that no more land should be set aside for exclusive Native occupation. It was held that in the present locations and Mission Reserves the

Natives had as much land as they could reasonably and with advantage make use of.

"There was strong expression of feeling against the proposed Neutral Areas. In this connection opportunity was taken by Mr. Marwick, M.L.A., to repudiate the finding of Natal Native Local Land Committee of which he was a member.

"A thoughtful minority including several of the members of Parliament would not be averse to the sale of land outside the scheduled Native Areas in the special circumstances where European farms are completely surrounded by Native-owned farms.

"There was a disposition on the part of some to urge the repeal of the Native Land Act of 1913 until it was pointed out that such repeal would give opportunity, by reverting to the pre-1913 situation, for the very conditions which they feared, the right of free purchase to both races including Natives from outside the Province.

"Much was made at nearly all the meetings of the relative proportion of land *occupied* by Natives in the four Provinces. The figures which were quoted by the speakers and taken from the Beaumont Report (Appendix V.) are :—

Cape Province	..	9·4% of the whole province.
Natal ..	..	43·1% of the whole province.
Transvaal	..	15·2% of the whole province.
Orange Free State	..	1·5% of the whole province.

"If only the amount set apart for Locations and Mission Reserves be considered the figures are :—

Cape Province	..	8·75%
Natal..	..	24·24%
Transvaal	..	3·56%
Orange Free State	..	0·20%

"Thus presented the figures are startling but a very important factor is left out of consideration.

"Regard must be had to the relative Native and European population as well as the relative size of the various Provinces and the impression conveyed by the foregoing figures must be qualified by this ratio.

"Much was made at the various meetings of a remark by the late Mr. Dower that Natives from the Orange Free State could be accommodated in Natal (Natal Local Land Committee Report, page 17), and the Commission was asked if the Government would repeat the assurance given by General Botha (quoted on page 118 of the Natal Local Land Committee Report) that there was no intention of bringing into Natal Natives from the other provinces.

"The statement was frequently made that Natal was being flooded by Natives from outside. This alle-

gation should be definitely and officially enquired into.

"At the meetings prominence was given to the fact that the Natives were not making the most of the land that they at present held. It was averred that Government supervision is lacking, and that this condition added to the natural conservatism and apathy of the Native brought about a state of stagnation in many of the Locations. The condition on some of the Mission Reserves as compared with that in the Locations was commented upon. In the former due to the example, precept and supervision of the missionaries the progress is worthy of praise.

"As occurred in the Transvaal tour the rapidly changing conditions throughout the Province were given prominence to at all meetings. It was held strongly that what was possible and reasonable in the way of Native land expansion in 1914 was neither possible nor reasonable to-day. The meetings, however, did not urge a new Commission of Enquiry. They only insisted on no more land being set aside for Native occupation than the Scheduled Native Areas.

"As the result of the tour the Native Affairs Commission makes the following recommendations to the Government :—

"(1) The Commission is of opinion in view of the expression of European feeling in Natal that it would not be wise to put into effect by Act of Parliament the recommendations of the Natal Natives Local Land Committee.

"(2) It recommends, therefore, that the sale of land in recommended areas to Natives be carried on administratively as at present and that it be permitted in so-called Neutral Areas where the land is already almost entirely surrounded by Native-owned properties.

"(3) In the centre of the demarcated area marked No. 3 in the Beaumont Report there is a large area not scheduled. The northern portion of this area is a game reserve : the southern portion is European farms. In order to form a solid block of Native land the two central portions might be considered Native Area. For administrative purposes this would afford a similar unity of land to what we find in the Transkei.

"(4) The formation of Councils, either according to the Native Affairs Act, 1920, or to some other modified scheme suitable to the people, should be urged both in Natal and Zululand.

"(5) When the expenditure of the sums obtained from the new Taxation measure is considered the need for the training of the people in better ways of agriculture should have a foremost place. The charge made against the Natives that they have made little progress

during the past half century is true and is not to the credit of the Government. Where the Natives have been taken in hand properly they have advanced.

"(6) The Commission feel that a thorough investigation should be made into and consideration given to the whole question of Native "Squatting"—this term being used in the widest sense to connote the occupation by Natives under any conditions of rent or service of European-owned land as well as Crown land which has not been specifically set aside as Native Reserves."

LEGISLATION.

During the Session of 1925 certain Bills directly or differentially affecting Natives were introduced into the House of Assembly and after their first reading the Government was furnished with the views of the members on the Bills as a whole or on particular provisions of them. The following are extracts from the reports submitted to the Government :—

1. *Criminal Procedure (Amendment) Bill*, 1925 :

"Section 12 of the Bill purports to place the wife, according to Native custom, of a Native in the position of an unmarried woman for the purpose of the law of evidence in criminal cases unless her marriage is by such law or custom a monogamous one.

"As a matter of fact there is no such thing as a monogamous marriage in Native law or custom in so far as the Union is concerned so that the exception contemplated by the section does not exist.

"The Commission feels that this section will offend the susceptibilities of a very large number of respectable and law abiding Natives just for the sake of placing on the Statute Book a declaration which the Commission understands has been carried out in actual practice by the various Provincial Divisions of the Supreme Court for many years.

"There would seem, therefore, to be little necessity for this section and the Commission suggests that it be deleted.

"Section 14 of the Bill takes away from the Native High Court in Natal the hearing of appeals from Magistrates in criminal cases where Natives are accused. It is held that inconvenience results from this practice inasmuch as reviews of the judgments of Magistrates are dealt with by the Supreme Court and it may happen that the same case is the subject of review by the Supreme Court and appeal to the Native High Court. The inconvenience is admitted, but it is suggested that a better procedure would be to send reviews also to the Native High Court.

" The practice involved in the proposed change seems to be important inasmuch as the proposal weakens the case for the differential development of the two races.

" In the second place jurisprudence has abandoned the idea that the law is the imposition of the will of the ruler upon his people and we have come to recognise that law is traditional rule of the community and the crystallization of the customs which a people has found most suitable. There is, therefore, a great difference between criminal law and procedure in Native and European cases.

" It has been the policy of our South African law to bring Natives under a criminal law of the Europeans but it may be questioned if the white people have been altogether wise in this. While it is admitted that there are many aspects of Native criminal law and procedure which are repugnant to European ideas it may be argued that it would have been wiser for us to purify and amend Native law and to assist it in its evolution rather than to cut across it in the manner we have done. At any rate there is no doubt that our criminal law and procedure are so different from that of the Natives that what we have thought justice is often regarded by them as injustice.

" It may be that it is too late in the day to impose upon Natives a criminal code more in keeping with their own ideas but it seems wise to give them a criminal court of their own presided over by judges thoroughly familiar with Native custom, conversant with the Native language and acquainted with the psychology of the Native people. These can all be supplied by the Natal Native High Court, so that it would seem the wiser policy to develop this Court and to establish similar courts for the rest of the Union rather than to remove one of its chief supports as is contemplated in this Bill.

" There is also the very important point that in the course of the development of the Natives it will be very desirable and only just to permit of Native juries in Native cases. Such a plan of course could only operate in an exclusively Native court such as the Native High Court in Natal.

" In conclusion it should be noted that the Natal Native High Court, notwithstanding the criticisms which have been levelled against it in the past, enjoys to-day the entire confidence of the Native people of Natal who would not willingly see the Court itself abolished or even its powers curtailed."

It may here be stated that this Bill did not become law ; but in the Session of 1926 a measure of extended scope was introduced and placed on the Statute Book under the title of ' The Criminal and Magistrates' Courts Procedure (Amendment) Act, 1926.' Section 29 of the

Act enacts that *either* spouse of a marriage according to Native custom is a competent and compellable witness against the other in criminal cases. That Act also contains the provisions of section 14 of the previous Bill.

2. *Mines and Works Act*, 1911, *Amendment Bill:*

"Dr. Roberts and Dr. Loram consider it unnecessary to restate the arguments, ethical and economic, that have been urged against the imposition of a colour bar; they feel that no new conditions of labour have arisen which would justify the application of the proposed restrictions.

"Further they are of opinion that a well considered and rigorously applied wages scheme would obtain the result which is aimed at in this Bill without the accompanying evil effects on both races which a restrictive measure such as this would certainly produce.

"General Lemmer on the other hand does not agree that a wages scheme would effect the desired purpose.

"In the Transvaal and the Orange Free State the principle of the colour bar was at one period of their history fixed by statute and to-day if not legal exists in practice, except where Natives may be exploited by unscrupulous employers to the detriment of the Europeans. He is therefore in favour of the Bill in so far as those two Provinces are concerned, but considers it inadvisable that its provisions should extend to the Cape or Natal in which Provinces there has not been any colour bar in so far as the objects of the Bill are concerned."

Dr. Roberts and General Lemmer also gave evidence before the Select Committee on the Bill.

The Bill failed to pass during the Session of 1925 but was introduced in the following Session and passed by the Joint Sitting of both Houses of Parliament.

3. *Masters and Servants (Transvaal) Amendment Bill:*

"The members have recently toured the Northern Transvaal and Natal and have come to the conclusion that an enquiry should be made into the conditions upon which Natives reside on European owned farms, whether such farms are occupied by Europeans or not. The difficulties which this Bill is presumably intended to meet are found in Natal as well as in the Transvaal. Such an enquiry would, it is thought, furnish information which would suggest other more desirable means for effecting the object desired by Colonel Collins.

"It is suggested therefore that the subject of this Bill be included in the scope of the proposed enquiry."

Dr. Roberts and General Lemmer gave evidence before the Select Committee on the Bill. The Bill did not go through the necessary stages in 1925 but in the following Session Col-Comdt. W. R. Collins introduced

a similar measure which embraced Natal as well as the Transvaal and this was placed on the Statute Book as the "The Masters and Servants Law (Transvaal and Natal) Amendment Act, 1926."

In simple words the effect of the Act is to bring under the Masters and Servants Laws a Native who obtains the right to occupy or cultivate land in return for his services or the services of his family.

4. *The Natives Taxation and Development Bill:*

This Bill has been fully discussed in the Commission's previous reports and became law as Act No. 41 of 1925.

It was amended in certain minor respects by Act No. 28 of 1926.

TRANSKEIAN TERRITORIES GENERAL COUNCIL.

On behalf of the Commission Dr. Roberts and Dr. Loram attended the Session of the Council in 1925 and Dr. Roberts and Mr. van Niekerk were present at the opening proceedings in 1926.

TOUR OF ZULULAND.

During August, 1925, General Lemmer and Dr. Loram in the company of the Secretary for Native Affairs and the Chief Native Commissioner, Natal, made a short tour of Zululand for informatory purposes, and held meetings with Natives at various centres.

BROWNLEE MISSION STATION: KING WILLIAM'S TOWN.

The members at the request of the Government visited King William's Town in October, 1925, to try and effect a settlement in regard to the Brownlee Mission Station, which is actually a Native Location within the municipal limits of King William's Town but, as such, is not subject to municipal control.

Consultation took place between the Natives and Commission and also between the Borough Co ncil and the members, and after full investigation the Commission came to the conclusion that the removal of the Location was desirable in the interests of the town and of the inhabitants of the Brownlee Location.

The Commission came to the conclusion that the terms offered to the Natives were reasonable and should be supported by the Government.

NATIVE CONFERENCE.

In December, 1925, a Conference summoned by the Governor-General under the Native Affairs Act, 1920, met at Pretoria for the purpose of discussing the Native Administration Bill.

The number of delegates to this Conference was increased to 50 as against 25 attending previous Conferences. The Bill was fully discussed and useful criticism offered.

The Minutes of the proceedings will be found in Annexure II.

PROPOSED NATIVE POLICY.

Towards the end of the Parliamentary Session of 1926 the Prime Minister laid before Parliament four draft Bills which indicated the policy of the Government in regard to Native Affairs in so far as legislation was concerned.

These measures are entitled :—

(i) The Union Native Council Bill ;
(ii) The Representation of Natives in Parliament Bill ;
(iii) The Natives Land Act (Amendment) Bill ; and, indirectly affecting Natives,
(iv) The Coloured Persons Rights Bill.

As these measures, apart from one or two outstanding principles, have been placed before the country as tentative proposals for advice or criticism the views of the members on these drafts will not be published until the Bills are introduced in their final form during the Session of 1927.

Members have, however, offered suggestions and made recommendations on the proposals and have had the opportunity of frequently discussing them with the Prime Minister.

In order that the proposals, as published, might be made known as widely as possible to the Natives Dr. Roberts and Mr. van Niekerk held meetings with Natives at various centres of the Union at which the Bills were fully explained, information given, and the views of the Natives solicited. In carrying out this duty 11 meetings were held in the Cape, 13 in Natal, 13 in the Transvaal and 2 in the Orange Free State.

A copy of the Report furnished by the two Commissioners is attached. (Annexure III.)

In addition a Conference under the Native Affairs Act, 1920, consisting of 50 delegates was held in Pretoria in November, 1926, at which full discussion of the Bills was invited.

Minutes of that Conference will be found in Annexure IV, but the main resolutions adopted are as follows :—

1. *Representation of Natives in Parliament Bill :*

(*a*) " That this Conference of Native representatives convened to discuss and to give the Native views on the proposed Union Native Policy as outlined in the Prime Minister's four Native Bills assures the Prime Minister of its willingness to co-operate with him in the adjustment of the racial relationship between the Black and White races, in the occupation and acquisition of land, and political matters within the Union, but that the task of doing so is rendered very difficult if not impossible,

owing to the Bills in question having been made interdependent.

"The Conference takes cognizance of the fact that just as it is not in the interests of the country to leave conditions created by the political colour bar in the South Africa Act and the Natives Land Act to continue, it is equally unwise and not in the best interests of the country to force the Bills—interdependent as they are—upon the country.

"The Conference therefore respectfully requests the Prime Minister to kindly remove the difficulty confronting the Conference by consenting to the deletion of the words from "Provided" to "Acts" in the Short Title section of each of the four Bills; to consent to each Bill standing and to be dealt with, on its own merits.

"The Conference further urges that its findings on any one or other of these Bills must not, in any way, be regarded as an acceptance of the Bills being introduced in Parliament in their present form."

"(*b*) In view of the strong and unanimous feeling expressed by the Transvaal, Free State and Natal representatives against the abolition of the Cape Native franchise as proposed under the Representation of Natives in Parliament Bill: and

"In view also of the fact that the proposed Native legislation affecting franchise emanates not from a desire to grant franchise to Natives in the Northern Provinces but rather from the mistaken fear on the part of the European public that white civilisation and white supremacy will be endangered:

"This Conference finds itself unable to consent to this measure which is directed against the future political rights of the people of the Union. It rejects the Representation of Natives in Parliament Bill.

"Alternatively it asks the Government to initiate a small beginning of a grant of franchise rights to the Northern Provinces' Natives, but leave the Cape Native franchise untouched."

2. *Natives Land Act Amendment Bill:*

"1. That in view of the rejection of the abolition of the Cape Native franchise by this Conference, the Conference finds that the Cape is faced with the similar danger in this Bill and therefore strongly opposes its application to the Cape Province.

"2. This Conference, realising that the Government have abandoned the policy of segregation, recommends that the whole country be released from the operation of the Natives Land Act, 1913.

" Or alternatively, (*a*) the Government should adopt the Beaumont and Committee Areas in the Northern Provinces as minimum areas in which natives only could buy.

" (*b*) That the allocation of areas according to tribes as prescribed in the Bill is strongly opposed as such will retard progress and civilization among the Bantu people.

" (*c*) That the restrictions on Associations of Natives to purchase land be removed.

" (*d*) That Land Boards as suggested by the Beaumont Commission should be established for further adjustment of the Land question.

" (*e*) That a Native Land Bank be established on the basis of the European Land Bank.

" 3. That farms bought by Natives and scheduled areas situated in European areas be added to Native areas.

" 4. That the whole of Chapter II. be deleted as the ultimate effect of its application will bring about an economic enslavement of Natives. The Conference recommends that this Chapter be substituted by one dealing with Native development in agriculture and industry."

" 5. That the Government should be liberal in its grants to the Native Land Purchase and Advance Fund.

3. *Union Native Council Bill :*

(*a*) That the principle of the Bill be accepted :

(*b*) Amendments in Section *two*, subsection (2) ; Section *three*, sub-section (2) (*c*) :

(*c*) Amendment in Section *six*.

ANNEXURE II.

MINUTES OF CONFERENCE SUMMONED UNDER ACT NO. 23 OF 1920 AND HELD AT THE PALACE OF JUSTICE, PRETORIA, ON THE 3RD, 4TH AND 5TH DECEMBER, 1925.

First Day.

3rd December, 1925.

PRESENT.

The Hon. J. B. M. Hertzog, Prime Minister and Minister of Native Affairs.

Major J. F. Herbst, C.B.E., Secretary for Native Affairs, Senator the Hon. A. W. Roberts, General L. A. S. Lemmer and Dr. C. T. Loram, Members of the Native Affairs Commission.

Mr. R. S. Medford, Secretary to the Native Affairs Commission.

Cape Delegates:

1. Mr. D. Bikitsha.
2. Mr. C. Sakwe.
3. Mr. S. Matoti.
4. Mr. S. Majeke.
5. Chief J. Moshesh.
6. Mr. T. Makiwane.
7. Chief J. Langa.
8. Mr. E. Mahonga.
9. Mr. J. G. Sikiti.
10. Rev. L. N. Mzimba.
11. Mr. A. Njokweni.
12. Mr. S. Plaatje.
13. Dr. S. Molema.
14. Mr. P. J. Nikiwe.
15. Mr. Singqandu.
16. Prof. D. D. T. Jabavu.
17. Rev. A. Mtimkulu.

Natal Delegates:

1. Chief Makasane.
2. Chief Kulu.
3. Chief Matole.
4. Chief Msinyane.
5. Chief W. Kumalo.
6. Rev. J. L. Dube.
7. Mr. N. J. Mfeka.
8. Mr. F. M. Mzoneli.
9. Mr. W. Bhulose.
10. Mr. A. A. Kumalo.
11. Chief Siyoka.
12. Chief Tombela.

Transvaal Delegates.

1. Chief M. Masibi.
2. Chief Mphahlele.
3. Chief Senthumulo.
4. Chief Sekukuni.
5. Chief Mampuru.
6. Chief G. Makapan.
7. Chief S. Makapan.
8. Chief Ngubu.
9. Chief A. Moiloa.
10. Mr. R. V. S. Thema.
11. Mr. S. Zibi.
12. Mr. J. Mohohlo.
13. Mr. J. Morosi.
14. Mr. R. M. Tladi.
15. Rev. G. S. Khoza.
16. Mr. D. Sebeko.

Orange Free State Delegates:

1. Mr. Z. W. Fenyang.
2. Chief Mopeli.
3. Rev. Z. R. Mahabane.
4. Mr. E. Gonyane.

Mr. I. Bud Mbelle of the Native Affairs Department interpreted in the Xosa-Zulu languages and Mr. A. S. Mbelle of the Native Affairs Commission interpreted in the Sesuto-Sechuana languages.

PRIME MINISTER'S ADDRESS.

General Hertzog addressed the meeting on the following lines :—

> " Unfortunately I shall not be present at this Conference for any length of time and I wish to say a few words to you. Possibly there may be questions put to

me for enlightenment, and if I have time this morning I shall answer them with pleasure. Unfortunately I have to be elsewhere at 11.30. Consequently if I am not in a position to give the necessary explanation, I hope to have the chance at a later opportunity.

" This Conference is meant to ascertain the feelings of the Natives in connection with Native administration, concerning which it is possible that proposals will be placed before Parliament at the next Session. The matters which are being brought to attention will be of great importance and in certain respects far reaching.

" Before I speak about them, I shall say a few words about the constitution of this meeting.

" This Conference consists of twice as many members as its predecessors. In addition other methods have been followed in choosing the delegates. It is not necessary for me to state the principles in accordance with which the Government has acted in this matter. But I may say, shortly, that the desire was to reach every portion of the Native people and above all where possible to place the Natives in a position to send their own delegates.

" As I mentioned at Smithfield I hope that in a short time this Conference will by law become the Union Native Council with most of its delegates chosen by the people. Its duties will be weighty and important.

" This Conference is therefore the forerunner of the future Union Council which I have no doubt will be of great use and power. But the extent of its utility will depend on how the delegates show their ability. If they play to the gallery or don't look to the benefit of the people the Council will fail. The Native population is looking for leaders ; and, these should be progressive not retrogressive. In the choice of leaders will depend how much the true interests of the Natives will be served.

" With my parliamentary experience, I have found that long and beautiful speeches are not always fruitful.

" The Native is in general a good orator and, in addition, he has a natural talent for debate. It is necessary for you therefore to know in the first place how to consult with each other, how to give advice, but at the same time how to take advice. If you do this there will be no necessity to look for eloquence. This will come of itself without your seeking for it, and when it comes it will beautify the fruit of your work.

" Be assured that the whole country has its eyes fixed on what may be done here ; and let me assure you that the eye of the white man is on this meeting, not because of any ill feeling, towards you, but because he desires that you will attain the blessing and the happiness of the Native people.

[U.G. 17—'27.]

" I feel certain that you have placed great importance on the views I voiced in my address at Smithfield.

" Now I wish to say at once that the reception of those views by the press as well as by other portions of the people—whites and blacks—has given me great pleasure.

" This gives me proof of how the whole of South Africa are in agreement that this problem must be solved, and also that the whole population is ready to think over it long and earnestly before taking action. This is as it should be.

" The Native problem is the most difficult one with which South Africa has to deal. Every earnest suggestion for its solution deserves consideration. And I feel convinced that South Africa is ready to give consideration to what I have proposed, and, at the same time come to some definite decision in the matter.

" I wish to repeat here what I said at Snithfield : I feel convinced that it is best both for the Native and for the European that so far as the occupation of land is concerned the Native should be separated from the European. This is the plan followed in the Transkei where one finds the most favourable conditions in so far as Natives are concerned.

" That is also the view put forward by Government Commissions and by nearly all writers on Native matters. And I feel convinced that this is also the opinion of the great majority of the Natives. But if there is to be territorial segregation then provision must be made for the necessary land. How that will be obtained I will not now go into. But I will say that according to the administration begun by the former Government there is no reason why the necessary ground cannot be obtained for the Native, whether by purchase or lease. What the necessary additional land will be has already been fixed in general by two Commissions and I have full confidence that I shall be in a position to place proposals before Parliament which will extend the Act of 1913.

" I have mentioned ' purchase ' and ' lease,' because the Native must clearly understand that no land is to be given by the State. But that the opportunity will be given to him by means of purchase or lease to enable him to acquire a reasonable extent of land in addition to what has been reserved for him.

" I wish here to emphasize that it is clear to me that there is a misapprehension about this matter. There are Natives as well as Europeans who seem to think that the Act of 1913 intended to make a free gift to the Natives of the land described by the Beaumont Commission. That was never the intention, nor is it the present intention.

" The Native must endeavour, just as the European does, to obtain land by means of purchase or hire. Where he has not the means the State will lend him the assistance in so far as he deserves it and the State is able to do it.

" I want you to know that the policy is the same as has been the case in the past. Where the Natives need land and wish to buy the Government has stepped in. I may inform you that for this year an amount of £50,000 has been placed on the Estimates for the purchase of farms in the Glen Grey District. For these, Natives will pay rent in the usual way.

" Further the Native must be assured that he will have the right to extend by purchase or hire the land already reserved for him.

" That is an implied right under the Act of 1913 and he must therefore be placed in that position, in other words, the Native must up to a certain point extend his territory, but this he must do by acquisition in the usual way possibly with the Government's help.

" I hope he will be placed in that position by legislation which I intend to lay before Parliament.

" Local Councils will be constituted on different lines within the Native Areas according to circumstances, development, national character and habits. While therefore in certain cases a Council will be constituted of Native Chiefs, there will be others consisting of Chiefs and representatives of the people. An eye will have to be kept continually on the progress and development of the Natives in such areas.

" So far as the duties of these Councils are concerned, these will naturally depend in each specific case on the capacity of the Council to deal with matters. As a guide all such matters will be entrusted to the Council as they have the power to deal with satisfactorily.

" I wish to add that these Native Areas will never become the independent or semi-independent states of which some Natives sometimes speak. The Native Areas will be under the leadership of the Government, more or less on the lines of municipalities or divisional councils amongst Europeans with defined rights and responsibilities.

" Then there will be further a Union Native Council which will in the course of time be charged with very responsible duties in regard to the affairs of Natives, what may be described as the Natives' Parliament.

" Some Natives doubt whether these different councils will ever be created. They point out that although five years have elapsed since the Native Affairs Act was passed by which provision is made for Native councils no such councils exist as yet. This is due to the fact that,

according to the opinion of the late Government not sufficient provision was made in the Act for the proper control by Government of the finances of these councils. As this omission has since been remedied by the Native Taxation Act there can no longer be any reason why these councils should not be established. That the Government takes these councils seriously is proved by your presence here to-day. There was no obligation on the Government to increase the number of delegates of this meeting, or to bring about improvements in the method of selecting them. This has been done solely to give the Natives a larger number of delegates in the consultations on these questions.

"I wish to assure you that the creation of Native Councils is an essential part of the Native policy of the Government.

"Therefore nothing surprises me more than when I see that according to some Natives it would be the policy of the Government to divide the Natives among themselves and to throw them back into the ordinary tribal system.

"Now I come to the question of the field of labour for Natives within Native Areas.

"Within a Native Area a Native ought to feel at home. So far as he is concerned, therefore, there should be no limitations within his area except those which exist in a well-managed community. As I have already said, it is my object that, so far as the Native is capable to do so, he will himself lay down the rules according to the demands of civilization, which will suit him. I not only desire that he shall be his own legislator within his own house, but he must also control his own administration by means of Native effort. Within these areas there will be opportunity for the Native statesman as well as for the Native civil servant. The employment of the European must be the exception, and as a general rule no white person shall be employed for work for which a Native can be found.

"In European areas conditions will naturally be the opposite to a certain extent. Where the European is almost wholly excluded from doing work in Native Areas it would not be right to place the European in his own area in a position of unrestricted competition on the part of the Native. Both have the right to protection; and the question to me is to give this protection in such a manner that justice shall be done to both.

"To obtain this end the basis for the employment of Europeans within white areas must be extended in favour of the European, so that, within his own areas, he will always have the assurance of obtaining employment—as will be the case with Natives in the Native areas

generally. It is for this reason that I will continue to support the Colour Bar Bill. It does not appear to me to be anything more than reasonable to restrict the activities of the Native in regard to certain matters.

"I come now to the question of the Native vote. As regards the arguments for and against the position in the Cape, I must refer you to history. It is clear that the arrangement which was come to in 1909 was only a compromise. Now we must accept it as a fact that the European portion of our population is against the enfranchisement of the Natives on the same basis as themselves. The European feels, quite rightly, that the right to vote is the fruit of centuries of civilized government and that he is the result and the heir of a civilization in which the Native does not share . The European is, however, prepared to agree that the Native should determine the method and personnel of the Native Council but, in the matter of Parliament, the European insists that this is a matter in which he alone shall have the say.

"Meanwhile it must be admitted that there are certain Native interests indissolubly bound to those of the European and because Parliament is entrusted with the management of these interests it is felt that, in so far as the Native is concerned, there should be representatives in Parliament to speak and act on his behalf.

"My proposal is that there should be seven Europeans in Parliament entrusted with the care of Native interests. These will be elected directly by the Natives independently of the white vote. These seven members will represent the whole Native population and will be able to speak and vote on all subjects except those affecting the principles of parliamentary representation.

"I have been told that the retention of the Cape coloured vote and its extension to the coloured people of the Northern Provinces is the least satisfactory of my proposals so far as the Native is concerned. It seems to me that this is a point of greater interest to the coloured man and to the European than to the Native. In the Cape there exists a large number of coloured people already in possession of the vote. They owe their origin to the white man. They speak the language of the European. They live among Europeans and share their outlook and philosophy in a measure totally different from what we can expect from the Native. Like the European they possess no tribal Chiefs and no tribal laws. It is therefore impossible to deal with them in the same way as the Native, or to give them separate councils or separate areas. They can best justify their existence where they are to-day and all I propose is that the rights possessed by them in the Cape will not be confined to the Cape.

"It is incorrect to say that the Native will be worse treated by this proposal. There is a difference in the treatment but that is a differnece which is calculated on the needs and interests of two different classes of the population. I hope you will agree with me that there is no injustice done when different grazing is given to sheep than that given to the cattle.

"I am anxious that the views of the Natives be heard on these weighty problems. I have decided therefore that next year after the various Bills have been laid on the table of the House, this Conference will again be summoned to discuss the Native problems raised by them in an effort to reach a solution whereby the interests of both Natives and Europeans will be safeguarded.

"My wish is that this will happen eventually to the general satisfaction of all.

"It has been said, I understand, that the search to-day for a solution is the result of fear. That may be so. But then I must also say that this fear has its origin in reason and prudence not in cowardice."

The Prime Minister then withdrew from the Conference, and it adjourned until 11.45 *a.m.*

Major Herbst in the chair.

Mr. Jabavu enquired what procedure would be adopted at the Conference. When could motions be submitted? He would also like to know during what hours it would sit. He pointed out that the feelings of the delegates was to the effect that they should have 30 days' notice of the agenda of a Conference in order to enable them to consult the people. Further, that three days was too limited a period for the duration of a Conference.

He hoped that Resolutions adopted by the Conference would be laid before Parliament before legislation took place.

He thought it should be a regular practice for the Prime Minister to give some time to Conferences for discussion of matters.

Major Herbst replied that the Conference would sit each day from 9 a.m. to 12.45 p.m. and then adjourn until 2.15 p.m. The length of the afternoon sessions would depend on the progress of business.

Subjects other than the Native Administration Bill should be brought forward by motion, and motions could be handed in at any time.

A regards the Prime Minister's attendance, it would be better to try and finish discussion of the Bill and ask General Hertzog to give them some time on Saturday morning.

Messrs. *Mtimkulu* and *Singqandu* handed in motions touching the Prime Minister's policy.

Major Herbst pointed out that the Conference had not been called to hear the Prime Minister's policy or to discuss it. General Hertzog, as a matter of courtesy, repeated what he

had said to his constituents, and he had intimated his willingness to discuss the matter with the delegates. But this must be dissociated from the special work for which the Conference had been summoned. The policy was a matter for the future.

Continuing, *Major Herbst* said that the matter which was being put before the Conference was a most important one. It was an attempt to put on a proper footing the whole administration of Natives throughout the Union. Delegates knew that the Government was still working under the laws of the old Colonies, so that instead of having one administration they were still working in compartments.

While Natal had a complete system under Acts passed by its own Parliament—laws providing even for the various salutes to officials—in the Cape there was no law at all. While in the Transvaal the law is that the Governor-General is the Supreme Chief and is given full power and authority to carry on as if he were a Native Chief.

In the Transkei they had evolved a perfect system for Parliament had given the Governor-General the power to make laws.

These different laws and powers led to confusion, and, in addition, stultified administration. For where there were no powers nothing was done—and where the powers were obscure nothing also was done for fear of coming into conflict wtih the law.

So any one who had experience of Native administration knew how difficult it was to carry on;

The Native Affairs Department was often blamed for sitting still and doing nothing, but this criticism came from ill-informed people who knew nothing about the difficulties. The Department could not make up for the deficiencies of Parliament. It was necessary to go to Parliament for a law before many things could be done. And Parliament was so overburdened with work that it was most difficult to get any law passed dealing specially with Natives.

A great deal of consideration had been given to the position —not the first time to-day. Bills had been drafted but had never become law.

He hoped for better success with the present Bill, which dealt with four important subjects, namely :—

(1) The powers and duties of government officials appointed to look after Native affairs ;
(2) the recognition of Native law and custom and the constitution of special courts to deal with these ;
(3) the recognition of lobolo and the administration of the estates of Natives ;
(4) the system of legislating in Native Areas by means of Proclamation issued by the Governor-General.

The Bill was a second attempt to secure uniformity in Native administration. Last year there was the Taxation

Bill, and this year it was the Administration Bill. It was an attempt to get the Department of Native Affairs and its officials throughout the Union, after having put their house in order, ready to deal with problems which would undoubtedly arise.

He was not going to be such hypocrite as to say that the Bill was a palatable measure. The delegates from the Cape Province would say that they got a fresh shock every year, but it was in that Province that there existed the greatest need for such a measure. The Bill was necessary principally to clear up the mess in regard to land matters in the King William's Town District.

The delegates from the other Provinces would find the Bill acceptable. As regards the Transvaal, they ought to welcome it; as regards Natal, the Bill contained extracts from laws already in force there.

There was a good deal of sugar in the Bill, but he did not want to stress that fact.

The Bill proposed to appoint Chief Native Commissioners and to have their duties clearly defined.

Then the duties of a Native Chief would be defined. They do not have the luxury of Chiefs in the Ciskei; in the other Provinces certain duties have been defined. In Natal there was the Native Code which rigidly fixed Native law and custom, so much so that it was not possible to alter a single section without the aid of Parliament. That Code had been passed in 1891 and there had been no alteration since. In the Transvaal by a law of 1885 Native law and custom were recognised and Chiefs appointed by Government have power to exercise jurisdiction in cases under Native law, subject to an appeal to the Native Commissioner. But the first thing to happen was that the Supreme Court ruled that the custom of lobolo was contrary to the principles of civilization. This knocked the bottom out of Native law and custom. At present all children born of marriages contracted under Native custom are illegitimate. In the Transkei Native law and custom are fully recognized but cases must be tried by the the Magistrate as Chiefs have no jurisdiction. In British Bechuanaland Native law and custom prevails and Native Chiefs have jurisdiction in accordance with treaty rights. In the Ciskei all are under European law. Although this has been the position since the annexation of British Kaffraria the Natives have adopted the practice of taking their cases to a Magistrate who has no jurisdiction and asking him to adjudicate under Native law and custom. The Bill proposes to help those people and further to give them properly constituted courts which will try cases under Native law and custom.

Certain safeguards are to be laid down in respect of marriages under Native law otherwise as experience has shown confusion would result.

He knew that legislation by Proclamation would be opposed by the Cape delegates, as they had consistently opposed it in the past, and he thought that was the reason why they were wallowing in the mud in regard to land matters. His opinion had been confirmed when he had travelled in the Transkei and in the Ciskei and found entirely different conditions

Many people with superficial knowledge would say that the difference was due to the Bunga, but they don't speak from experience. He and others who were aware of the facts knew that it was due to government by Proclamation.

When had Parliament last dealt with the Ciskei? In 1884!

In the Transkei as difficulties arose they were overcome by Proclamations issued by the Governor-General. Year by year the difficulties were discussed and Proclamations issued to meet them.

He could quote long reports by the Chief Native Commissioner showing the difficulties in regard to land matters in the districts of Kingwilliamstown, Peddie and Victoria East. There transfer of land had to take place with the aid of attorneys, who had to receive powers of attorney, and to prepare formal deeds of transfer. Of course they did not work for nothing! In addition transfer duty had to be paid. As a result when a father dies the son sits upon the land without going to attorney, Magistrate or Deeds Office. And his son does the same! When the land is sold the purchaser simply sits upon it.

The result is a state of confusion which it is impossible to put right under the existing law.

In the Transkei, just across the river, where the wicked system of legislation by proclamation obtains, a man simply takes the title to the Magistrate, pays 2s. 6d. and receives an endorsement of transfer!

The only thing to be done in Kingwilliamstown was to appoint a Commission to find out what people were entitled to occupy the land to-day. To ignore all intermediaries, former dead owners who should have taken transfers, and to issue new title.

He knew that the Ciskei Natives were afraid of the proclamation system because rights might be taken away. In the hands of a person who was very unsympathetic such might happen. But let them look to the Transkei! Had any rights been taken away there since 1879 except by the authority of Parliament itself?

A further safeguard was the provision that all proclamations should be placed before the Native Affairs Commission before they were approved by the Governor-General. If the Commission did not approve of any portion of the proclamation its protest would accompany the proclamation when laid on the Table in Parliament.

In conclusion *Major Herbst* asked the delegates to be constructive in their criticism. If they disagreed with any provision they should try and offer an alternative.

The Conference adjourned from 12.45 *p.m. to* 2.15 *p.m.*

Chief Msinyane moved :—

> "That this Conference expresses to the Governor-General and Princess Alice their deep sympathy in the loss which they, the European people and the Natives have suffered through the death of Queen Alexandra.
>
> "They trust that their message may be conveyed to His Majesty the King."

Mr. Fenyang seconded.

The motion was adopted unanimously all members of the Conference standing.

Mr. Sikiti thought the Bill was so important that 3 days was too little time for its discussion.

Mr. Mtimkulu intimated that he had a meeting with the Natives whom he represented and a discussion of 3 hours had taken place on the provisions of the Bill. He would give the view of the people. The first section to which he wanted to refer was No. 2 which gave Sub-Commissioners the powers of a Justice of the Peace and a Police Officer. This meant that a Sub-Commissioner would not only arrest a Native but sit in justice on him.

Major Herbst pointed out that the Sub-Commissioner would have no criminal jurisdiction. All criminal cases would be tried by the Magistrates. The intention was to separate from the Magistrates' Court all matters appertaining to Native law and custom, and so to make the procedure cheap and simple.

Mr. Mahabane hoped the Conference would adopt the procedure followed last year, namely, to discuss the principles of the Bill first. That would help them to understand the subject matter before going into details.

Major Herbst agreed that the suggestion was a good one, but what would be the result? Suppose the Conference rejected the Bill would the delegates simply return home? The Conference was purely a consultative body—not a legislative one.

Let them take the Bill clause by clause and say what they liked.

Mr. Mtimkulu enquired whether in adopting the Chairman's suggestion they would not be bound in regard to the principle.

Mr. Sakwe asked whether the powers of the Chief Native Commissioner would be the same as those of the Chief Magistrate of the Transkei.

Mr. Makiwane thought there was no harm in discussing the Bill clause by clause. If the delegates disagreed they could say so. There were clauses in the Bill which his people would not like to be thrown out.

Mr. Matoti agreed with Mr. Makiwane.

Mr. Singqandu thought the Chairman would appreciate the difficulty of the delegates. Section *one* was delightfully indefinite. There was a Chief Native Commissioner in the Ciskei but no one knew his functions.

Mr. Kumalo supported the views of Mr. Makiwane.

Mr. Jabavu asked the Chairman to give some indication of the duties of a Chief Native Commissioner.

Mr. Khoza thought the Chief Native Commissioner should be nominated by the Bunga.

Major Herbst pointed out that the gentlemen holding the post of Chief Native Commissioner were civil servants and the most senior officers of the Department.

If the Bunga were to nominate it would be impossible to have regard to the claims of others—men whom they had never seen and who probably were doing equally good work as the men among them.

A Chief Native Commissioner is the senior representative of the Department of Native Affairs in the area of his appointment. Being the senior Native Affairs official in an area, he controls, in so far as Native matters are concerned, the work of Magistrates in that area.

A Chief Native Commissioner is responsible to the Government for the administration of Native Affairs in his area. All correspondence between Magistrates and the Department of Native Affairs is conducted through him, and he is the officer to whom the Government looks for advice on all Native matters in his area.

He will not have the same powers as the Chief Magistrate of the Transkei because the latter possesses judicial powers in the Native Appeal Court but the Bill proposes to abolish that Court, and the intention is to take away the judicial powers of the Chief Magistrate and Chief Native Commissioner so that they will be free to deal with administrative duties and not be hampered with judicial duties.

A Chief Native Commissioner will have a lot of work thrown upon him when local councils are established. And, if there is a General Council he will be its chairman. All work as between the Council and the Government will fall upon him.

There will also be a lot of work in the administration of land matters.

It would be the duty of a Chief Native Commissioner to see that all Magistrates pursue a common policy; to co-ordinate all Native administration in their respective areas; to see that officials afford access to Natives and keep in constant touch with Natives; and generally to bring about improvement in Native matters.

Such roughly would be the functions and duties of a Chief Native Commissioner—but they would be definitely laid down

so that a man would know exactly whom to seek and need not go to an attorney.

This would clear up the position. For take the case of the Transvaal, where the Natives and the Government are at issue in Court most of the time. A Native Chief issues an order under Native law and custom ; the order is challenged ; long litigation ensues ; the usual experts appear on both sides, and finally the case winds up at Bloemfontein with a ruinous bill of costs.

Something more definite was necessary now, and it was desired to put in plain words what were the duties of each one.

Mr. Plaatje stated that owing to the short notice he had received he had not had time to understand the Bill. He thanked the Chairman for the explanation. In taking the Bill clause by clause the Chairman would find that they were groping for information which was supplied later on in the Bill.

He did not think the Conference would be discontented if the Government had placed a Bill before them containing the law of the Transkei. But the Bill was the law of Natal and the Transvaal. In the Orange Free State and the Cape there were no Native Commissioners and no Native Sub-Commissioners. If the Transvaal was satisfied with those officials, then confine them to that Province.

He had heard Native law and custom laid down in the Supreme Court of the Transvaal, but it was not the Native law and custom of his people.

Then the Bill proposed to regularize lobolo—after 100 years of christianity amongst the Natives ! This made the Bill hopeless.

He had no objection to Headmen, but their appointment would lead to hereditary Chiefs and Government Chiefs. He knew of cases where the people ignored the Government Chief and stuck to the deposed Chief.

Major Herbst stated that in his previous explanation he had omitted to say that the legal actions in which the Government had been involved were really the result of endeavouring to bolster up the authority of the Chiefs. They had nothing to do with Commissioners. Chiefs control the locations in the Transvaal and because certain people were obstreperous the Chiefs appealed to the Government. In the old days the Chiefs would have made short work of the rebels, but to-day they have to ask the Government to deport them. In the Transvaal and Natal a chief had no authority to act until the Government gave him such authority. He knew of the difficulty mentioned by Mr. Plaatje, but the Government seldom departs from the line of succession in appointing a Chief. If a Chief misbehaves to-day the people have not the power nowadays to deal with him, and Government had to be called in.

Mr. Jabavu asked the Chairman to be more strict with the delegates and keep them to the point. There were some

clauses in which many were specially interested, and if fifty orators were given free rein not much progress would be made.

Chief Mphahlele supported Mr. Jabavu.

Mr. Sakwe said that Native Commissioners were a new thing to his people. They could not do without a Chief Magistrate in Transkei. He moved that section *one* (1)—appointment of Chief Native Commissioners—be adopted.

Mr. Makiwane seconded.

Mr. Mtimkulu moved as an amendment that "Minister" be deleted and "Governor-General" substituted in lieu thereof.

Chief Tombela said that the notice given had been too short. He suggested that the Bill be postponed in order that the people might be consulted.

Major Herbst said it was impossible to accept the suggestion.

Mr. Mahabane said they did not feel free to express their views. He had been given very little notice and had had no time to consult the people. He enquired what would be the position of the Chief Magistrate in the Transkei if the Bill became law and whether a Chief Native Commissioner would be appointed for the Orange Free State.

Major Herbst intimated that the last speaker could express any views he liked.

There was no intention to appoint a Chief Native Commissioner for the Orange Free State. The word "area" is used so as to group *e.g.* a portion of the Cape with the Orange Free State.

As regards the Chief Magistrate, the Bill aimed at uniformity : the judicial functions of that official would fall away, but he would do the same ad inistrative work.

Mr. Morosi suggested a commission should fix Native law so that Magistrates could then carry it out.

Mr. Fenyang did not see the necessity for Native Commissioners. Was it not possible to compile Native law. Further, by appointing Native Commissioners officials would be multiplied and expense incurred.

Major Herbst replied that there was no intention to multiply officials.

In 90 per cent. of the cases the Magistrates would be Native Commissioners.

Mr. Plaatje asked why it could not be stated in the Bill that Magistrates would be Native Commissioners. He was afraid of Native Sub-Commissioners.

Mr. Thema complained that in every law put before them they got something from Natal and something from the Transvaal—never anything from the Cape. When the Transvaal was annexed to Natal the latter's laws were extended to the former, making the Governor-General the paramount Chief. The framers of those laws knew Zulu law and custom, but they were ignorant of Transvaal Native law and custom.

He moved the deletion of words " and police officer " in section *one* (2).

Mr. Jabavu said that relying upon the Prime Minister's address and his wish that they should develop and have their own Magistrates, he moved the insertion of the following words between " Commissioners " and " as " in section *one* (2) :

" who shall as far as possible be Natives ".

The Chairman put Mr. Mtimkulu's amendment to section *one* (1).

Eleven voted for the amendment, which dropped.

Section one (1) *was passed*;.

Mr. Mahabane supported Mr. Thema's amendment and Mr. Jabavu's amendments to section *one* (2).

Amendments carried.

The Chairman put section *one* (2) as amended, namely :

(1) by the insertion of the words " who shall as far as possible be Natives " between the words " Commissioners " and " as " :

(2) by the deletion of the words " and police officer."

Carried.

Section one (3) *was agreed to.*

Mr. Zibi said they did not want Superintendents. He moved the omission of section *one* (3).

Mr. Jabavu seconded Mr. Zibi's motion. The Natives in the Cape would like to get rid of those officials who had dispossessed the Chiefs and Headmen of all power they had previously had. A Native could not get a land allotted without the permission of the European Superintendent. Nowadays the boundaries of all fields were indicated by stones marked " N.A.D." Headmen were not able to give out fields.

Major Herbst pointed out that many delegates had pleaded that Magistrates should be made Native Commissioners. A Magistrate had many duties and the Natives might never see him unless he had someone to relieve him of details. The appointment of sub-Commissioners would involve heavy expense and Superintendents are only appointed for the sake of economy. If Superintendents are cut out someone else would have to be appointed. Some Chiefs could do the work but not all. Superintendents had to keep tax registers and did a lot of work.

Mr. Sakwe supported Mr. Zibi's motion.

Mr. Singgandu said he knew the value of Superintendents and he would be sorry if they were abolished.

Mr. Mahonga supported the last speaker. There were three superintendents in the Glen Grey District and they helped the people very much.

Chief Mopeli said that a Chief existed in the Harrismith District, and there was no Superintendent. The Chief tried cases subject to appeal to the Commandant. They did not want any other official.

Major Herbst pointed out that the Commandant was a Superintendent.

The Chairman put section one (4) *and* 28 *voted against it.*

Section one (4) *deleted.*

Mr. Mtimkulu asked what the intention was in regard to the appointment of Chiefs. Would a son succeed his father?

Major Herbst replied that the Government would appoint all Chiefs.

Mr. Mtimkulu moved the deletion in section *one* (5) of all the words:

"He may . . . . of the Minister."

Speaking to the motion he said that deportation was not known in Native law. The Chiefs punish a man or the man runs away to escape punishment. The Chief does not deport. According to common law no man can be deported from his own country.

Dr. Loram pointed out that the last speaker had forgotten some of his history for there had been a time when Zulu Chiefs had been compelled to leave their country. The proposal was a sound one for a deposed Chief could not very well be left amongst the tribe.

Mr. Morosi seconded Mr. Mtimkulu's motion.

The Conference adjourned.

Second Day.

Friday 4th December, 1925.

Major Herbst in the Chair.

Discussion of section one (5) *continued.*

Chief Mphahlele enquired whether Chiefs would receive payment. He only received £4 per quarter and had to support his family. Tribes nowadays do not support their Chiefs who are starving. He had endeavoured to follow the advice of the previous Governor-General that Chiefs should lead their people. He had got his tribe to purchase four farms, to build a hospital and to found a school for 600 children. In spite of these good works he was starving. Irrigation works had also been carried out. But he got no encouragement. Better conditions were necessary for Chiefs if they were to lead their people.

Mr. Makiwane said that he wanted a distinction made between succession in the case of ordinary headmen and headmen as Chief of blood and moved:

"that a successor to a headman of royal blood should also be a man of royal blood."

Major Herbst expressed the hope that there would not be much discussion on this sub-section, which simply confirms what was being done every day. The only new thing was the removal of a Chief or headman from his location and this was

customary in the Transvaal and Natal. Even to-day there were banished chiefs.

Mr. Langa supported Mr. Makiwane's motion.

Mr. Plaatje said that this sub-section touched the liberty of the subject. Such things as contemplated by it did not happen in the Cape. It would be a pity to help the Government to a position of being able to give the Natives more pinpricks. He supported Mr. Mtimkulu's motion.

Mr. Dube said that the debate up to that point had left out the rights of the people. The people wanted to progress but some chiefs were not worthy to rule progressive people. How could they be led by ignorant people? Some of the Chiefs were born fools. To escape the Chiefs Natives were getting exempted from the Natal Code. A progressive man was looked upon as "umtakati." Chiefs opposed schools and churches.

Mr. Thema explained that he wanted Chiefs to have a fair deal. If they did wrong they should be punished. The Minister was given autocratic powers.

Chief Tombela expressed great surprise at Mr. Dube's speech. If a Chief did wrong he should be punished but not dismissed.

The Chairman put Mr. Mtimkulu's motion, namely,

> "The deletion in section *one* (5) of all words after the words "as may be prescribed."

33 *voted for the motion which was carried.*

The Chairman put Mr. Makiwane's motion which was adopted.

Section one (5) *as amended was passed.*

Section one (6) *was passed.*

Section two was passed.

Dr. Loram explained the provisions of section *three.*

Dr. Molema stated that in tribal life the Supreme Chief has the ultimate powers of allotting land. He would not therefore quarrel with the first part of clause (*a*), but he knew nothing in tribal life which justified the proposal to divide or amalgamate tribes. His interpretation of this proposal was that it showed a failure to recognize the ethnic unity of the tribe and that it was an attempt to wreck tribal life—a step in the direction of segregation.

He hoped in the course of evolution the tribal system would become effete and die a natural death, but he could not see any good government in dividing tribes. He had had some experience in the case of Montsioa who had been paramount Chief but Government supported the petty chiefs and made them independent with bad results. If such a precedent were followed on a large scale there would be disastrous consequences.

Chief Sekukuni supported the views of Dr. Molema.

Major Herbst thought that Dr. Molema did not know very

much about the intention of the sub-section. Things contemplated in that sub-section happened every day.

Two locations were often merged into one, and a single location sub-divided into two. The Government did not do that sort of thing for fun—it was forced upon the Government by the action of the people concerned.

Mr. Dube opposed the sub-section particularly in regard to the land question. He hoped that the land reserved by the Act of 1913 would be secured and now according to the Chairman the land could be reduced.

Major Herbst intimated that the Bill had nothing to do with the question of land for Native occupation. The land reserved under the Act of 1913 could not be taken away without an Act of Parliament.

Mr. Dube said that however secure the locations might be if the Natives could be removed from them then the security was nominal. How could the Natives progress if they were liable to eviction. Their very title was threatened.

At any time a whole tribe might be shifted so a man contented himself with a wattle hut : there was no inducement to build decent houses. The Natives had a burning feeling on account of the land along the coast having been taken from them for European occupation.

Segregation would wear a more favourable aspect if the Natives were assured that their lands would be secured.

Mr. Plaatje opined that the sub-section touches at the root of the liberty of the subject. It was putting back the clock and stopping the progress of a large section of the population.

Dr. Molema moved the deletion of :

(1) the words in clause (*a*) from " and may divide " to the end of that clause :

(2) the whole of clause (*b*).

Mr. Jabavu seconded.

The motion was put and adopted.

Section three as amended was adopted.

The Chairman invited discussion on section *four.*

Mr. Jabavu said that the people in his District did not want legislation by proclamation. They wanted full consultation before legislation. There were serious objections to such a system in the Ciskei. Proclamations in the Transkei were only issued after consultation with the Bunga—and most probably with its approval—but others against the wish of the people. The Transkei certainly did get advantages.

In the Ciskei, however, there was no Bunga or other body representing Native views. There the Magistrates were under the Department of Justice and were unsympathetic in regard to Native matters. The powers under the Bill would enable such men to carry out such things as at present could be staved off.

Again Europeans and Natives were much inter-mixed in the Ciskei and the Municipalities particularly hard on Natives.

The people would rather pay lawyer's fees for title than give the powers sought for in the Bill.

He admitted that the proclamation system had its advantages—and might be acceptable if they could get safe guards or fix machinery for such safeguards. They in the Ciskei had no Bunga and they did not consider the Native Affairs Commission a sufficient safeguard.

He suggested that section *four* be taken out of the Bill and be only discussed when a Bunga had been constituted, and he moved accordingly.

Mr. Kumalo seconded.

Dr. Loram addressed the Conference.

Mr. Mtimkulu asked the delegates to consider the matter in a broad spirit. If a certain thing was good for hundreds of people might it not be good for others. It had certainly made for development in the Transkei. He would vote for the principle of government by proclamation.

Mr. Plaatje agreed with the principle of government by proclamation provided the authorities gave certain safeguards. As regards the clauses of section *four* he agreed with (*a*), (*b*), (*c*) and (*d*) but objected to (*e*) which was to control public meetings when the Supreme Court had decided that free speech was the right of every citizen.

There were in his opinion no safeguards as he could not trust the Native Affairs Commission which had supported, in the Urban Areas Act, a pass system for the Cape.

The Conference adjourned from 12.45 *p.m. to* 2.15 *p.m.*

Dr. Roberts said he wished to correct any misapprehension which might arise from Mr. Plaatje's remarks concerning the Urban Areas Act.

The Urban Areas Act as it emerged from Parliament was a very different measure to the Urban Areas Bill which the Native Affairs Commission recommended to the Government. The provisions which Mr. Plaatje referred to were incorporated in the Act by Parliament itself and in Parliament he had spoken against them.

If that Act had been passed under the proclamation system the Natives would have received an Act ten times better.

Mr. Thema said he was afraid. He had heard a lot about segregation but did not know what it was. This Bill was the first step to segregation. Government by proclamation seemed to be the only gift from the Cape—but what they wanted in the Transvaal was a more liberal policy of administration and it was therefore fortunate that the power of legislating by proclamation did not exist in that Province.

Anyway it was a new proposal to them and he saw it was proposed to control meetings which were free at present.

Regarding the introduction of seditious literature he thought