populus and in consequence laws were passed by the ruling class specially affecting the plebs, although the latter were never consulted, nor had any political representation. The plebs occupied a position in the Roman State similar to that now held by the Natives in South Africa. They had no political, social or constitutional rights. They were, just as the Natives today, dependent upon the populus. It was inevitable that a struggle would arise between the two classes, which as you know lasted for a hundred years. Concession after concession was wrung from the populus, culminating in the passing of the Lex Hortensia B.C.276, giving equality in all respects to the plebs. The main difference between the class struggle in Rome and that in South Africa is that of "colour", and again our problem is more complicated, because the Native Bantu are a backward race, almost primitive in their mode of living, and in consequence, there can never be any social equality between the races in South Africa. It took the Romans centuries to solve their problem, and it will likewise take us centuries to solve the difficult problem in South Africa. Unconsciously we are proceeding upon the same lines as the Romans.

In the first stage, the dominant idea is repression followed by the Kaffir Wars. Then we are slowly recognising the fact that the Natives should be given power to manage their local affairs in the Native areas, and hence the introduction of the "Council system", which has its counterpart in the consilium plebis of Rome. Thereafter comes the appointment of "Tribunes of the People" in the shape of the Native Affairs Commission - champions of the Natives, although the body unfortunately has become political, and has lost its power with the Natives. And lastly, we reach the stage where legislation is about to be introduced, giving the Native a limited representation in Parliament. But there will be no "Lex Hortensia" in South Africa. All are agreed thet "differentiation" rather than "equality" must be the solution of the problem in South Africa.

Until we reach the solution of the problem legislation for the Native must continue in the hands of the ruling white

population, until the Native is either absorbed in our Polity (Cape system) or forms a polity of his own, assuming the power to govern himself in respect of his internal and domestic affairs as was done in the days of the Chiefs.

Now we find that there are throughout the Union approximately 292 of these Statutes specially affecting Natives. The characteristics of these laws are :-

(1) They are passed by the Ruling class

(2) No consultation is made with the Natives, the persons chiefly affected by these laws. It is true that in recent times there have been Native Conferences where proposed legislation is discussed, but the delegates to these Conferences are not representative of the Bantu nation.

(3) Many of these laws are passed to safeguard the supremacy of the white race

(4) They are moulded by public opinion of one section of the population of South Africa,

and (5) In many cases they bear the impress of the Party political organisation.

It must not be taken that I am against the passing of these differentiating laws. Some are absolutely necessary and without them it would be impossible to govern the Native.

The Native has a dual personal capacity as a member of the Union, in the same way as clergymen, doctors, lawyers, and civil servants.

Laws or rules are passed regulating the internal management of each of these professional bodies, and so the Native must also be ruled by domestic rules.

The native is subject to the ordinary laws governing both white and black, and at the same time, there are additional laws to which he is subject, because of the peculiar position he holds in our South African polity.

But there is a difference between such local rules affecting professional men and these affecting the Natives. A professional man voluntarily submits to be bound by the rules when he elects to take up a profession, but the Native has no such election. He is compelled to submit to them. Then again, a professional man

has....

has a right tp appeal to the Supreme Court to review any injury which he alleges has been inflicted upon him where these rules have not been complied with. The Native, on the other hand, has no right to appeal to the Supreme Court against any order or action of the Supreme Chief.

These differentiating laws may be classified as follows :-

(1) Constitutional or Administrative Laws,

dealing with the government and control of the Natives. They are mainly administrative or executive Acts and are a survival of the prerogative of the Chief.

The justification for these laws lies in the fact that they are absolutely necessary for the government of the Natives, and these orders of the Supreme Chief are nothing more nor less than the continuation of the theory of the Native form of Government by the Chief. It is desirable also that these administrative laws should be removed from parliamentary control.

(2) Quasi-Administrative Laws

which reflect European ideas and wholly arise because of the intercourse between white and black. These laws comprise, inter alia, Pass Laws, Master & Servants' Acts, Curfew Laws.

These laws reflect European ideas and are the result of political expediency, and in some cases, passed for the convenience of the white race.

The Pass Laws are necessary being in the best interests of both European and Native. In Natal, however, there are far too many passes, and the time is ripe for the introduction of one pass only -- namely the identification pass, which must be improved upon.

I submit that some of the penalties in connection with pass laws are too severe, e.g. failing to produce a pass when suddenly called upon to do so. I think an opportunity should be given to the Native, where circumstances permit, to produce his pass. This concession is given to Europeans,

e.g., failing to produce motor driver's licence. The punishment should be for not taking out the requisite pass.

The Master & Servants' Act, passed many years ago is out of date, and requires overhauling. Hitherto it has been amended piece-meal and the amendments have satisfied neither European nor Native.

I am not against the introduction of a Master & Servant Act, but I do say that the method of administration leaves much to be desired. Some of the penalties provided for trivial offences are far too severe, e.g. if a native negligently causes damage to his master's property he may be punished criminally. In ordinary cases this would only give rise to a civil action and I feel that the Native should be treated in the same way. If he deliberately or wilfully causes such damage, there is the common law at hand to punish him.

My contention is that the Master & Servants' Act tends to make more natives criminals than any other Act. A European's private contract is enforcible only by a civil action and although I do not advocate the abolition of the criminal penalties in all cases under the Master & Servants' Act, I do say that in many cases, the penalties could today be removed.

The administration of the Act places a Magistrate, in many instances, in a very difficult position. While desirou of dispensing justice in an equitable manner, moral pressure is sometimes brought to bear upon him to deal more severely with a native than he would otherwise do.

In the new Contract Service Bill it is proposed to give Magistrates the power to impose whipping up to 5 strokes, fo the breach of any clauses of the Master & Servants' Act. This, in my view, is a retrogressive step in a British Dominion. I fear that if the clause becomes law it will defeat its own object for it will drive the Natives from th rural districts to the towns.

Where a Native commits a crime under the Common Law or

one of violence, I have hesitation in saying that he should be punished severely. A difference, however, should be made in regard to the infliction of punishment for the breach of a private contract, and the commission of a crime.

(3) Laws affecting the Welfare of the Natives.

These laws again reflect what the ruling class deems necessary for the Natives welfare. In Natal, they deal with sexual intercourse, sidewalks, clothing to be worn, obstruction of roads and Native meetings. In perusing these laws we are at once, struck by the absence of legislation dealing with the welfare of natives in the locations such as the promotion of agriculture, hospitals, roadmaking, control of cattle, agricultural education, afforestation; the prevention of infectious diseases, infant mortality etc.

My object in explaining to you the peculiar constitutional position which the native holds in South Africa is to interest you and your Society in the future legislation dealing with Natives. A person living in the town often exclaims "that legislation does not affect us". It does affect you, because it may have a tendency to drive Natives from the country into the towns.

For example, the proposed Native Contract Bill., if passed in its present form, will undoubtedly cause a large number of rent paying Natives on private lands to migrate to the towns, and become essentially urban Natives, and these Natives are increasing each day and the problem is one which will soon become a difficult one to deal with.

The trend of future legislation for the Native will continue to be by Proclamation instead of under Parliamentary control, and that being so, it becomes increasingly essential that every citizen should study such proposed legislation.