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Government Gazette, November 23rd, 1934. No. 2235

P R O C L A M A T I O N

No. 229, 1934)

Under and by virtue of the powers vested in me by section nine of the Native Administration Act, 1927 (No. 38 of 1927), I do hereby confer, with effect from the 1st December, 1934, upon the Native Commissioners named in the Schedule hereto criminal jurisdiction in respect of any offence, subject to the jurisdiction of a Magistrate's Court, committed by a Native within their respective areas of jurisdiction.

SCHEDULE

In the Cape Province

Native Commissioner for the District of Kingwilliamstown.

In the Province of Transvaal

Native Commissioner for the District of Pretoria.

In the Province of Natal

Native Commissioner for the District of Durban.

Native Commissioner for the District of Pietermaritzburg.



6. Jurisdiction of Chief in respect of ~~criminal~~ punishable offences by ~~the~~ members of his own tribe in his own area subject to not exceeding 2 head of cattle or 5 Sec. 20

7. Appeal in Civil Cases as follows:-

Chief Court to N.C. Court Sec. 12.

N.C. Court to Native appeal Ct Sec. 13.

Native appeal Ct (when conflicting decisions given) to Union Appellate Div

N.B. Natal ~~or~~ High Ct (Civil Jurisdiction) &

Transvaal appeal Ct - abolished.

Section 13.

8. Native appeal Ct's (one or more) = President & 2 members, who may be magistrates <sup>Native</sup> N.C.s, or other qualified persons (also assessors if desired) Sec 19.

9. Magistrate Courts cease to have jurisdiction in respect of civil cases arising between Native & Native where <sup>Native</sup> N.C. Courts exist Sec. 17

10. Advocates & Attorneys may appear in N.C. Court & <sup>Native</sup> appeal Ct Sec 16.

Chief's Debts re

11. Tribes not to be bound by Chief's personal obligations unless by a vote of a majority of the adult male members of the tribe present at a public meeting convened for the purpose. Certificate by <sup>Native</sup> N.C. to this effect to be conclusive evidence Sec 3



Marriage & Succession Secs. 22~~23~~

19. Adoption in toto of Branchian Marriage laws as given in Sect. 142 of 1910 viz:-

(1) Every Native wishing to marry under <sup>or Christian</sup> civil rites, who is already married under Native law, must declare in oath the name of his wife (or wives) by Native custom, every child of such ~~marriage~~ union, the property allotted to each woman or house, + <sup>such</sup> other necessary information as the Magistrate or N.C. may require.

(2) This declaration to be filed + admissible as evidence.

by marriage officer

(3) No <sup>Christian</sup> Minister <sup>Solemnise any marriage of a</sup> may ~~marry~~ Native male without this declar<sup>n</sup>. that as to whether there is a customary union between the Native + any woman, & if there be such union, without a decl<sup>r</sup> certificate of the Magis. or N.C. that the requirements of the section have been fulfilled.

(4) Penalties provided

(5) A marriage between Natives to will not in future give community of property except that (a) when there is no customary union the parties may, within one month <sup>previous to</sup> of the marriage, declare jointly before a Magistrate <sup>Actual Commissioner</sup> or marriage officer their wish to have community. This community will not extend to land in a location under joint tenure,

b. A civil or other marriage will not in future affect

the rights of widows & children of customary union, & their children of such marriage will not have greater rights <sup>in respect of deceased's estate</sup> than if the marriage had been a customary union.

7. Existing marriages in community of property will not be affected by the Act.

20. Succession will follow the Wills Act of 1894 Sec 23.

(a) A native may devise by will except

(a) Movable property allotted or accruing under native law & custom to any woman of a customary union

(b) Land in a location held on individual tenure in jointness - to devolve on one male person in accordance with table of succession to be prescribed by regulation.

(2) In intestate estates, the property will be administered under native law & custom

(3) Disputes <sup>between natives or natives</sup> arising out of (1) & (2) will be dealt with by N.C. (or magis when there is no N.C.); when non-natives concerned the matter will be dealt with by the ordinary courts

(4) No ~~that~~ <sup>gen</sup> letters of administration necessary.

Disorder, etc (Chap 14)

21. <sup>General</sup> Govt may make regular dealing with undesirable pictures, carrying weapons, assemblies, decency, etc. Sec 27

22. The Gov. may proclaim & create pass areas (except in scheduled areas) Sec 28

23. ~~Section 29~~ Any person who utters any word or does anything to promote ill-feeling between Natives or Europeans may be punished by imprisonment or fine or both Sec 29

~~Sec. 34~~ ~~Section 34~~ provides for restriction of the ~~land provisions (Chap III)~~ to ~~Transvaal~~

↓ Convicted persons may be prevented from moving into certain areas. Sec 29

Convicted non-South African born may be expelled from the Union. Sec 29

24 The Governor-General may make regulations for the management of any village or township outside Urban Areas, if not less than  $\frac{2}{3}$  of the inhabitants are Natives

The Governor-General may also make regulations for the imposition of rates or charges on owners or residents of such village or township, but not exceeding 1% of the value of such land in any one year

Sec 30

25 The Act, in respect of its land clauses, may be extended applied to Transvaal and areas set aside for Hottentots or Bastards Sec 34

System of Exemption

26 All holders of Exemption are brought under this Act. Total or partial exemptions may be granted by the Governor-General. But no exemption shall include ownership or occupation of land, taxation, liquor. Sec 31

PROCLAMATIONS

PART II.

By MAJOR-GENERAL HIS EXCELLENCY THE RIGHT HONOURABLE THE EARL OF ATHLONE, KNIGHT OF THE MOST NOBLE ORDER OF THE GARTER, KNIGHT GRAND CROSS OF THE MOST HONOURABLE ORDER OF THE BATH, KNIGHT GRAND CROSS OF THE MOST DISTINGUISHED ORDER OF ST. MICHAEL AND ST. GEORGE, KNIGHT GRAND CROSS OF THE ROYAL VICTORIAN ORDER, COMPANION OF THE DISTINGUISHED SERVICE ORDER, PERSONAL AIDE-DE-CAMP TO HIS MAJESTY THE KING, HIGH COMMISSIONER FOR SOUTH AFRICA, AND GOVERNOR-GENERAL AND COMMANDER-IN-CHIEF IN AND OVER THE UNION OF SOUTH AFRICA.

\* No. 296, 1928.]

NATIVE ADMINISTRATION ACT, 1927: DATE OF COMMENCEMENT OF CHAPTER V AND SECTION THIRTY-SIX.

Under and by virtue of the powers vested in me by section thirty-seven of the Native Administration Act, 1927 (No. 38 of 1927) I do hereby proclaim, declare and make known that Chapter V and section thirty-six thereof shall commence and come into operation on the first day of January, 1929.

GOD SAVE THE KING.

Given under my Hand and the Great Seal of the Union of South Africa at Capetown this Seventeenth day of December One thousand Nine hundred and Twenty-eight.

ATHLONE.

Governor-General.

By Command of His Excellency the Governor-General-in-Council.

J. B. M. HERTZOG.

\* No. 2257.]

It is hereby notified for general information that His Excellency the Governor-General has been pleased, under and by virtue of the powers granted to him by sub-section (1) of section twenty-three of the Native Administration Act, 1927 (No. 38 of 1927), to make the accompanying Regulations dealing with matters of succession in native estates.

REGULATIONS FRAMED UNDER SECTION TWENTY-THREE OF THE NATIVE ADMINISTRATION ACT, 1927.

PART I.

1. Upon notification to any Native Commissioner or Magistrate that a dispute or question has arisen out of the administration of any estate in accordance with native law and custom, such Native Commissioner or Magistrate, upon deposit with him by the person making complaint of the cost of summons and service thereof, shall summon before him all the parties concerned and such witnesses as he may consider necessary and shall summarily and without pleadings hear the evidence and determine the issue.

2. A native commissioner or magistrate in declaring his finding in regard to any question or dispute referred to in the preceding section may make such award as to the costs of the proceedings as may seem to him fit.

3. Subject to the provisions of section one the procedure to be followed and the fees and charges to be taken or made shall be those laid down in the rules for courts of Native Commissioners for the time being in force.

4. The procedure in appeals from the decision of a Native Commissioner or Magistrate in regard to any dispute or question arising out of the administration of any estate in accordance with native law and custom shall be the same as that laid down in respect of appeals in civil proceedings from courts of Native Commissioners.

5. In every case in which a native Commissioner or Magistrate in determining any dispute or question referred to in section one shall have included in his finding any determination in respect of the right to the ownership of land, he shall certify to the registrar of deeds concerned his decision or, if that decision is appealed against, the decision of the native appeal court in regard to the person entitled to such right and such certificate shall, on production to the said registrar, be sufficient authority for the registration of the transfer of such land by the said registrar subject, however, to compliance in each case with the requirements of section forty-four of the Deeds Registries Act, 1918 (No. 13 of 1918).

6. On the application of any native desiring the transfer to himself of any landed property to which he claims to be entitled by devolution in accordance with native law and customs the Native Commissioner or Magistrate of the district in which such property is situated shall, if satisfied, after such inquiry as he may deem necessary, that the claimant is entitled thereto, grant to the applicant a certificate to that effect and such certificate shall be sufficient authority to the registrar of deeds concerned for the transfer to the claimant of the property described therein subject, however, to compliance in each case with the requirements of section forty-four of the Deeds Registries Act, 1918 (No. 13 of 1918).

7. On the application of any person claiming to be the heir, or, in case of minority, the guardian of the heir to the intestate estate of any deceased native, a Native Commissioner may, after such inquiry as he may deem necessary, issue to such person a certificate designating him, in terms of sub-section (6) of section twenty-three of the Native Administration Act, 1927, as the executor in the estate and such certificate shall be regarded for all purposes as equivalent to letters of administration.

(Applicable in respect of the Cape Province, excluding the Transkei Territories.)

1. Succession in terms of sub-section (2) of section twenty-three of the Native Administration Act, 1927 (No. 38 of 1927), shall be regulated, subject to the following provisions, in terms of the annexed Table of Succession.

Male descent in the said table shall mean descent through males only.

When the deceased native quitrent allotment holder was a female, it shall be recognized that she herself constituted a principal house. In such case paragraphs 1, 2 and 9 of the table only shall apply.

2. (a) If, within a period of not less than six months after the death of the deceased, the Native Commissioner of the district in which the land is situate has, after due inquiry, been unable to determine which male person, if any, is entitled to succeed to such land in accordance with these regulations he shall, by notice posted at the court-house of the district, and at or on the land in question, call upon any person claiming to be entitled to succeed to such land in terms of the Table of Succession, to lodge his claim thereto with such Native Commissioner within three months from the date of such notice.

(b) If, after the lapse of a period of not less than two years from the death of the deceased, the Native Commissioner of the district in which such land is situate is satisfied upon reasonable grounds that the male person entitled to succeed thereto in accordance with these regulations has either absconded from the district or is absent therefrom and his whereabouts is unknown, such Native Commissioner shall, by notice posted at the court-house of the district, and at or on the land in question, call upon such person to lodge his claim thereto with the said Native Commissioner within three months from the date of such notice.

(c) If, within the period prescribed in sub-sections (a) and (b) hereof, no such claims or claims be lodged, or if any be lodged, and, after due inquiry, be disallowed by the Native Commissioner, the Governor-General may authorize the transfer of the land to the person next entitled thereto in accordance with the order of precedence laid down in the Table of Succession.

3. (a) When the holder of any land dies leaving surviving him any widow or partner who was at all times the sole person with whom he had contracted either a marriage or a customary union or who, if not such sole person, was partner of the principal house, such widow or surviving partner shall, until her re-marriage or entrance into another customary union, be entitled, during her residence at the kraal of her late husband, or partner, or at such kraal as may be approved by her late husband's or partner's relatives, to the use and occupation of such land, subject to the obligations imposed by the conditions of title; and during such use and occupation such land shall remain registered in the name of the deceased.

(b) Any widow or surviving partner entitled under the provisions of this section to the use and occupation of land shall be held to have forfeited her rights to such land if, within three months of the personal service upon her of a written notice signed by the Native Commissioner of the district in which such land is situated, calling upon her to notify her acceptance of such rights, she has failed to notify such acceptance.

4. (1) Should the heir under the Table of Succession, at the date when he becomes entitled to succeed to the land registered in the name of the deceased, be already in possession of land in a location held in individual tenure, he shall be required by the Native Commissioner to elect within three months after the death of the deceased or after the termination of any usufructuary rights enjoyed by any widow or surviving partner of the deceased under the provisions of section three, as the case may be, whether he will remain in possession of the land at the time held by him or take possession of the land to which he has become entitled to succeed; and the Chief Native Commissioner shall authorize the transfer of the land which the heir does not select to the person next entitled to succeed to the deceased in accordance with the Table of Succession, who shall not be in possession of land in a location held in individual tenure and who shall not be ineligible to hold such land.

(2) The provisions of section two shall apply, mutatis mutandis, to succession in accordance with this section, provided that the date from which the periods of six months and two years therein specified shall be reckoned shall be the date of election by the heir and not the date of the death of the deceased.

5. It shall be lawful for any person entitled to succeed to land under the provisions of these regulations to renounce his right to such land which shall thereupon devolve upon the person next entitled thereto under these regulations, provided that, whenever the person entitled to succeed to such land is a minor, such renunciation shall be made by the guardian of such minor and shall be effective only subject to the following conditions:—

(i) that evidence on oath or by way of solemn declaration has been given to the Native Commissioner of the district in which the land is situated in support of the renunciation and that such further information relative to the renunciation as the Native Commissioner may require has been furnished; and

(ii) that the Native Commissioner is satisfied that it would be in the interests of the minor that the renunciation should be accepted; and

(iii) that the approval of the Chief Native Commissioner has been obtained.

6. Whenever, under the provisions of these regulations, land shall have reverted to the Crown, the Governor-General may in his discretion authorize its transfer to a female member of the family of the deceased or any descendant of any such female or may cause such land to be sold and the proceeds thereof to be divided amongst the female members of the family of the deceased or their descendants.

7. (1) If any native shall desire to disinherit the person entitled to succeed to his land under these regulations by reason of gross misconduct or incapacity to deal with or manage the land or insanity or for any other just cause the Native Commissioner of the district in which such land is situated, on the application of such native, shall summon before him the person whom it is proposed to disinherit, and, in the presence of such person or in his absence in case he should neglect, refuse or be unable by reason of insanity to appear at the time and place mentioned in the summons, shall inquire into all the circumstances and may declare such person disinherited. Subject to the provisions of sub-section (2), any person so disinherited shall not be entitled to succeed to such land which shall upon the death of the holder thereof devolve upon the person next entitled thereto under the provisions of these regulations.

(2) At any subsequent time prior to the death of the holder the Native Commissioner, upon representations to him either by the holder or by the person disinherited may re-open the inquiry and in the event of his being satisfied that the grounds for such disinheritance no longer exist may rescind such disinheritance.

(3) A record shall be kept of all proceedings under sub-sections (1) and (2) of this section and it shall be competent for any person interested in any declaration of disinheritance or the rescission thereof to appeal to the Chief Native Commissioner against any decision of a Native Commissioner within a period of fourteen days from the date of such declaration or rescission. The decision of the Chief Native Commissioner shall be final.

Disinheritance

SCHEDULE.

*Male descent, see Art. 1. of Part II*  
TABLE OF SUCCESSION.

4. 1813 Comm. app. B. p 19

1. The deceased's eldest son of the principal house or, if he be dead, such eldest son's senior male descendant, according to native custom.

2. If there be no male descendant of the deceased's eldest son, the deceased's next son of the principal house or his senior male descendant, and so on through the deceased's sons or their senior male descendants respectively and through the deceased's several houses in their order according to native custom.

3. If there be no son or male descendant of any son of the deceased, the father of the deceased.

4. If the father of the deceased be dead, the deceased's eldest brother of the same house or his senior male descendant, and so on through the brothers of that house or their senior male descendants respectively according to native custom.

5. If there be no brother of the deceased of the same house or male descendant of any such brother, the deceased's eldest brother of the allied house of higher rank or next rank as the case may be or his senior male descendant and so on through the brothers of such allied house and their senior male descendants respectively according to native custom, and thereafter through the brothers of the remaining houses in order of rank according to native custom and their senior male descendants respectively.

6. If there be no brother of the deceased or male descendant of any brother of any house, the deceased's eldest paternal uncle in the same house as the deceased's father or such paternal uncle's senior male descendant and so on through the paternal uncles of that house and their senior male descendants respectively according to native custom.

7. If there be no paternal uncle of the deceased or male descendant of any paternal uncle of the house to which deceased's father belonged, the deceased's eldest paternal uncle of the allied house of higher rank or next rank as the case may be according to native custom or his senior male descendant and so on through the deceased's paternal uncles of such allied house and their senior male descendants respectively, and thereafter through the deceased's paternal uncles of the remaining houses in order of rank according to native custom or their senior male descendants respectively.

8. If there be no paternal uncle of the deceased or any male descendant of any such uncle of any house, the paternal grandfather of the deceased.

9. If there be no heir competent and willing to accept transfer of the land under the provisions of this Table of Succession the land shall revert to the Crown.

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