

a

POSITION IN THE TRANSVAAL, O.F.S. AND CAPE, AFTER
THE N.A. ACT.

The administration was at length forced to recognise the necessity of dealing with the position of ~~the~~ conflicting marriage systems, and their interpenetration. *in the O.F.S., Transvaal, Cape Union.*

Since 1927 "no male native shall during the subsistence of any customary union between him and any woman contract a marriage with any other woman unless he has first declared upon oath, before the magistrate or native commissioner ~~of~~ the district in which he is domiciled, the name of ~~such~~ ~~first~~ every such first-mentioned woman, the name of every child of any such customary union, the nature and amount of ~~imm~~ the movable property (if any) allotted by him to each such woman or house under native custom; and such other information relating to any such union as the said official (2) may require." (1) This shall be duly recorded and serve as evidence.

~~Minister of the Christian Religion~~

No person competent to solemnise marriages may marry any male native unless he has first taken from him a declaration as to whether there is "subsisting at the time any customary union between such person and any woman other than the woman to whom he is to be married and in the event of any such unions subsisting unless there is produced to him by such person a certificate under the hand of the magistrate or native commissioner that the provisions of this section hereinbefore set out have been duly complied with". (3). Any ~~person~~ ~~contravening~~ person contravening the above "shall be guilty of an offence and shall upon conviction be liable to a fine not exceeding £25. or in default of payment to imprisonment for a period not exceeding three months", and any male native who does not conform to the law shall be liable upon conviction to a fine not exceeding £50. or in default of payment to imprisonment for a period not exceeding six months.

- (1) N.A. Act 38, 1927, Section 22 (1)
(2) Ibid Section 22 (2)
(3) Ibid Section 22 (3)

The property rights of wives and children ~~previously~~ of previous customary unions are carefully protected, for no later marriage "shall in any way affect the material rights of any partner of such union or any issue thereof, and the widow of any such marriage and any issue thereof shall have no greater rights in respect of the estate of the deceased spouse than she or they would have had if ~~the~~ said marriage had been a customary union."

There is therefore no explicit condemnation of a marriage by Christian rites during the subsistence of a marriage sanctioned by native law. ~~No property need be~~ If any property is allocated to the wives of customary unions ~~(but none need be)~~ (but ~~any~~ ~~if~~ ~~any~~ ~~is~~ it automatically is removed from that which the husband brings ~~in~~ with him into the Christian marriage.

The N.A. Act does not deal with the problems arising from customary unions entered into during an existing marriage by Christian rites. That it is not regarded as bigamy ~~is obvious~~ follows inevitably from the non-recognition of ~~the~~ binding nature of marriage by native law. ~~We shall now examine the position~~

We shall now examine the position in the light of a few cases subsequent to the passing of the above act.

The court has held that a Christian or Civil marriage implies a contract of exclusive cohabitation, therefore any intercourse with a woman under the cloak of a native customary union would be adulterous and any children born as a result would be adulterine and illegitimate, The fact of dowry or fine having been paid for their mother does not legitimise the children. (1)

(1) Barnett Mdingi v. Percy Mpande.

Collection Number: AD1715

SOUTH AFRICAN INSTITUTE OF RACE RELATIONS (SAIRR), 1892-1974

PUBLISHER:

Collection Funder:- Atlantic Philanthropies Foundation

Publisher:- Historical Papers Research Archive

Location:- Johannesburg

©2013

LEGAL NOTICES:

Copyright Notice: All materials on the Historical Papers website are protected by South African copyright law and may not be reproduced, distributed, transmitted, displayed, or otherwise published in any format, without the prior written permission of the copyright owner.

Disclaimer and Terms of Use: Provided that you maintain all copyright and other notices contained therein, you may download material (one machine readable copy and one print copy per page) for your personal and/or educational non-commercial use only.

People using these records relating to the archives of Historical Papers, The Library, University of the Witwatersrand, Johannesburg, are reminded that such records sometimes contain material which is uncorroborated, inaccurate, distorted or untrue. While these digital records are true facsimiles of paper documents and the information contained herein is obtained from sources believed to be accurate and reliable, Historical Papers, University of the Witwatersrand has not independently verified their content. Consequently, the University is not responsible for any errors or omissions and excludes any and all liability for any errors in or omissions from the information on the website or any related information on third party websites accessible from this website.

This document forms part of the archive of the South African Institute of Race Relations (SAIRR), held at the Historical Papers Research Archive at The University of the Witwatersrand, Johannesburg, South Africa.