

THE TENURE OF LAND HELD IN TRUST FOR NATIVES  
AND ITS RELATION TO MINERAL EXPLOITATION.

The desire which is so pronounced amongst natives to acquire land in all parts of the Colony at the present time both in towns and country makes it imperative for the Government to decide upon a definite line of policy in connection with this important question at the earliest possible moment.

Representations have been made from various quarters both by Chiefs and individual natives as to the inadequacy of the land for native occupation and settlement, and their anxious expressions have invariably been accompanied by a request for additional locations or for permission to purchase more land.

Bearing, as it does, so vitally upon the whole future native policy, not only of this Colony but of South Africa, the question so frequently raised here has been deferred pending the issue of the reference to the South African Native Affairs Commission whose deliberations are being largely directed to the question of land tenure.

While therefore the attitude of this Department has practically been to temporise with specific cases as often as they have been brought to notice, definite action is now forced upon us by reason of the fact that certain partly educated natives are intent upon taking an early opportunity of testing their somewhat equivocal position before the Supreme Court.

A case is now actually pending in which a number of natives who purchased township land without reference to this Department are suing for

transfer

transfer of titles in their own names. Fortunately the power of the seller to give title to anybody is under dispute and the case may consequently fall to the ground.

But, should an order be granted for such direct transfer to natives, the whole practice and procedure of the past 30 years will be reversed, and the Government will be face to face with a new situation of grave political consequence to the future.

It must be recognised that there was not only a profound feeling but a consistent determination on the part of the late Republican Government to exclude the native from any freehold property rights, and that the sentiment upon this subject throughout the two new Colonies is still unmistakably strong.

The force of public opinion will assuredly therefore be directed against any reversal of previous and well established policy in this respect.

The difficulty was recognised at the time of the first British occupation 1877-1881 when it was arranged that certain approved purchases by natives might be made, but that the title should be vested in the name of the Secretary for Native Affairs at that time.

It is again recognised when the Convention between Her Majesty's Government and the South African Republic was made in 1881. The right of Natives to acquire land was specially reserved in that Convention, but it was to be vested in the name of the Native Location Commission, for which at a later date was substituted the name of the Superintendent of Natives, the office now held by the Commissioner

Commissioner for Native Affairs.

It is commonly accepted in this country that no native can hold title to land and the practice obtaining in the Registry of Deeds and other offices is to refuse direct transfer. The authority for this is based upon ancient custom and the Convention of 1881 which provided for trusteeship: but it has never been made quite clear by legislation and this requires to be done.

Under the circumstances mentioned it may at any moment become necessary to introduce legislation to define and to control the occupation of land by natives.

In the meanwhile this Department continues to discourage all applications for purchases by natives as far as it may lie in its power to do so.

#### MINERAL EXPLOITATION.

One of the most important issues arising out of this question is the right of natives to minerals and precious stones.

This particular matter calls for immediate attention owing to the fact that several applications for the acquisition of mineral rights upon locations and upon farms held in trust for natives are being pressed by interested parties, who are naturally anxious to secure such rights and to proceed with the exploitation and development of properties which they have reason to believe contain valuable mineral deposits.

Questions have intermittently arisen as to  
prospecting

prospecting for minerals and precious stones on -

1. Land set apart and known as Government locations.
2. Land purchased by Natives and held in trust by Government

Under the late Government certain concessions were granted by Chiefs and approved, giving the exclusive right to prospect.

Where, in the opinion of the Law Department, such concessions had been properly validated by the late Government, they have been recognised by the present Government as an obligation.

There were however a number of outstanding papers on record in which individuals and companies had made applications to the late Government either for concessions or for the exclusive right of exploitation which had been countenanced but not validated.

Our policy has been to refuse recognition or approval of such unvalidated concessions and to oppose the granting of any exclusive rights, treating all applications under Section 49 of the Gold Law 15 of 1898. That Section reads as follows:

"When a Chief with his Council desires that the  
 "land which has been pointed out to him by the  
 "Government for a dwelling place with his  
 "people (location) which he occupies with his  
 "people, should be prospected for precious  
 "metals, he may apply to the Government to cause  
 "such to be done by white persons. The persons  
 "proposed by the Chief and his Council shall in  
 "the first place be taken into consideration by  
 "the Government. Should the Government consider  
 "it desirable to authorise other persons to  
 "prospect, this may be done without reasons  
 "being

"being given, those persons excepted whose  
 "farms were expropriated by the Government on  
 "behalf of the extension of the location, to  
 "whom the preference shall be given. The Gov-  
 "ernment shall cause to be pointed out to the  
 "person or the persons authorised by it what  
 "portion of the location has been rendered  
 "available for prospecting.

"Whenever it appears through prospecting  
 "that payable precious metals are found within  
 "such locations, the State President shall have  
 "the right, with the advice and consent of the  
 "Executive Council, to declare such land, either  
 "wholly or in part, public diggings under the  
 "regulations laid down in this Law for Govern-  
 "ment land with this proviso, however:

- "1. That the grazing rights shall be left to  
 "the Chief and his people.
- "2. That their kraals and lands shall be ex-  
 "cluded and shall not be disturbed except  
 "with their consent.
- "3. That sufficient water shall be left for  
 "their households and for their cattle.
- "4. That a 'mynpacht' under the terms of this  
 "Law shall be granted to the person or per-  
 "sons authorised by the Government to  
 "prospect, when they give sufficient proof  
 "of the payableness of the ground, the  
 "size to be fixed in consultation with the  
 "Superintendent of Natives and with the  
 "Head of the Mining Department, but in no  
 "case greater than the maximum fixed for  
 "private land by Article 25, paragraphs 2  
 " and 3 of this Law, computed according to  
 "the number of morgen to be thrown open,

- "5. That compensation shall be given to the  
 "Chiefs and their people who have obtained  
 "the location gratis from the Government,  
 "computed as a fourth of the proceeds of  
 "the licence and 'mynpacht' monies.
- "6. That compensation computed at a third of  
 "such proceeds shall be granted to the  
 "Chiefs and their people who have acquired  
 "the location land wholly or in part at  
 "their own expense.
- "7. The Government shall have the power to  
 "make such regulations regarding the por-  
 "tion of licences and 'mynpacht' monies to  
 "Moshette and the Kaffir Chiefs of equal  
 "standing with him, as it may deem fit."

It is manifest that the wording of the Section is ambiguous and that the conditions laid down for prospecting and development are, from an administrative point of view, as difficult to carry out as, from a Native point of view, they are undesirable.

Referring first to the leading paragraph of the Section, it may be observed that the land which was pointed out to the Natives was reserved land set apart for their use but the dominium remained vested in Government. All mineral rights thereon should have been reserved by Government, instead of which, provision is made by which the Chief can apply to Government for leave to allow prospecting by white persons who shall have priority of consideration.

This I believe to be radically wrong in principle. All Government Location land should be treated as Crown Land and, as such, the Government should

should be regarded as the owner in all matters connected with the search for and development of minerals. If so be that it was considered desirable to allow prospecting and subsequently to proclaim the whole or part of any Government location as public diggings, then, in case the Natives thereon were disturbed or suffered damages, it should be the duty of Government if necessary to provide for them elsewhere and to see that they are compensated for loss or damage. In effect such Natives should be fully recouped and replaced in other spheres equal at least in value for beneficial occupation to those from which they had to be removed.

To allow the Natives on Government locations to make terms with the promoters of exploiting ventures is unsound.

The Section goes on to provide that, in the event of locations in whole or in part being proclaimed public diggings, the rights of the Natives shall be safeguarded in the matter of grazing, kraals, lands, and water.

Then in Sub Section 5 it is provided that compensation shall be given to Chiefs computed on one fourth of the proceeds of licence and mynpacht monies.

We have thus a picture before us of valuable minerals being discovered on land occupied by Natives as Government locations; of a mynpacht being granted to the discoverer; and of perhaps a very large sum of money being paid over to the Natives.

As I said before this is entirely unsound. The Chiefs who would receive such monies are as a rule utterly incompetent to handle them. It means in most cases, if not in all cases, that the Chiefs become depraved and debauched and their people, if

they

they got a portion of the money, would probably become the same.

We then come to another class of location consisting of settlements upon land purchased by natives and held in trust by Government.

At the present time a considerable amount of land purchased by Chiefs or Natives is held in trust either by the Commissioner for Native Affairs or by missionaries who had in times past occasionally been the media of purchase.

As stated in the Land Report just issued by me in the form of a Blue Book, efforts are being made to collect all titles and vest them in the Commissioner for Native Affairs.

In appendices 4, 5, and 6 of that Report particulars of such holdings are given. The number amounts roughly to 120.

It is advisable to state here how as a rule those farms were acquired. The general system was as follows:-

In those cases, clans which had become broken and scattered re-formed into groups and the land allotted to them was found insufficient for the people to live upon.

In other cases there were tribal disputes for chieftainship and a division took place. The disconnected section departed from the tribal settlement and settled down elsewhere. Such Sections may have settled either on Government ground or private land, and were often allowed to purchase for themselves, sometimes from Government but more often from interested parties who had land to sell.

The method of purchase was generally that the Chief called his people together and invited them



them to subscribe to a common fund. If the people agreed the Government was then approached and asked to consent to the purchase. The Chief then invited the people to bring in their subscriptions. Some did so in the form of cattle and stock and some in money. When a sufficient sum had been collected in money and in kind to effect a purchase the proceeds were handed over to the seller and the land transferred either to the Superintendent of Natives or to missionaries, or were never transferred as certain chapters in the Blue Book above mentioned will reveal.

These purchases were therefor of a communal nature. The Chief paid perhaps a little or no more towards the purchase than any of his people. In many instances both the Chief who organised the purchase and the people who subscribed the money have disappeared by death or otherwise, and the land is now occupied by other people who are not necessarily descendants of the original subscribers.

It will therefore be seen that a good deal of land thus acquired and held in trust is entirely unconnected with those who originally acquired it, as well as with those who occupy it to-day. I do not say that it is all like this. There are a few exceptions, but as a rule it is so.

Now, the relation in which the Government stands to such land and the people now living upon it is one of great responsibility, which should in my opinion be properly assumed. This can be done if the Government, as trustee, resolves to exercise a wise and beneficent discretion. That discretion should I think be exercised for the benefit of the many by the assumption of power to deal with such land as if it were Government location land set

apart. I do not for a moment suggest that the people living on lands purchased by their ancestors or by their friends should be deprived or removed; but that in exchange for the benefits conferred and the guardianship undertaken by the Government, obscure claims to individual ownership should be renounced and the controlling power be vested entirely in Government.

This has particular reference to lands which are supposed to be mineralised and which it is proposed to prospect and develop.

Were Government authorised and empowered as principals to deal with such matters, the way would be clear to make suitable and sufficient provision for all the Natives concerned, and, in the event of rich mineral deposit being found, the proceeds of the value thereof should be placed in a public trust fund for the common good of the Natives.

In several instances negotiations between Europeans and native landowners have led to provisional agreements which have been submitted to this Department for consideration under Law 3 of 1898.

Such agreements provide for periodical payments to the Natives during exploitation and for a final option of purchase in the event of the discovery of payable minerals.

Generally speaking the payments offered for prospecting are upon a graduated scale varying in amount from £100 to £400 per annum, whilst the purchase price upon option ranges from £5,000 to £60,000 cash.

As an instance of what the possibilities are in this respect I may mention that overtures were lately made to the Chief Hermon Salon of the Rustenburg District for leave to prospect for  
precious

precious stones on a farm purchased by him and his people, which is held in trust by the Commissioner for Native Affairs. One of the conditions of the proposed contract was the option to purchase the farm, which is in extent about 6,000 acres, for £60,000.

A similar proposal regarding a farm belonging to Natives in the Pretoria District involved an option of £30,000.

As a matter affecting Native policy and administration, the consequences have to be considered of large sums of money being available to or for certain small bodies of Natives far in excess of their wants. In possession of such wealth they would surely become a danger to themselves and a terror to others whilst it lasted. They would be robbed and cheated and become a mark for illicit traffickers and desperate characters of all descriptions.

It would be morally unjustifiable to sanction the acquisition by them of such wealth knowing that it was to lead to their own destruction.

If therefore the Government by Law reserves specifically to itself mineral rights over all land dedicated to, or held in trust for, Natives it does not deprive them of any privilege they now enjoy, because according to the existing Gold Law the position of Native landowners in the matter of mineral rights is clear, that is to say: the Native may not hold a licence to prospect nor work claims on his own behalf; nor employ others to work as owner or part owner; nor be in possession of raw precious metal; nor be in any way connected with the working of diggings except as a workman in the service of whites.

In the laws of the land and in the course of administration the Native is treated as a miner. This is in his own interest no less than in the interests of the country. He is not capable of managing his own affairs beyond a certain degree. To endow him with the power to do so is to place him at the mercy of unscrupulous adventurers.

I consider that the time has come when the Government should exercise its prerogative in safeguarding the Natives in the interests they have acquired in land and that a legislative measure with the following salient provisions would best contribute to that end:-

1. That in pursuance of the policy laid down in the Convention of 1881 between Her Majesty's Government and the late Republic it shall be possible for Natives to obtain land in such places as the Government may approve but that all transfers shall be alone made in the name of the Commissioner for Native Affairs, or other persons appointed by Government, in whom trusteeship should ipso facto vest.

2. To provide for the absolute reservation by Government of all mineral rights over land held in trust for Natives.

3. To establish a Native Trust Fund under the control of the Lieutenant-Governor in Council and administered by the Commissioner for Native Affairs as trustee.

4. That Government alone conduct negotiations with the outside public relative to minerals, precious stones, and base metals in such areas.

5. That all payments accruing from the mineral exploitation of such areas be credited to the Trust Fund and be utilised for the benefit of the Natives in general, after providing fully and

adequately

adequately for those who had a vested interest in any particular farm, i.e. by purchasing new land and re-settling those displaced upon it, and re-equipping them or compensating them as the case may be.

6. That capital accruing to the Trust Fund be invested and together with the income to be derived therefrom, be available for outlay in the general interest and welfare of the whole Native population in such manner as the Governor in Council may from time to time determine.

7. That no agreement between white people and Native owners for the acquisition of mineral rights should be recognised or validated, and that no disposal of land to Natives otherwise than in trust as herein indicated shall be permitted.

As a precedent for this proposal reference may be made to Letters Patent dated 27th April 1864 appointing the Natal Native Trust, and to a Proclamation by Sir Garnet Wolseley dated 3rd August 1875. Copies appended.

These documents refer to the disposal and management of lands which then or thereafter might be applicable to purposes connected with the support advantage and well-being of the Natives and for the vesting of such lands in an Incorporated Board of Trustees.

The Natal Native Trust has been in existence for 40 years.

In the last Natal Blue Book on Native Affairs appears an annual report of the Trust which sets forth the amount and locality of land vested and the measures taken to utilise the funds at disposal for improvements in the matter of irrigation, roads, fencing, treeplanting, seed mealies and for relief of distress.

Unless something is done at an early date to make the position clear, there is an almost certain danger of the natives asserting at law their right to get transfer of land and then of gradually absorbing the land.

The number of natives who are even now in a position and prepared to pay large sums of money for farms is in itself sufficient to attract serious attention to the vital issues at stake. The more prosperous they become the more eager will they be to acquire land.

The exclusive policy successfully pursued by the Boers in the past is a policy of self preservation with which the present or future Government of the Transvaal must sooner or later identify itself - and any postponement of the question can only lead to the complication and trouble.

Sgd. G. Y. L.

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