

JOINT COUNCIL OF EUROPEANS AND NATIVES, DURBAN.
 REPORT ON
 THE ISSUE OF LETTERS OF EXEMPTION FROM NATIVE LAW.

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- A. In Natal, by Act 28 of 1865, provision was made for the issue to natives under certain conditions of Letters of Exemption from Native Law. This Act was repealed by Act 38, of 1927, under which authority is given for the issue of regulations providing for exemption. These regulations have never been issued and therefore in effect the Act of 1865 has been repealed and nothing so far has been put in its place. As economic and social changes are going on very rapidly among the natives, and many are now in fact living under civilised conditions, many practical difficulties and inconveniences arise from their being unable to free themselves from the provisions of a law suited only to primitive tribal life. Women, for example, in service, who save money by their own efforts, cannot by the native code dispose of it by will. Unmarried natives cannot appear in court save through their kraal-heads and many legal difficulties are due to the fact that natives earning money in towns cannot in their own persons bring legal actions. By a recent decision, even natives qualified to bring actions can only do so in the courts of their places of residence, i.e. the reserve from which they come to work, often for months together in Durban, and this even if the cause of litigation has arisen in Durban and all the witnesses to the action reside there.
2. There were, however, serious anomalies in the Act of 1865 and the regulations to be issued under the Act of 1927 should avoid these. In the first place, letters of exemption are personal, and name the children of the exempted man. But children born subsequently, not being named in the letter of exemption, are not included and pass therefore under native law. This division of families is obviously undesirable. In the second place, the status of the married woman is unsatisfactory. A woman married when her husband receives his exemption is named in the letter of exemption and remains exempt after his death, unless she marries an unexempted native. But an exempted man marrying an unexempted woman, gives her his status only by courtesy, and only during his life-time. On his death she reverts again to native law, and any property left to her by will by her husband becomes automatically the property of her nearest male relative.
3. The position in Natal is more acute than in the other Provinces, as the Natal Native Code (instituted by Law 19 of 1891) is obligatory; magistrates trying cases must decide in accordance with its provisions, whereas in other Provinces the recognised law is European law and while native law may be recognised, considered and consulted, the magistrate may apply European law if he thinks fit. Doubtless the retention of Native Law under Shepstone's influence was a statesmanlike act, the natives sixty and seventy years ago were living under tribal conditions to which European law was not applicable; the Zulu legal system embodies a great, and in some ways a noble tradition, and its retention has helped to preserve the fine character of the Zulu race. Yet now its provisions no longer fit the conditions under which modern Zulus live, and therefore refusal to exempt from it is in fact a serious grievance.
- It is further obvious that in view of the growth of railways and the greater mobility of the population that as far as possible letters of exemption should be issued on uniform conditions throughout the Union, and that any native exempted in one province should automatically be exempted in any other to which he may remove.

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RECOMMENDED REGULATIONS FOR EXEMPTION FROM NATIVE LAW.

The provisions for exemption should as far as possible be similar throughout the Union, and a native exempted in one Province should be exempted in all Provinces.

A native entering the Union from Non-Union areas shall not be eligible to apply for letters of exemption until he or she has resided in the Union for two years.

I. The qualifications for exemption should be clearly stated and any native possessing these qualifications should be entitled on application to the Chief Native Commissioner of the Province to receive a letter of exemption.

II. The following qualifications are recommended, any one of which should entitle the possessor to exemption, providing that he or she is not living in polygamy nor under aboriginal conditions, and provided that the Governor-General may refuse the grant of letters of exemption to applicants of known bad character.

III. The following qualifications are recommended for men of 21 years or over, any one of which should entitle the possessor to exemption :-

- a. The attainment of Standard VI.
N.B. It should be an instruction to the Education Dept. to issue a certificate of having passed Std VI to any native so qualified.
- b. The possession either of immovable property to the value of £75, or moveable property to the value of £100. or the receipt for 12 months of wages of £5 a month.
- c. The practice of a skilled trade or the carrying on of a licensed business.
N.B. It is suggested that a list of trades qualifying for exemption be issued by the Native Affairs Department.
- d. The exercise of tenure over 10 or more acres of land for the purpose of cultivation.
- e. The holding of office as a marriage officer.

IV. The following qualifications, any one of which should entitle the possessor to exemption, are recommended for unmarried native women of 21 years and over :-

- a. The attainment of Standard VI. Note as above.
- b. The accumulation of savings of £50 or over.
- c. A certificate of continuous employment for a year or more.
- d. The practice of a skilled trade or carrying on of a licensed business.

If exemption be refused, the grounds for the refusal must be set forth in writing and the native shall have the right to appeal to the Native Appeal Court.

I. An exempted native shall be bound to register his marriage with the Chief Native Commissioner of the Province. If a man is married at the date of the exemption, his wife shall also be exempt and should his marriage occur subsequent to the grant of letters of exemption, his wife shall be exempted by the fact of registration, and shall continue to hold that status after his death, unless she marries an exempted man.

II. An exempted native shall be bound to register all minor children existing at the date of the marriage or born subsequently, with the Chief Native Commissioner of the Province, and such registration shall exempt these children until the age of 21, when each must apply individually for the issue of letters of exemption to himself or herself.

N.B. It shall be the duty of the authorities to make it known that the children of exempted persons revert at the age of 21 to the status of unexempted persons, failing application for and issue of letters of exemption.

The letters of exemption shall exempt from all laws peculiar to natives with the exception of those laid down in Par. 31 of Act 38, 1927.

Letters of exemption shall be cancelled if the exempted native reverts to polygamy or to living under aboriginal conditions.
