

Bavenda

May 168.

1. Eldest son of chief wife succeeds. - She is not necessarily the first wife married

But deceased's eldest sister nominates before assembled family relatives, if eldest son of chief wife not fit she can nominate another - usually the next son of chief wife

- 2 In absence of heir to great house - eldest daughter of chief hut may be recognized & she nominates usually eldest brother of her father's second wife. - but relatives really decide

② Pol.

In the Transvaal, as in the Cape, native marriage was taken from its context of native culture, condemned as repugnant to Western ideals, & removed by the Administration from recognition in law. Yet the necessity for making provision for one legal result of native marriage, viz the disposition of property, illustrated the continuance showed that the original mode of marriage continued. Redress for other matters, & the maintaining of the old customs, were left to the natives themselves who had no legal means of enforcement.

Special Cases of Bantu Inheritance

Bacuto.

Three principal houses

1. Great house in thekkulu
2. Lenaka horn
3. Herite.

Each wife has separate establishment & the eldest son of her house inherits & administers for his mother during her lifetime. He inherits absolutely on her death. Dowsy cattle of gifts shared by eldest son & malome.

But a widow can inherit cattle in case of no male chn. but in no case more than a life interest which she forfeits if she leaves her husband's people. With the cattle she can ~~be~~ bohadi a woman to any man to raise seed to her deceased husband's house. ~~any~~

A woman can inherit property if there are no other collateral male heirs to her father's property.

N.B. While disposal of property by verbal will is rare # Chief Moshesh did so & this is looked on as a precedent & permitted provided the legal heirs are not disinherited.

BECHUANALAND.

It is not necessary to deal in any great detail with the Bechuanaland districts of the Cape Colony, for the policy is similar to that of the Transkei prior to Proc. 142 of 1910. In other words the operation of native law has always been in force and was retained at annexation. Marriage by native custom is recognised, and Proc. 2 of 1885, Section 44, lays down that such a marriage, if registered within three months of its celebration, "shall in all respects be as valid and binding and shall have the same effects upon the parties, their issue and property, as a marriage contracted under the marriage law of the Cape Colony." As in the Transkei, only the first marriage could be registered ~~in~~ a vain attempt to reduce polygamy ^{by} ~~and~~ offering alien advantages in regard to property as inducements.

In practise, unregistered native marriages are taken cognisance of, because in Bechuanaland cases are tried by native chiefs ^{who have} with unlimited jurisdiction in civil matters between members of their own tribes. (2)

Previous to the N.A.A. chiefs dissolved unregistered marriages by native custom though they had no special statutory power to do so; registered marriages were dealt with by the courts.

(1). Prov. (c) ~~to~~ of Cape Act 41, 1895.

(2) Sections 31 & 32 of 1st Schedule to Proc. 2 British Bech. 1885 and recognised by the N.A.A. No. 38 of 1927.

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PRELIMINARY STATEMENT.

ORGANISATION OF RESEARCH IN NATIVE LAW.

The Native Administration Act of 1927 provides for the recognition of Native Law in legal suits between Native and Native. It will thus be necessary not only to collect accurate and full information on Bantu law generally, but also to distinguish the differences which exist in the Traditions of tribal groups. The Natal Code, the Transkeian Penal Code and the Succession schedule of the Glen Gray Act contain such of the body of Bantu Law as has been codified, but they cannot be said to represent the actual text of that law. The Transkeian Code is more European than Bantu and even the Natal Code is Bantu Law considerably modified by European conceptions.

The Natal Code is not only a Statutory Code in Natal, but it is also often regarded as a declaration of Bantu law, yet many of its clauses would be disputed by one tribal group or another. In not a few directions failure to recognise tribal differences might easily lead to discontent and unrest. This would be particularly so in disputes arising out of marriage customs and inheritance rights. There are many variations of the custom we know as lobola, while the essentials of marriage may not be the same in all cases. Sections 11 and 23 of the Act will provide ample opportunity for the existence of these differences to manifest themselves.

Any attempt to codify Native Law would soon reveal the inadequacy of our information and it is not likely that the codification of the law of even one tribal group would be possible without much disputation. But the new Act makes it imperative that the judicial officers who will have to dispense justice under the powers given them by the Act shall have knowledge of the laws of the tribes among whom they are placed. It will therefore be necessary to provide them with such systematised information as is available. And the more that is available the more intelligent and just will be their judgments.

Systematised information on Bantu law checked by modern anthropological knowledge hardly exists, even in respect of the better known groups. Since Shepstone lived and did his great work there has been a revolution in our knowledge both of the principles and the facts of traditional jurisprudence, while much more is known of the legal institutions of other Bantu people so that much fresh light has thus been thrown on the meaning and significance of Zulu legal customs. The jurist, the social anthropologist, the administrator of native law must co-operate if native law is to be justly dispensed.

A number of magistrates have already realised the urgent need for accurate information on Bantu law and some have collected considerable data with a view to publication. Their efforts should be supported to the fullest extent possible, and this Memorandum is written to secure that the utmost advantage is taken of their special knowledge. It is likely, however, that without the correlation of these efforts the maximum advantage will not be obtained either for these workers or for the country. The excellent little work by Major Harries, "Notes on Sepedi Laws and Customs" contains so much that has proved valuable to the

student.....

student of Native Law that one wishes he could be induced to write a more extensive work arranged with full regard to the information required and to the order and classifications desirable for easy reference and especially for comparative work.

The encouragement of investigations, the planning of systematic research, the co-ordination of information, and the publication of results will require the co-operation of the Native Affairs Department and the Universities if the work is to be done thoroughly and effectively. It is therefore suggested that this University approach the Native Affairs Department to ask it to call a conference of the most experienced and best informed officers of the department and the lecturers in Social Anthropology and Native Law in the Universities for the following purposes:-

- a. Consideration of the best means of systematising study and research in Native Law.
- b. Survey of the data available.
- c. Preparation by a Committee of the conference of a schedule of categories on which information should be gathered.
- d. Provision of machinery for the guidance of recorders and authors of monographs.

No doubt there are others beside the present writer who have suggestions to make on each of these heads and a conference of this kind would prove most fruitful at this time. There is a great deal of valuable material which magistrates, missionaries and others can supply if they are helped to arrange their information in some systematic way.

In the publication of monographs or less ambitious contributions to our knowledge of Bantu law, the University's Journal "Bantu Studies" should be of considerable assistance.

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LECTURER IN NATIVE LAW AND ADMINISTRATION.

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