APPELLATE DIVISION.

SUCCESSION.

MANTJOSE vs. JAZE 1914 A.D. 144.

The rule that the father of an illegitimate child can ~~acquire~~ acquire no rights over the child without marrying the mother, and so making the child legitimate, is not only in conformity with the ordinary law of South Africa, but it seems to me also more in consonance with ~~the~~ public policy than the contrary rule that by giving a few head of cattle to the supposed head of the ~~mothe~~ mother's house he may deprive her and the relatives of all right to the custody of the child, while refusing to accept her as his lawful wife.

BIKITSHA vs BIKITSHA. 1917 A.D. 611.

If a native who falls under the Kaffrarian Ordinance 1 of 1864 dies leaving a Christian widow - or any direct issue of such Christian Marriage, or both such widow and such issue, and does not leave a second widow who was married by native custom or any direct issue of such marriage, the ordinary law governs the disposition of his property.

MCUNU vs MCUNU. 1918 A.D. 323.

I cannot think the framers of the Code of 1878 intended to impair

The general heir would prima facie be entitled to all kraal property. The right well recognized by native custom of a kraal head to establish an "Ikohlo" section possessing the special characteristics and enjoying the special status accorded to it by native usage.

MOMOLOLO'S EXECUTOR vs UPINI 1919 A.D. 58.

The object of the Act (7 of 1895) was to enable natives to dispose by will of their immovable property, for under native law they had no power of testamentary disposition. The distinctive provision ~~is~~ is that the will shall be read over and explained to the testator by an Administrator of Native Law in the presence of two witnesses. The object of this no doubt was to ensure that the testator, to whom as a native the whole idea of disposing of property by will was something entirely new, should thoroughly appreciate what he was doing. Sec 5 requires that the Administrator of Native Law shall record upon the paper on which the will is written a certificate in terms of the Schedule that he had explained the will to the testator in the presence of two persons of full age, and that the testator understood. The will must be signed in the presence of two competent witnesses, present at the same time; the witnesses shall sign. The rules of the common law and statute law of Natal upon the subject are based upon simple and sound reasons, and are as applicable to native wills as to others. This is not the only respect in which the native population, as they develop in civilisation and acquire new rights, come under the ordinary law of Natal.

MHLONGO vs MHLONGO. 1919 A.D. 470.

The magistrate and the Judges interpreted the section by the light of their general knowledge of native laws and customs. Where property belonging to the "Indhlunkulu" house is transferred to the "Ikohlo" house, a debt was created.

NATIVE CODE.

NTULI vs NTULI. 1921 A.D. 473.

The Native Code of 1878, which admittedly became law in Zululand by Proclamation 2 of 1887 has continued to be in force there.

NATIVE HIGH COURT.

REX vs MANYILE. 1921 A.D. 473.

The members of the Natal Native High Court had been specially appointed to their high office because of their knowledge of native customs. That was an invaluable qualification in ~~one~~ enabling them to weigh and understand native evidence; but it was ~~w~~ to bear in mind that such evidence should only be elicite[d] the same lines and subject to the

same safeguards as any other evidence. It is most desirable that the High Court should possess and retain the confidence of the Native population; and he felt sure that all the members of the Court were anxious to secure it. To that end it was important to observe carefully the rules of procedure and to maintain always that dignity and decorum with which the proceedings of every Court of criminal justice should be invested.

LAND.

THOMPSON vs KAMA 1917 A.D. 209.
STILWELL.

The Act 27 of 1913 devided all the land of the Union into two categories, that which lies outside and that which lies inside a scheduled native area. And it divides all the population into two classes- natives and non-natives. The Cape alone among the Provinces of the Union recognized no colour bar to the Parliamentary franchise. A qualified Native enjoyed full electoral privileges. Sec 35 of the South Africa Act provided that a disfranchising law based on mere grounds of colour or race should not be valid unless passed by a two-thirds majority at a joint sitting of both ~~houses~~ Houses. The intention was to place the Cape Province outside the restrictive ambit of the statute.

The key to the meaning of Sec 8 is to be found by bearing in mind first the difference between the franchise laws, as regards natives, of the Cape and the other Provinces of the Union, and secondly the 35th Sec. of the South Africa Act. The restriction placed by Sec. 1(2)upon the acquisition by a person other than a native of land in a scheduled area is not in force in the Cape Province.

The legislature intended that the restrictions were only to be temporary - that they should be in force only so long as they deprived a person from acquiring, or holding a qualification for the parliamentary franchise.

The effect of the section is to exempt at the present time the Cape Province from the restrictions contained in the Act.

CHIEFS.

UNION GOVERNMENT vs MONTSIOA. 1914 A.D. 42.

In 1884 the then Paramount Chief of the Baralongs sought the protection of the British Government, and, with the assistance of his Councillors, ceded his country (which included the present district of Mafeking) to the Queen with full powers of legislation and taxation. Thereafter, for about eleven years, British Bechuanaland, as the new territory was called, was administered as a Crown Colony, the authority to frame and promulgate all necessary laws having been conferred upon the Governor of the territory by Royal Commission.

Annexation to the Cape Colony came up in 1895, and Badirile Montsioa, the then Chief, signed, a petition adverse to the proposal. This he withdrew in consideration of a letter addressed to him by the Administrator of Bechuanaland, which contained certain undertakings regarding the inalienable character of native reserves, the jurisdiction of native Chiefs and the non-extension to the new territory of the Glen Grey Act of 1894. Annexation was carried through by Act 41 of 1895.

MONTSIOA vs MATLABA. 1919 A.D. 241.

Sec. 31 Proclamation 2 B.B. 1885. Native Chiefs in B.B. shall have original and exclusive jurisdiction in all civil cases between natives of their own tribes exclusively; but in all civil cases between Europeans or between a European and a native or between natives of different tribes, the magistrate

of the district shall alone have jurisdiction.
Sec 35. The right of allotting the land is vested in the Government. As a matter of fact, the Government allows the chief or headman to allot land, and does not interfere unless complaints are made. When the white people first came into the country which is now known as Bechuanaland they found that portion of the continent inhabited, apart from Korannas and Bushmen, by two nations, the Batlapins and the Baralongs, both belonging to what is now called the Bechuana, itself a member of the great Bantu race.
1885 Sir Hercules Robinson as High Commissioner proclaimed a certain portion of the British Protectorate over Bechuanaland and the Kalahari as British territory under the name of British Bechuanaland. The jurisdiction of native chiefs among themselves is almost universally tribal.

MATOPE vs DAY 1923 A.D. 397.

A native tribe is a legal entity, which can sue and be sued in a Court of law through its chief, a chief is an essential part of a tribe. It is true that the recognition by the Government is a limited one, and that he is consequently not invested with the full powers ordinarily possessed by native chiefs.

MAKAPAN vs. KHOPE. 1923 A.D. 551.

A native Chief sitting in his Court has power to inflict punishment by fine or imprisonment for a contempt committed in facie curiae. Law 4 of 1885 which is a statute "to provide for the better management of and the better administration of justice among the native population of the Republic", constitutes a native chief appointed by the Government a court of justice with certain jurisdiction.
The power to punish for contempt in facie curiae is one which is recognized by the native law and custom — a court consisting of the Chief with his councillors was recognized as a judicial tribunal constituted according to law.
No objection can very well be taken against a young Chief calling in the assistance of his more experienced counsellors, who, in the absence of all writing, would have their knowledge of native law and custom engraved on the tablets of their memory. There can hardly be a more satisfactory mode of arriving at a just conclusion in regard to native law and custom. I think we should be careful not to discoun-tenance such a practice, for otherwise we might be acting contrary to the true intent of the Act, which desires that effect should be given to the administration of actual native law and custom.

LOCATIONS.

MATHIBA AND OTHERS vs MOSCHKE. 1920. A.D. 354

From early times provision was made in the Transvaal for the settlement of Native Tribes - 1853. On 14-11-1871 the Volksraad resolved to approve of the recommendation of the Commission and instruct the Government to reserve ground or to try to acquire it for Kaffir Locations. The meaning of the Besluit of 1888 (Art 189) is clearly that the Government was empowered to take private land required for a location and to give by way of compensation, not what the owner was willing-to to take but equal land or a fair price, whether the latter was willing or not to dispose of his land on such compensation.
