

18th August - 1904.

THE SECRETARY FOR NATIVE AFFAIRS.

I enclose a draft memorandum relative to tenure of land held in trust for natives and its relation to mineral exploitation. It has only been roughly drawn amidst a good many interruptions and I have no doubt omitted certain points and features which may with advantage be brought in. The language also and the arrangement can, here and there, be easily improved upon.

I shall be glad if you will let Mr. Warwick have a copy and both of you consider it carefully with a view to suggestions and alterations. When we have jointly fixed it up I should like to show it to Sir Richard Solomon before sending it to him officially as Acting Lieutenant-Governor for despatch with his remarks to England.

The Executive Council holds that, while concurring with me in the general views I hold upon the subject, it would be advisable to consult the Colonial Office in London before promoting legislation here.

I enclose your original draft Ordinance. My view is that the preamble to it might well take a form similar to that adopted in Letters Patent appointing the Natal Native Trust which I have had copied as an annexure to these papers. The--

I think the 3rd paragraph of the Order in Council should be adopted relating to the taking and holding of lands or any interest therein and the grants, sale, lease, or disposal thereof
for the support, advantage or well being of the natives
or for purposes connected therewith.

The basis

The basis of what we propose should I think be, the disposal and management of lands applicable to such purposes, and the vesting of such lands in a Board of Trustees.

Your draft Ordinance will require amplification and in terms of my suggestions on page 12 and in other parts of the memorandum.

I think it would be distinctly useful to put in a draft Ordinance but I should like it to be as comprehensive as possible.

(Sgd) G. Y. Lagden,

August- 18

04.

G.W.A.

Native Land and Trust Ordinance, 1904.

PREAMBLE.

Whereas it is expedient to regulate the acquisition, occupation and disposal of land for the support, advantage or well-being of the natives of this country and whereas it is desirable that such lands should be vested in an official Trustee, and also to provide for the establishment and maintenance of a Native Trust Fund, for the purposes aforesaid.

NOW THEREFORE be it enacted by His Excellency the Lieutenant-Governor of the Transvaal by and with the advice of the Legislative Council thereof as follows:-

1. The short title of this Ordinance shall be the "Native Land and Trust Ordinance, 1904".
2. The following terms shall be interpreted to have the meanings respectively assigned to them:-

NATIVE: Any person both of whose parents are members of some aboriginal race or tribe of Africa.

LAND: All landed property, (a) which may be known as locations beyond the limits of any township, (b) which may belong to the Crown, (c) which may have been individually or collectively acquired by natives by purchase or otherwise, (d) which may be held in trust for natives either by the Government or any private individual Society or Corporation in Trust.

NATIVE TRUSTEE: The Commissioner for Native Affairs or officer for the time being appointed to act in that capacity.

3. All such Laws, Regulations and Resolutions as are now in force in so far as they may be repugnant to the provisions of this Ordinance are hereby repealed.

4. It shall not be lawful for any Native to sell, lease, encumber by mortgage, or otherwise deal with the surface,

mineral, water,

mineral, water, pastural, agricultural or other rights appertaining to land which may now or hereafter be in his or her possession or occupation directly or indirectly.

5. It shall not be lawful for any person to enter into any negotiation or transaction with a Native for the acquisition or disposal of such rights in any manner whatsoever.

6. The power to purchase, sell, hypothecate, lease or otherwise deal with the land and rights aforesaid or any interest therein is hereby vested in and absolutely reserved to the Lieutenant-Governor acting by and with the advice of the Executive Council or to such person as may be thereto nominated as Native Trustee.

7. All title to land held by or on behalf of Natives shall be conveyed and surrendered by the person or persons in whose name or names it may be registered to the Native Trustee who shall retain and be responsible for the safe custody of the same.

8. The Native Trustee may sue and be sued, plead and be impleaded in all Courts of Law duly established in this Colony.

9. The transfer of all titles mentioned in the preceding section shall be passes free of duty, and be duly registered in the Deeds Office without charge.

10. All bonds, servitudes and other encumbrances now existing or contracted in future upon land held by Natives shall be dealt with by the Native Trustees appointed as aforesaid.

11. The Registrar of Deeds or Registrar of Mining Rights is prohibited from accepting any deed or document affecting property in which the interests of a native may be concerned unless they be duly executed by the Native Trustee.

12. Any land acquired by Natives, whether by purchase individually or collectively, before this Ordinance comes into operation, which may be found to contain minerals, base metals

or precious stones

of precious stones in payable quantity may be expropriated or disposed of by the Native Trustees under the authority of the Lieutenant-Governor provided that property of equivalent surface value for Native purposes be set aside for the occupation of the Native owner or owners and that due compensation be paid to such owner or owners ~~and that~~ for disturbance, damage, dwellings, improvements and removal. The amount of such compensation shall be determined by the Lieutenant-Governor.

13. Should the amount realised upon the disposal of such property exceed the value of the land granted as an equivalent, as well as the compensation provided for in Section II the surplus shall be credited to the General Native Trust Fund hereinafter established.

14. A Native Trust Fund may be established and maintained for the general benefit and welfare of the Native population.

15. All monies accruing to this Fund shall be payable to and received by the Native Trustee and paid into the Colonial Treasury, and the account operated upon jointly by the Native Trustee and Colonial Treasurer.

16. The purposes to which this Fund shall be devoted will be determined by the Lieutenant-Governor in Council.

17. The Lieutenant-Governor may from time to time make such regulations as may appear to be expedient for giving better effect to the objects of this Ordinance.

18. Any person or persons contravening the provisions of this Ordinance or any Regulation thereunder shall upon conviction, be punished by a fine not exceeding £100 or imprisonment with or without hard labour for a period not exceeding six months.

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