

P.O. Sacramento

Aug. 20th 1927

My dear Harris

Thank you for returning the book. But it breaks my heart to be assured that my No 1 Copy has gone for ever. It was, as W^m Shakespeare says, "full of wise saws & modern instances" which are only reflected here & there & by no means truly checked in the No 2 Copy I send you.

If however No 2 has been of use I am glad, even if only in one or two little points.

A-la-la-la I am crying for my No 1.

In regard to your two questions I enclose a copy of the Rajudi School. My list is much the same as yours but diverges here & there. Yours would be correct from the Miamian side & my is correct from this side. It is all a matter of how you read the tribal history; one may regard Mampon as the true & rightful tribal claimant, or another may regard him as a traitor & destroyer of his people who guided the Red coats & Swagies to the place of the final debacle.

Thus the last school on your list in the book Maditwa II would naturally be so named ~~after~~ by those of Mampon (Hoozique) & of Maditwa after the great old Keshon whose school was similarly named

the Marung & all on this side including E of Inhe
 & as far as Marigstad Mapulana's Lyanting & beyond
 & all swear by Kyagudi the son of Moromatche &
 name the school of that period Makya II to bring it
 nominally in line with the old Kyagudi's school of years
 ago. I therefore say Makya II is the proper name
 of this school, though doubtless the years would differ.
 The last school on my list is Mangana II under young
 Thulane (of Head Office whom you perhaps know). He is the future
 chief & is daily becoming more powerful, in fact or leave he
 eclipses his tributary father Sekhuni II. so I do not
 always want him here as it means two bulls.

You would not get the present Sekwati of Sekhuni
 to admit that there ever was a school Mangana II
 or that Thulane could be chief of it. I or the other
 hand have never heard the name or the chief of the
 corresponding school on the Sekhuni side.

The last known member of the Marala died last year.
 I know him, he looked like a shrivelled old monkey
 just a bag of bones. He loved sugar & was a mine of
 compressed historical information. It is true that
 some old Madikoa I claim to be Marala but I am
 assured that they are not.

Your "Mazana" of Hutudi is a misprint for "Mangana".

Your other question as to whether a man may marry his paternal cousin Kgdobale explains to me three: - a man may marry the daughter of his father's younger brother but may not marry the daughter of his father's elder brother -



Nos 1 2 & 3 being brothers 1 & 3 have daughters, 2 has a son. No 2's son can marry No 3's daughter, but cannot marry No 1's daughter -

I have not gone into this question & perhaps some old wise-heads may differ but Kgdobale is fairly sound & his opinion is corroborated by old Headman Kgidine of Schomona & the Headman Mosei of Hartbosch.

I wish you a pleasant - trip to East Africa, a good time there, & a return like a game-refreshed ready to start wrestling again with your job.

Kind regards to Mrs Harris.

Yours sincerely
D.H. Harris.



In antwoord gelieve te refereren naar:
In reply please quote this number:

MINUTE.

UNIE VAN ZUID-AFRIKA.—UNION OF SOUTH AFRICA.

KANTOOR VAN DE
OFFICE OF THE

Box 62

Benoni

21/11/1930

19

De
My dear Hunt

How are things with you? There is very little news of an official nature here. Herbst was to have returned yesterday but I have not heard of his arrival yet. We are pretty busy as usual on Far East Rand. Our most trouble at present is the influx of numbers of immoral & big game licensing women from Basutoland.

From your intimate study of native life especially in Eastern Transvaal can you tell me whether:

- (1) Res judicata or rather its principles have ever been considered unknown in native law? I have always thought that even if a plaintiff did not take the point, the Chief's Court would.
- (2) There be a punishment implied on a plaintiff

trying to bring the same case on a second time?

- (2). Does a Chief's Court order "specific performance" in a judgment.
- (3). Is there anywhere that I could get a short resume of the procedure in a civil action before a Chief's Court? Just the commencement of the action, trial, judgment & execution of latter & also whether Chief in real notie law's custom personally sits? He would have to do so now of course.

There is a great paucity of reference or books on these subjects. why don't you publish something?

Sorry to trouble you - Best wishes,
Yours sincerely,
H. M. M. M.

New address

Schunkeunland

Private Bag

Lydenburg

25-11-30

My dear Charles

Please do not quote me as an authority & do not put me into print.

On the points you raise I can give you my opinion & tell you what is the practice here.

I do not know your Bawanda, as it has been stated that I should spend what now almost amounts to a lifetime among these Bapedi.

It has been my hobby to dig into their history & with their history their customs & intimate ways, some of which would certainly shock even a Frenchman like Henri A. Junod.

I am no lawyer but here and in my old age I find my judgments are accepted by my people, that is all.

It seems here that *Res judicata* with natives is much the same as with us.

A case decided by the kgoro is done with in so far as that kgoro is concerned, unless some totally different - previously unheard of essential point crops in.

They decide their cases by precedent - of the judgments of old chiefs.

There are however nowadays some new points unknown to the old days & the old conditions & the old chiefs, cropping up.

I find that on such new points the kgoro generally prefers to refuse to give a decision & create a new precedent themselves. Their inclination here is to refer it to the Administrator.

of the District, the Native Commission, & subsequently follow his precedent. Their loyalty in this respect is sometimes embarrassing, as I have found that instances have occurred in which when I have been absent from Schoonard on the day set for the case the parties, in spite of summonses, have delayed coming to my office till my return, though my senior clerk should act in my absence.

There are at least three new precedents created by my Court (me) in recent years which all my chiefs and headmen follow.

No! you may take it that a case once heard in a kgoro cannot be reopened in the same kgoro (or *Ukgotla* which is the more usual western Transvaal word).

No fine would be inflicted on a plaintiff trying to bring a case a second time. He would be ordered off & told to "go where you like" as his case was finished in so far as that kgoro was concerned.

Specific performance is ordered by a Chief's Court & if not carried out is enforced by the *batsela* who in case of refusal attack & drive - say, the judgment-cattle - to the kgoro where they are handed over to the other party.

To begin a case the plaintiff approaches the chief through his special *mbudzi* (mouthpiece of the chief). Each section of

the tribe has its own representative relative of the chief & through ~~it~~ ^{him} alone can approach the chief about a case. A foreigner or stranger of another tribe can approach the chief through the chief's younger brother (in the case of Sekembuni his immediate younger brother Shatudi) without touching the head indunas of the kgoro, but tribesmen of the chief must approach through their own proper channel.

The mulodi tells the chief who decides whether the matter is of importance enough to call together the old men of the kgoro, or whether it is a petty matter which the immediate councillors who are always sitting around the chief's place can deal with offhand.

In the former case he appoints a day, very often a Sunday here, & the batseta call the parties in & the case is heard.

The chief after receiving the greetings of the parties generally, almost always, disappears & is not present during the formal hearing but if interested in the case he can be there all the time.

The men of the kgoro can even ask the chief to leave the kgoro, so as not to influence the men in one direction or the other, and then they can discuss the case freely among themselves.

Generally during the hearing the chief is absent but is constantly kept-

informed of what is happening, and any questionable points are referred to him.

After all discussion is over the chief is recalled to the bench. The defendant or his spokesman summarizes to the chief his side of the case & shows why he should be let off according to custom. Then the plaintiff or his spokesman gets up & points out why according to custom the defendant should be heavily fined.

The chief has heard the reports sent him during the hearing, he has also heard the summaries. One way & another he has got a good grip of the general opinion of the majority.

It is now up to him to decide for or against: if against ~~the plaintiff~~ then he must decide what fine must be paid.

I must admit that the chief is absent more in theory (or by ceremony) than in fact. I have known a chief go about 40 yards away & though the special intermediaries reported to him regularly during the case, he had really heard for himself every word said.

In spite of the Administration Act no change of procedure has penetrated here yet.

I received your letter this morning

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I go to Lydenburg at or before sunrise tomorrow so am writing this this evening or it will miss the post.

I have not dug deeply in this letter into variations or intricate points of detail, & have asked no one their opinion. It is just simply what I think, what I have actually seen, & what is my experience in Sekukuniland -

All experts may contradict me, but I shall carry on to the end, backed by my old men - & to hell with the experts.

Kind regards & if there is any other point I can tell you what the Bepeledi do - right or wrong in the eyes of other tribes, you have only to ask.

Yours as ever

Donald R. Hunt -

P.S.

Remember Sekukuniland has never had any lawyers, no telephones, no nothing. Head Office knows nothing about it. More than most it retains its pristine customs unaltered.

D.R.H.

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