

is enhanced. All the loot collected is laid before him to divide, and, of course, he takes the lion's share. The "soldier" who was chiefly instrumental in the acquisition of the booty gets methylated spirits and a dagger^{a/}. His stick is then tied in the presence of all others, with a red tape near the top end, and this is his "D.S.O." To such chaps promotion to high position in the ranks comes soon. Promotion is by merit, but favouritism is not entirely wanting.

In regard to their activities-- in the gang there is specialisation. Some boys are skilled in playing the mouth organ; others in thrashing and others are adepts in stabbing and in breaking into stores and houses. Bicycle and motor cycle chains, sjamboks and electric wires, ordinary sticks with iron knuckles at the head, and canes are the instruments used for belabouring well behaved citizens in unfortunate circumstances.. The boys also carry deadly knives. A Laita boy can stab you without coming near by throwing the knife in a special way. "Give a boy a mouth organ and let him play it; when he has finished playing you will know whether he is a Laita boy or not" said one fellow to me.

You will find that these boys are dirty, both in clothing and in body; they have no time for washing their bodies and their ordinary clothes. The afternoon off, should they be in domestic service, as indeed many of them are, is given to plotting what is to be done in the evening; the evening is the time for operations. When six o'clock and the evening draw nigh, I was told, the head goes wrong, and one does not know where one is, because of the intoxicating effects of dagga and methylated spirits. The effects, all the same are welcome.

Now what is done by the Amalaita gangs depends on what sort of gang they are and on the general conditions of their

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locality. The gang that is composed of younger boys, anything from 11 years to 14 years of age, does nothing very serious, except to scout out chances for older fellows. Then again, the more alert the police are, the more tricky and on the qui-vive the boys are. On the other hand, when the police show laxity, the Amalaita do harm with impunity and become mosr defiant to the public. They have in Durban three stations, say (A), (B) and (C). The police disturb them at "A" and they move to "B", disturbed there they move to C. From C to A again. It is conventional that wherever they flee from a danger situation, each should run in his own direction and that when one is arrested, he should never disclose the names of others. If he does, woe unto him.

I do not think that these boys know all the consequences of their actions; no man ever really does. It is simply that they do what they like and have come to like what they do. The Amalaita boys do not understand civic life; their deliberate acts are actuated by motives that lie within narrow universes. What is good to do is what the immediate moment suggests as possible to accomplish. Faction fights between two rival gangs are arranged for without any consideration, whether, if carried out public peace and lives will be endangered thereby. A break into a store or house is a brave thing to do. The illegality of the act and the higher moral virtues which the act contradicts are beside the point. Methylated spirits are taken because they are rare to get, illegal to obtain and not taken as a beverage by other people; dagga is consumed freely for its unbalancing effects; there is something good in seeming unnatural and nothing appeals more to the martial and puerile mind than to prove better than his adversaries.

When a boy can successfully and unwittingly play with the lives and property of well behaved citizens, when he enjoys immunity from punishment and comes out of any situation at the better end, then he is said to have adapted himself to his environment. When the Amalaita boys want new members to enter into their ranks, they look for an opportune time, say when either the "guardian boy" is away of the Mistress or Master, and go to the boy and persuade him to adapt himself to his conditions by joining them; he must not remain, and they will not tolerate a tyro in this division, say at Greyville. Adaption in this case, therefore, means becoming a crook. When persuasion fails, the desired fellow is thrashed into the gang.

I now make the following suggestion: The question which every citizen should ask is "what can be done to check these boys from doing harm? Can we ever get rid of them?" Probably we could. As I have said, a vigorous police force could help, but at the best, its activities are prevented, and that is not sufficient; what is wanted is something curative, something in which the psychological factors which are behind the Amalaita could be given a healthy outlet for expression. I have in mind educative influences to be found in a Pathfinder or Scout organisation. Would it be too much to suggest a mass organisation of all working boys into pathfinder or scout groups? The Municipalities, I think, should take up this project, because they have the authority behind them and they could find the necessary money. After all the town fathers should look into the welfare of the city or town workers. Doors should be left open, of course, for cooperation from such voluntary bodies as the school and the Church. It should not be difficult with the help of pass registers, for the Municipalities to find

out all the boys working in Durban, their ages, and to divide these boys into suitable pathfinder groups under healthy patrol leaders. By that way, as I have said, room could be allowed for healthy deeds of daring, acts that go to form good character, and on the whole, such an organisation would be economically sound, because for one thing it would mean an intelligent and reliable force of labour. That is one way in which Bantu nation building, for which Mr. Heaton Nicholls shows so much concern, could be taken up.

DR. ROBERTS: I wonder if you recognise that gangs of that kind are very common in the lives of all nations at certain stages; there is scarcely a nation which has not had them and after a time they lapse with the increase of knowledge?-- I suppose so.

CHAIRMAN: I think we may now proceed with our questions with the paper before us. I want to start with the suggestions made by Mrs. Palmer; under item 3 you say that the chief's power depends mainly on his control of the land and power to deprive an offending individual of his plot of land.--(MRS PALMER) I must say that that evidence was not put in on behalf of the Joint Council. That is my personal statement and perhaps you would defer asking questions on that. (THE REVD MR. COTTON) ~~The~~ Mrs. Palmer has not carried the whole Committee with her in some points, but I do not think we should object to Mrs. Palmer's answering any questions on her statement, provided it is understood that she does not commit the whole of the Joint Council to her views.

I do not think the question of whether the Joint Council is committed or not matters in the least to us, because we are not taking a vote on what the different people think. We are trying to get at facts and at reasons

and conclusions, and we would not blame you for things which you would not be prepared to subscribe to, or even press you on things which you are not prepared to agree to. Well, we shall leave Mrs. Palmer's statement over, and I shall first question you on your statement on the issue of letters of exemption. You recommend that natives in the Union, coming from non Union areas should not be eligible to apply for exemption until after a residence of two years; on what grounds do you suggest, firstly a delay and secondly the period of two years?--(THE REVD. MR COTDN) I may say that I am not wholly in agreement with that myself.

Perhaps I had better put the question to someone who is in agreement with it?-- (MR. MAZINGI) I was totally against it, but when I found that I could not get it out altogether, I tried my best to get it reduced to three or six months. Unfortunately the members who wanted it in are not here. It was the European section who wanted that; they put forward the argument that the characters of people were not known when they came here; people might have been guilty of theft. Yet when they came here they immediately applied for exemption. We tried to shake that, but the vote went against us.

Take your native from Nyasaland; if he comes here and he is not to be exempted, then the particular native law from the area where he comes from will be applied to him?--That is so.

That might be the native law to which he is accused, is that so, that is so.

Why should a choice be made for a native law in preference to European law?--"e argued that. A similar

thing obtains here now with regard to natives from Basuto-land and so on, and we thought this being a n industrial centre and natives coming here, should adapt themselves to the law of the centre.

Why the Native law in preference to the European law in that case?--The only reason ⁺ can give is that the European section, who were strongly in favour of this, did not regard that as being of any importance. They only looked to the character of the man. It is only the native who is affected.

How can the character of the man be affected or influenced by the question whether he is born outside the Union or inside the Union? Do you think the characters of the natives inside the Union are so much superior or inferior to the characters of the natives from outside the Union?-- Well, ⁺ think the idea was to discourage them from entering into these parts....

Do you think putting them under Native law would discourage them?--?--Not necessarily. The way in which the gentlemen who were arguing the point looked upon it was this: no matter how the native law affects a man, so long as he is prevented from being exempted from the laws of this Province, they are quite satisfied.

And you think the native would not want to come in unless he had a hope of exemption?--^he would not be as free as all that. Natives from the Cape or the Transvaal, who are exempted there and come here are not necessarily exempted here.

But you are talking of non U_nion ⁺ territories in this statement which we have before us?--Yes, that is so.

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Well, then, do not bring in the Cape or the Transvaal. What about the non-Union Natives, the Natives from Basutoland and the Portuguese Natives?— These people come from those provinces under their own laws, the same as the Natives from the Cape and the other provinces do. They may have their own exemptions in those other provinces, but when they come here they find that they are barred and they have to wait a certain period before they can claim exemption again.

So, if you had a Native medical man, a man who has qualified say at a European university, and who was born in Basutoland, and who came to settle in Durban, the Zulu tribal law would have to apply to him for the first two years?— Yes, that is so. (Mrs. Palmer): There was a great deal of discussion on this question in the Council and I think the decision finally come to was due to the feeling of the European section of the Council, that we should know a good deal about the character of a man before we could give him exemption. I did not quite agree with that. There was a little feeling among a certain number of Natives that they would not like these outsiders to come in under exactly the same terms as they themselves.

If you make them all subject to Native law, you make them subject to the same laws as the bulk of the Natives are under?— Yes, they do feel that an educated Native who belonged to the Union should get exemption on easier terms than Natives coming from outside. (Mr. Makulisi): I think the Joint Council thought that exemption was a privilege for the Natives. There are so many disqualifications enumerated, such as polygamy, or if a Native was a known bad character. They wanted to give a chance for a long

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duration so as to be able to judge the character of a person. A man might just come in and later on start working against the principles which govern the granting of exemptions. ^Q The framing of regulations under the Act means generally that you are tying down things and that you cannot use a great deal of discretion when you have tied them down and, if you made two years compulsory without any sort of exception, then you may find an exceedingly advanced Native who comes in from some adjoining territory to settle in Union territory whom you would subject to the Native law for the first two years. With regard to the qualifications for exemption, I do not know whether the items under C.3 must be read as subject to Item G.?- (Mrs. Palmer): Yes.

Is that what is intended ?- Yes.

But Item G. assumes that letters of exemption are already given. You cannot cancel a thing which is not given?- Anyone of these conditions should entitle a person to claim exemption, provided he is not living under certain conditions and then anyone of the subsequent conditions should entitle him to exemption.

When you refer to the possession of ^{1m}movable property I take it that you do not refer to tribal lands ?- No.

And when you refer to movable property, you do not refer to the cattle ?- No, we do not.

Now, the receipt for 12 months' wages at the rate of £5, would that be a continuous period of 12 months ?- Yes.

That may mean that a break caused by temporary unemployment would keep on putting the disability of his getting his exemption indefinitely ?- Yes, but it is only one of a number of disqualifications.

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MR. LUCAS: Is it only meant to apply to men?— No; women are also put down there.

CHAIRMAN: Now, the exercising of tenure, do you mean there of individual tenure?— Yes. It is the case of the Native sugar farmers. We were informed --- we have not got any definite information --- but we were informed that some Native sugar farmers could not enter into any contract and could not take legal action without the consent of their kraal heads, and that this handicapped them very seriously. You see, the position of the Natives in this Province is quite different from any others, because here the magistrates must deal with the Natives according to Native law, they have no discretion, whereas, in the other Provinces, discretion is left to the magistrate, and, ~~there-~~through ~~fore,~~ the cancelling of the Natal Act of 1865 has left our Natives without any means of claiming the exemption for the last four years.

Are there any other points to be raised on this question of exemption?— (Mr. Shepstone): I want to refer to a very vital decision in that respect. The Native Appeal Court has held that exempted Natives fall within the jurisdiction of Native Commissioners. The effect of that decision is this, Prior to that, the decision of the Native Commissioner could be taken to the ordinary Court of Appeal. That is to say, the exempted Native followed the ordinary laws of the Colony and could appeal to the Union Appeal Court and, from that, to the Privy Council. But now they can only go to the Native Appeal Court and I think that that is a very vital deprivation of their privileges.

DR. ROBERTS: But cannot they appeal from the Native

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Appeal Court to the Supreme Court or to the Appellate ?- No, they cannot. In the past, things were different, but now we can only go to the Native Appeal Court and that is an unfortunate position, and it is a position which should be rectified, because, obviously, I think the intention of the Legislature was that they should be entitled to the ordinary laws of this Province.

Did that decision explicitly say that he could not appeal to the Supreme Court ?- The position is this. The Native appeal from a Native Commissioner comes to the Native Appeal Court and there is no appeal from that to the Appellate Court and the Native Appeal Court has indicated quite clearly that they are not bound by the decisions of the Appellate Court, and the Native Appeal Court has, in fact, differed from the Appeal Court, and may do so again. I think it is a position which should be rectified. An exempted Native goes before the Native Commissioner, he has the common law applied to him, he appeals and then he has to stop short of the Supreme Court.

CHAIRMAN: He stops short in matters of European common law ?- Yes.

This is not a case of Natives coming up under the Native law ?- No; they are exempt from the Native law and they come under the ordinary law. An exempted Native is not subject to the Native Code, but he is subject to the Roman Dutch Law, but, under this decision, although the exempted Native is subject to the ordinary Roman Dutch Law, that is decided by the Native Commissioner. Then he goes from the Native Commissioner to the Native Appeal Court, but, instead of having the ordinary privileges which

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you would have of carrying your case to the Appeal Court and from the Appeal Court to the Privy Council, that man can go no farther than the Native Appeal Court.

It takes the wrong turning at the start ?- Yes, and it is now indicated that, so far as exempted Natives are concerned, they are subject to the Native Appeal Court and that they can take matters no farther. If the thing only arises out of Native law, it does not so much matter, but where the exempted Native is having his rights and privileges determined by Roman Dutch Law, there he is entitled, to my mind, to go to the Supreme Court of South Africa and to the Appellate Division. If I were to start a case now in the Supreme Court of South Africa and then go to the Appellate Court and test the ruling of the Native Appeal Court that they have the right to deal with exempted Natives and if the Appeal Court overruled the decision of the Native Appeal Court, the Native Appeal Court would yet not be bound by the decision of the Appellate Division.

DR. ROBERTS: Surely the Appeal Court would have the right to say that there is a miscarriage of justice ---? No, the Native Appeal Court clearly indicated that they will not be bound by the decisions of the Appellate Division of South Africa. They have made that clear and they have gone so far as to give a decision in regard to loans to Natives which is entirely opposed to the finding of the Appeal Court of South Africa. In point of fact, it has been indicated by the President of the Native Appeal Court that they will not be bound by the decisions of the Appeal Court of South Africa. Of course, if he were convinced that he was wrong, there might be some redress, but I submit

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that this is a matter for legislation.

CHAIRMAN: Which case was that you were referring to in which it was decided that the exempted Native is subject to a court from which the only appeal is to the Native courts ?- This was decided last week. As a matter of fact, I argued it against my own convictions. It was the case of Mabasa.

That was decided in the Native Appeal Court ?- Yes.

And the Native Appeal Court decided that they had jurisdiction ?- Yes.

Now, supposing the Supreme Court were to decide that they had jurisdiction in the same case ?- Yes, exactly.

Well, the matter is one of very great interest, so far as the lawyers are concerned ?- Yes, it is a matter for immediate legislation, because it places the exempted Natives in a most unfortunate position.

You do not claim the right of appeal to the Privy Council in matter of Native law ?- No, that is not the point at all. The only point is in regard to jurisdiction so far as exempted Natives are concerned. (Mrs. Palmer): We have it on the West Coast of Africa. Why should not our Natives have it.

CHAIRMAN: Would the right of appeal from the Courts here to the Privy Council not be a ~~gilt~~ gilded pill ?- It seems to work on the West Coast of Africa.

You are appealing to a Court which has a number of preconceived notions of law and you have got to get into another system altogether ?- The Privy Council of the Empire hears appeals from the Malay States, from Indian Chiefs from Mahomedan Chiefs and from others. I am thinking of a

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special case where a West Coast chief got a decision reversed.

Now, a statement on Native unemployment was put in on behalf of Mr. Ngcobo. Can any of you here answer questions on it? Now with regard to Wage Board determinations, the statement is made there that the Native staff in certain firms fell from 19 men to 7 men after the Wage Board determination. Is it represented that that was the result of the determination? - (Mr. Mazingi): To a certain extent it is. Although there is depression, it was not until the visit of the Wage Board that there were more dismissals than before.

The determination was a good deal before the depression? - This was about 1928.

That is a long time before the depression. You refer to certain sections of employment --- were the dismissals immediately after the determination, or shortly after? - They were shortly after.

Did this simply mean that the Company got on with fewer men, or did they substitute White men? - They mostly substituted Indians and White men.

MR. MOSTERT: Did they reduce their staffs, too, that is to say, in the ratio? - In some cases they have done so.

They reduced the ratio through having to pay more? - Yes, they reduced their ratio of the people employed. (Mr. Makulisi): I know one firm, J. Ellis Brown, coffee works, where they had three Natives and now they have only one where they had three. They raised their wages by £1.5.- and one Native now does the work which three Natives did before. I had many of my friends there.

CHAIRMAN: Would you care to express an opinion whether it is a good thing or a bad thing? - It is a bad thing

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Does it not improve the efficiency of the Native who is left over, the efficiency of the one who keeps a job ?- No, I think he is overworked.

It does not improve his efficiency, it lowers his vitality, perhaps ?- He is overworked. It is true he is paid more, but at his own expense.

Must we conclude from that that you are doubtful whether the application of wage regulations to Natives would be a good thing for the Natives ?- (Mr. Mazingi): Up to now it has been the opposite. Let me give you an instance. There were quite a large number of Natives employed as clerks in chemists businesses. They did various kinds of work, and I was one of them. I was an ordinary clerk doing typing and I still do so, but when this Act was in force, we were all dismissed and we were told we could not be employed as clerks any longer, because the firm could not afford to pay us. Either other people were engaged in our places or we must be satisfied to be taken on as casual men.

MR. LUCAS: That was interpreting for these secret remedies ?- Yes, and ordinary work, too.

A lot of opposition came to that from the medical department. There were a lot of other questions involved ?- Yes, but it is purely Native work. We had to do letters which were written in various Native languages, they had to be translated into English and it was work which no other person could do, excepting the people belonging to the various tribes. But that has now been changed, because of the wage determination.

CHAIRMAN: Now, do you know what the feelings are of the Natives generally in Durban with regard to wage

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determinations ?- The Natives generally are against it, because most of them today are out of work.

They are afraid that it will put them out of work ?- It has already done so. They have seen that.

Now, if they are in work, they complain that their wages are too low and that they would want that remedied ?- Yes.

How is it to be remedied if it cannot be remedied by wage legislation ?- It could be remedied by a rise in wages.

Yes, but how are the wages to be made to rise ?- They should be made to rise in this way. The Natives have been employed since the commencement of business. Prior to the determinations, the Natives were getting their increases as usual, they were getting more money from time to time.

You mean that there was an upward tendency ?- Yes, in some places there was.

Yes, but the complaint has been made to us that the upward tendency was not strong enough ?- No, that is so.

Supposing we admit that it was not strong enough, how can it be made strong enough? You have ruled out wage determination as a method. Now can you suggest any other method ?- The reason which causes the Native to think that it is not good is because of the White labour policy. Whenever a question is raised, a White man is brought in and the Native is kicked out.

MR. LUCAS: Can you bring many cases of that kind? There may be one or two cases of that kind, but can you raise many? I happen to know something about the work which you did; it was brought before us, but that affects only a very small number of Natives ?- Yes, that is so.

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Are you not saying that the Natives are opposed to wage determination because it hits a small section to which you belong ?- No, there are many in the factories too who are affected.

Have any of them been dismissed because of these wage determinations ?- There were quite a number of women dismissed at the factory, at Wentworth clothing factory.

But there was no wage determination in regard to that ?- Yes, I hear that, but there was nothing else.

When were they dismissed ?- They were dismissed some time early last year.

There was no determination then. There is one now ?- Yes.

MAJOR ANDERSON: Was it through fear that there was going to be a determination ?- Yes, probably.

MR. MOSTERT: Are your views that the adjustment as far as wages are concerned, could be done through supply and demand ?- Yes, and I think that is the only way.

MAJOR ANDERSON: Is not the danger then, that the wages may be forced down ?- (No answer):

MR. LUCAS: The main point we are concerned with is the application of wage determination to unskilled work ?- Yes, I understand that.

Can you say that any Natives on unskilled work have been forced out of their work through the wage determination ?- There is Creswell's White labour policy.

CHAIRMAN: No, that is not the question. The question is whether as a result of the wage determination by the Wage Board, for example, Natives have been turned out of unskilled work ?- I do not know of any at present.

MAJOR ANDERSON: Has it had that effect at Bloemfontein

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