

2.7.6

Diocesan Training College.

Grace Dieu Farm,

Petersburg

1st Nov: 1926

My Dear Mrs: Jones,

I received your nice letter, I was really enlightened to receive one from you.

I thank you very much indeed for your words of encouragement. It was a great help to me.

Oh! Mrs: Jones, you have asked me a question and a-half. I don't really know what to do. My aim is, if I could get a school to teach, I wish to form a detachment of way-fer-ers. Especially, I wish to go home, and do them some. Because Lydenburg is a very dull place infact, mind you, "Path-finding" has been going on for quite a long time, but it has not reached Lydenburg yet. so I am pretty sure that it will take a long time before this wayfarers ~~has~~ business can be there. So I really wish to go there and start it for them, perhaps the people would improve, and their children too. But as I have an Industrial certificate, it will take me a long time to go there, because I want to use this certificate by working, as my father is getting weak, and helpless, so I wish to help him as much as I can, and thank him for this bit of education he has given

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me, and I want to educate my brother, as he is the only one.

Here is one difficult thought: Right down in the East, near the river Komati, there is a country called Butchbuckridge, have you heard of such a place? I was once there when I was a girl of 10. that was in 1919. I went after my mother's death, my Grand^{mother} stole me with her, without my father's consent, when she had been to her daughter's death. Of course my father left her and said nothing.

I stayed there, among these heathen people, for 4 months. Then my father wrote back for me. During my stay I noticed that these people know nothing about "God." They still believe in spirits, and circumcision is still taking place there. But to my mind, it looks as if, if a person went there, and gave them "light" they would quickly understand. Because I once caught fever during whilst I was there. Then - then of course ~~it~~ some said, "give her medicine." Then my granny and some people said, "no, don't give her native medicine, she is a Christian." I suppose they had heard something about Christians not taking any of that kind of medicine, because to the west part of that place, 28 miles away from them, there are people who know a little about "God," and are a bit civilised.

I am trying to make clear to you, how I ~~know~~ saw this place, by telling the story briefly. I wish to go there one ~~of~~ day. These are the thoughts that worry me, day and night.

That is what I wish to do.

I am kindly asking for your advice.

you are the first one I have ever told these things.

I can be enlightened to know when you are leaving for England.

Of course whilst I am working, I will stay as a wayfarer, and correspond with my leader, till I am able to go home.

I am yours.

Sincerely, F

Francina Mokoena.

From the Bishop of Zululand.

Vryheid.Natal.

My dear Bishop,

Dec. 17, 1927

Archdeacon Lee tells me that at the Meeting of your Committee at Bloemfontein it was said that the Native Administration Act allows a Native who has been married by Christian rites to take another wife (or wives) without penalty:and suggested that I should get from you, or the Secretary, information as to what the Committee finds and recommends about this. I shall be glad if I can hear something before the 6th January about it, as we have a Native Conference just after that date.

In Natal those wishing to be married by Christian rites have to get a License at the Courthouse for it, at 14/=:and yet no protection, even now, is provided if a man takes another wife by heathen custom, except a punishment of imprisonment for a short time for bigamy, after which he does as he likes. Some of our Clergy are suggesting that it would be best for all to be married by Native custom, and then be blessed in Church. Until there is, as is not likely, a law against adultery, I cannot see what protection a Christian wife can have: she simply has to put up with the husband's adultery, after his punishment for bigamy. The 14/= License is an imposition.

Yours ever affly,

Arthur Zululand

The Rt. Reverend
The Bishop of Zululand,
VRYHEID, Natal.

The University,
JOHANNESBURG,

3rd Jan. .928.

Dear Sir,

Your letter of the 17th ultimo addressed to the Bishop of Johannesburg was handed to me as the subject matter is one to which I have been giving some thought and also because the Executive Committee of the General Missionary Conference has referred the matter to me for the attention of the Joint Council of Europeans and Natives.

I had hoped to have been able to draft a memorandum to go with this letter, but the memorandum is going to be longer than I had supposed. Indeed I am inclined to think that it may be necessary to ask the General Missionary Conference to call together a representative group to discuss the main points that arise. Meanwhile I hope to have the draft memorandum ready for private circulation. Could you get a few of your people to discuss the position which has arisen under the Native Administration Act and to let me have the ~~best~~ benefit of their views and of any information they can offer.

The main points that seem to call for attention are:-

1. Polygamy is a disappearing institution. Marriage under Native law is based upon polygamy. Therefore this form of marriage, while it should be tolerated, should not be encouraged.
2. As we believe that the Christianisation of the Bantu is most to be desired, Christian forms of social organisation

are to be encouraged.

3. Where civilised ways of life have been adopted any return to heathen ways should be followed by either a penalty or loss of privileges or both.

4. The disappearance of polygamy brings the single wife into an entirely new relationship with her husband necessitating that she should have a definite legal status - she has none under Native law. With the decay of polygamy the old ~~social sanctions of tribal life are destroyed~~ ~~the native~~ social sanctions of tribal life are destroyed. The adult male needs other sanctions to maintain the integrity of the family. Under the new ~~arrangement~~ sexual relations with other women is adultery and the effect upon the life of the people is bad. It is just here that marriage under Native law breaks down.

5. In these circumstances the aim of legislative and administrative policy should be to lead the Native to accept the restraints of civil or Christian marriage and to provide inducements for him to do so. Where a Native has not yet married he should be encouraged to the civil marriage rather than to the other. Where the Native is already married under Native law his marriage should only be recognised in so far as it is registered, and every subsequent marriage should be preceded by definite provision for the first wife and her children, even though this may be an inroad on Native custom. In some such way the status of women would be gradually raised. No franchise provision should be available to the ^{married} man who is not ^{not} married according to civil or Christian rites or whose marriage is registered in some such way as that suggested above.

6. The Native Administration Act does not seem to contemplate the eventual emergence of the Bantu into civilised marriage, for it has not concerned itself to protect it. It does specifically protect the Native marriage.

These are some of the thoughts that come to me as I consider the new situation, but I shall be grateful for your observations on the actual effects of the new clauses.

Yours faithfully,

Hon. Sec. Joint Council of Europeans
and Natives.

PIETERSBURG JOINT COUNCIL.

(EUROPEANS AND NATIVES.)

CHAIRMAN:-

RT. REV. BISHOP FULLER,

SECRETARY:-

MR EPHRAIM MASIBE-LANGA.

THE PARSONAGE,
PIETERSBURG.

Feb. 24 1928

Dear Sir,

At the February meeting of the above the question was raised of the failure of Native Christian Marriages in Urban Areas.

It was stated 1. That a very large proportion of Christian Marriages in Urban areas are short lived, that with slight or no excuse the man deserts the wife, that he then in certain cases seizes the children, and in many cases proceeds to take another wife either irregularly or by native custom. 2. That in these cases the woman has no redress, being unable to afford to go to the European Court, and the Native Commissioner having no authority to intervene. 3. That whereas in marriage by native custom the Chief's court can adjudicate, it cannot do so in the case of Christian marriages.

It was generally acknowledged that the case was as stated and the following action was proposed :-

1. To invite all Missionary Conferences to discuss at their next meeting the following resolution - That all Missionaries shall refuse to marry any native persons living in urban areas by Christian rites so long as a deserted indigent spouse is unable to obtain legal redress.
2. To urge the Government to make provision under the Native Adminis-

See Act

PIETERSBURG JOINT COUNCIL.

(EUROPEANS AND NATIVES.)

CHAIRMAN:-

RT. REV. BISHOP FULLER,

SECRETARY:-

MR EPHRAIM MASIBE-LANGA.

THE PARSONAGE,

PIETERSBURG.

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tration Act for dealing with marriage difficulties consequent on desertion.

I shall be glad if you could obtain for me the opinion of your
Joint Council on this.

Believe me , your's sincerely,

Chairman.

1. Not correct. - Accept the provision for death.

2. Ask Welsh for documentary evidence.
Ask for insertion clause 3, franchisee Rev.
if Welsh agrees. But will not be regarded
as customary provisions.

3. Write to Welsh.

4. Noted. How does it work in the franchisee.

5. Quote 1903/5 * 1910 Commth.

Also - No. protection for the widows.

see 10 below
case provided
reported by
Dobson

Consider Civil Justice, old case ~~and~~ Delijns.

Continue Community.

apply to Natal & Zululand

6. Don't ask for Sec 16 of 1867/1869.

If par 2 not right we don't need these

Sections.

Use ordinary
marriage law

7. Divorce is for undesirable.

Answer to query - Yes.

Hold over for the present.

- Answer to Miss J.

8.

9. Action costs money. Magistrates encourage

Cit^{is} for restorⁿ of conjugal rights.

Main right to be made to pay.

NC to take action without expense to woman.

Discuss possibility of machinery for recovery.

Rebuckling proposal too drastic

10. Dubé, rare case widow who had contributed money to

buy a farm was found by law taking the
property in the absence of male issue

Also see for
Solicitors

of November 22 1903 Com.

Press for Majority.

Emphasise effect of no Community.

12

Lobola

~~for the~~

effects of the practice of
 Consider Lobola / Whariki / Magici to be contrary to
 the Christian conception of Marriage + Domesticity.
 the ~~the~~ ^{the} Christian principle + ~~to the~~ it retards the
 progress of the native people. ~~should not be~~
~~all of this~~ be done that will ~~encourage~~
 its continuance ^{make} discouraged.

Dube we can't leave our women behind
 Lobola keeps our women back

It has served some useful purpose

Do not consider Lobola cases arising out
 of legal ties should be dealt with
 as arising out of U. L. Custom:

& That the Ct's have no jurisdiction
 over Lobola claims arising out of
 legal Marriages.

Jenny objected to last cl. of Sec. 11.

"provided further that it shall be competent
 for the Ct's to deal with Lobola

13:

Lobola shall not be an essential
 for parents consent in the marriage

P. O. Box 1176,

Johannesburg.

8th April 1928

Dear Bishop Fuller,

I have been overwhelmed with University and Joint Council work so that it is only now, in the holidays that I am able to reply to correspondence of many weeks' standing. Yours of the 25th Feb. reproaches me.

I am sending you some more copies of the Memorandum on industrial natives, also a circular on a number of topics. I propose to issue regular circulars in future to keep the Councils going with information.

Your note on Native marriages was referred by the Joint Council to its Committee on the N. A. Act. But as a matter of fact I am preparing a memorandum on the marriage questions arising out of the Act for the S. A. General Missionary Conference, and in addition I have been asked to write on it by the Editor of the International Missionary Review, taking into account the ~~past~~ views of Missionary Conferences from Kenya to the Cape. So you see it is a big matter.

Meanwhile I should be glad to have a fuller memorandum from you on the actual difficulties which trouble your Council.

Would your Council agree to the Shepstone view that a Native marriage after a Christian marriage should be either bigamous or adulterous in the eyes of the law? But note that the bigamous wife is now legally protected under the Native Administration Act (see Section 23(1) as to succession; also, although the Act has followed the Transkeian law it has omitted the following provision of the Transkeian Procl. 142 of 1910.:-

"No marriage according to Native Custom which takes place during the subsistence of a marriage according to the law of the Cape shall be recognised as conferring any status or rights whatever under this Proclamation upon any party to such marriage by native custom, or upon any issue thereof"

Why has this been omitted. As the law stands it seems to be putting a premium on adultery.

With kind regards to you all,

Yours sincerely,

I shall be glad
to inform you
of any resolution
reports of Conference
& any other
publications
dealing with
this subject.
Copies of any
of these will,
I can be
found
attached

Dear

The position of Native Christians under marriage laws, especially where marriage under native custom is recognised side by side with ~~xxxxxx~~ marriage by civil or Christian rites, is causing missionaries and others interested in the Union of South Africa ~~xxx~~ considerable anxiety, especially since the passing of the ~~xxxxxx~~ Native Administration Act in 1927.

Native life
in Africa
is the
life of the
people.

In the Union of S.A. the matter has been brought to the attention of the Executive Committee of the South African Missionary Conference at a recent meeting of the Executive Committee of the South African Missionary Conference it was decided ~~to ask me~~ to investigate the matter and ~~to advise the Conference what steps~~ should be taken to safeguard Native Christian Marriage ~~and generally.~~

More recently I have received a request from the Editor of the International Review of Missions for an article on the same subject with the suggestion that I should first communicate with the various Missionary Conferences in Southern Africa since the same problem is occupying the attention of these bodies.

During the last few days I have had the privilege of discussing certain questions of African administration with ~~xxxxxx~~ high official of one of the British African territories and this matter also ~~xxxx~~ was mentioned by him as a problem which required careful attention.

In view of these facts I venture to approach you for assistance in securing as full and accurate information as it may be possible to obtain ~~to write a monograph on the question.~~ The object of the pamphlet will be to gather together the relevant facts and if possible to suggest principles upon which legislative and administrative policy should be based in the treatment of Native Christians who wish to follow civilised ways of life, ~~and generally~~ in the ~~eveningment of civilised~~ ^{Christian} marriage.

I propose to prepare a statement which

While it may be true that conditions vary enormously in Southern Africa making uniformity in laws and administration impossible, it is no less true that there is a unity in the problems of this area which makes it necessary that there should be a considerable amount of agreement in general policy and certainly in principles underlying policy which the various administrations should follow. It will certainly strengthen the several Missionary Conferences in their respective areas if they are working in ~~xxxxxx~~ accordance with a common missionary policy in Southern Africa.

has legal, admin. & missionary problems which arise

I feel sure that I can count on your help in this matter and I am therefore enclosing a statement of the position of Native marriage in the Union of South Africa. Can you obtain for me statement of the legal position in your area and of the

BBx 154 Pietersburg.

April 19 1928.

Dear Mr Rheinallt Jones

The Pietersburg Joint Council have asked me to answer your letter of April 8th with regard to the troubles re marriage of native women, as the Council sees them. Shortly the problems are two:-

(1). A woman marries & subsequently comes to live in a town location. After a year or two she may be deserted by her husband, who, in time demands & takes the children. She has no redress whatever. Having contracted out of the sphere of authority of her tribal chief by coming to live in a town, she cannot obtain any justice from him, even if he has power in such a matter at all, which seems doubtful.

She cannot afford divorce proceedings

Nor has the Native Commissioner in the town, on his own admission, any powers on which he can act to give her redress against her husband. ?

Thus she is driven to an evil life in many cases.

(2) What is more frequent still is the general ignoring of the marriage bond on the part of either party & their resort to desertion without either taking any legal steps whatever. The practice amounts to divorce by consent or without it with no legal aspect to it at all.

Women are as bad offenders as the men in this respect.

What the Council desires, is that some steps be taken to get the Government to introduce legislation that will, in the first case, enable the woman to get some measure of justice, & in the second case put a certain stop on this increasing laxity.

One member of the Council put forward a somewhat drastic proposal which he suggested should be discussed by all Missionary Conferences & Synods for the purpose of airing this evil & the injustice. Namely, that since people frequently make use of the Sacrament of Matrimony because the Minister is a legal Marriage Officer & that this Sacrament is so frequently abused in the above way, ~~that~~ the Churches should discuss the wisdom of refusing marriage under the ~~Christian~~ Christian Sacrament to all parties with very rare exceptions. Since the Government is responsible for the Civil Contract & is responsible for the lack of justice with regard to deserted women, that the Government alone should be the respons-

-ible party for allowing a union that may terminate in a state from which the aggrieved party can get no redress.

This somewhat drastic proposal would at least serve to bring the whole trouble to light, were it to be discussed in all Church Conferences.

The Pietersburg Council would like to know wather your Council are faced with any like problem & if so, what mearures they can suggest should be takem, as also whether they think that the proposal above made would serve any useful purpose.

your's sincerely

Harold Sharpe
(archdeacon)

July. 30th 1928.

The Secretary,
Joint Council of Europeans & Natives,
Johannesburg.

Dear Sir

I am instructed by the Diocesan Native Conference, held at Springs in this month, to furnish your Council with a copy of the resolutions following, the original of which has been forwarded to the Prime Minister, and a copy of which has been sent to the Secretary for Native Affairs:

- ① "That this Conference urges the Government to inaugurate old age pensions for Natives, to be paid for out of the Native General Tax and Foss Money!"
carried unanimously.
- ② "This Conference from its own knowledge, and on representations made to it, respectfully calls the attention of the Government to the bitter

complaints of Natives working on the diggings, against the manner in which white employers are allowed to escape punishment under the penal clauses of the Labour Laws, for breaches of labour contracts. Innumerable cases occur of employers leaving the diggings without paying their Native employees, or dismissing them arbitrarily. This Conference feels that, since Native employees are proceeded against for offences against the Labour Laws, similar action should be taken against employers."

carried in the form of an unopposed motion.

- ③. "That this Conference deplores the fact that the Native Administration Act 1924 fails to protect the Christian marriage of Natives as against their marriage by Native custom. The Conference particularly notes that Chapter V contains no provision whereby the issue of Christian marriage can have preferent claim in intestate estates; that there is no

Provision definitely discouraging marriage by
Heathen rites after marriage by Christian rites;
that such adulterous marriages seem to rank on
an equality with Christian marriages for the purposes
of intestate succession: This Conference,
therefore, urges on the Government the
desirability of protecting Native Christian
marriages by special enactment."

carried unanimously.

(14) "That this Conference urges the Government
to request Civil Marriage Officers to refrain
from emphasising the possibility of divorce
when issuing enabling certificates to the
partners to a marriage."

carried unanimously

Yours faithfully

J. D. [Signature]

Secretary
Diocesan Native Conference

Telegraphic Address:
Telefaies Adres:
"NATIVES."

N.A. 117.



45/276(11)

For your information

UNION OF SOUTH AFRICA.
UNIE VAN SUIDAFRIKA.

JSA/EvD.

DEPARTMENT OF NATIVE AFFAIRS,
DEPARTEMENT VAN NATURELLESAKE,

P.O. Box } 384,
Postbus }

PRETORIA,

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8 - AUG 1928

Right Reverend Sir,

Referring to a remark you made
in conversation recently, I enclose a copy of a letter
addressed to the Secretary of a Missionary Conference,
in connection with the effect of Act 35 of 1927, upon
Native Marriage relations.

I have the honour to be,

Right Reverend Sir,

Your obedient Servant,

J. P. Allison
SECRETARY FOR NATIVE AFFAIRS.

The Right Reverend the Bishop
of Johannesburg,
Crescent Drive,
Westcliffe,
JOHANNESBURG.

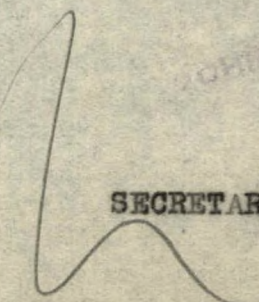
18 - AUG 1928

Sir,

With reference to your letter of the 27th ultimo, I have the honour to inform you that the Diocesan Native Conference does not appear to have appreciated the purpose of the provisions of the Native Administration Act in respect of Marriage and Succession. The intention of these provisions is to secure to the female partner of a customary union contracted prior to a marriage such benefits as would accrue to her under native law and custom, and to impose upon the male partner an equitable obligation in respect of his responsibilities. There can of course be no recognition of a customary union contracted after a marriage. If a native has married in accordance with the ordinary law of the land he must be presumed to have consciously undertaken the responsibilities inherent in "marriage", and the term "customary union" would not apply to any relationship thereafter entered upon. If this is borne in mind it is not thought that the provisions of the Act will be found to do more than protect the interests of those who were entitled, before a Christian marriage was entered upon, to look to the partner of a customary union for maintenance and support.

I am considerably surprised to read the second resolution submitted. It has not previously been brought to the notice of this Department that Civil Marriage Officers have emphasised the possibility of divorce when issuing Enabling Certificates. If this has been done it is of course quite contrary to the policy of the Department, and I shall be glad to be furnished with specific instances in order that the matter may be investigated. I cannot think that the practice is general.

I have the honour to be,
Sir,
Your obedient Servant,



SECRETARY FOR NATIVE AFFAIRS.

Reverend Edward Paterson,
St. Cyprian's Native Mission,
10, Sherwell Street,
Johannesburg,
South Africa.



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

RECEIVED

19 NOV. 1928

Handed to

Answered

DEPARTMENT OF NATIVE AFFAIRS,
DEPARTEMENT VAN NATURELLESAKE.

Pretoria, 13 Nov. 1928

J. G. Rheinallt-Jones, Esq.,
Box 1146, Jhb.

Dear Mr Rheinallt-Jones,

Certainly I shall be happy to see you at any time convenient to yourself. If you have any proposal for an amendment of the Marriage Sections of our Administration Act, I should like to have it at an early date.

As regards co-operation with the Dept. this is undoubtedly desirable but our difficulty always is to release our Officers and to pay for their transport.

I hope the schedule of decisions will have been of use to you.

By all means publish my memorandums if you wish. Since the Admin Act it becomes rather a record than a review.

Yours sincerely
E. Hartwood



University of the Witwatersrand,

JOHANNESBURG.

TELEGRAMS: "UNIVERSITY."

CODE: A.B.C. 5TH EDITION.

TELEPHONE Nos. 5910, 5911 & 6631.

P. O. Box 1176.

MILNER PARK,

JOHANNESBURG.

Ans. 13/11/26

IN REPLY PLEASE QUOTE

E. R. Gathorne Esq.,
Department of Native Affairs,
Zasme House,
PRETORIA.

Dear Mr. Gathorne,

The Conference on Native Marriage Laws placed on my shoulders the task of preparing a memorandum embodying the recommendations of the Conference, but unfortunately I have been overwhelmed with University and other work and I have found it quite impossible to tackle the memorandum, and I am afraid it will be another ten days before I shall be free to do so.

I will send you the first draft and I propose to come and see you again if this is not too inconvenient for you.

I also wish to see you regarding a proposal which the University wishes to make to the Native Affairs Department. Before sending on the proposal officially I should like to have your advice as to the procedure and we could discuss this when I go over to Pretoria. *Send me a copy of the memo.*

I will also bring with me the typed copies of the Schedule of Decisions which you so kindly lent me; the typing is almost complete.

I also wish to suggest to you that you let me publish in "Bantu Studies" your very interesting memorandum on Native Law and Administration. Will you consider this?

With kind regards.

Yours sincerely,

J. M. M. M. M. M.

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SOUTH AFRICAN INSTITUTE OF RACE RELATIONS (SAIRR), 1892-1974

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