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COMMISSION
on
LAWS and CUSTOMS
of the
BASUTOS
1873



MORIJA SESUTO BOOK DEPOT
MORIJA - LESOTHO

PROCLAMATION

BY THE PRESIDENT OF THE UNITED STATES

OF THE DISTRICT OF COLUMBIA
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PROCLAMATION.

BY HIS EXCELLENCY SIR HENRY BARKLY,

Knight Commander of the Most Honourable Order of the Bath,
Governor and Commander-in-Chief of Her Majesty's Colony of
the Cape of Good Hope, in South Africa, and of the Territories
and Dependencies thereof, and Her Majesty's High Commis-
sioner, &c., &c., &c.

BY virtue of the 2nd section of the Basutoland Annexation Act, No. 12 of 1871, I do hereby proclaim and make known that from and after the 1st day of December next, the following amended regulations will be established for the future Government of British Basutoland:—

COURTS OF LAW.

1. By Proclamation No. 51 of the 24th August, 1871, the territory of British Basutoland has been divided into four districts, termed respectively, the District of Thaba Bosigo, the District of Berea, the District of Leribe, and the District of Cornetspruit; and these districts are now subject to the jurisdiction and authority of the several Courts of Resident Magistrates of the districts.

2. When any crime or offence shall be committed on the boundary of any two of the aforesaid districts, or within the distance of two miles of any such boundary, or shall be begun in one district and completed in another, every such crime or offence may be dealt with, inquired of, tried, determined and punished in either of the said districts in the same manner as if it had been actually and wholly committed therein.

3. The person and property of every individual will be equally respected and protected by the law.

4. The taking of the life of any person wilfully and maliciously will be held to be murder, and will be punishable by the death of the offender. Infanticide or concealment of birth will be punishable by imprisonment.

5. The taking of the property of any person against his will, except by order of a Magistrate or Assistant Magistrate in due course of law, will be held to be theft, and punishable accordingly.

6. Arson, with intent to kill any person, shall be punishable with death. Rape shall be punishable with whipping, not exceeding fifty lashes, or confiscation of the property of the offender, or both.

7. All other offences against person or property shall be punishable by confiscation of the property of the offender, in the discretion of the Court, or by imprisonment, and, in the circumstances hereinafter mentioned, by whipping.

8. All acts which by the laws of the Colony of the Cape of Good Hope are held to be offences against person or property, shall, due allowance being made for the circumstances of the country, be held to be offences and punishable accordingly.

9. Any person forcibly compelling another to submit against his will to circumcision, or any other like act or ceremony, shall be held to be guilty of an assault, and shall be punishable accordingly.

10. Any person aiding in or procuring the circumcision of any youth without the consent of his parent or other person having the lawful custody of such youth, shall be guilty of an assault, and shall be punishable accordingly.

11. Every person practising or pretending to practise witchcraft, or other acts commonly regarded as such, shall be held to be a rogue, and shall be punishable accordingly.

12. Any person falsely accusing another of practising witchcraft, or other such acts, shall be held to be a rogue, and shall be punishable accordingly.

13. Every person committing any theft of stock in the Colony of the Cape of Good Hope, or in Natal, or in the Orange Free State, shall be dealt with in like manner as if such theft had been committed in Basutoland.

14. Persons sentenced to imprisonment shall be confined with or without hard labour, in some gaol or lock-up in Basutoland, or in such place in the Colony as the Governor shall from time to time appoint.

15. No female shall be sentenced to receive a whipping.

16. The trial of every person charged with an offence shall be held by the Magistrate or Assistant Magistrate of the district (except as hereinafter provided) in public, and the charge and the evidence given against such person, and the evidence adduced in his defence, and the finding and the sentence, shall be duly recorded by such Magistrate or Assistant Magistrate. And a return of all convictions and sentences shall be sent at the end of each month by the Magistrate or Assistant Magistrate to the Governor's Agent.

17. The trial of every person charged with a crime or offence punishable by death under the laws of the Colony, shall be held before three of the Magistrates or Assistant Magistrates aforesaid, the senior to preside, at such time and place as shall be appointed by the Governor's Agent, and of which time and place due notice shall be given. If the Magistrates or Assistant Magistrates shall differ with respect to the guilt of the person accused, he shall be discharged; if they shall differ with respect to the sentence to be passed upon any person convicted, the sentence proposed by them respectively shall be submitted for the decision of the Governor for the time being; and no sentence of death shall be carried into effect except upon the warrant of the Governor, to whom all the proceedings in the case shall be forwarded.

18. The Magistrate, Assistant Magistrate, Magistrates or Assistant Magistrates shall, in passing sentence of confiscation of property, declare and record the proportion which, when recovered, shall be given to the complainant, and that which shall be given to the person by whom the offender shall have been arrested and brought to justice, and that which shall be taken for Her Majesty for the purposes of the Government.

19. It shall be lawful for the Magistrate, Assistant Magistrate, Magistrates or Assistant Magistrates, if he or they shall see fit to do so, in any case in which an offender may not be possessed of property sufficient to make due compensation for any offence of which he may have been convicted, and likewise at any time in the case of hardened offenders, to order such offender to be punished by whipping, not exceeding thirty-six lashes.

20. The Magistrates and Assistant Magistrates shall have jurisdiction in all civil suits arising within their respective districts, and shall be bound, in respect of all such suits tried before them respectively, to record the matter of the suit, the evidence taken on both sides, and the judgment.

21. No decision of any dispute by any person other than a Magistrate or Assistant Magistrate shall be held to debar either of the parties from instituting a suit in respect of the same before the Magistrate or Assistant Magistrate of the district.

22. All summonses and subpoenas issued by a Magistrate or Assistant Magistrate in any such suit may be served by the parties to the same, but it shall be lawful for the Magistrate or Assistant Magistrate to award reasonable costs for such service against the losing party.

23. All writs of execution that may be issued by any Magistrate or Assistant Magistrate shall be carried into effect by some person to be appointed by him; and it shall be lawful for such person to seize property sufficient to cover judgment and costs, as well as the costs of such execution, as approved by such Magistrate or Assistant Magistrate.

24. All judgments or decisions of the respective Resident Magistrates and Assistant Magistrates of the Districts of Berea, Leribe, and Cornetspruit, and of the Assistant Magistrate of the District of Thaba Bosigo, in all civil causes, shall be subject to be reviewed by the Chief Magistrate of Basutoland; and when and as often as any Court of Resident Magistrate of any of the aforesaid Districts of Berea, Leribe, and Cornetspruit, or the Assistant Magistrate of the District of Thaba Bosigo, shall sentence any person, upon conviction, to be imprisoned, with or without hard labour, for any period exceeding one month, or to pay a fine exceeding five pounds sterling, or the value of five pounds sterling, or to receive any number of lashes exceeding twelve, the Magistrate or Assistant Magistrate pronouncing sentence shall, upon the application of the person upon whom the said sentence shall have been passed, forward to the Chief Magistrate of Basutoland, not later than fourteen days next after the termination of the case, the record of the proceedings of the case; and the said Chief Magistrate shall have full power to alter, amend, mitigate, or annul the said sentence; but he shall have no power to increase it.

MARRIAGES.

1. It shall not be lawful for any person to compel any woman to enter into a contract of marriage against the wish of such woman.

2. Any marriage celebrated by any minister of the Christian religion, according to the rites of the same, shall be taken to be in all respects as valid and binding, and shall confer on the parties to the same, and their issue, such and the same rights, to all intents and purposes, as marriages contracted according to the customs of the Basutos.

3. No marriage of any kind celebrated after the publication hereof, whether it be celebrated according to the rites of the Christian religion or according to the customs of the Basutos, or whether it be a first or subsequent marriage of either or both of the parties thereto, shall be held to be valid and binding on such parties, or to confer any rights on them or either of them or their issue, unless both the parties shall, within twenty-one days from the time when the same shall be celebrated, appear before the Magistrate or Assistant Magistrate of the district, and declare their consent to the same. And such Magistrate or Assistant Magistrate shall thereupon register the same in a book to be by him kept for the purpose; and a fee of two shillings and sixpence shall thereupon be payable to such Magistrate or Assistant Magistrate for the purposes of the Government.

4. The dowry given in consideration of any such marriage, if any, shall likewise be registered at the same time as the marriage; and no suit shall at any time be entertained respecting such dowry unless the same shall have been given and registered with the marriage.

5. All questions which may arise in respect of marriages celebrated before the publication hereof shall be tried and decided in conformity with the customs in force at the time of such celebration.

6. If one of the parties to any marriage shall die, the survivor of them shall be entitled to the custody of any issue of the same, until they shall attain the age, in the case of males of eighteen years, and in the case of females of sixteen years; and no such female shall before attaining such age be given in marriage without the consent of such surviving parent, nor without her own consent.

7. If any woman whose marriage shall not have been registered as aforesaid, shall, after the publication hereof, become the mother of any child or children, she shall be entitled to the custody of the same until he or she or they attain the age, in the case of males of eighteen years, and in the case of females of sixteen years; and no female child of such woman shall be given in marriage before attaining the age of sixteen years without the consent of such woman, nor without her own consent.

8. If the husband of any woman shall die, she shall be at liberty to contract a second marriage at her discretion. But in the event of her so marrying, the custody of the issue of her previous marriage shall thereupon be transferred to some person to be selected, if possible, from the relatives of such issue by the Magistrate or Assistant-Magistrate; and the Magistrate or Assistant Magistrate shall make order for the preservation and administration by the person to be so selected of any property belonging to the minors, for their benefit.

LANDS AND HUT TAX.

1. The right of allotting the land for the occupation of the several members of the tribe is vested in the Governor.

2. For the purpose of this allotment the territory will be subdivided into such and so many districts as may from time to time be found necessary.

3. This sub-division will be made by the Governor's Agent, subject to the approval of the Governor, and one of the principal chiefs or headmen will be nominated to the superintendence of each such sub-division.

4. Each such chief or headman will, as soon as practicable, submit to the Governor's Agent a list of the members of the tribe resident within or belonging to his sub-division, to whom he proposes that a tract of land should be allotted for occupation; and such allotment, subject to such alteration and amendment as may be found necessary by the said Agent, shall be made accordingly, and lists of all such allotments shall be thereupon made, and kept of record in the said Agent's office.

5. No addition to or alteration of such lists shall be made, except with the approval of the said Agent, after communication with the chief or headman of the sub-division to which the same shall relate.

6. Every person to whom any such allotment shall be made shall be bound to pay to the said Agent or to the Magistrate of the district, for the purposes of the Government of British Basutoland, a hut tax, at the rate of ten shillings per annum, for every hut that may be erected for the occupation of a family on such land.

7. In computing the liability of any person for payment of the Hut tax, it shall be held that payment at the rate of ten shillings per annum shall become due for each wife of any person residing on any

such lot, whether a separate hut shall be erected for the use of each such wife or not. The tax shall be also payable for each hut occupied by any unmarried man.

8. The hut tax hereby declared to be payable shall become due on the first day in June in each year. But it shall be lawful for the Governor from time to time to fix some other day at which the same shall become payable; provided that not more than one such payment shall at any time be declared to be payable within twelve months.

9. The hut tax hereby declared to be payable may be paid by the person liable for the same, either in money, or in grain, or in stock, at the option of such person. The Agent shall in each year fix the value at which such grain or stock shall be received.

10. It shall be the duty of the chief or headman of the sub-division to collect the tax due from the persons residing in his sub-division, and to deliver the same at such time and place as shall be appointed by the Agent or the Magistrate of the district.

11. A receipt for the amount of tax paid by each person, signed by the Agent or Magistrate of the district, or by some person thereto authorised by him, shall be delivered to each such payer. And such receipts shall, as soon as arrangements to that effect can be made, be written on paper bearing a stamp equal to the amount of tax received from such payer.

12. In the event of failure or refusal on the part of any person liable to hut tax to pay the same, the amount due may be recovered, by order of the Agent or Magistrate of the district, by sale of so much of the property of such person as may be sufficient to cover the amount due, with any expenses that may be incurred for the recovery of the same. And it shall be lawful for the Agent or Magistrate of the district, if he shall think fit so to do, and if he cannot obtain payment of the tax, to eject the person in default from the occupation of the land.

TRADING REGULATIONS.

1. No person shall be allowed to trade by wholesale or retail in Basutoland unless he shall first have obtained a licence for that purpose from the Governor's Agent or from a Magistrate in Basutoland.

2. Every such licence will remain in force for the term stated therein not exceeding in any case the term of twelve months from the date thereof.

3. Such licence may authorise the holder either to move from place to place for the purpose of his trade, or to establish some fixed trading station at a place to be approved by the Governor's Agent.

4. The Governor's Agent will be at liberty, if he shall consider it necessary so to do, to refuse to issue any such licence on the original application, or to refuse to issue a fresh licence on the expiration of any preceding licence.

5. In any case in which the renewal of the licence shall be refused as aforesaid, and in any case in which a licence shall be forfeited as hereinafter provided, the holder of such previous or forfeited licences shall be permitted, at any time within three months (unless the same shall have become liable to seizure), to remove the materials of any building which he may have erected at his trading station, together with any movable property belonging to him; and failing such removal

within the time appointed, such materials and property may be removed and sold by order of the Governor's Agent; and the proceeds of such sale shall be applied, as far as may be necessary, to the payment of all expenses incurred, and the balance shall be paid to the owner of the same. No claim for compensation for loss caused by such removal will be admitted. But such trader will be allowed to continue trading to the end of the three months, on paying in advance, at the beginning of each of those months, the sum of one pound.

6. For the purposes hereof the term "trading" shall be taken to include exchange or barter.

7. The sale of spirits is strictly prohibited; and the holder of any trading licence convicted thereof shall be liable to a penalty not exceeding ten pounds, and in the case of a second or subsequent conviction, shall be liable, in addition, to the forfeiture of his licence, at the discretion of the Governor's Agent; and all spirits that may be found in his possession shall be forfeited.

8. Any person trading without such licence, or after the expiration of the term for which it shall have been granted, or in violation of the conditions thereof, or after the same shall have been forfeited, shall be liable on conviction to a penalty not exceeding ten pounds in any such case.

9. It shall be lawful for any police officer, or other person thereto authorised in writing by the Governor's Agent or by a Magistrate, at any time to demand the production, by any person trading, of his licence; and any such person refusing or failing to produce the same shall be liable on conviction to a penalty not exceeding ten pounds.

10. Every trading station, or premises, or wagon, or other vehicle used for purposes of trade, shall at all times be liable to the examination of any person thereto authorised in writing by the Governor's Agent or by a Magistrate; and the owner or person in charge of any such station, premises, wagon, or vehicle, who shall resist or obstruct such examination shall be liable on conviction to a penalty not exceeding ten pounds.

11. The amount payable for a trading licence shall be ten pounds for one year. All licences shall expire on the 31st December of each year. A licence taken out before the 30th June in any year shall be paid for at the full rate of an annual licence, but if taken out after the 30th June, then only £5 shall be charged. All licences shall be paid for in full at the time of issue.

12. Any wagon or conveyance, being the property of or employed in the service of a trader holding an annual licence, will be allowed to pass freely between his residence and the boundaries of Basutoland by any of the regular wagon roads.

13. All licences granted for a less period than twelve months will be paid for at the rate of one pound per month, or fraction of a month, for each wagon entering Basutoland for purposes of trade.

14. All persons entering Basutoland with wagons for the purpose of purchasing corn from the licensed traders will obtain the necessary permits from the several Magistrates or Assistant Magistrates, or from the officers in charge of police stations, and on their return will produce a certificate from the trader of the quantity of corn sold by him, and in the event of the corn in the wagon being found to exceed that stated in the certificate, the surplus will be seized and forfeited,

and the person in charge of the wagon shall be liable to a penalty of five shillings for each bushel of such surplus : and the wagon and corn may be detained until such penalty is paid.

15. No holder of a trading licence shall be allowed to keep at his trading station more than two hundred animals, horses, cattle, sheep, goats, and pigs included, whether they be his own property or that of some other person.

16. No transfer of any licence will be valid unless the same be executed in the presence of the Governor's Agent, a Magistrate, or some person thereto authorised by such Agent or Magistrate, nor unless the same be recorded by such Agent, Magistrate, or other person, to whom the sum of two shillings and sixpence will be paid for the purposes of the Government for every such transfer.

17. All Basutos conveying grain of any kind out of the country for sale will be required to take a pass for each vehicle and for each pack-horse or ox or cow employed for that purpose, and the sum of two shillings and sixpence shall be paid for each pass for a vehicle and threepence for each pack-horse, ox, or cow ; and all grain removed without such pass shall be liable to be seized and confiscated.

18. No person shall, by virtue of any sale, barter, gift, or other transaction, deliver to any person any gun or pistol, or any lock, stock, barrel, or other part of a gun, or pistol, or any percussion caps, or any gunpowder, or any lead, without the written sanction of the Magistrate of the district, under penalty not exceeding five hundred pounds sterling, or under pain of imprisonment with or without hard labour for any period not exceeding seven years. The Magistrate of the district shall not be bound to assign any reason for refusing to sanction the sale, barter, or delivery of any fire-arms or ammunition.

19. All penalties imposed by these regulations may be sued for before any Magistrate or Assistant Magistrate in Basutoland. And all such penalties may be recovered by the seizure and sale of any property belonging to the person convicted, or which may be found on the trading station, premises, wagon, or vehicle of such person ; and one-half of all penalties received under these regulations shall in each case be paid to the person on whose information the conviction shall have been obtained, and the balance shall be paid to Her Majesty for the use of the Government of Basutoland.

GOD SAVE THE QUEEN.

Given under my hand and the Public Seal of the Colony of the Cape of Good Hope, this 6th day of November, 1871.

HENRY BARKLY,
Governor.

By Command of His Excellency the Governor.

R. SOUTHEY,
Colonial Secretary.

No. 74, 1871.

CAPE OF GOOD HOPE

REPORT AND EVIDENCE

OF

COMMISSION

ON

NATIVE LAWS AND CUSTOMS

OF THE

BASUTOS

Ordered by the *House of Assembly* to be printed.

1873

CAPE TOWN :

SAUL SOLOMON & CO., STEAM PRINTING OFFICE.

1873

THE REPORT AND EVIDENCE OF THE COMMISSION ON NATIVE LAWS AND CUSTOMS OF THE BASUTOS

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OF THE

MORIJA PRINTING WORKS
MORIJA - LESOTHO

CAPE OF GOOD HOPE

Return, in compliance with a Resolution of the Honourable the House of Assembly dated the 12th May, 1873, for "A Copy of the Report and Evidence of the Commission appointed to inquire into the Native Laws and Customs of the Basutos."

SCHEDULE OF CORRESPONDENCE.

Letter from the Honourable the Colonial Secretary (August 19, 1872), appointing the Commission.

Letter from Chairman of Commission (December 30, 1872), transmitting

1. Report of Commission, with Annexures A,B,C, and D.
2. Proceedings of Commission, with Appendices A,B,C, and D.
3. Minutes of Evidence taken before the Commission.

Letter from Chairman of Commission (February 3, 1873), forwarding a Letter and Supplementary Paper from Mr. J. Austen, one of the members of the Commission, and Resident Magistrate of Cornetspruit District.

Colonial Office, Cape Town, 19th August, 1872.

C. D. GRIFFITH, Esq., Chief Magistrate, Basutoland.

SIR, - I am directed by the Governor to intimate to you that, in compliance with a resolution of the Honourable the House of Assembly, His Excellency is pleased to appoint a Special Commission, consisting of yourself as chairman, and of the several Magistrates of Basutoland as members, to inquire into and report upon the native laws and customs of the Basutos, and on the operation of the regulations established for their government, in terms of the report of a Select Committee of the Honourable House, appointed to consider this subject, of which a copy is enclosed.

Your particular attention is invited to the regulations 3 and 8, specially mentioned in the Select Committee's report, and His Excellency desires that you will be good enough to appoint an early date for the meeting of the Commission, in order that its report may be completed and submitted as soon as possible.

I am to add that the Governor has appointed a separate Commission to investigate the case of Tosani, T'Suen, Leposa, and G. Parkis, whose petition is noticed in the last paragraph of the Select Committee's report.

I have, &c.,
R. SOUTHEY, Colonial Secretary.

BASUTOLAND

Chief Magistrate's Office,
Maseru, 30th December, 1872.

The Honourable the Colonial Secretary,
Cape Town.

SIR, - With reference to your letter No. 24 of the 19th August, 1872, intimating to me that the Governor, in compliance with a resolution of the Honourable the House of Assembly, had been pleased to appoint a Special Commission, consisting of myself as chairman, and of the several Magistrates of Basutoland as members, to inquire into and report upon the native laws and customs of the Basutos, and on the operation of the regulations established for their government; the Special Commission in question having finished their labours, I have the honour of forwarding herewith, for the information of His Excellency the Governor, the following documents, namely:-

1. Report of the Special Commission, with Annexures marked A, B, C, and D.
2. Proceedings of Special Commission, with Appendices A,B,C, and D.
3. Minutes of Evidence taken before the Commission.

I have &c.,
CHARLES D. GRIFFITH,
Chief Magistrate of Basutoland.

REPORT OF THE SPECIAL COMMISSION

Appointed by His Excellency the Governor on the 19th August, 1872, in compliance with a resolution of the Honourable the House of Assembly, to inquire into and report upon the laws and customs of the Basutos, and on the operation of the regulations established for their Government.

Your Commissioners have taken the evidence of the Chiefs Letsie, Tšita Mofoka, Jobo Sofonia Moshesh, George T. Moshesh, Mateus Mohapi, Nehemiah Moshesh, also Kabi, a councillor of the Chief Moletsane, and a very intelligent Mosuto named Philemon Moletse, as well as of the Revs. Messrs. Mabile and Jousse, of the French Protestant Missionary Society, on the laws and customs of the Basutos, and on the operation of the regulations; and from this evidence it will be seen what

the native laws and customs are and the feelings of the people in respect to them. The three customs which appear to be most injurious to the people, morally, socially, and politically, and to retard them in the progress of civilization, are the "Lebollo" or circumcision, the "Sethepu" or polygamy, and the "Bohadi" or marriage with cattle. With regard to the first-named of the customs, the "Lebollo," Mr. Orpen has correctly described it in his memorandum attached to the proceedings of the Select Committee of the Honourable the House of Assembly, and there is no question about it that it ought to be abolished as soon as possible; but at the same time your Commissioners consider it to be their duty to point out the inadvisability of dealing roughly with this custom, bad as it is, for in the districts of Leribe, Berea, and Cornetspruit very large numbers of the chiefs and people are staunch supporters of it, and would probably strongly resent its suppression. Therefore great caution will be necessary in any steps which are taken for abolishing it.

The second and third of these customs, "Sethepu" and "Bohadi," are too deeply founded to be easily abolished. That will be a question of time; and as by the influence of the Government and the missionaries the people are raised in the scale of civilization, so will these customs disappear.

With regard to the missionaries, your Commissioners would wish respectfully to bring to the notice of Government that they disagree entirely with these zealous men, who have the interests of the natives entirely at heart, but who wish to make Christians of them by legislation, being firmly convinced that this much-to-be-desired object can only be brought about by conviction. At the same time, your Commissioners would strongly recommend that the Government should take every opportunity of showing the Basutos that it does not approve of these heathenish and barbarous customs, and that it would gladly see them abolished.

Your Commissioners have carefully gone through the regulations, and having had as magistrates the experience of eighteen months in the practical working of them, are in a position to speak pretty confidently as to how far they affect the interest and progress of the Basutos, and what amendments they would recommend therein.

Your Commissioners recommend, under the head "Courts of Law," that the amendments of the Select Committee of the Honourable the House of Assembly from section 1 to 22 be adopted. That section 23 be amended as suggested by your Commissioners; and that the additional regulations, forming sections 24 and 25, be added. (*Vide* Annexure A.)

Under the head of "Marriages," your Commissioners recommend an entire amendment of the regulations as suggested by them. (*Vide* Annexure B.)

Under the head of "Lands and Hut Tax," your Commissioners recommend an amendment of sections 10, 11, and 12, and the addition of two regulations, forming sections 13 and 14 (*Vide* Annexure C.) These two additional regulations provide for a system of passes to persons leaving and entering Basutoland, the want of which has been very much felt as a check upon thieves and others going out of and returning to Basutoland, and for a system of pounds and pound regulations for the safe custody of stolen or unclaimed animals.

The present system adopted by the chiefs and people, of appro-

priating all unclaimed animals, has a most demoralizing effect upon them, and teaches them to have a most utter disregard for *meum et tuum*, as, for instance, a Basuto sells a horse to Free State burgher; in a few months the horse returns to Basutoland to its former owner, who reports it to the chief; the chief tells him to keep the horse until it is claimed. This is not likely to be the case, as the horse is generally sent to some out-of-way place for some months, and eventually sent to Nomansland or elsewhere for sale. &c.

Under the head of "Trading," your Commissioners have recommended an amendment in section 13, and an additional regulation as No. 20. (*Vide* Annexure A.) This additional regulation provides for the standard weights and measures of the Cape Colony being used for the purpose of trade in Basutoland, and your Commissioners respectfully request that the Governor's Agent's office may be supplied with a set of standard weights and measures. Much dissatisfaction and discontent have been expressed by the chiefs and people at the want of system prevailing amongst the traders in purchasing their produce, each trader appearing to have his own standard of measure.

Your Commissioners have also respectfully to urge that in order to meet the case of many people who are unable to get married by a Christian minister, either because they are heathens or under church discipline, the Marriage Act of the Cape Colony, No. 16 of 1860, ought to be put in force in this territory.

Your Commissioners wish also to point out that the law with regard to the registration of marriage, as far as the heathen Basutos are concerned, has been quite inoperative; and as the 4th section of the Marriage Regulations debars any person from bringing any action for dowry, unless the same shall have been given and registered with the marriage, the consequence is that those people are now obliged to go to their chiefs with their cases of disputed dowry, our courts being closed to them. This your Commissioners consider a most impolitic step, and therefore, with a view to its removal, have recommended the cancellation of the Regulations No. 3. and 4, rendering it compulsory to register, and have suggested a regulation (*vide* section 7 of amended regulations), leaving it optional to heathen Basutos, or Basutos married with cattle to register their marriages and the dowry, being of opinion that our courts should be closed to no class of suitors.

In explanation of the last or 25th regulation, under the head of "Courts of Law," as recommended by your Commissioners, we would explain that the regulation (which has been acted up to hitherto in this territory) is now inserted with the view of carrying out in the shape of a regulation or law on the subject a statement made by Sir P. E. Wodehouse at the great meeting of chiefs and people held at the Korokoro on the 22nd February, 1869, when an outline of the regulations was first read to the Basutos by him. He said that as they were then entering on a new era as British subjects, all old cases in dispute were to be done away with, and that from that day they were to begin with a clean sheet. By an oversight it is supposed this was left out when the regulations were published.

CHARLES D. GRIFFITH,
Chairman of Special Commission.

Maseru, 30th December, 1872.

[A]

COURTS OF LAW

Amended Regulations suggested by Special Commission.

Section 1 to 22 to stand as amended by Select Committee of the Honourable the House of Assembly.

Section 23. - It shall and may be lawful for any person being a party to any civil suit or action depending in the court of any resident magistrate or assistant resident magistrate of Basutoland to appeal against any final judgment, decree, or sentence of such court to the Chief Magistrate of Basutoland; and any party against whom any final judgment or sentence of the said has been given in any civil case (and an absolution from the instance shall be deemed to be such a final judgment or sentence), if he intends to appeal therefrom, shall, on or within fourteen days, make known his intention to the clerk of the said court, who shall note his appeal, with the date thereof in the proper column of the Record Book, and the party appealing shall then deposit and lodge with the clerk of the said court the sum of one pound sterling as security for the costs of conducting the said appeal, and the said clerk shall make a note of the said deposit in the last column of the Record Book, and thereupon the said appeal shall be allowed, but not otherwise. The deposit aforesaid shall be forfeited to the Crown if the appeal shall be considered frivolous and vexatious, but if otherwise it shall be returned to the appellant. And in any case where an appeal may have been duly noted, the said court may direct that the judgement or sentence appealed from shall be carried into execution, or that the execution thereof shall be suspended pending the said appeal, as to the said court may appear most consistent with justice.

Section 24.- When and as often as any court of resident magistrate or assistant resident magistrate shall sentence any person, upon conviction, to be imprisoned with or without hard labour for any period exceeding one month, or to pay any fine exceeding £5, or to receive any number of lashes exceeding twelve, the magistrate pronouncing such sentence shall forward to the Chief Magistrate of Basutoland, for his consideration, not later than fourteen days next after the determination of the case, together with such remarks, if any, as he may desire to append; and in case the proceedings said shall appear to such Chief Magistrate to be in accordance with real and substantial justice, he shall endorse his certificate to that effect upon the said proceedings, and the said proceedings shall then be returned to the resident magistrate or assistant resident magistrate by whom the same shall have been transmitted; and every resident magistrate or assistant resident magistrate forwarding any such record shall inform the person convicted of the day upon which such record will be forwarded, and it shall be lawful for any person duly acting for such convicted person to peruse and, if need be, take a copy of such record whilst in the possession of the Chief Magistrate; and it shall be lawful for such person, should he so think fit, acting as aforesaid, to set down the case contained in such record for argument before the said Chief Magistrate. If upon considering the proceedings aforesaid, it shall appear to the Chief Magi-

strate that the same are not in accordance with real and substantial justice, or that doubts exist whether or not they are in such accordance, then it shall and may be lawful for the said Chief Magistrate to alter or reverse the sentence of the resident magistrate or assistant resident magistrate's court, and to set aside or correct the proceedings thereof, and when it shall appear necessary or proper to do so, to remit such case to the said resident magistrate or assistant resident magistrate's court, with such instructions relative to the further proceedings to be had in such case as to the said Chief Magistrate shall seem calculated to promote the ends of real and substantial justice, but the said Chief Magistrate shall have no power to increase any sentence.

Section 25.— That no civil or criminal case originating prior to the meeting of Basuto chiefs and people held by Sir P. E. Wodehouse at the Korokoro, on the 22nd February, 1869, shall be entertained in any resident magistrate or assistant resident magistrate's court unless all the parties thereto agree together to refer such case for decision of the aforesaid court.

Certified:

CHARLES D. GRIFFITH,
Chairman of Special Commission.

[B.]

MARRIAGES.

Amended Regulations suggested by Special Commission.

Section 1.— To stand as printed, namely:— It shall not be lawful for any person to compel any woman to enter into a contract of marriage against the wish of such woman.

Section 2.— Any marriage celebrated by any minister of the christian religion according to the rites of the same, or by any civil marriage officer, shall be taken to be in all respects as valid and binding, and shall confer on the parties to the same and their issue such and the same rights to all intents and purposes as marriages contracted under the marriage laws of the Cape Colony.

Section 3.— That all questions of divorce arising between persons married by a minister of the christian religion or by a civil marriage officer shall be tried and decided before the Chief Magistrate and any two of the resident magistrates or assistant resident magistrates, the Chief Magistrate to preside; the proceedings of the said court to be conducted as near as can be, due regard being had to the circumstances of the country, in conformity with the forms and proceedings of the divorce courts in the Cape Colony. The said court to assemble at such time and place as shall be appointed by the Governor's Agent, and of which time and place due notice shall be given. A fee of twenty shillings shall be payable by the party made liable therefore for the registration of each divorce pronounced or decreed by the said court.

Section 4.— That all questions of divorce which have arisen or which may arise in respect of marriages celebrated by a minister of the christian

religion before the publication of the regulations of Sir Philip Wodehouse, dated 13th May, 1870, shall be tried and decided according to the laws and customs of the Basutos in force at the time of such celebration, and may be tried summarily before any court of resident magistrate or assistant resident magistrate. A fee of twenty shillings shall be payable for the registration of each divorce pronounced or decreed by any such court.

Section 5.— That all other questions (including divorce of parties married according to the customs of the Basutos) which may arise or have arisen in respect of marriages celebrated before the publication of the regulations Sir Philip E. Wodehouse dated 13th May, 1870, shall be tried according to the laws and customs of the Basutos in force at the time of such celebration, and may be tried summarily before any court of resident magistrate or assistant resident magistrate. A fee of twenty shillings shall be payable for the registration of each divorce pronounced or decreed by any such court.

Section 6.— That no registration of a christian marriage other than that by a minister of religion or a marriage officer in conformity with the 21st section of the Marriage Ordinance in Council of the Cape Colony of February, 1839, or the Civil Marriage Act of 1860, shall be necessary; and all marriages registered as aforesaid since the 13th May, 1870, shall be considered as legally registered, and the marriages legally valid and binding.

Section 7.— That it shall be optional for any persons married according to Basuto customs to register the said marriage, within one month after its celebration, at the office of the resident magistrate or assistant resident magistrate. The dowry or cattle given in consideration of any such marriage, if any, shall likewise be registered at the same time as the marriage.

Section 8.— That a registration fee of two shillings and six pence shall be payable for the registration of all marriages, whether celebrated according to the rites of the christian religion, civil marriage act, or according to the customs of the Basutos, for the purposes of the Government.

Section 9.— That all divorces between parties married according to Basuto custom may be tried and decided in the court of any resident magistrate or assistant resident magistrate, and a fee of twenty shillings shall be payable for the registration of such divorce by the party made liable therefore by the resident magistrate or assistant resident magistrate.

Section 10.— That in the event of any person after having contracted a marriage according to the rites of the christian religion or the civil marriage law of the Cape Colony taking another wife according to the custom of the Basutos, he shall be considered to be guilty of bigamy, and after due proof and conviction shall be liable to the pains and penalties attached to that crime by the law courts of the Cape Colony.

Section 11.— That in the event of the death of any person married by a minister of the christian religion, or by a civil marriage officer, all questions with regard to the registration of wills, and the administration of the estates and property of persons dying testate or intestate (and all other persons who may choose to avail themselves of the said law by making a will) shall be regulated by the provisions of Ordinance No. 104 of 1833 of the Cape Colony, in so far as it shall be deemed applicable to the circumstances of the country, and by substituting the name of the chief magistrate of Basutoland, wherever the name of the Master of the Supreme Court appears in the said Ordinance.

Section 12.— If one of the parties to any marriage celebrated according to the custom of the Basutos shall die (who shall not have availed him or herself of the preceding section by making a will), then all questions in respect to inheritance and guardianship shall be decided according to Basuto law and custom.

Section 13.— If the husband of any woman who has been married, according to Basuto custom shall die, she shall be at liberty to contract a second marriage at her discretion, but in the event of her so marrying, the custody [khodiso] or guardianship (bodisa) of her children shall be regulated according to Basuto law and custom.

Section 14.— In the event of a man and his wife married according to Basuto custom both becoming converted to christianity, and being re-married by a minister of the christian religion or by a civil marriage officer, then in that case the issue of their previous Basuto marriage (if any) shall *de facto* become legitimized, and shall, as well as the issue of the christian or civil marriage, come under the operation of the marriage laws of the Cape Colony, as provided by the 2nd section of these regulations.

Section 15.— That all persons, male and female, when they shall attain, or who have already attained, the full age of twenty-one years shall be deemed to have attained the legal age of majority.

Certified:

CHARLES D. GRIFFITH,
Chairman of Special Commission.

[C]

LANDS, HUT TAX, POUNDS, PASSES, &c.

Amended Regulations suggested by Special Commission.

Section 1 to 9.— To stand as printed.

Section 10.— It shall be the duty of the chief or headman of the subdivision to assist in the collection of the tax due from the persons residing in his subdivision, and to report to the resident magistrate or assistant resident magistrate of the district all defaulters.

Section. 11.— A receipt for the amount of tax paid by each person, signed by the resident magistrate or assistant resident magistrate of the district, or by some person thereto authorized by him, shall be delivered to each such payer.

Section 12.— In the event of failure or refusal on the part of any person liable to hut tax to pay the same, the amount due may be recovered by order of the agent or magistrate of the district, by sale of so much of the property of such person as may be sufficient to cover the amount due with any expenses that may have been incurred for the recovery of the same. And it shall be lawful for the agent or magistrate of the district, if he shall think fit so to do, and if he cannot obtain payment of the tax, to eject the person in default from the occupation of the land, or to sentence the said person to imprisonment with hard labour for any period not exceeding two months.

Section 13.— That every person leaving Basutoland shall be provided with a pass signed by a resident magistrate or assistant resident magistrate, or by his order, and any person leaving Basutoland without such a pass will upon conviction be liable to a fine not exceeding twenty shillings; and every person entering Basutoland must be reported to the resident magistrate or assistant resident magistrate of the district within ten days after his arrival at any village in which it is his intention to stay; the report must include the number and description of persons and of any property they may have brought with them. Any chief or headman of a village neglecting to comply with this regulation shall be liable upon conviction to a fine not exceeding five pounds sterling.

Section 14.— That the Governor's Agent is empowered to establish one or more pound or pounds in each district, and to appoint some fit and proper person to be the poundmaster or keeper of every such pound, and it shall be competent for such Governor's Agent to dismiss any such poundmaster or keeper for misconduct. The Governor's Agent to frame a code of regulations for the management of such pounds, and to publish the same for general information in the English, Dutch, and Sesuto languages.

Certified:

CHARLES D. GRIFFITH,
Chairman of Special Commission.

[D]

TRADING REGULATIONS

Amended Regulations suggested by Special Commission.

Section 1 to 12. — To stand as printed.

Section 13. — That a hawker's or travelling trader's licence, without any vehicle, or with only one vehicle, will be paid for at the rate of one pound per month or fraction of a month; that for every vehicle exceeding one an additional sum of one pound will be paid.

Sections 14 to 19. — To stand as printed.

Section 20. — That the standard weights and measures in conformity with the provisions of Act No. 11 of 1858, passed in the Parliament of the Cape Colony, be the standard weights and measures to be used in trade in Basutoland.

Certified:

CHARLES D. GRIFFITH,
Chairman of Special Commission.

PROCEEDINGS OF SPECIAL COMMISSION

[E]

PROCEEDINGS OF SPECIAL COMMISSION.

Meeting of the Special Commission appointed by His Excellency the Governor by letter No. 24, dated Colonial Office, 19th August, 1872, in compliance with a resolution of the Honourable the House of Assembly, to inquire into and report upon the native laws and customs of the Basutos, and on the operation of the regulations established for their government.

Tuesday, 3rd December, 1872.

PRESENT:

CHARLES D. GRIFFITH (Chairman),

Major Bell, | W. H. Surmon.

Commission in deliberation.

Commission resolved to take evidence upon the laws and customs of the Basutos, and the operations of the regulations.

Commission adjourned till to-morrow at 10 o'clock a.m.

Wednesday, 4th December, 1872.

CHARLES D. GRIFFITH (Chairman).

Major Bell, | E. S. Rolland.
W. H. Surmon, |

Commission in deliberation.

Commission resolved to continue taking evidence.

Commission adjourned till 10 o'clock to-morrow.

Thursday, 5th December, 1872

PRESENT:

CHARLES D. GRIFFITH (Chairman).

Major Bell,		E. S. Rolland,
J. Austen,		W. H. Surmon.

Commission in deliberation.

Commission resolved to continue taking evidence.

Commission adjourned till 10 o'clock to-morrow

Friday, 6th December, 1872.

PRESENT:

CHARLES D. GRIFFITH (Chairman),

Major Bell,		E. S. Rolland,
J. Austen,		W. H. Surmon.

Commission in deliberation.

Commission resolved to continue taking evidence from such persons as may be willing to afford information to the Commission.

Commission adjourned till 10 o'clock a.m. to-morrow.

Saturday, 7th December, 1872.

PRESENT:

CHARLES D. GRIFFITH (Chairman),

Major Bell,		E. S. Rolland,
J. Austen,		W. H. Surmon.

Commission in deliberation.

Resolved to continue taking evidence.

Commission consider regulations under "Courts of Law."

Resolved: That the regulations under the above head as amended by the Select Committee of the Honourable the House of Assembly, with the exception of the last or 23rd section, be recommended for adoption.

Commission adjourned till 10 o'clock a.m. on Monday, 9th December, 1872.

Monday, 9th December, 1872.

PRESENT:

CHARLES D. GRIFFITH (Chairman),

J. Austen,
Major Bell,

E. S. Rolland,
W. H. Surmon.

Commission in deliberation.

Commission consider the last or 23rd section of the regulations under Courts of Law, as amended by Select Committee of the Honourable the House of Assembly.

Resolved: That section 23 as amended by Select Committee be struck out, and the following substituted:—

Section No. 23. — It shall and may be lawful for any person being a party to any civil suit or action depending in the court of any resident magistrate or assistant resident magistrate in Basutoland to appeal against any final judgment, decree, or sentence of such court to the chief magistrate of Basutoland, and any party against whom any final judgment or sentence of the said has been given in any civil case (and an absolution from the instance shall be deemed to be such a final judgment or sentence), if he intends to appeal therefrom, shall, on or within fourteen days make known his intention to the clerk of the said court, who shall note his appeal, with the date thereof, in the proper column of the record book, and the party appealing shall then deposit and lodge with the clerk of the said court the sum of one pound sterling, as security for the costs of conducting the said appeal, and the said clerk shall make a note of the said deposit in the last column of the record book, and thereupon the said appeal shall be allowed, but not otherwise. The deposit aforesaid shall be forfeited to the Crown if the appeal shall be considered frivolous and vexatious, but if otherwise, it shall be returned to the appellant. And in any case where an appeal may have been duly noted, the said court may direct that the judgment or sentence appealed from shall be carried into execution, or that the execution thereof shall be suspended pending the said appeal, as to the said court may appear most consistent with justice.

Commission in deliberation:

Resolved: That the following additional sections, to stand as Nos. 24 and 25, be added to regulations under "Courts of Law:—"

No. 24. "When and as often as any court of resident magistrate or assistant resident magistrate shall sentence any person, upon conviction, to be imprisoned with or without hard labour for any period exceeding one month, or to pay any fine exceeding £5, or to receive any number of lashes exceeding twelve, the magistrate pronouncing such sentence shall forward to the chief magistrate of Basutoland for his consideration, not later than fourteen days next after the determination of the case, the record of the proceedings in the case, together with such remarks, if any, as he may desire to append; and in case the said proceedings shall appear to such chief magistrate to be in accordance with real and substantial

justice, he shall endorse his certificate to that effect upon the said proceedings, and the said proceedings shall then be returned to the resident magistrate or assistant resident magistrate by whom the same shall have been transmitted; and every resident magistrate or assistant resident magistrate forwarding any such record shall inform the person convicted of the day upon which such record will be forwarded, and it shall be lawful for any person duly acting for such convicted person to peruse and, if need be, take a copy of such record whilst in the possession of the chief magistrate; and it shall be lawful for such person, should he so think, fit acting as aforesaid, to set down the case contained in such record for argument before the said chief magistrate. If, upon considering the proceedings aforesaid, it shall appear to the chief magistrate that the same are not in accordance with real and substantial justice, or that doubts exist whether or not they are in such accordance, then it shall and may be lawful for the said chief magistrate to alter or reverse the sentence of the resident magistrate or assistant resident magistrate's court, and to set aside or correct the proceedings thereof, and when it shall appear necessary or proper to do so, to remit such case to the said resident magistrate or assistant resident magistrate's court, with such instructions relative to the further proceedings to be had in such case as to the said chief magistrate shall seem calculated to promote the ends of real and substantial justice, but the said chief magistrate shall have no power to increase any sentence.

No. 25.— That no civil or criminal case originating prior to the meeting of Basuto chiefs and people held by Sir Philip Wodehouse at the Korokoro on the 22nd February, 1869, shall be entertained in any resident magistrate or assistant resident magistrate's court unless all the parties thereto agree together to refer such case for the decision of the aforesaid court.

Commission consider regulations under "Marriages."

Section 1.

Resolved that it stand as printed.

Section. 2

Chairman moved to strike out this section and substitute the following:-

Any marriage celebrated by any minister of the christian religion according to the rites of the same, or by any civil marriage officer, shall be taken to be in all respects as valid and binding, and shall confer on the parties to the same and their issue such and the same rights to all intents and purposes as marriages contracted under the marriage laws of the Cape Colony.

Agreed to.

Section 3.

Chairman moved to strike out this section and substitute the following:-

That all questions of divorce arising between persons married by a minister of the christian religion or by a civil marriage officer shall be tried and decided before the chief magistrate and any two of the resident magistrates or assistant resident magistrates, the chief magistrate to preside; the proceedings of the said court to be conducted as near as can be, due regard being had to the circumstances of the country, in conformity with the forms and proceedings of the divorce courts in the Cape Colony. The said court to assemble at such time and place as shall be appointed

by the Governor's Agent, and of which time and place due notice shall be given. A fee of twenty shillings shall be payable by the party made liable therefore for the registration of each divorce pronounced or decreed by the said court.

Agreed to.

Section 4.

Chairman moved to strike out this section and substitute the following:-

That all questions of divorce which have arisen or may arise in respect of marriages celebrated by a minister of the christian religion before the publication of the regulations by Sir P. E. Wodehouse dated 13th May, 1870, shall be tried and decided according to the laws and customs of the Basutos in force at the time of such celebration, and may be tried summarily before any court of resident magistrate or assistant resident magistrate. A fee of twenty shillings shall be payable for the registration of each divorce pronounced or decreed by any such court.

Agreed to.

Section 5.

Chairman moved that the section 5 be struck out and the following substituted:-

That all other questions (including divorce of parties married according to the custom of the Basutos) which may arise or have arisen in respect of marriages celebrated before the publication of the regulations by Sir P. E. Wodehouse dated 13th May, 1870, shall be tried and decided before any resident magistrate or assistant resident magistrate in conformity with the Basuto customs in force at the time of such celebration.

Agreed to.

Section 6.

Chairman moved that section 6 be struck out and the following substituted:-

That no registration of a christian marriage other than that by a minister of religion or a marriage officer in conformity with the 21st section of the Marriage Ordinance in Council of the Cape Colony of February, 1839, or the Civil Marriage Act of 1860, shall be necessary; and all marriages registered as aforesaid since the 13th of May, 1870, shall be considered as legally registered and the marriages legally valid and binding.

Agreed to.

Section 7.

Major Bell moved that section 7 be struck out and the following substituted:-

That it shall be optional for any persons married according to Basuto customs to register the said marriage, within one month after its celebration, at the office of the resident magistrate or assistant resident magistrate. The dowry or cattle given in consideration of any such marriage, if any, shall likewise be registered at the same time as the marriage.

Agreed to.

Section 8.

Chairman moved that section 8 be struck out and the following substituted:

That a registration fee of two shillings and six pence shall be payable for the registration of all marriages, whether celebrated according to the

rites of the christian religion, civil marriage act, or according to the customs of the Basutos, for the purposes of the Government.

Agreed to.

Mr. Rolland moved that the following section be added to form No. 9:—

That all divorces between parties married according to Basuto custom may be tried and decided in the court of any resident magistrate or assistant resident magistrate, and a fee of twenty shillings shall be payable for the registration of such divorce by the party made liable therefore by the resident magistrate or assistant resident magistrate.

Agreed to

Commission adjourned till 10 o'clock a.m. to-morrow.

Tuesday, 10th December, 1872

PRESENT:

CHARLES D. GRIFFITH (Chairman),

J. Austen,
Major Bell,

W. H. Surmon,
E. S. Rolland.

Commission consider regulations under "Marriages."

Major Bell moved that the following section be added, to form No. 10:—

That in the event of any person after having contracted a marriage according to the rites of the christian religion or the civil marriage law of the Cape Colony taking another wife according to the custom of the Basutos, he shall be considered to be guilty of bigamy, and after due proof and conviction shall be liable to the pains and penalties attached to that crime by the law courts of the Cape Colony.

Agreed to.

The Chairman moved that the following section be added to form No. 11:—

That in the event of the death of any person married by a minister of the christian religion or by a civil marriage officer, all questions with regard to the registration of wills and the administration of the estates and property of persons dying testate or intestate (and all other persons who may choose to avail themselves of the said law by making a will) shall be regulated by the provisions of Ordinance No. 104 of 1833 of the Cape Colony, in so far as it shall be deemed applicable to the circumstances of the country, and by substituting the name of the chief magistrate of Basutoland wherever the name of the Master of the Supreme Court appears in the said Ordinance.

Agreed to.

Chairman moved that the following section be added, to form No. 12:—

If one of the parties to any marriage celebrated according to the custom of the Basutos shall die (who shall not have availed himself or herself of the preceding section by making a will), then all questions in

respect of inheritance and guardianship shall be decided according to Basuto law and custom.

Agreed to.

Major Bell moved that the following section be added, to form No. 13:-

If the husband of any woman who has been married according to Basuto custom shall die, she shall be at liberty to contract a second marriage at her discretion, but in the event of her so marrying, the custody (khodiso) or guardianship (bolisa) of her children shall be regulated according to Basuto law and custom.

Agreed to.

Chairman moved that the following section be added, to form No. 14:-

In the event of a man and his wife married according to Basuto custom both becoming converted to christianity, and being remarried by a minister of the christian religion or by a civil marriage officer, then in that case the issue of their previous Basuto marriage (if any) shall *de facto* become legitimized, and shall, as well as the issue of the christian or civil marriage, come under the operation of the marriage laws of the Cape Colony, as provided by the 2nd section of these regulations.

Agreed to.

Major Bell moved that the following section be added, to form No. 15:-

That all persons, male and female, when they shall attain, or who have already attained, the full age of twenty one years, shall be deemed to have attained the legal age of majority.

Agreed to.

Commission consider regulations under "Land, Hut Tax."

Sections 1 to 9 to remain as printed.

Section 10.

Major Bell moved to strike out this section and substitute the following:-

It shall be the duty of the chief or headman of the subdivision to assist in the collection of the tax due from the persons residing in his subdivision and to report to the resident magistrate or assistant resident magistrate of the district all defaulters.

Agreed to.

Section 11.

Major Bell moved to strike out this section and substitute the following:-

A receipt for the amount of tax paid by each person, signed by the resident magistrate or assistant resident magistrate of the district, or by some person thereto authorized by him, shall be delivered to each such payer.

Agreed to.

Section 12

Mr. Surmon moved: That after the word "land," in the last line, the following words be added: "or to sentence the said person to imprisonment with hard labour for any period not exceeding two months.

Agreed to.

Mr. Rolland moved to add the following, to form section 13:-

That every person leaving Basutoland shall be provided with a pass signed by a resident magistrate or assistant resident magistrate, or by his order, and any person leaving Basutoland without such a pass will upon conviction be liable to a fine not exceeding twenty shillings; and every person entering Basutoland must be reported to the resident magistrate or assistant resident magistrate of the district within ten days after his arrival at any village in which it is his intention to stay. The report must include the number and description of persons, and of any property they may have brought with them. Any chief or headman of a village neglecting to comply with this regulation shall be liable upon conviction to a fine not exceeding five pounds sterling.

Agreed to.

The Chairman moved that an additional section be added, to form No. 14:—

That the Governor's Agent is empowered to establish one or more pound or pounds in each district, and to appoint some fit and proper person to be the poundmaster or keeper of every such pound, and it shall be competent for such Governor's Agent to dismiss any such poundmaster or keeper for misconduct. The Governor's Agent to frame a code of regulations for the management of such pounds, and to publish the same for general information in the English, Dutch, and Sesuto languages.

Agreed to.

Commission consider "Trading Regulations."

Section 1 to 12 to remain as printed.

Section 13

Mr. Surmon moved that this section be struck out and the following substituted:—

That a hawker's or travelling trader's licence without any vehicle, or with only one vehicle, will be paid for at the rate of one pound per month or fraction of a month; that for every vehicle exceeding one an additional sum of one pound will be paid.

Agreed to.

Section 14 to 19 to remain as printed.

Mr. Rolland moved that an additional section be added as follows, to form No 20:—

That the standard weights and measures in conformity with the provisions of Act No. 11 of 1858, passed in the Parliament of the Cape Colony, be the standard weights and measures to be used in trade in Basutoland.

Agreed to.

Major Bell moved: That His Excellency the Governor be respectfully requested to put the regulations in force as amended by this Commission with as little delay as possible.

Agreed to

The Chairman submitted a correspondence which had passed between himself as Governor's Agent and the Rev. Mr. Mabile, on the subject of divorces and guardianship of children of parents married with cattle, which he requested might be entered upon the minutes, which was agreed to. (Appendix A,B,C.)

The Chairman submitted copy of a letter from him in his capacity as Governor's Agent to the Honourable the Colonial Secretary, No 58 of

the 8th July, 1872, on the subject of the registration of christian marriages, which he requested might be entered on the minutes, which was agreed to. (Appendix D.)

Chairman submitted a draft report, which was read and agreed to. I certify the above to be a true copy of the proceedings as recorded by me.

CHARLES D. GRIFFITH,
Chairman Special Commission

APPENDIX

[A]

Governor's Agent's Office, Maseru, 9th July, 1872

The Rev. A. MABILLE, Morija.

SIR,— With reference to your letters of the 15th and 17th ultimo, on the subject of the children of Pauluse Matete, by his two wives, Yakobina Masakuane and Penelopa Moopone, who were put away when he (Pauluse Matete) re-entered the Church some years ago, and to whom it appears he granted letters of divorce as far back as 1864, I have the honour to inform you that, after having given the matter every consideration, and after having read and re-read the regulations under the head of marriages, I regret to say that it is not in my power to decide the case in the way in which you appear to wish it could be decided, or to put the same construction upon the regulations as you have done. On reference to the 5th section of the Marriage Regulations, you will find it distinctly laid down that all questions which may arise in respect of marriages celebrated before the publication of the regulations shall be tried and decided in conformity with the customs in force at the time of such celebration, and there is no question that Pauluse Matete's marriage was celebrated with these two divorced wives before the publication of the regulations; consequently, all questions which may arise in respect of these marriages must be tried and decided in conformity with the customs in force at the time of each celebration — namely, Sesuto customs.

I conclude that Pauluse Matete married the two divorced wives with cattle, but did not get his cattle back when he divorced them; consequently, his heirs claim the children (according to Sesuto custom) in place of the cattle. If the cattle had been returned, Pauluse Matete's heirs would have had no claim to the children.

In these remarks I wish you to understand that I am not approving or supporting Sesuto heathenish customs, but I am bound to administer the law as I find it; and in this case I am bound to point out to you what I consider to be the law, however much I may regret the possibility of its proving revolting to your feelings as a Christian minister, as the case of these children is a very important one, the first of the sort which has been brought to my notice, involving, as it does, the serious question whether the children of Christian parents can or ought to be handed over to the care of their heathen relatives. I shall be quite prepared, if you are dissatisfied with my views as above expressed, to submit the matter for the consideration of His Excellency the Governor and his legal advisers, in which event I should wish you to draw up a clear and succinct statement of the case in all its bearings, which I will forward to His Excellency with such remarks thereon as I may consider necessary for the purpose of placing His Excellency in possession of the very fullest and clearest information on the subject.

I have, &c.,

C. D. GRIFFITH, Governor's Agent.

Governor's Agent's Office, Maseru, 29th July, 1872.

The Rev. A. MABILLE, Morija.

MY DEAR SIR,— I have received and carefully considered your letter of the 17th instant about the children of Pauluse Matete and his two wives, Maphoka and Masekwai. I am sorry to have to inform you that I am unable to admit the force of your new argument as sufficient to alter the conclusions I had formerly arrived at on this case.

There can be no doubt, I think, that both the spirit and the letter of the Basutoland Regulations on the subject of marriages amounts to this, that Sesuto customs shall regulate marriages contracted under Sesuto laws, and that civilized practices shall regulate marriages contracted under civilized laws.

I cannot agree with you that Maphoka and Masekwai were simply concubines of Matete (as you call them on the second page of your letter).

Married lawfully, according to Sesuto customs, and before the promulgation of British laws in this territory, they were his *wives* legally and substantially, and not merely *concubines*. This being so, the time afterwards came when Matete, for certain reasons, thought fit to separate himself from these two wives, by writings of divorcement. These documents can, in my opinion, have no force, either in Sesuto law or in English law, to disturb the usual and customary transition of the children of Matete, at his decease, to the care of his eldest son by his first wife, that is, to Ramabelikwe.

Matete married both these wives *with cattle*. They bore him children. So long as Matete's cattle were not returned to him, his right of property (and consequently the right of property of his heirs and successors) in the children by those two marriages could not be infringed. But the cattle never *were* returned to Matete; consequently, the right of Ramabelikwe to the children remains intact.

There is no native law of marriage by cattle in any South African tribe that I am acquainted with where the same conclusion would not hold good in the like premises.

As to Matete's writings of divorce which he gave to his two wives, they may have held perfectly good, simply as between himself and the two women; but neither in Sesuto nor in English law can they be regarded as anything more than a private mutual agreement by consent of parties. They could not give Maphoka and Masekwai the right to marry again. For by Sesuto law it would have been necessary that simultaneously with Matete's giving his wives letters of divorce, the cattle which he gave for them in marriage should have been restored to him. Then, and then only, could the divorce have been declared complete (in Sesuto law), and the wives could have married again, and their children by Matete would no longer have been his property or that of his heirs. But as the cattle were not restored to Matete, the children remained lawfully in his possession, and are therefore heritable (after Sesuto custom) by his son Ramabelikwe.

I quite understand the argument you found upon clause 2 of the Basutoland Marriage Regulations, but I regret not being able to agree with your view of its bearing upon this and similar cases.

You think that since Christian marriages performed in this territory by Christian ministers were regarded as binding, even before the promulgation British laws, so also letters of divorce, granted under the like circumstances, ought to be allowed to have an equal power of unbinding or dissolving marriage ties. And were marriage simply a religious ceremony, I should agree with you; but marriage is not only a *religious*, it is also a *civil* contract. And as it is only in conjunction with civil procedure that the act of a Christian minister in marrying people can be regarded as binding, so neither could his act in granting them a divorce be so regarded, without the similar accompaniment of a civil process; such as, for instance, amongst the Basutos, the restoration to the husband of the "marriage cattle." I observe here, that amongst some sects of Christians, so cautiously is the subject of divorce regarded, that they will not allow their ministers to sanction them in any shape at all, even *with* the concurrence of legal proceedings. But it appears to me to be perfectly clear that no divorce in the case of Matete, whether it was a divorce by Christian ministers or a divorce by a civil law officer, which did not include the restoration of the cattle, could in any way bar the right of Ramabelikwe to the custody and care of Matete's children by those wives to whom the letters of divorce were granted.

If, however, you still have doubts upon the subject, and think it desirable to bring the matter for review before higher authority, I shall be very happy, as I said before, to forward any statement of the case you may prepare for the consideration of His Excellency the Governor, accompanied with such explanatory or other remarks as I may deem necessary for putting the whole matter in the clearest possible light.

I have, &c.,

C. D. GRIFFITH, Governor's Agent.

P.S.— With regard to the suggestion which you offer, that Christian fathers in this country should make a kind of testament, relating their wishes how their children should be educated, &c., it will, I think, be evident from what I have above said that I cannot consider such a testament as having any legal force to bar the rights of relatives to the care and custody of the children of marriages contracted originally under Sesuto law, unless the marriage dowry (cattle) be voluntarily restored to the husband (who makes the said testament) by the friends of the wives (if any) who are divorced, and of the wife who becomes the Christian partner of the converted man by Christian marriage ceremonies. For, in Native law, as long as the cattle are not restored, so long the children are the inalienable property of their father and the heritage of his heirs and successors. And nothing can release the children of parents once married by cattle from the operation of the Sesuto laws of marriage, save and except the restoration of the dowry originally paid by the father to the friends of the mother.

C.D.G.(G.A.)

[C]

Thaba Bosigo, 1st October, 1872.

C. D. GRIFFITH, Esq., Governor's Agent, Maseru.

SIR,—As we are now assembled at Thaba Bosigo to consider certain questions affecting the discipline to be exercised in our churches, the missionary at Morija has submitted to us a correspondence which has taken place between yourself and him relative to matters of *divorce* and *custody of children*.

We sincerely regret to find that the interpretation you give in your letter of 20th July to the Regulations contained in the Governor's proclamation, 74, of November 6, 1871, will oblige you to decide cases under abovementioned heads in a manner most oppressive to Christian Basutos. We, however, thank you for the permission you give to the missionary at Morija to bring the matter under review before higher authority, and also for the readiness you express to forward any statement of the case for the consideration of His Excellency the Governor. We are in consequence emboldened to submit the following remarks, as they will throw greater light upon such matters, and may assist in obtaining an amendment of the present Regulations.

You state that both the spirit and the letter of the Basutoland Regulations on the subject of marriages amounts to this, "that Sesuto customs shall regulate marriage contracted under Sesuto law, and that civilized practices shall regulate marriages under civilized laws."

The case brought under your notice by the missionary at Morija has originated in a matter of *divorce* and *custody of children*. No provision for divorce is made by the Regulations, whether for marriages made by Native custom or under civilized laws. You, however, consider yourself bound in such matters by article 5 of section "Marriages." We respectfully submit that this article is inadequate to meet question of *divorce*.

We however, proceed upon your view of the cases laid before you, and we remark that in some respects the matter of Matete's women is somewhat exceptional in the eyes of ecclesiastical authorities. The man lived in flagrant adultery with the women, as he had previously bound himself to renounce polygamy; he had been solemnly married to one wife by a minister of the Christian religion, to which wife he had vowed fidelity. After breaking his marriage vows, he lived some years with the two women now in question, but ultimately the burden of his conscience obliged him separate from them. Whatever force the remarks might have in a court of justice we know not. We will suppose no such violation of the laws of Christian marriage has taken place, and we object to your view of the condition of a woman divorced by a polygamist. You state that as to Matete's writings of divorce which he gave to his two wives, they may have held good simply between himself and the two women, but neither in Sesuto nor in civilized law can they be regarded as anything more than a private agreement by consent of parties, — they could not give Masekwai and Maphoka the right to marry again, for by Sesuto law it would have been necessary that simultaneously with Matete's giving his wives letters of divorce, the cattle which he gave for them in marriage should have been restored to him. Then, and then only, could the divorce have been declared complete, and the wives could have married again. We re-

spectfully insist that if this is really to be the position of every woman who has been or shall be divorced by Basuto men on becoming Christians, they are in a pitiable state. Upon the same reasoning, even upon the death of the man, who had originally bought them, they could not be allowed to marry if they are the property of the family or of the heirs of their purchaser.

It will be here necessary for us to allude briefly to what has taken place since missions were established in this country. When Christian missionaries arrived in Basutoland, very nearly forty years since, they certainly found the position of the women very low, as, indeed, it is among all barbarous people; but still, compared to that of the women of the Zulu or Amaxosa Kafirs, the degradation was not so great, — polygamy upon a large scale was not a custom of ancient date. The Basutos, a section of the Bechuana family, had begun to imitate the tribes of Lower Kafirland, with which they had come in contact. Their inferior wives, they said, they married according to *Tambookie custom* — *Ka Sethepu* (Bathepu is the Sesuto name for Tambookies), and the word *Ka Sethepu* is the word used to-day when speaking of their union with women holding a secondary place in their harem. The women are called *lirethe*, to denote their inferiority, the derivation being from the word *heel of the foot*. In common conversation, the word *mosali*, woman or wife, is used, and not the technical word showing their legal status, *serethe*. The first or legal wife of man is his *mogassa*. We have no technical word in English to express the word applied to the inferior woman. You object to our calling them *concubines*, and, indeed, in the common acceptation now given to that word, it is open to objection. But the Romans used the word *concubina* in the sense the Mosuto would use *serethe*. Moshesh, after the death of his first wife, also spoke of himself as having no wife. He was a widower, or *lesoga* or bachelor, and he refused to raise any woman to the rank of wife, *mogassa*. The position of the *lirethe* was then, as it is now, well portrayed in the paper called *The Little Light*, of which we enclose three numbers containing portions of the same article to which we would respectfully invite your attention.

It was truly grievous for Christian men to see the state of degradation in which the people were lying; but they came knowing the power of God's Word to raise the most abject, and, therefore, with full confidence of success, they began their labours.

No sooner were the precepts of the Bible understood by some of the Basutos, than many were convinced that their ways were evil, and must be amended. Many forsook the heathen customs of their tribe, and this they did, not in opposition to their rules, as it has often happened converts have been obliged to do in other countries of the world, and even in parts of South Africa, but they threw off their customs with the full approbation of those who were then the most influential chiefs in the country. Whatever customs existed in the dark time of the tribe, the introduction of Christianity must modify, or else those turning towards it must oppose them with all their might. Happily, the intelligent chief of those days, Moshesh, threw all his influence to the side of Christianity, to a modification of customs. He was one of the first to proclaim liberty to some women of his harem on their conversion. He not only separated from them, but he gave them liberty to marry again. His decision to separate

from these women was not a private arrangement, simply between himself and the women, but it was proclaimed in a great assembly of the people in 1840. Some of the heathen present raised their voice in the meeting to oppose the introduction of the new custom, and even threatened one of the counsellors of Moshesh with instant death for advising the chief to divorce his wives. But Moshesh was firm. Christianity thus gained one victory over heathenism that day: the custom, whatever it may have been before, was from that day changed, and divorce was allowed to women separated by men becoming Christians, or to women desiring separation from polygamists. The missionaries never thought of interfering with the real wife, the *mogassa*, of any man. In proof of what we have stated above as to the legality of divorce since 1840, we give a copy of one of several original letters of divorce now under our hands. It is a letter granted by Moshesh himself to one of his *lirethe*.

TRANSLATION.]

Separation of Sethepu

This day appeared before me, Eugene Casalis, minister of the Church of Thaba Bosigo, Moshesh Chief of the Basutos, and Nsseriso daughter of Ntimu and of Monoa, an inferior wife of Moshesh, and declared before confirmers (*batusi*) thus:—

- 1st. Their marriage by which they were formerly united in the manner of *sethepu* shall this day end.
 - 2nd Nsseriso is released from the bond (*molao*) of Moshesh, that of a husband, and Moshesh is released from bond of Nsseriso, that of a wife.
 - 3rd This day Nsseriso shall return to her relations, and there be at her own disposal or be free (*ipotoke*); and if she shall again marry it shall not be said she commits adultery; if she remains single, she shall be considered a free woman.
 - 4th. As to the children, they shall be brought up as their parents (*batsuali*, progenitors) shall agree together.
- Thaba Bosigo, 21st February, 1843.

E. CASALIS,
MOSHESH, x
NSSERISO, x

Confirmers:

Tsoloi x Ntisnu x, Yorefa Isiu x, Mvanya x, Malitsani x, Ntlama x,
Yathua Nan x.

This letter was the model' on which a hundred other documents were drawn up. In two or three exceptional cases only did Moshesh desire the clause giving permission to marry again might be omitted. This, however, had nothing to do with the question of dowry, but owing to reasons duly appreciated by the missionaries at the time, — as, for instance, in the cases of Ma-Thlali (George Moshesh's mother), Ma-Tekhonyana (Nehe-miah's), and Ma-Tsekelo.

These letters of divorce of Moshesh, we say, were not given in private; his affairs in those times were all considered public affairs, and as having a bearing on the government of his tribe.

We have here, then, letters of divorce under our hand of 1843 and 1845, witnessed or confirmed by Letsie and Molapo and the other chief men of the Basutos. Among these letters are some granted by the Great Chief Mokhachane, father of Moshesh, and in these the clause giving permission to re-marry, and also to be the guardian of children, is granted to the women who applied for divorce.

We believe, sir, that it will not be difficult for us, even now, nearly thirty years after these letters were given, to obtain satisfactory proof that the cattle paid as dowry were not returned, and yet these divorces were held legal in the eyes of the Basutos, and that women furnished with them did re-marry. If, therefore, in olden times, it was even true that there was by Basuto custom an impossibility to obtain a divorce without restitution of cattle, what we have here said abundantly proves that for thirty years the custom of divorcing and giving permission to re-marry without restoration of dowry by the family has been established. We need not, perhaps, go back further than thirty years to support our position. Christianity not being known before that time, we may well concede that customs antagonistic to it did exist; but then we have been indeed poor workers, with the Gospel in our hands, if we have obtained no amelioration,, no change of those customs since that time. But in case it should in any way tend to give strength to our position, we for the moment set aside the requirement of and the changes produced by Christianity, and we still deny that by heathen Sesuto custom it was a *sine qua non* that cattle should be returned. When the relations of a woman wished to obtain possession of such woman and all her children, the cattle were returned as a custom. But frequently one or two girls were left to the husband and considered sufficient compensation in lieu of the cattle. If the husband sent away the woman or "threw her away" he lost his right to the cattle, but he could retain some or all of his children. If the woman was re-married, the children by such marriage belonged to her second husband. Such were old Sesuto Customs. To break these marriages, there was no civil process before a native tribunal required; the matter was generally very simple and private. The man had the right to do as he judged best for himself, or, at any rate, if his family were called in, they did all that was needed, without reference to chiefs. Of course the chiefs, especially those of the present day, would wish every case, relating even to family arrangement, to pass through their hands, and they may pretend such and such forms are required to give legality to any step. This would greatly add to their importance, and give them a far greater power over the people; but such is not Sesuto custom. In these times the natives make a great distinction between chiefs' law and the customs of the tribe. Chiefs' law is arbitray, and made to yield and to increase power or cover any act they have committed; therefore, little real light can be obtained by submitting the questions to them, "What is law?" "What is custom?" If, therefore, a man had the right to divorce in olden times, without even referring to a public court or to chiefs, and to forego restitution of cattle, he surely could do so in later times, when the requirements of Christianity were brought before him,

and when his conscience obliged him to abandon every filthy way, and when he had the sanction of his chief, and their example to countenance him. If divorces were of a certain force even when made openly in church courts, the decisions of which have not been contested or protested against during the many years in which Moshesh held the government, consequently they cannot be invalidated now by the present Government, which has bound itself to accept all transactions made before its assumption of authority. Any attempt to annul these acts of Moshesh and others would be dangerous, as by the same procedure every letter, every public document, every agreement of native chiefs, or people may be torn to pieces. The blessed effects of religion having operated amelioration in the former state of this people and modifications of their heathen customs, which, even before its introduction, were not quite so binding as your decision would now make them, we cannot silently allow such changes to be all swept away by our Christian rules into whose hands the Government of this country has passed.

We feel it our bounded duty to submit to you, and through you to His Excellency the Governor, what our experience of the country and our knowledge of its customs enables us to see would be right or wrong; feeling assured due consideration will be given to our remarks, and that the retrograde step you had thought the regulations obliged you to take will not be insisted upon. How many an unfortunate woman might, by such an act of Government, be rendered miserable, far more miserable than in times of greatest darkness and barbarism known to Basutos; they would be thus lowered to the state of women in Zululand. What would there be to prevent the seizure of a number of women now in our churches, some married and having families, who were formerly divorced, if letters of divorce are now powerless to protect them, although they have been respected by native custom till now? If once those documents are vitiated by the judgment of a British magistrate, a precedent would be established, and henceforth be a law, such as did not exist before the Government took the rule of the country.

By the principle you have laid down, that cattle *must* be returned by the woman or her friends, or there can be no legal divorce, divorce of women married in polygamy would be rendered almost impossible. Those who have sold females are not likely to restore the dowry, if even they have still got it in their hands. After a man has had the use and the services of a woman for years, can it be considered just to ask for the cattle formerly given for her? It may be replied, she has children; but she may have none, or even if she has children and they refuse, backed by British law, to be married to a polygamist, or to be married with cattle, or to work for their mother or her relatives, is it likely those friends will care to redeem the woman and children by giving back the cattle? In most cases the relations of the woman are heathens, and would gladly prevent any one from becoming Christian. They will know that a man on becoming a Christian must give up his *lirethe*, and that he released them by letters of divorce, he could not enter a Christian church as a member, and certainly they would rejoice in barring his becoming a member, by simply refusing the cattle which you decide *must be restored* or else he can grant no valid document. The law would thus prohibit him from yielding up his right to property he had probably spent years in working in the Colony to obtain, for in

many a case the family of the man have not contributed anything, or perhaps only one ox, and yet the law would not interfere if he were to take the same cattle and slaughter them, or dispose of them for whatever might gratify his tastes. Such a restriction, therefore, would be a persecution, different from any the Christian community has had to encounter as yet.

Having, we believed, proved that even by our native law, divorces without restoration of cattle were feasible, especially in cases of the *li-réthé, concubina*, for the *mogatsa* (real wife) was seldom or ever divorced, and further having shown that before the British Government was established in this land, the acts of divorce were, as a civil process, held valid, although dowry was not restored, we are led to the second case upon which your letter touches – Guardianship of children.

You state that “it is perfectly clear to me that no divorce in the case of Matete, whether a divorce by a Christian minister or a divorce by a civil law officer which did not include the restoration of cattle, could in any way bar the right of Ramabilikwe to the custody and care of Matete’s children by those wives to whom the letters of divorce were granted.” Further you say: “With regard to the suggestion which you offer, that Christian fathers in this country should make a kind of testament relating to their wishes how their children should be educated, &c., it will, I think be evident from what I have already above said, that I cannot consider such a testament as having any legal force to bar the right of relatives to the care and custody of the children of marriages contracted originally under Sesuto law, unless the marriage cattle or dowry be voluntarily restored to the husband (who makes the said testament) by the friends of the wives (if any) who are divorced, and of the wife who becomes the Christian partner of the converted man by Christian marriage ceremonial. For in native law as long as the cattle are not restored, so long the children are the inalienable property of their father, and the heritage of his heirs and successors, and nothing can release the children of parents once married by cattle from the operation of Sesuto law of marriage, save and except the restoration of the cattle or dowry originally paid by the father to the friends of the mother.” This is a most serious statement, and if acted upon will bring misery upon many a now happy family. If a Christian man is debarred from appointing guardians for his children in case of his death – so that they may be educated in Christianity, because the law declares them inalienable property; by the like reasoning he would be debarred from making a testament or from giving any portion of his goods and chattels to any person. His wife being also inalienable property must also pass to the custody of his heirs. If this were strictly law, then a Christian man, or a heathen man, could not give his daughter in marriage unless he was paid for her, she being the inalienable property of the family, and yet in the country such has been the custom for years past, and Basutos marrying in the Colony have, in very many cases, not given the parents cattle; therefore those wives are liable to seizure. If, however, it shall be shown that parents have thus alienated their daughters without dowry, and that heirs and successors have not had the right to seize those daughters thus alienated by the fathers, we hold that, by a much stronger reasoning, fathers would be allowed to give their children into the guardianship of curators. Again, where parents have alienated their children by binding them as apprentices, the law would not annul the indenture in case of

the father's death on application of heirs. Could the law quash an act by which a father gave his children into the guardianship of others to be educated as Christians?

But we refer again to our arguments in cases of divorce. Letters of divorce have held good for thirty years past; no cattle were restored and the divorced women re-married, and their marriages were held legal. The same acts have given the children to the keeping of the mother, or provided that they should be educated by mutual arrangement of parents. Can the first-mentioned hold good and the other be annulled? We hold, as we have said, letters of Moshesh and Mokhachane, in which these clauses are inserted, and we thereby claim a legal right for a father to direct how his children shall be educated in case of his decease.

We beg to be allowed to advance another plea. We must contend that the framers of the regulations did intend by Article 6, that the survivors of a marriage should be entitled to the custody of any issue of the same till of age. Nothing is here said of marriages which shall in future be made. In Article 3, care is taken to insert the clause "after publication hereof;" but these words are not found in Article 6. We cannot believe that those who prepared this rule would so far overlook the rights of hundreds of Christian mothers, or the wishes of Christian fathers, as to make it only applicable to marriages taking place after 1871. Such would indeed be a crying injustice to native converts.

At any moment a Christian family may be deprived of its head by death, and if the law is only retrospective, heathen relatives can lay claim to the children and drag them from their mother, so that they might be brought up in heathenism, and yet probably that mother had pledged herself (together with the man) before God to bring up those children in the Christian faith. The feelings of every Christian must revolt from such cruelty, which if heathenism had even made it a custom, civilized laws ought to have ignored it. We repeat what we before said, speaking of divorce: if native customs did allow such action as passing the custody of children to the heirs of a man, those customs were in force before Christianity was known; but Christianity is now known, and it has been understood even by the heathen that Christianity would change their customs, and hitherto they have refrained from openly protesting against such changes.

If we had believed the Christian converts would be exposed to such outrages by the promulgation of the regulations we would have taken an earlier opportunity of praying. His Excellency to insert some clause by which children of Christians might be protected. We say hundreds of Christian families are liable at any moment to be placed in the painful position we have mentioned, — to know that their children will, by virtue of an order from a magistrate, be taken from their mother and brought up in heathenism. In very many cases the father alone has given cattle for his wife. Is he then to have no power to place them in safety in case of his decease? Has he no power to secure their being brought up where they may receive those blessings of Christianity in which he died rejoicing? Are his dying wishes to be set at nought because his heir, his elder son perhaps by the widow, who is a heathen, or his children by a former wife, are heathen, and they rush upon the defenceless household and take the children (and why not the wife, if such regulations are only prospective) as

their inheritance? We would humbly beg that these considerations may be duly weighed and a better interpretation may be put on the existing laws, or amendments to avert persecution may be made.

If Article 6 is only prospective, thus Article 8 would also be so; for a woman who has been purchased by cattle by Sesuto law, you say, cannot be allowed to marry unless cattle or dowry be restored. The widow would thus be debarred from re-marriage (unless she had been married after 1871), unless cattle is restored. At the same time, any female who is of age can by these laws marry when she pleases.

We have, &c.,

For the Conference of the Paris Evangelical
Missionary Society,

DR. E. CASALIS, Secretary.

(From the "Little Light of Basutoland.")

MARRIAGE WITH CATTLE

In treating the subject of cattle marriages, we propose to show:

1. That they are opposed to the spirit of Christianity.
2. That they degrade the woman.
3. That they render impossible all family life and all proper bringing up of children.
4. That they are commercially unprofitable.
5. That they form an insurmountable barrier to all progress, civilization, and good government; and
6. That the practice constitutes the basis and substance of the system of heathenism prevalent in South Africa, and that, once abolished, it would crumble away and cease to exist.

Our space being limited, we shall endeavour to be as summary and concise as possible, rather indicating than developing these arguments.

We maintain then (1) That cattle marriages are opposed to the spirit of Christianity.

The institution of marriage is of Divine origin. In the beginning was the woman created for man, as his helpmate and companion. She was made part of him, "bone of his bone, and flesh of his flesh." The union between man and wife is of the most intimate and holy nature, and was purposed to be symbolically the antitype of the tenderest relation, the deepest mystery in creation, the relation between the Creator and creature, between the Redeemer and the sinner. The first woman was a free gift to the first man, given with Divine munificence unconditionally. Thus the origin of the first pair indicates and is the foundation of the marriage relation. Love and unity, which are the essence of it, are at the same time the basis of marriage and essential to its existence, according to the Divine or Christian ideal. That ideal is, therefore, essentially opposed to all sale or bargain, to any transaction by which the woman is made a purchaseable and transferable article, without reference to her own choice.

A cattle marriage is a genuine sale. This is a position which was indignantly denied by the old Basutos. White men, they said, knew nothing about it. "The girl was not sold," they said; "she did not cease to be her father's child, and the money or cattle was given as a thank-offering and a compensation to the parents for the trouble and expense of bringing her up, and for the loss of her services." The fact was, they were shocked to hear a spade called a spade. Their position was untenable, and the more candid heathen will now admit (especially amongst themselves) that the transaction is a sale. Buying and selling were unknown to the old Basutos, except in a restricted sense: indeed, you could hardly insult a Mosuto of the days of Mokhachane (Moshesh's father) more than by trying to purchase from him, or paying him. The only possible transaction was a mutual present, in which the buyer thanked the seller by giving him a present of an equivalent. This prejudice has worn off, and the word sale or purchase has ceased to be degrading or insulting. The modern heathen will, therefore, generally admit that he sells his daughters, and that their marriage is a commercial transaction. That such is really the case is proved by the fact, that (1) he claims a proprietary right to his daughters; (2) they partake of the nature of other property, being transferable and heritable.

This is true of both married and unmarried women. A man, for instance, may inherit his father's widows and their daughters. He likewise inherits his brother's widows, and any other female relative whose male head dies, and of whose estate he may happen to be the heir at law. No woman is without an owner, and that owner is not her mother's but her fathers' relative. She is sold for the benefit of that relative, — a man she may have never seen, and who has not expended a farthing on her bringing up, and her mother and mother's family gets nothing but the usual "complimentary" cows. Thus the plea of the transaction being of the nature of a thankoffering, or of compensation to the bringers-up, is untenable.

Women are also transferable as well as heritable. Divorce merely consists in the annulling of the sale by mutual consent, and the restoration of a part or the whole of the price, — and a woman may be then sold to any other man. Instances have been known of a man who had paid cattle for his son's wife, afterwards taking that wife from his son and living with her himself, on the plea that she was bought with his cattle. Some cases have occurred in which one man has sold his wife to another; and we know of one case in which a man was unable to pay a fine, and the paramount chief decided that his wife should be sold to pay the balance still owing, which was done. As all Basuto's sales are guaranteed, if a wife should die childless in the first year after marriage, her husband may claim one of her sisters from the father, without additional payment, and, where there have been no daughters of marriageable age, a younger sister has often been taken to supply such a vacancy, whilst her place again would be filled by the first unmarried sister who became marriageable. No one, therefore, who is not wilfully blind or ignorant of the institution as it exists can for a moment deny that a cattle marriage is to all intents and purposes a sale.

The moment this is frankly admitted, as it will be by any man who takes the trouble to ascertain the facts of the case, it follows that there is

an end to the Christian ideal of marriage. A woman who is brought up to have no choice, who is sold as a rule to the highest bidder, who is considered as the property of her male relatives by the father's side, who may be transferred from her husband to another without her consent, who, when widowed, may become the concubine of her husband's brother or of his eldest son, is not and cannot be a wife in the Christian sense; she is a chattel bought and sold like a Georgian slave. Her husband cannot respect or esteem her, for she is his property, a female human animal which he has purchased. Thus polygamy becomes possible, the purchase of a constantly increasing stud of wives as a farming speculation, which those who engage in it believe mistakenly to be the safest and most profitable investment of their property.

We do not deny that the system is not always carried out in all its brutality. Natural affections, a regard for decency and public opinion, and a determined will on the part of the victim often combine to check abuses. The law lately introduced forbidding forced marriages, though accompanied by no penalty, has, we dare say, some restraining effect. Forced marriages, nevertheless, do and will continue to take place. A polygamist who has sold a daughter to advantage will always be able to purchase an additional wife with the proceeds, and parents attracted by the price offered will always find ways and means of coercing the will of their daughters if necessary.

By the sale of women, marriage is therefore reduced to a mere commercial transaction, in which the woman has virtually no choice. On the man's side, interest and animal passion are the chief motives, and love either does not exist or is reduced to its lowest animal expression. The woman trained by early education and by that infamous institution "the circumcision of girls" to accept any man, can never conceive or entertain for her purchaser and owner the true sentiments of a wife. The whole marriage relation is thus distorted and degraded. Love, honour, conjugal fidelity, all that renders the marriage relation pure and beautiful, all that tends to fulfil the original design of God, are rendered impossible. They are, as a fact, unknown and inconceivable to the mass of the people.

To develop this view would be to fill a small volume. We would only ask in conclusion whether a custom that renders the ideal and design of the Creator impossible, — that makes the woman a transferable and heritable chattel, without reference to her will, — that renders polygamy and woman-farming possible, — that vitiates the purest affections between parent and child, — that establishes (as we shall show hereafter) a perpetual and universal antagonism between the interests of husband and wife, — that makes love and unity impossible, conjugal fidelity a vain word, all that constitutes home, all that ennobles and humanizes man, a thing unknown, — that destroys a woman's purity, — we ask whether a custom that is the cause and origin of all these evils is not diametrically opposed to the spirit and precepts of Christianity? From Laban and Shechem down to the later Jews amongst whom the practice existed, and down to the present time, it will and must inevitably continue to be radically vicious, immoral, and productive of nothing but sin, misery, and moral ruin, both to man and wife and to their offspring.

(2) We maintain, in the second place, that cattle-marriages degrade the woman. This will have been made self-evident to such of our readers

as have attentively perused the previous article. When a woman has been made, and is considered, an article of commerce, it is unnecessary to add that she is treated as having no will or responsibility of her own. She becomes a slave, and we know what the effects and consequences of slavery are. That she is often a willing slave, only proves that she has lost her selfrespect and is devoid of the feelings of womanly virtue. She remains all her life in a condition of pupilage. When a Mosuto speaks of his "children," his wife is included in the expression. He is alone responsible for her actions: she can possess no property and has no civil rights. She thus acquires all the vices of a slave, subserviency, — cunning, deceit, obstinacy, and recklessness of the consequences of her actions. Again, as the fruit of criminal connections is a source of profit to the husband, the "co-respondent" being mulcted in a fine, whilst the husband is enriched by an additional child, the Mosuto is rather lenient than otherwise to his wife's unfaithfulness. Indeed, instances are known where men have temporarily exchanged wives, and it is common enough for a polygamist to lend one of his wives to a friend, visitor, or dependent; nay, a wife will sometimes apply to her husband for permission to have a paramour! The children of such connections all belong to the husband or "owner." The natural consequences of such a state of things are a very loose code of conjugal fidelity, and the degradation of the wife into a creature whose morality is at the disposal of her husband. She is, by law and custom, an inferior creature in every respect, and practically the actual fact is that she is morally a more degraded being even than the man. Nor is it possible for her to emerge from that degradation, nor to obey the dictates of her heart and conscience, if she has any, — for all her education and training have been such as to fit her for complacent acquiescence in immorality of all kinds.

(3) Cattle marriages also render impossible family life and the proper bringing up of children, for a woman who is the absolute property of her husband cannot be to him a wife and companion. He is her master, and she is his slave. There can be no association between them to constitute home, — to enable them to form a family. Our idea of a family is that of an association of persons bound together by the tenderest ties, of which the husband is the head, whilst the wife and mother forms, as it were, a connecting link for the transmission of authority and the maintenance of affection, she being likewise associated with him in power and entitled to her full share of honour and affection from the children. Where the husband despises the wife as a slave, the children will do so too, or else they will take her part against him, and so the family relation will be broken up. As cattle marriages facilitate polygamy, a still further element of mutual jealousy, quarrelling, and disunion is introduced. The rival wives will always dispute, and their feuds, as well as their intemperate and obscene language, will demoralize the children to a fearful degree. A woman who is herself degraded, and must be so, cannot train up children but to her own resemblance, — cannot even maintain in their affections the place which is her due. She cannot give them either a home or home life and home affections. The wife whose feelings have generally not been consulted in her sale, but who takes a pride in having sold for a high figure to the benefit of her relations, keeps a constant partisanship in their favour. Even when attached to her husband, her relations and their

interests are her chief care. If not, they all unite with her husband's relations – her natural enemies – and with his other wives – her still greater enemies – in persecuting her, and she has then no refuge. So she generally sticks to her own relations, who encourage her quarrels with her husband, for they get paid for the beatings she receives from him, and who usually find ways and means of preying upon him through all kinds of by-laws belonging to the system. They also interpose between the husband and the children, subverting his authority and promoting disunion, feuds, and a never-ending confusion. Christianity, which is founded upon the natural relations of man, – which takes its origin in the family, – which draws some of its tenderest similes from the parental, filial, and fraternal relations, cannot for a moment co-exist with or tolerate an institution which is subversive of all these. Where there is nothing noble, or good, or beautiful, there cannot originate any of those principles of honour, virtue, truth, purity, and godliness, which are included in our idea of the proper training up of a family.

But (4), these marriages are commercially unprofitable. In making a few remarks upon this aspect of the case, we address ourselves chiefly to native ideas on the subject. All censuses tell us that the proportions of the two sexes are pretty equal in all countries. The price, therefore, which is realized for the females will all be spent again in providing wives for the males. Nor is a man who has many daughters enriched by the cattle he receives for them. That cattle is almost invariably paid away for the purchase of additional wives for himself or his sons, after a deduction has been made of the share to be given to relatives, and the share which is slaughtered, so that a man is left poorer than he was before. A youth who has earned cattle in the Colony sees his little herd, after his return, swallowed up in a day by the purchase of a wife. The cattle thus given are constantly changing hands and constantly diminishing by extravagant and useless slaughter, – not to provide necessary food, but to gorge the appetites of those who flock to these feasts. They enrich nobody, they are the source of endless law-suits, and they cannot breed properly. We never knew any one the richer for his gains in this way, and we have known many who had sold numbers of daughters and female relatives and yet were worse off than their neighbours. The probable profit arising from these sales, however dazzles the imagination of the natives, who are incapable of, and do not believe in, arithmetic. Like the “great expectations” of many people, they encourage laziness and inactivity in the hope of a fortune that never comes, or that is anticipated when it comes.

(5.) Cattle marriages form an insuperable barrier to progress, civilization, and good government. As long as they exist, the women and their offspring will be degraded. The highest future to which a girl can look forward, is to be sold into slavery and vice for a good round sum. Brought up to such an ambition, she has no further anticipations when it is fulfilled. The youth looks forward to marriage as the end of all toil for him. When by labour in the Colony he has amassed sufficient to keep a wife, he settles on his lees and expects her to provide for him the rest of his days. His fortune is made, and he lives on his money. She will build his house, sow and reap his lands, and cook his food; bearing him children, whose sale will provide comfortably for his old age. What more does he want? He cares not for progress, – he hates religion and civilization, because

they are opposed to his practice and to his vices. He has been brought up by degraded parents and he follows in their footsteps; and even when he has been taught better, his tendency is to relapse into the degradation around him, and to subside into the paradise of sensuality and indolence provided by this system. The effect of all this upon the character is to make bad subjects. Sensual and utterly selfish they are animated by no patriotism and have no public spirit. All progress towards civilization is abhorrent to them, for it threatens to put an end to their dreamy, idle, sensuous life; and they are unable and unwilling to submit to the restraints of good government or just laws, because these strike at the roots of the custom. The attraction of this mode of life to a native brought up under its degrading influences is inconceivable, and exercises a powerful fascination even upon those who profess Christianity, holding them back from true progress, and filling them with a hankering after "the fleshpots of Egypt." Native Christians are subjected to constant temptations, vexations, and annoyances in connection with this custom. Proprietary rights are claimed in their wives and children, the exercise of their authority is interfered with, and insubordination and rebellion stirred up in their families by their heathen friends; they are tempted by offers of sharing in secret the price paid for their heathen female relations, and they are taunted with their marriages being illegal (in the native idea), and their wives and children are incited to hostility and disobedience by the plea that they have no right over them, not having paid for them, &c., &c.; and thus a constant soreness is kept up, and a continual cajolery brought into play, to which many, alas! finally succumb.

(6.) The practice constitutes the basis of South African heathenism. It will be evident from the preceding remarks, how intimately it is connected and interwoven with the social life of the Basutos. The heathenism of South Africa is not a religion like many other heathenisms; it is a social system which penetrates into every detail of daily life. The practice of cattle-marriages is the basis of the whole system. It is, so to speak, the Mosuto's one profession and trade, the object of his aspirations, the aim of his life, and the foundation of his domestic and governmental arrangements. Take away that, and all the customs, rights, and privileges it involves, and there remain only a few disjointed fragments of superstitions and customs without a rational and without an object.

The influence of this system surrounds the Mosuto from his birth and haunts him to his grave. The female child is looked upon as a probable source of profit from her birth. She is trained bodily and mentally for the moment of sale, and the conduct by which she may become the source of greater profits to her relatives is carefully inculcated. All the native customs in which she is brought up, the beliefs and superstitions in which she is trained, have a bearing on the custom. As for her morals, never very pure, they are completely vitiated by the loathsome practices of the "women's circumcision," and the looser they are, the better fitted she will be to yield to the exigencies of custom. The mutual relations between families, the ties of relationship, the provision for widows and orphans, the position of wives before and after marriage, are all provided for by the custom, whilst the laws of property and inheritance are regulated by and intermixed with it. Almost every act of social life and of native etiquette are founded on and intimately connected with this practice. The

customs observed at the announcement of an engagement, a birth, a death, of the weaning of a child, of a woman's expecting to become a mother, are founded on the proprietary right in the woman, and accompanied by a payment or present of cattle to the owners of the person concerning whom the announcement is made. Similes connected with this practice teem throughout the language. When a native talks of "Sesuto," with a proud accent on the word, meaning thereby the national manners and customs and all that constitutes a Mosuto, he refers especially to marriages, the property in women, and all the consequent rights and customs. Cattle-marriages mean polygamy, they mean systematic sensualism and immorality. Take them away, and the whole fabric is broken in pieces, — the native heathen customs become meaningless, — polygamy becomes impossible, — woman is emancipated, — virtue, truth, and honour cease to be empty names, destitute of meaning, and incapable of realization in the mind of a Mosuto, — they cease to be a utopian dream which even the Christian can hardly conceive or believe in. In our attempts, therefore, to introduce and propagate Christianity, our chief blows should be struck at this system. If we wish to reconstitute the family on the Christian mode, to train up "a righteous seed," to found an indigenous Church, there must be no compromise with this embodiment of evil, this traffic in souls, this chain of bondage under which many a soul, convinced of the truth of Christianity, still groans unable and often, alas! unwilling to cast it off.

We must apologize to our readers for our superficial and summary treatment of the subject. We have only indicated the main line of argument. We have advanced many arguments without giving our proofs, but we can assure the readers that we are well able to prove them. And if we have not adduced more proofs and examples, it is chiefly because they would unveil details too loathsome for a christian pen to record. Let the churches everywhere unite their efforts to suppress the crying evil, well assured that when once they succeed, the end of South African heathenism will not be very far off. May God shortly bring this to pass!

[D]

Governor's Agent's Office,
Maseru, 8th July, 1872.

The Honourable the Colonial Secretary, Cape Town.

SIR, — A few days ago a deputation (consisting of the Reverend Messieurs Maitin and Duvoisin) from the conference of the French Protestant Missionaries in Basutoland waited upon me and requested me to bring the notice of His Excellency the Governor the hardships to persons married according to Christian rites having to appear in person before the magistrate for the purpose of having the marriage registered, thus compelling the parties in many instances to travel sixty and eighty miles; that the consequence is the marriages are not registered as regularly as they otherwise would be, if some more convenient method of having them registered could be adopted.

I have much pleasure in bringing this matter to the favourable consideration of His Excellency, as I am personally aware that in the case of Christian marriages the regulations in force in this country press very heavily upon the parties, and the consequence is that the regulations with regard to registering marriages is constantly avoided.

In order to relieve the Christian marriages from the hardships of the present regulations I would suggest, for the consideration of His Excellency, whether it would not be possible to adopt the 21st section of the Marriage Order in Council, in force in the Colony from 1st February, 1839, by which it is provided that the minister or marriage officer shall, immediately after the solemnization of every marriage, make an entry thereof in a marriage register book to be kept for that purpose, &c., and also before the parties depart, an entry shall be made on a separate piece of paper, &c., &c., a duplicate original register, which shall be left in the hands of the minister, &c., and shall, within one month, be sent to the Colonial Secretary, &c. In the case of this territory it will only be necessary to substitute the Governor's Agent for the Colonial Secretary, and if it is necessary to continue to enforce the payment of the registration fee of 2s. 6d., this can be collected by the minister, and sent together with the duplicate original register.

Whilst on this subject of marriages, I would respectfully remind you that I have received no reply as yet to my letter No.16 of the 7th December, 1871.

I have, &c.,

C. D. GRIFFITH, Governor's Agent.

MINUTES OF EVIDENCE

SPECIAL COMMISSION on the LAWS AND CUSTOMS OF THE BASUTOS and on the OPERATION OF THE REGULATIONS ESTABLISHED FOR THEIR GOVERNMENT:

Tuesday, 3rd December, 1872

PRESENT:

Mr. GRIFFITH, Governor's Agent (Chairman),

Major Bell, Resident
Magistrate of Leribe,

Mr. Surmon, Resident
Magistrate of Berea.

Mr. *George Tladi Moshesh* examined.

1. *Chairman*.] Mr. Moshesh, you are a son of the late Chief Moshesh ?
-Yes, I am.
2. Have you been in Basutoland all your life ? - Yes, with the exception of two years, from 1857 to 1859, when I was at school in Cape Town.
3. You are now in Government service as Sub inspector of Basutoland Police ? - I am.
4. Are you acquainted with all the laws and customs of the Basutos ?
I cannot say for certain that I am acquainted with all the laws and customs, because they are not written.
5. Major *Bell*.] Have the Basutos any written laws of their own ? -
They have not now, but they had before the last war with the Free State. My father had written laws with regard to the sale of brandy, circumcision, theft, and also about drinking the native beer, called "Joala."
6. *Chairman*.] Who drew up these written laws ? - My father; that is, he dictated them; they were written out for him by Mr. Arbousset, and afterwards printed in Sesuto by the missionaries.
7. Have you a copy of these laws ? - I have not; they were all lost during the wars with the Free State.
8. What is Basuto law with regard to wilful murder ? - If a man kills another wilfully he is fined ten head of cattle, but if he kills another accidentally then he is only fined four or five head of cattle.
9. To whom does this fine go ? - To the relations or friends of the deceased, and they afterwards send one or two head of cattle to the chief to report the death of his subject and that he (the chief) may drink the blood of his dead subject.
10. Major *Bell*.] Is there any difference in the punishment if a female is the murderer or murdered. There is no difference made that I am aware of.

11. Are children punished for murder or homicide? – No; the parents of the child committing the crime are punished by fine.

12. *Chairman.*] What is the law with regard to rape? – This crime is punished by fine only.

13. What is the law with regard to unnatural crimes? – These crimes are of very rare occurrence, and I have never heard of any punishment for them.

14. What is the law with regard to incest? – This crime is known, such as a brother having connection with a sister; but there is no punishment as it is not considered a crime, but only a disgraceful thing.

15. What is the law with regard to arson? – This is considered a very serious crime, and is punishable by fine at the discretion of the chief who hears the case.

16. What is the law with regard to infanticide? – Cases of this sort do occur sometimes, but I have never heard of any punishment being inflicted for it, nor have I heard of any case of the sort ever having been brought before a chief for his decision.

17. What is the law with regard to assault? – This offence is always punished by fine, according to the rank of the person assaulted, and the nature of the wounds inflicted.

18. What is the law with regard to abortion? – never heard of any punishment being inflicted for this offence.

19. What is the law with regard to theft? – This crime is punished by fine; but in the case of notorious thieves, who are likely to involve the country in war by stealing from neighbouring nations, they are sometimes put to death. I knew of four notorious thieves who were put to death by order of my father Moshesh. If a thief is found at night in the act of breaking open or stealing out of a kraal, he can be shot or stabbed with an assegai, without the person killing or wounding him being subject to any punishment or blame; or if a thief fights or resists when he is being apprehended, he can be killed.

20. What are the laws and customs with regard to marriage? – Marriages either take place with the payment of cattle or sometimes without, but it depends upon the wish of the parents of the girl; but as a general rule, marriages take place with cattle. There is no fixed rule laid down for the number of cattle to be given for a wife: the usual number is from ten to fifteen head of cattle. The usual practice is for the man to send to the girl or woman he wishes to marry to ask if she will marry him. If she consents, he will then go and see her himself; after that he will see her parents, and tell them that he wishes to marry their daughter. The parents then say they have no objection, and the marriage is arranged and the number of cattle to be paid is agreed upon. It does sometimes happen that parents compel their daughters to marry men against their wishes by beating them, &c., but this happens very seldom. If a woman is ill-treated by her husband, she has the protection of her parents and relations, to whom she can fly, and if the case of ill-treatment by the husband is proved, he will have to pay a fine before his wife is restored to him. If a woman refuses to live with her husband, there is no law to compel her to do so, and the only remedy the husband has is to demand that his cattle which he has given for her be restored to him. If she has borne him children, he can either claim the children or his cattle. If he claims all the latter,

then his wife, can keep all the children, and he has no further claim upon them. If a wife dies without having borne children to her husband, he will have no claim for the restoration of the cattle he has given for her, but if his deceased wife has a sister living he can go to her parents, and they will generally let him have her for half the number of cattle he gave for her sister; but if she refuses to marry him the law will not support him in any further claim on the parents or relations of his deceased wife. If the husband dies, his wife or wives belong to his eldest surviving brother who is to raise up seed to his deceased brother by taking them to wife himself or giving them to other men as wives. If the deceased has left any children, the son of the first wife will be his heir, and can claim all the children borne to his deceased father's wives, and all cattle given for any of these children belong to him. The maternal uncle of every married woman is called the "malome," and he has a right to a portion of the cattle given for his niece. He is expected to take care of his niece and her children, and to supply her with anything which she may require, such as a kaross, &c., A man cannot divorce his wife without a cause, for if he does so, he cannot claim his cattle back again; but he may divorce her for adultery, in which case he can recover his cattle. In some cases the husband can receive part of the cattle and keep some of the children, but he cannot recover all the cattle and at the same time keep all the children. Sometimes one child kept by the husband is considered to be equivalent to the restoration of all the cattle. In cases where cattle are restored, the "malome" has also to give up those that he has taken as his share.

21. What is the law with regard to inheritance? - Each wife has a separate establishment. The husband apportions cattle to each house; the eldest son in each house inherits all the property which has been allotted by the father to that house. A widow can inherit cattle belonging to her house in case she has no male children at the death of her husband. Children belong solely to their father; when he dies, they are left in the charge of the mother; the dowry cattle of the girls is claimed by the eldest son of the house to which they belong, and is divided between him and "malome" in the usual way. Although I have said the eldest son of the house claims the cattle, I must explain that he is only acting for his mother, who has charge of all her deceased husband's property during her lifetime belonging to her house, but at her death, then it devolves upon the eldest son of the house.

22. Major *Bell*.] What is the law with regard to seduction? - This is settled by a fine. The man has the option of marrying the girl, in which case the fine is small; but if he refuses to marry the girl, then the fine is doubled.

23. *Chairman*.] What is the law with regard to injury to property? - If the injury is wilful it is settled by a fine, but if it is accidental there is no fine imposed.

24. What is the law with regard to trespass by cattle? - If cattle or horses break out of a kraal at night and trespass in cultivated land there is no penalty; but if the trespass is repeated at night several times, then a fine is imposed. If this has not the effect of making the owner keep his stock from trespassing they can then be driven into a kraal and killed. Trespass in the day time is settled by fine, if repeated more than once or

twice. At the chief's village no pigs are allowed; if they are found trespassing at the chief's village they can be killed.

25. What is the law or custom with regard to guardianship? – The eldest brother is in each case the guardian of the brother next to him in age belonging to the same house. At the same time the eldest brother of the whole family, including all the houses, has a concurrent guardianship overall his lesser brethren.

Wednesday, 4th December, 1872.

PRESENT:

CHARLES D. GRIFFITH (Chairman),

Major Bell,

Mr. W. H. Surmon.

Sofonia Moshesh examined.

26. *Chairman.*] Have you lived all your life in Basutoland? – I have never lived anywhere else but in Basutoland.

27. Were you employed by Moshesh in his court and in political cases? – I was, very much.

28. Do you know the laws and customs of the Basutos? – Yes, I do, very well.

29. Have the Basutos any written laws? – When the missionaries came into the country, some written laws were drawn up and adopted by Moshesh with regard to circumcision, theft, witchcraft, brandy and joala-drinking; besides these there are no written laws.

30. Have you a copy of these written laws? – I have not, nor have I seen a copy for many years.

31. What is the Basuto law with regard to wilful murder? – There is no fixed law on the subject; each chief decides the case brought before him as he thinks fit. I have heard of some cases in which the murderer has been put to death, but Moshesh did not approve of this punishment, because the person or persons who put the murderer to death became murderers themselves by doing so. I only know of my own knowledge of one case in which Moshesh had a murderer put to death. The usual punishment for killing another person is a fine of cattle. A distinction is made in the amount of the fine between wilful murder and culpable homicide, but no fine is inflicted in cases where persons are killed by pure accident alone. There is no difference made between the murderer, whether male or female.

32. Are children under age punished for murder or culpable homicide? – No; in each case of this sort the parents of the child have to pay a fine.

33. *Major Bell.*] How are these fines distributed? – They are paid to the deceased's father, or heir, who distributes it by sending part to the chief and to the relations entitled to it; if the person killed is a foreigner, or has no relations, then the fine goes to the chief.

34. *Chairman.*] What is the law with regard to infanticide? – I do not know of any law on the subject. I have heard of cases of infanticide, and concealment of birth, but they are never taken notice of.

35. What is the law with regard to rape? – It is punished by a fine, whether the crime is committed on a child or a grown-up person, or not.

36. What is the law with regard to unnatural crimes? – I have never heard of any case of the sort ever having been tried before a chief. I have only once heard of a case in which a man had connection with a goat; the goat was destroyed, but the man was not punished.

37. What is the law with regard to incest? – This crime is known, such as a brother having connection with a sister, but I never heard of there being any punishment for it, but it is considered a great disgrace.

38. What is the law with regard to abortion? – There is no law about it, and no punishment.

39. What is the law with regard to arson? – This crime is punished by fine, and is considered as serious a crime as murder.

40. What is the law with regard to theft? – This crime is punished by fine, but is also punished in some cases by death, where the thief is an incorrigible one, and has been often punished. If a thief is caught in the act of stealing at night, he can be shot, as the Basutos have a proverb which says, :- “A thief is a dog which must pay with its head.” The receiver of stolen property, knowing it to have been stolen, can be fined as a thief; this applies to all who partake of the meat of stolen animals knowing them to have been stolen.

41. What is the law with regard to assault? – This is punished by fine, which goes to the person assaulted or to his parents.

42. What are the laws and customs with regard to marriages? – Marriages take place with cattle and without. The general custom is to marry with cattle; those that are married without cattle do so by a private arrangement between the parents of the parties. There is no fixed number of cattle to be given for a wife. These cattle are given to the parents of the girl as a sort of compensation for the loss of her services, which the husband will now derive the advantage of. I do not consider that the wife is purchased with the cattle, because the husband cannot sell her again to another man. No such case has ever been heard of. If the husband wishes to get rid of his wife she must go back to her parents or relations. The Basutos make use of the word “reka” when they say buy a horse, &c., but the cattle given in marriage are called the “bohadi”, and a man does not say he is going to “reka,” or buy a wife, but he says he is going to “nyala” a wife, or marry. If a woman is ill-treated by her husband she can go and complain to the chief, and if the husband is found to be in fault, the chief will fine him, and the fine will be sent to her parents. If after this decision of the chief, the husband continues his ill-treatment, then the wife can leave him and go to her relations and divorce her husband, in which case the husband can get all his cattle which are still in existence returned to him. If a woman refuses to live with her husband, there is no law to compel her to do so; the only redress the husband has is to demand his cattle, which he is entitled to have restored to him, or if his wife has borne him children he can keep them all, in which case he cannot claim any of the cattle; even if there is only one child he cannot claim the restoration of cattle. If he elects to claim his cattle then he cannot claim

any of his children, who then belong to their mother and her parents. Sometimes the parties agree amongst themselves to divide the children and the cattle; this is also done in some cases where the woman is in fault. If a woman dies without having borne children to her husband, he cannot claim his cattle back again, but if his deceased wife has a younger sister he can claim her, in which case he will only have to give half the number of cattle for her; but if the sister refuses him, or her parents refuse to let him have her as a wife, then in that case he can claim his cattle. The same rule applies in case his deceased wife has no sister. If the husband dies, his wife or wives belong to his heir, either his eldest son or brother, as the case may be, and all the children and property belong to the heir, but the son is not supposed to take his father's wives, although it is done in some cases. The deceased father's wives are generally taken by his brothers to wife to raise up seed to their brother. The maternal uncle of every girl or woman is called the "malome", and he receives a portion of the cattle given for them in marriage, because he is the guardian of his sister and her children. If the husband divorces his wife without a cause he cannot get all his cattle back, but if he divorces her for a good cause, such as adultery, &c., &c., then he can claim all his cattle, if his wife has borne him no children; but if he has one child by her, which he wishes to keep, then he cannot claim his cattle. With regard to divorces in cases in which the husband or wife has become converted to Christianity, the custom has been as follows:— If the wife of a heathen becomes a Christian, if he is not a polygamist, she remains with her husband, but if the husband is a polygamist and his first wife becomes converted, she remains with her husband, but if the inferior wives become converted they generally leave their husbands or divorce themselves from their husbands, in which case the husbands do not claim their cattle. I only know of one instance in which a man claimed his cattle back when his wife left him on becoming a Christian, and that was in the case of Mokhachane, the father of Moshesh. In all cases the children belong to the father; they are claimed by him as long as his cattle are not restored to him. If a woman, on becoming a Christian wishes the children to belong to her, and to be taken from the control of her heathen husband, the only way she can do so is by restoring the cattle to him which he gave for her, but if he refuses to take the cattle, then she cannot get her children. If a polygamist husband becomes a Christian, he sends back all his wives, except his first wife, to their friends, but the children all belong to him. If they are very young they remain with their mother until they are nearly grown up, when the father takes them under his charge.

43. Mr. *Rolland*.] If a man's wife dies without having borne him children, can he claim to take his deceased wife's sister, although married to another man? — No, such a case could not take place. I have never heard of an instance.

44. Major *Bell*.] At what stage of the proceedings is a marriage said to be completed? — A marriage is said to be completed when the father of the bride has slaughtered an animal or animals as "mafura," with the fat of which the bride and bridegroom are anointed, and the bridegroom has the gall bladders put round his wrist. If the bridegroom refuses to have the gall bladders put on his wrist it is a sign that he does not like the bride, and the marriage is dissolved, the cattle are returned, and the

animals slaughtered by the bride's father are paid for by the bridegroom or his friends.

¶5. *Chairman.*] What are the laws or customs with regard to inheritance? – A polygamist, either chief or common man, if he has three or more wives, has three principal houses, called the “Ntlokholo,” “Lena-ka,” and “Lerite.” Each of these houses have their own establishment and cattle set apart for it.

Thursday, 5th December, 1872.

PRESENT:

C. D. GRIFFITH (Chairman),

Major Bell,

Mr. E. S. Rolland,

Mr. J. Austen,

Mr. W. H. Surmon.

The Rev. *A. Mabile* examined.

46. *Chairman.*] You are a minister of the French Protestant Evangelical Missionary Society? – I am.

47. How long have you been a missionary in Basutoland? – Twelve years and a half.

48. Have you, during that time, had many opportunities of learning the laws and customs of the Basutos? – I have.

49. Are you acquainted with the criminal laws? – I cannot say I am.

50. Have you ever seen any of the written laws promulgated by Moshesh? – Yes, I have seen some of them.

51. You have heard the evidence given by Mr. George T. Moshesh on the criminal law of the Basutos? – Yes, and I agree with it; but I would make this remark, that the punishment awarded is always according to the rank of the offender – the higher his rank the less the fine.

52. Do you know the laws and customs with regard to marriage? – Yes, I know some of them.

53. Will you kindly inform the Commission what they are? Yes; marriage according to Basuto custom is effected with cattle, but there may be exceptions in which a marriage is effected without cattle. There is no fixed rule with regard to the number of cattle to be given. A girl is sometimes married against her wish; the man who will give most cattle get her without regard to her feelings. The only protection a woman has from ill-treatment by her husband is to run away to her parents or friends. If there are no children the husband can claim the restoration of his cattle; but if he has children by her, then the children stand in the place of cattle. If a wife dies without having borne her husband any children

he can get her sister or some other female relation for his wife without payment of cattle. I am not certain whether the husband can claim his cattle back or not. I am not aware of any instance in which a deceased wife has been replaced by another sister, although the wife of another man. If a man without making any previous arrangement about his wives and children, they belong to his heir; but it often happens that a man, before he dies, apports his inferior wives and children to the younger sons of the principal house. The "malome" is the maternal uncle of the girl going to be married and receives a share of the cattle given for her, and is considered her guardian.

54. What has been the custom with regard to men or women divorcing each other on becoming Christians? - In the case of a man who is a polygamist becoming a Christian, he sends away all his wives with the exception of his first wife, and he also keeps all his children, unless they are too young to be taken from their mothers. In the case of a wife becoming a convert whilst the husband is still a heathen, if she is the first wife she remains with her husband; but if one of the inferior wives, then she tries first to get her husband to give her a letter of divorce; but if he refuses to do so, then she leaves him of her own accord, in which case the children belong to the husband. When the husband grants a letter of divorce, it is generally arranged that the children shall belong to the two, but the father has had the first claim to them. In case of the father's death the children belong to his heir. I do not know of a case in which cattle have been claimed by the husband when his wife has become a Christian. Some of the chief Letsie's wives have become Christians, and he has never claimed his cattle back.

55. Mr. Rolland.] Have you known instances in which women who have separated from their husbands on becoming Christians have afterwards been married in church to other men, without the restoration of the first husband's cattle? - Yes, I have known of such cases.

56. In such cases, have you known of the first husband stipulating that the children by such second marriage shall belong to him? - No, I have not known of such a case.

57. Chairman.] Can you give the Commission any information with regard to the laws and customs connected with the Basuto system of superstition? - Yes. With regard to circumcision, which I consider a school of immorality, both the male and female rite, which I consider has the most degrading effect upon young people. I am aware that the late Chief Moshesh endeavoured to put down circumcision in the tribe, and his successor, Letsie, has also carried out his father's wishes. Some of Letsie's sons have not been circumcised.

58. Are the Basutos a superstitious people? - Yes, very much so indeed. The worst feature in their superstition was that of accusing a person of having an evil eye, which subjected the accused person to death. A book could be written about the different questions upon which the people are superstitious.

59. Can you give the Commission any information upon the operation of the regulations? - Generally speaking, the regulations have been well received by the majority of the people. The only regulation which I consider requires amendment is that under marriage, particularly the clause 3, which I think might be struck out, and the registration of a christian

marriage left to the missionary or minister, as is done in the Colony. I would also suggest that in case of a heathen man and wife becoming both converts to Christianity, the custody or guardianship of their children should be governed by civilized law, in order to prevent the children being claimed by a heathen.

60. *Mr. Rolland.*] Have you any remarks to make about the age of the majority? – Yes. I think the ages fixed too low. I would suggest that they be, with regard to both sexes, fixed at twenty.

61. *Chairman.*] Have you any remarks you would like to make to the Commission with regard to the Basutos? – Yes. I would like to see circumcision, polygamy, and cattle marriages abolished, for these are the great hindrance to advancement of the people in civilization and christianity, as I am of opinion that the Basutos are capable of being raised to an advanced state of civilization, judging from what I have seen of them in our schools and churches.

The Rev. Mr. *Jousse* examined.

62. *Chairman*] Have you anything to add to what Mr. Mabile has said? – I agree with all he has said. I wish there was only one court of law in this country; but I hear of there being a Native court, as well as the English court of law, and this works very prejudicially on the people, for they are sometimes punished in the Native court for an offence for which they would not be punished in the English court.

63. Are you not aware that any person who is dissatisfied with the decision of a chief, or Native court, can appeal to the magistrate? – Yes, I am aware of this; but the people are too timid to appeal against their chiefs.

The Chief *Letsie* examined.

64. *Chairman.*] You have heard what the Rev. Mr. Mabile has said about husband or wife becoming converted? – Yes, I heard. I know what Moshesh's own custom was. When his two wives, Nehemiah's and George's mother's, became converted, he did not divorce them or send them away; the same with Sofonia's mother; they all lived at the mission station, and continued to be considered Moshesh's wives, although they did not live with him. My own wives who have been converted are still my wives, although separated from me. I was asked to divorce them, but I refused to do so, but I never have opposed their leaving me on becoming Christians, but I have always considered them my wives, although I have not cohabited with them. The children of these wives belong to me, because, whether my wives leave for Christianity or for any other cause, the children belong to me.

65. In the case of a man and his wife who have been married with cattle but who have afterwards become Christians, in the case of the death of the husband, who do the children belong to? – In such a case the children belong to the husband's heirs, because a man's faith does not destroy his relationship.

66. If a woman who has been married with cattle divorces her husband on becoming a Christian, and afterwards marries a Christian man in the church, by whom she has children, can the cattle husband claim these

children of the Christian marriage? – Yes, he can, if his cattle have not been restored to him, or if his wife has had no children by him; but if his cattle have been restored to him, or if he has had children by his wife, which he can keep, then in such a case he has no claim whatever to the children of the Christian marriage.

67. If a man marries a woman without cattle, who do the children belong to on the death of the husband? – To the husband's heirs; there are several precedents for this.

68. Major *Bell*.] According to Basuto law and custom, can a man dispose of his property before his death, by making a verbal will? – Such a practice is very rare. I have only heard of one instance in which it has been done, and that was in the case of the Chief Moshesh, shortly before his death.

69. *Chairman*.] Since Moshesh has established a precedent, will the laws and customs of the Basutos recognize a will, by which a man disposes of his property? – Yes, if he disposes of his property justly, but not if he disinherits his legal heirs.

70. Don't, you think it would be a good thing if there was a regulation providing that persons may make a written will disposing of their property and providing for the guardianship of their children as they may think fit? – Yes, I think it will be a good thing, as no one will be compelled to make a will; those that like can do so, but those that don't like can leave it alone.

71. What is your opinion about circumcision? – I can only say what I said to my father Moshesh, when he refused to let Majara, Nehemiah, Matilika, Silibalo, Mota, Samuel, and Sofonia, all his sons, be circumcised. I then said to him, "What you have done is good; but don't begin like a child and go round and round, but what you have once begun, go on with." Some of my sons have not been circumcised.

72. Are we to judge from this that you don't think it a good thing for the people? – I don't think it is either good or bad, and I don't approve of it as I don't see any advantage in it. I mean both the circumcision of males and females; but I have seen men send away their wives because they had not been circumcised.

73. Do you know anything about the written laws that Moshesh promulgated? – Yes, I recollect them; but I have not got any of them now, as they were destroyed during the war with the Free State.

Friday, 6th December, 1872

PRESENT:

C. D. GRIFFITH (Chairman).

J. Austen,

E. S. Rolland,

Major Bell,

W. H. Surmon.

The Chief *Jobo*, a brother of the late Chief Moshesh, examined.

74. *Chairman.*] You have been born and lived all your life in Basutoland? – Yes.

75. You are now living at Thaba Bosigo? – Yes.

76. Have you always lived there? – Yes.

77. Were you one of Moshesh's counsellors? – Yes.

78. You are a Christian? – Yes; I have been one for more than twenty years.

79. Have you heard what the other persons examined have said with regard to cattle marriages? – Yes; and I agree that what they have said is the law and custom of Basutoland.

80. What is your opinion about cattle marriages? – I don't see any great objection to its being practised by the heathen. It is quite right that the Christians should give it up, and that they should use their influence with their heathen brethren to make them Christians, as the Word of God has great power but I do not think you can make Christians by law.

81. Don't you think these cattle marriages prevent the people from becoming civilized? – I don't see why it should.

82. What is your opinion about "Lebollo?" – I think the "Lebollo" both for lads and girls is most objectionable, and I think it retards the people from becoming civilized more than anything else.

83. What is the feeling of the tribe with regard to "Lebollo?" – A great portion of the tribe is attached to the custom because their fathers practised it; but I do not think there would be any difficulty in abolishing it for they can show no reason except the above for retaining it.

84. You are aware that the late Chief Moshesh abolished the custom? – Yes, I know it well; because I was sent with several of Moshesh's counsellors to the several circumcision lodges to drive the boys away.

85. What is your opinion about a law providing that people can make wills? – I think it would be a very good thing; if there was such a law now I would make my will at once.

86. Under the Basuto laws and customs, if a man dies, who is the guardian of his children? – His eldest son; but in case there is no son, then his eldest brother is the guardian of all his children; but each son has a guardian appointed during the lifetime of his father, who is selected from one of his other sons.

87. *Major Bell.*] In case of a woman being murdered does any portion of the fine go to the chief?..... – No; because the Basutos say that a woman has no chief but her husband or her parents.

88. *Chairman.*] Can a woman inherit any property? – Yes, under certain circumstances she can.

89. What are the circumstances? – When there are no other collateral male heirs to her father's property. A widow can also inherit the property belonging to her house as long as she remains with her husband's friends; but if she leaves them, then she is obliged to give up the property; but under any circumstance she has only a life interest in the property. She can slaughter any of the cattle belonging to her house, or sell them, and can also marry a wife with the cattle to raise up seed to her deceased husband, by giving the wife to any man she chooses to select. Any children that a widow may get after the death of her husband belong to his heirs.

90. What authority has a parent over his children? – A father has unlimited authority over his children, even the power of life and death.

91. Is a parent liable for the misdeeds of his children? – Yes, and never ceases unless his father renounces him publicly when he is incorrigible.

92. Can a man's daughter be seized or taken as security for a fine? – Yes.

93. How is the land distributed? – Land is not sold or permanently alienated, but is occupied with the consent of the chief, who apports a certain part or tract to minor chiefs or headmen, who again apportion it to the people under them. A chief has the power to take a man's garden ground away; but it is never done because it is like killing a man.

94. If the occupier quit his land and another take possession, can the first occupier eject him if he wishes to occupy the land, even after the lapse of years? Yes, if the occupier goes to the chief when he is leaving and tells the chief that he is leaving, but intends to return again; but if he does not do so then he loses his claim to the land.

95. Is a Basuto doctor entitled to his fees whether he effects a cure or not? – No; except a cure is effected he is not entitled to his fees.

96. What is the law with regard to reporting the death of a person? – The death of every person is supposed to be reported to the guardian of the deceased person as the case may be, otherwise a fine of one to three head of cattle; and they are supposed to report the death to the chief, otherwise a fine is imposed.

97. What is the law with regard to spoor? – If a spoor is traced to a village, unless some trace of the stolen property is found at the village no fine can be imposed, although the spoor cannot be traced past the village; but if stolen property is found at a village, but the thief cannot be discovered, then the village is held responsible and be liable to pay a fine.

The Chief *Letsie* re-examined.

98. *Chairman.*] Is the above a correct version of the law with regard to spoor? – Yes; the reason the law is not enforced with regard to holding a village liable for any spoor traced to it is because some years ago some of the Chief Pushudi's people took an ox of their own to a neighbouring village and slaughtered it there in the night, but carried the flesh back to their own village; the next morning a great outcry was made about the missing ox, the spoor was traced by the owners of the ox, who had slaughtered it themselves, at the village in question, and after searching about they pretended to find the remains of the head, &c., which they had buried; the case was considered clear against the village, which was fined fifty

head of cattle. Subsequently a kaross was found in a sluit near the village which had been forgotten there by the would-be thieves, and the whole thing was exposed; the fine was restored to the village, and Moshesh then called a "Pitso," or meeting, and mentioned this case to all the chiefs, and then made a law forbidding any person from being punished simply on the evidence of a spoor or of slaughtered meat being found at a village.

99. What is the law or custom in Basutoland with regard to stray horses and cattle? - The law is that all stray or unclaimed animals are reported to the principal chiefs, and eventually become his property.

100. Do you take any means of publishing these stray animals? No; the people who report them to me are told to keep them until they are claimed.

The Chief *Tšita Mofoka* examined.

101. *Chairman.*] What is your opinion about the custom known as "Lebollo?" - I do not see any harm in it, nor do I see any good in it. If I saw any good in it, I would not have left one of my sons uncircumcised. I have the same remark to make with regard to girls. I have sent some of my daughters to school instead of the "Lebollo." I have not made any profession of Christianity, although I attend at the services of the church.

102. You have heard what the other persons have said about the laws and customs of the Basutos? - I have.

103. Do you agree with them? - Yes, I do; what they have said is correct.

104. Do you know the custom called the "Maboella?" - Yes; it is a very good custom, by which pasturage is reserved near each village by the headman, which is marked off by stones or branches of trees. The reserved pasturage is marked off in about January in each year, and all stock is kept from it until the winter. The same pasturage is reserved every year. This reserved pasturage is thrown open for the stock generally as soon as the chief's cattle have been sent to graze on it. The same rule applies with regard to reeds, grass, &c. As soon as the chief sends to cut reeds or grass then the people do the same, and each person who cuts grass or reeds on the first day throws one bundle down for the chief at a certain spot pointed out for that purpose. Those people who have been too late in coming to cut reeds or grass can go to the chief and ask him for some, and if he has any to spare he will give them some.

The Chief *Letsie* re-examined.

105. *Chairman.*] What are the laws and customs of the Basutos with regard to reeds, grass, and "modi," also wood? - Originally there was no law about wood, but Moshesh, at the advice of the missionaries, placed people in charge of the forest to prevent their being wantonly destroyed; but this law has not been strictly carried out. All the reeds, grass, and modi belong to the Government or paramount chief, and he again distributes them to the minor chiefs, and they again give them to their retainers, as they are required. If a man planted reeds they would belong to him.

106. Have you any remarks to make upon the regulations at present in force? - No. I have nothing to say about them.

Kabi, a Counsellor of the Chief Molitsani, examined.

107. *Chairman.*] Are you a Christian? – No.
 108. Has the Chief Molitsani sent you to represent him here? – Yes.
 109. Have you heard what other persons have said about the laws and customs? – Yes; and I agree with what they have said.
 110. What is your opinion about cattle marriages? – I think they ought to be continued, and I think if they were prevented it would cause great offence.
 111. What is your opinion about the “Lebollo?” – I don’t think there is any advantage in retaining this custom; my chief, Molitsani, has abolished it both with regard to males and females, and I think it is a very good thing that he has done so.
 112. Have you heard the regulations read over? – I have.
 113. Have you anything to say about them? – No; as long as the regulations mean that the children of a deceased husband belong to his heirs, then they are good.

Saturday, 7th December, 1872

PRESENT:

C. D. GRIFFITH (Chairman),

J. Austen,
Major Bell,

E. S. Rolland,
W. H. Surmon.

The Chief Letsie requested that his evidence might be read over to him in order that he may know what he has said.

This having been done, the Chief expressed himself satisfied with what had been taken down as his words by the Commission.

Philemone Moeletsi examined.

114. *Chairman.*] Have you been all your life in Basutoland? – I was born in Basutoland, but when I was a lad I went with my parents into the Colony and remained there for several years, when I returned to Basutoland and have been here ever since.
 115. Where do you live now? – I am now living at Mahalie’s Hoek, but I formerly lived at Beersheba.
 116. Are you a Christian? – I am, and have been so for many years.
 117. Do you know the Basuto laws and customs? – Yes, I do.
 118. Have you heard what the other persons have said before the Commission as to the laws and customs of the Basutos? – Yes, they have told the Commission the truth.
 119. What is your opinion about cattle marriages? – My opinion is that it is a good institution; the Basutos have no other way of effecting a valid and binding marriage. This way of marrying satisfies the father of the girl, and it also satisfies the bridegroom. However poor he may be, he does not like the idea of marrying without cattle. As Christians we

are bound by the laws of the Church to marry without cattle, but if we Christians were free to do so, we would marry with cattle, because such a marriage is more binding, and confers more complete rights than any other form of marriage as far as we Basutos are concerned. As a Christian, I would combine the cattle marriage with the religious ceremony.

120. Do you consider that by a cattle marriage a woman is purchased and becomes a slave? – I cannot admit that by a cattle marriage a woman is purchased or becomes a slave. Although cattle is given for her, and she becomes a man's wife, she still remains the child of her father, and his sons have a proprietary right in her daughters. If I married Letsie's daughter for forty head of cattle and received only ten head of cattle for my daughters by her, Letsie's sons would still come and claim "Ditsua," or the "Maloma's" portion from me. Another proof that the woman is not sold is that once I have married her she is my wife, but I cannot sell her again to another man, as I could a horse or an ox, &c., &c., A thing sold passes from hand to hand, and there is no limit to the times it may be sold or the number of people who may purchase it. But if I marry a woman I cannot sell her; she may even leave me, divorce me, and go back to her father and be married to another, I being not willing to let her go, and I may stay lamenting for ever without the right of claiming her back as my property, the great proof is that she is not transferable. I am most anxious for the progress and civilization of the tribe, but I refuse to admit that a woman married with cattle is bought in the same sense as a slave in the Portuguese settlement.

121. What is your opinion about the custom known as "Lebollo," both with regard to males and females? – I have not been circumcised, and therefore I cannot tell what it is or what ceremony is gone through; but I do not see any advantage in the custom, and I think if man is created in order to progress, that this custom will effectually prevent him from progressing. It is a mere tradition handed down from father to son, and I do not think the abolition of it would cause any disturbance.

122. Major *Bell*.] Have you ever heard a Basuto give a reason for circumcision? – The only reason I have heard is that a person becomes a man as soon as he is circumcised, but as long as he is not he is considered to be a boy.

123. *Chairman*.] Which custom do you consider keeps the people in darkness and heathenism more than any other? I have no hesitation saying it is the "Lebollo."

124. Which custom do you think the people would sooner abolish, "Lebollo" or cattle marriages? – They would sooner abolish "Lebollo."

125. What is your opinion about polygamy? – I consider that it is as great an obstacle to progress and civilization as "Lebollo."

126. What is your reason for saying so? – Because a man that is a polygamist has no peace in his household; his whole time is taken up in disputes and quarrels, and watching over his wives to see that no other man has connection with them. He has no time to attend to matters which may enable him to progress and advance in civilization or to the education and improvement of his children.

127. Mr. *Austen*.] Have you any remarks to make about the regulations? – Although I do not clearly understand the meaning and bearing of some of them, yet as a whole I have no objection to make to them.

128. Do you think it would be any advantage to the people if the magistrates were appointed marriage officers? – Yes, I think it would be a very great advantage, and would be appreciated by the people. Whilst on this subject, it has just struck me that there is a great omission in the marriage regulations, no provision being made for the settlement of divorces between persons married according to Christian rites.

129. Major *Bell*.] Do you know why the people neglect to have their marriages registered? – The heathen neglect to do so because they do not understand the object of registering or what advantage is to be gained by it.

130. *Chairman*.] Do you think it would be a good thing if a Government witness were appointed who should be present at each heathen marriage, to ascertain the amount of dowry to be paid, and to bring the Government fee of 2s. 6d. for the registration of the marriage? – Yes, I think it would be a very good thing indeed if such an officer was appointed in each district.

The Chief *Nehemiah Moshesh* examined.

131. *Chairman*.] You are a son of the late Chief Moshesh? – I am.

132. You were sent to Cape Town for your education? – Yes; I was nineteen years of age when my father sent me to Cape Town.

133. I suppose you know the Basuto laws and customs very well? – Yes, I think so.

134. Have you heard what the other persons have said about the laws and customs of the Basutos? – Yes, I have, and I agree with them that what they have said is correct as to the laws and customs of the Basutos.

135. What is your opinion about cattle marriages? – I quite agree with what Philemon Moeletsi has said. I do not see anything wrong in cattle marriages. The marriage ceremony in church is the witness of the marriage in the Christian marriage, and the cattle is the witness of the marriage in the case of heathens.

136. Don't you think cattle marriages retard the progress and civilization of the people? – I do not think so.

137. Don't you think polygamy does so? – I do not see that it does.

138. Major *Bell*.] Can you tell the Commission what the advantages are in polygamy? – I do not care about answering that question.

139. What is your opinion about the custom known as Lebollo? – I have already publicly protested against it, and some years ago I wrote a letter against it and had it printed. I was encouraged and supported by Letsie and a great many other people, both heathens and Christians, as I consider that this custom keeps the people more in darkness and heathenism than any other. Other darkneses exist, but this is nigh itself.

140. Can you tell the Commission why the heathen have not had their marriages registered? – I have always heard the people approve of the regulation, but I cannot say why the people have not registered their marriages.

141. Have you any remarks to make on the regulations? – I have not; they are good. The only addition I would suggest would be a law with regard to divorce in those cases where the marriage is made without cattle. At present there is no law on the subject.

The Chief *Mateose Ramohaŋi* examined.

142. *Chairman.*] Have you lived all your life in Basutoland? – Yes.

143. What is your position in the tribe? – I am the chief of the Bataung Baramakheli branch of the Basutos.

144. Have you heard the evidence given by the other persons about the laws and customs of the Basutos? – Yes, I have, and they have described them correctly.

145. What is your opinion about cattle marriages? – As I am a Christian, I cannot approve of them, and I agree with the Church laws on the subject.

146. What do you say about polygamy? – I think it is very wrong and I don't approve of it. I think both polygamy and cattle marriages prevent the spread of Christianity.

147. What do you say about Lebollo? – I consider it a very useless practice. Even those who practise it do not attach any importance to it; whereas in the cases of cattle marriages and polygamy a great deal of importance is attached to them.

148. Which of the heathen customs do you consider the most degrading to the people? – I consider the Lebollo to be so; and I am of opinion that it could be easily abolished.

149. Have you any remarks to make about the regulations? – I have not.

I certify the above to be a true copy of minutes as taken down by me.

CHARLES D. GRIFFITH,

Chairman of Special Commission.

Chief Magistrate's Office,
Maseru, Feb. 3, 1873.

The Honourable the Colonial Secretary, Cape Town.

SIR, - With reference to my letter No. 4. of 30th December, 1872, I have now the honour of further enclosing the within letter and supplementary paper from Mr. J. Austen, Resident Magistrate of Cornet Spruit District, in connection with the proceedings of the late Special Commission at this place on the native laws and customs of the Basutos.

I have, &c.,

CHARLES D. GRIFFITH,
Chief Magistrate of Basutoland.

Resident Magistrate's Office,
District Cornet Spruit, Dec. 31, 1872.

CHARLES D. GRIFFITH, Esq., Chairman of Commission of Inquiry upon Basuto Laws and Customs, Maseru.

SIR, - I have the honour to return the report of the Commission of Inquiry upon Basuto Laws and Customs, of which I generally approve.

I have made one addition under the head of "Trading Regulations," by adding a clause for regulating the trade in gunpowder and firearms for the consideration of the Government.

The natives have shown an increased desire to purchase firearms, and many who have gone for labour to the Diamond-fields have returned with guns. It is, therefore, worthy the consideration of Government whether this branch of trade shall be restricted here to the loss of the revenue or not, when firearms can be so easily procured in other quarters.

I have also drawn up a paper containing my own views on native customs, and have taken the liberty to make some suggestions, which I beg to submit for the consideration of Government, founded upon my experience amongst all classes of natives on the frontier for the last thirty years.

I have ventured this course, as I consider the introduction of Responsible Government a very important era in the history of the Colony, and think that much will be expected from the report of the present Commission of Inquiry to enable the new Ministry to strike out a judicious line of policy for the future good government of the natives under British rule.

The paper in question I beg respectfully to submit as an appendix, irrespective of any views or opinions that may be held to the contrary by other members of the Commission, and to be considered as a contribution of evidence of my own, and for which I may be held solely responsible, should they dissent from the views I have expressed therein.

I have, &c.,

JNO. AUSTEN.

*Supplementary Paper put in by Mr. Austen Senior Magistrate in Basutoland
(District Cornet Spruit).*

I entirely concur with my fellow-commissioners in the general opinion expressed in the report on the laws and customs of Basutoland, and as to the practical results which have been achieved within the short period that they have been in operation. But beg respectfully to submit the following observations for its consideration and that of His Excellency the Governor.

1. I have been now employed nineteen years in the Border Department, and had been ten years in a missionary capacity, also on a border station, and have been brought in contact with every class of frontier native, and consequently have had an opportunity of making myself acquainted with their country and customs.

2. I have had intercourse with most of the oldest pioneer missionaries, Revs. W. Shaw, Shrewsbury, Boyse, Shepstone, Ayliff, Dugmore, and Warner, of the Wesleyan mission; and Bonatz and others of the Moravian mission, and several of the Berlin missionaries, Possalt, Dohne, and others; and from all that I have been able to gather from the experience and opinions of those faithful men, I never heard one of them urge that the natives should be civilized by a positive Act of the legislature, but that it was a work of time. That when they learnt from their missionaries what their duty is as Christians, and from the Government officers the justice and superiority of its laws, as a natural result they would abandon their own customs and adopt those of a superior race.

3. On the expression of opinion given by Mr. Bowker before the select committee of the Honourable House of Assembly, and by the late Mr. Warner, and many worthy and zealous missionaries in Basutoland, that girls among the Kafirs are looked upon in the light of pounds, shillings, and pence, or so many head of cattle, is a modern idea, and was never held by those old pioneers I have quoted, and I am quite sure that those of them who are still living will bear me out in what I have stated. Cattle marriages were never considered by the primitive Kafir or Mosuto or Zulu as a sale, but as a marriage money dowry, very much as marriage settlements are still made in England amongst the higher classes, with this difference that the dowry is given to the parents of the girl for their trouble and pains in supporting and bringing her up, and by which act the girl and her children have an hereditary claim upon her parents, and each member of her family, for protection and support in case she be ill-used, or be left a widow; and finally as a ratification of the marriage contract by which the husband's conjugal rights are secured to him in lieu of our marriage ceremony and registration, &c., &c.

4. I have known, and still know, many well-conducted Kafir, Fingo, and Basuto women, who have grown up in the old Colony on mission stations, and the largest frontier towns, were married there under the Christian rites, some would insist upon their suitors giving their parents a marriage dowry. Others after having lived with their husbands many years, and borne them several children, have at last broke up rough, and have threatened to leave their husbands, take their children with them to their parents, saying: "You have given nothing for me to my parents; what are they eating? What, am I and my children to work for you for nothing!" The

man has been compelled to drive out fifteen or twenty head of cattle and take them to his wife's parents or friends to stop her from leaving his house! And others I have heard openly stated that they believe themselves to be good Christians (and I have known nothing to the contrary), that cattle have been given for them, and that they would not give their daughter in marriage to a man without cattle – that the only objection they would consider valid is in case of a non-professor of Christianity – that the giving of cattle is no purchase, nor is it slavery, but the securing to the husband his conjugal rites, and they see no harm in it.

5. That this ancient custom amongst Kafirs and Basutos has very much degenerated and abused there is no doubt but it must be borne in mind at the same time that when a Kafir or Mosuto speaks to another about marrying a wife, he will never say I am going to barter or buy a wife, but I am going to “qasha” the “beletta,” betroth a wife, or “lobola” take “bohadi,” meaning the betrothal or engagement cattle. The terms barter or buy are European or Colonial terms that have been adopted since the natives have come in contact with the white men, and have become Kafirized. Much has been said and written of late about the degradation of females, and the forced marriages that have taken place, and the hard lives that Kafir and Basuto women lead. This I am willing to admit was the case before these people came in contact with white men or British protection; but the times are very much changed, and will continue to progress.

6. In the Native Reserve I found a good deal of this nineteen years ago. Many girls asked me for protection, and I stopped many forced marriages. Women who had been ill-treated by their husbands, and his relatives, also came for protection. The result is that at present a forced marriage is seldom or ever attempted, nor do you hear of many cases of flagrant degradation or oppression of women. Men of all tribes and classes are found with their hoes side by side with their wives cultivating or weeding the fields; others purchase ploughs; and you see dozens of ploughs going at a time in neighbouring fields, and only a few women and young girls picking up their own private or fancy gardens, over which the husband or parents exercise no control.

7. It was remarkable to me, as one of the present Commission, that during the whole of the evidence before the Commission no reference was made by the chiefs who gave evidence to chiefs prior to Moshesh's advent, such as Mokhachane, Lebe, and others. Motloni, Monaheng, and other great hereditary chiefs as to what ancient Basuto customs were in those days. From the evidence it is made to appear that the Basuto nation were not in existence, or otherwise that they had no established laws prior to Moshesh; that they sprung into existence, and were made a nation by Moshesh, who gave them a code.

8. Those who know anything really about the Basutos before Moshesh came in contact with missionaries and traders and British Governors, know that their customs were closely assimilated to those of the Batlokoas, Zulus, Abambo, and all the Kafir tribes stretching from the north down to the frontier coast; and that the large dowries that are said to be their ancient custom was introduced by Moshesh, after the people had grown rich in cattle, and that it was not so in earlier days; precisely so as with the Zulus of Natal.

1. The checks I would beg respectfully to suggest for consideration of the Government generally would be, first- as at Natal - fix a scale of dowry to apply to all natives under British supervision.

2. In cases where excessive dowries are demanded and no reasonable objection found to exist against the marriage, then let the parties have an appeal to the magistrate, who shall be empowered, after due consideration, to grant permission for the marriage to take place.

3. Under the head of "Schools," let a law be made making it imperative that all boys and girls residing within a reasonable distance from the magistracy, up to the time of puberty, shall, for a certain time during each year attend school, and in default the magistrate, on the complaint of the teacher, be empowered to send a policeman to collect and bring absentees to school; and should it be found after due warning given to the parents upon third or fourth offences, to impose a small fine, to form a school fund, and the establishment of Government schools (undenominational) at each of the seats of magistracy, and, if possible, to combine the following handicrafts with them:-

1. Wagonmakers
2. Blacksmiths
3. Carpenters
4. Masons
5. Shoemakers
6. Tailors

7. There ought also to be a training school for young girls, to teach them, housekeeping, by which wives would be trained for such men as the more civilized sons of chiefs, who have been sent down to Cape Town and other places. On their return from school, wives are generally chosen by their parents from amongst their most inveterate heathen relatives, who not being proper companions and checks upon them, they gradually deteriorate and ultimately fall back into heathenism.

4. The inferiority of the female sex is found to exist among all heathen or uncivilized nations. It is therefore education alone that can place the woman in her proper position as the wife and companion of her husband and mother of their children, and centre of domestic comfort and happiness.

1. In reading over the report of the present Commission, it strikes me that when speaking of the "inadvisability of not dealing roughly with native customs," the districts of Leribe, Berea, and Cornet Spruit are specially named, from which wording of the report, when read at a distance, would lead to the conclusion that opposition would only be met with in the three named districts.

2. If I put a correct interpretation upon this point, then I beg most respectfully to differ with my brother Commissioners, for whose opinions I have the most profound respect; and in support of what I have just stated, will give the following instances:-

1. The day I left the Commission, on my way home, in passing a number of Basutos weeding in their gardens, not more than two miles from the Morija mission, a very influential headman, and I believe son-in-

law to the chief Letsie, ran up to me, asked the news, &c. I said a few words to him, and said he would hear all the news from the chief. He expressed his general dissatisfaction at the action of those chiefs who had asked for the Commission and revision of the laws; that they were perfectly satisfied with the present laws so far as they comprehended them; but were opposed to any interference with their own hereditary customs. That if changes were forced upon them very many would leave the country.

2. A few miles on I met another party – one whose name appears in the application – a very intelligent and influential man, and relative of the Chief Letsie. This man had the most confused ideas as to the object of the inquiry, and intimated that when they got up that petition at Thaba Bosigo, the object they had in view was quite different; that they did not wish to have their own customs put down by force or roughly interfered with. Their complaint was that the names of their chiefs did not appear in the laws and regulations.

3. It must have occurred to every member of the Commission during the whole of the investigation, that the inquiry was generally distasteful, from the fact of so much hesitancy and want of clearness with which answers to questions put by the Commission were given. And what were the remarks of the Chief Letsie? How often did he not taunt the Commission with want of fairness to him, – that he was “patisad,” startled, and put down, and not treated with proper consideration? He studiously avoided any reference to the meeting at Thaba Bosigo, where the petition to Parliament was got up and signed, and it was with some difficulty that the Commission could keep his confidence.

4. Shortly after my return from the Commission, the Chief Moorosi paid a visit to this office, and, amongst other things, asked for the news of the Commission. I referred him to the Chief Letsie and the petition of Thaba Bosigo, and the names of the chiefs who had signed, showing that it was an inquiry not emanating from the Government, but from the Basuto chiefs themselves, who had asked for it. The old chief replied that he was quite sure that the chiefs who had signed the petition did not know its real object; had they done so they would never have put their hands to the paper, as it was in direct variance with the views and interests of every real Mosuto; that it is clear that the petition was the exponent of the missionary view and not of the social and political feelings of the Basuto nation, who are not opposed to civilization and general advancement under the new *régime*, but that it was never contemplated by the late Moshesh, when he surrendered himself, people, and country to the British Government, that a surrender of all their social laws and customs were included.

5. That they have no objection to send their children to school to be taught. They were alive to the advantages arising from education, but they were opposed to have Christianity forced upon them; that those who became convinced by precept and example would denounce all the customs of their forefathers, and others were to be allowed to remain heathens, &c., &c.

Lastly, it may be considered a great piece of presumption on my part to put my own views and opinions so prominently forward in opposition to those already expressed by gentlemen of the standing in the public

confidence as the late Mr. Warner, Commandant Bowker, the respected French Evangelical Protestant missionaries in Basutoland, and Mr. Orpen M.L.A. But as a faithful witness I dare not reserve an open and honest expression of my convictions, leaving them to the Government to take them for what they are worth.

1. The late Mr. Warner was one of my oldest and best friends; his opinions have my greatest respect and consideration. But those who knew him best, knew him to be a man of crochets, and peculiar views of his own on many subjects.

2. Commandant Bowker qualified his remarks by saying – “my experience has been amongst the broken tribes.” It is therefore not difficult for me to differ with him in opinion.

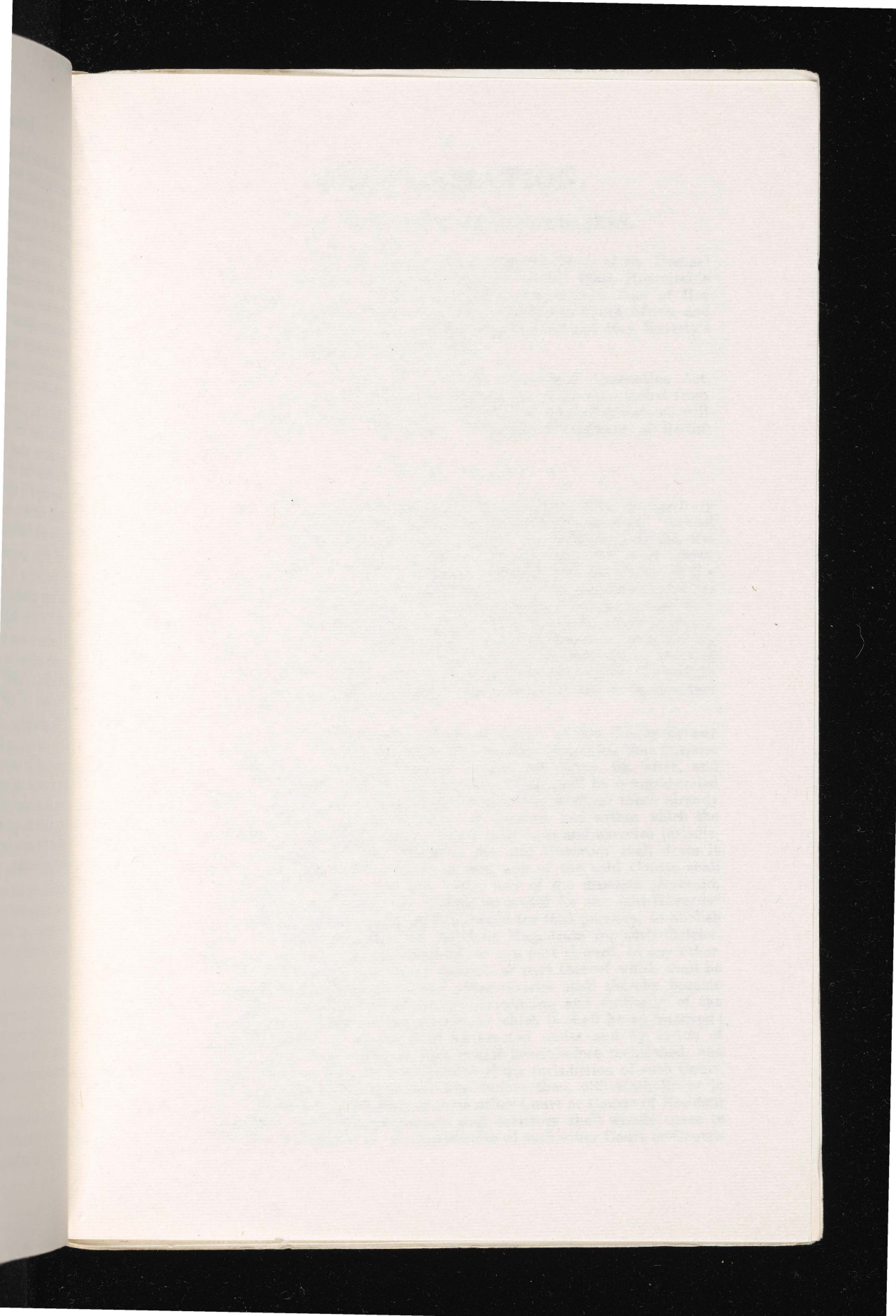
3. Most of the present missionaries in Kaffraria and Basutoland have not imbibed their first impressions from crude heathens, but from christianized nations, whose views are generally warped, and, in most cases, given to favour that of their missionary. Those who know natives best have been taught by experience that their statements are to be taken with the utmost caution upon every subject, and that nothing but personal intercourse and observation with both parties are safe.

4. Mr. Orpen deserves credit for the interest he has taken and feels in the advancement of the Basutos; his experience and conclusions are derived from missionaries and their station-people and his own farm-servants, who speak to please, and must therefore be taken with caution.

5. I venture to hope that the views and opinions I have expressed will be generally endorsed by the Honourable the present Secretary for Native Affairs (unless his views have become altered), the Civil Commissioner of Wodehouse, and the Secretary for Native Affairs of Natal.

6. The introduction of Responsible Government is a very important era in the history of the Colony, and especially as regards the future good government of the natives of all classes. And as there was a considerable degree of reserve and apparent want of familiar interchange of opinion between the members of the Commission upon the various topics under inquiry, I have thought it my duty (with due respect for their opinions) to submit this paper for their favourable consideration, and of His Excellency the Governor.

JNO. AUSTEN.



PROCLAMATION

BY THE PRESIDENT OF THE UNITED STATES

That the President of the United States has the honor to announce to the people of the United States that he has the pleasure to appoint to the office of Secretary of the Interior the Honorable G. K. Warren, of the State of New York, to hold office until the 1st day of January, 1877.

Witness my hand and the seal of the Office of the President of the United States at Washington, this 10th day of July, 1876.

JOHN W. FOSTER

By Proclamation No. 11, of the 10th day of July, 1876, the President of the United States has the honor to announce to the people of the United States that he has the pleasure to appoint to the office of Secretary of the Interior the Honorable G. K. Warren, of the State of New York, to hold office until the 1st day of January, 1877.

Witness my hand and the seal of the Office of the President of the United States at Washington, this 10th day of July, 1876.

PROCLAMATION.

BY HIS EXCELLENCY SIR HENRY BARKLY,

Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, Knight Commander of the Most Honourable Order of the Bath, Governor and Commander-in-Chief of Her Majesty's Colony of the Cape of Good Hope in South Africa, and of the Territories and Dependencies thereof; and Her Majesty's High Commissioner, &c., &c., &c.

BY virtue of the 2nd section of the Basutoland Annexation Act, No. 12 of 1871, I do hereby proclaim and make known that from and after the 1st July, 1877, the following amended Regulations will be established and in force for the future Government of British Basutoland:—

COURTS OF LAW.

1. By Proclamation No. 51 of the 24th of August, 1871, the territory of British Basutoland has been divided into four districts, termed respectively the District of Thaba Bosigo, the District of Berea, the District of Leribe, and the District of Cornetspruit; and these districts are now subject to the jurisdiction and authority of the several Courts of Resident Magistrates. And it shall be lawful for the Governor of the Colony of the Cape of Good Hope, by any Proclamation to be by him from time to time issued for that purpose, to erect, constitute, and establish Courts of Resident Magistrates, to be held for and within such other districts respectively, as the said Governor shall think fit, which Courts shall respectively be holden before such persons as shall respectively be appointed to be Resident Magistrates of such districts.

2. It shall also be lawful for the Governor of this Colony by any Proclamation to be by him from time to time issued for that purpose as occasion may seem to him to require, to define, fix, alter, and appoint the local limits of the territory which shall be comprehended and included in any of the aforesaid districts, whether those already created, or such as shall hereafter be created, and within which the Resident Magistrate for such district shall have and exercise jurisdiction and authority; and whenever the said Governor shall deem it to be inexpedient or unnecessary that any of the said Courts shall continue to be holden for and within any of the districts aforesaid, then and in every such case it shall be lawful for the said Governor by any Proclamation to be by him issued for that purpose, to abolish such Court and the Office of Resident Magistrate for such district, and also to annex any such district, or any part thereof, to any other district or districts; and every district, or part thereof which shall be so annexed as aforesaid to any other district shall thereby become and be within and subject to the jurisdiction and authority of the Resident Magistrate of the district to which it shall be so annexed; and whenever any Court shall be erected under and by virtue of the power and authority in that behalf hereinbefore mentioned, and the district assigned for the exercise of the jurisdiction of such Court shall comprise territory which was, before then, either wholly or in part, within the jurisdiction of some other Court or Courts of Resident Magistrate, then and thereupon such territory shall wholly cease to be within, or subject to, the jurisdiction of such other Court or Courts.

3. Every person who shall hereafter be appointed the Resident Magistrate for any district shall be so appointed by the Governor; and it shall be lawful for the said Governor when and so often as by reason of the death, sickness, absence, or other incapacity of any Resident Magistrate, it shall appear to him to be necessary or expedient so to do, to appoint some fit and proper person to act as and in the stead of such Resident Magistrate within his district; and all deeds, acts, matters, and things which shall be done and performed by or before any person so appointed to act as aforesaid, and under and by virtue of such, his appointment shall be as legal, valid, and effectual to all intents and purposes, as if the same had been done and performed by or before the Resident Magistrate instead of whom such person shall have been appointed to act: Provided, always, that no Resident Magistrate of any district existing at the time of the commencing and taking effect of these regulations, and of which the local limits shall not be changed by any such Proclamation as in the 2nd section mentioned, need be appointed anew, but shall, without any fresh appointment, be deemed and taken to be the Resident Magistrate of such district.

4. Every person who shall in manner aforesaid be appointed to be a Resident Magistrate, or to act as or in the stead of any Resident Magistrate, shall, before exercising any of the functions of his office, take the oath of allegiance and the oath of office set forth in the schedule hereunto annexed marked A, before the Chief Magistrate or any other Justice of the Peace, who are hereby empowered and required to administer the same; and every such person shall, as soon as he shall have duly taken the oaths aforesaid, cause such oaths to be recorded, and shall subscribe the same in the record book of the proceedings of his Court, or of the Court in which he shall so have been appointed to act, as the case may be.

5. The Courts of the Resident Magistrates aforesaid shall be respectively Courts of Record, and the pleadings and the proceedings of the said Courts shall be carried on, and the sentences, decrees, judgments, and orders thereof pronounced and declared in open Court and not otherwise; and the several pleadings and proceedings of the said Court shall be in the English language; and in all criminal cases the witnesses for and against accused person or persons shall deliver their evidence *viva voce*, and in open Court.

6. When any crime or offence shall have been committed on the boundary of any two districts, or within the distance of two miles from any such boundary, or shall be begun in one district and completed in another, every such crime or offence may be dealt with, inquired of, tried, determined, and punished in either of the said districts in the same manner as if it had been actually and wholly committed therein.

7. The person and property of every individual will be equally respected and protected by the law.

8. The taking of the life of any person, wilfully and maliciously, will be held to be murder, and will be punishable by the death of the offender. The taking of the life of any person wrongfully and unlawfully without malice will be held to be culpable homicide, and will be punishable by fine, or imprisonment, or both.

9. Except by order of a Magistrate, and in due course of law, the taking of the property of any person against his will and fraudulently will be held to be theft, and will be punishable in like manner as if committed in any other part of the Colony.

10. Rape shall be punishable with whipping, not exceeding fifty lashes, or confiscation of all or any of the property of the offender, or by imprisonment with or without any of the foregoing punishments combined.

11. All other offences against the person or property shall be punishable by the confiscation of the property of the offender, or any part thereof at the discretion of the Court, or by imprisonment, or by whipping, not exceeding thirty-six lashes, and it shall be lawful to inflict any two or more of such punishments.

12. All acts which by the laws of the said Colony are held to be offences against the person or property shall, due allowance being made for the circumstances of the country, be held to be offences in Basutoland, and be punishable accordingly, *i.e.*, as they would be if committed in any other part of the said Colony; and all persons tried for any offence may be convicted of any minor or other offence, in like manner as if the trial took place in any other part of the said Colony.

13. Any person forcibly compelling any other person to submit against his or her will to circumcision (or as it is called in Sesuto "lebollo"), or so compelling any person, male or female to submit to any other like act or ceremony, shall be held to be guilty of assault and shall be subject to the like punishment as he or she would be for the offence of assault in any other part of the Colony.

14. Any person aiding or procuring the circumcision of any youth or girl without the consent of his or her parent, or other person having the lawful custody of such youth or girl, shall be guilty of an assault, and shall be punishable as in the last preceding regulation mentioned.

15. Every person practising or pretending to practise witchcraft, or other acts commonly regarded as such, shall be held to be a rogue, and shall be punishable by fine, confiscation of property, or imprisonment, or by all or any of such punishments.

16. Any person falsely accusing another of practising witchcraft, or other such acts, shall be held to be a rogue, and shall be punishable as in the last preceding regulation provided.

17. Any person domiciled in Basutoland, who shall commit any offence in any place out of Basutoland, may be dealt with in Basutoland in like manner as if such offence had been committed in Basutoland, and any person who shall commit any theft out of Basutoland, and who shall bring the stolen property or any part thereof into Basutoland, may be dealt with in like manner as if such theft had been committed in Basutoland.

18. Persons sentenced to imprisonment with or without hard labour shall be confined in some gaol or lock-up in Basutoland, or in such other place in the Colony as the Governor shall see fit to direct.

19. No female shall be sentenced to receive a whipping.

20. The trial of every person charged with any offence shall be held by and before the Magistrate of the district in which it was committed (except as hereinafter provided, and except as to cases falling within the 17th regulation, which may be tried in any district of Basutoland), and every trial shall be held with open doors; and the charge, the evidence given for and against such person, the finding, and the sentence, shall be duly recorded by the Magistrate by or before whom the case is heard, and a return of all cases so adjudicated upon shall be sent, at the end of each month, by the Magistrate to the Chief Magistrate of Basutoland.

21. The trial of every person charged with a crime or offence punishable by death shall be held before any three of the Magistrates aforesaid, the senior to preside, and at such time and place as shall be appointed by the Governor's Agent, and of which time and place due notice shall be given. If the Magistrates shall differ with respect to the guilt of the person accused, he shall be discharged, and no sentence of death shall be carried into effect except upon the warrant of the Governor, to whom all the proceedings in the case shall be (as soon as may be) forwarded.

22. In case of a sentence of confiscation of property, the property confiscated shall belong to Her Majesty, to be applied for the purposes of the Government, provided, however, that it shall be lawful for the Magistrate pronouncing any sentence of confiscation of property, to adjudge that a portion of the property confiscated or the proceeds thereof shall be given to the party injured or aggrieved by the accused and a portion, or the proceeds thereof, to the person on whose information the accused has been brought to justice, or who has materially assisted in bringing the accused to justice.

23. It shall be lawful for the Magistrate, by and before whom any case is tried, if he shall see fit to do so, to order any offender to be punished by whipping, not exceeding thirty-six lashes, in addition to any other punishment, not being the punishment of death.

24. The Magistrates shall have jurisdiction in all civil suits and proceedings over and against any person residing within their respective districts, and shall be bound, in respect of all such suits and proceedings tried or heard before them, to record the subject of the suit or proceeding, the evidence taken, and the judgment. All such suits and proceedings shall be dealt with according to the law in force, at the time, in the Colony of the Cape of Good Hope, except where all the parties to the suit or proceeding are what are commonly called Natives, in which case it may be dealt with according to Native law, and in case of there being any conflict of law, by reason of the parties being Natives subject to different laws, the suit or proceeding shall be dealt with according to the law applicable to the defendant. And the proceedings shall, as near as may be, and so far as circumstances will permit, be the same as those in the Courts of Resident Magistrates in the Cape Colony.

25. No decision of any dispute by any person other than a Resident Magistrate, or Assistant Magistrate, shall be held to debar either of the parties from instituting a suit in respect of the same dispute before the Resident Magistrate or Assistant Magistrate of the district, provided that nothing herein contained shall apply to arbitration.

26. All summonses issued by a Magistrate or clerk of the court, in any civil suit or proceeding, may be served by the parties to the same, and it shall be lawful for the Magistrate to award reasonable costs for such service against the opposite party, if unsuccessful. If the parties are unwilling to serve any summons, the same may be served by any person who may be appointed for the purpose by the Magistrate issuing the same, and the person applying for the same shall, in such case, deposit the costs thereof with the Magistrate, the question as to who is ultimately to bear such costs being left for the decision of the Magistrate after the case is disposed of.

27. It shall be lawful for any person, being a party to any civil suit, action, or proceeding depending in the Court of any Magistrate in Basutoland, to appeal against any final judgment, decree, or

sentence of such Court, or against any rule or order made by such Court in any such civil suit, action, or proceeding, having the effect of a final or definite sentence to the Chief Magistrate of Basutoland, and an absolution from the instance shall for such purpose be deemed a final judgment or sentence, provided that if he intend to appeal, he shall, within fourteen days after the decision complained of, make known his intention to the clerk of the said Court, who shall note his appeal, with the date thereof, in the proper column of the Record Book, and the party appealing shall then deposit and lodge with the clerk of the said Court the sum of £1 sterling as security for the costs of conducting the said appeal, and the said clerk shall make a note of the said deposit in the last column of the Record Book, immediately after the note of the said appeal, and thereupon the said appeal shall be allowed, but not otherwise. The deposit aforesaid shall be forfeited to the Crown if the appeal shall be decided by the Court of Appeal to be frivolous or vexatious, or if it shall be abandoned or not duly prosecuted; but if otherwise, it shall be returned to the appellants. And in any case where an appeal may have been duly noted, the Magistrate shall direct either that the judgment, sentence, decree, rule, or order appealed from shall be carried into execution, or that the execution thereof shall be suspended, pending the said appeal, as to the Magistrate may appear most consistent with justice. And in case the Magistrate shall direct any such judgment, decree, rule, order, or sentence to be carried into execution, the person in whose favour the same shall have been given shall, before the execution thereof enter into good and sufficient security, to be approved of by the Magistrate, for the due performance of such judgment or order, as the Court of Appeal shall think fit to make thereupon; and in case the Magistrate shall direct the execution of any such judgment, decree, rule, order, or sentence to be suspended pending such appeal, such Magistrate shall and may, whenever it shall appear to him necessary and consistent with justice so to do, require the person against whom such judgment, decree, rule, order or sentence shall have been given, before any order for the suspension of any such execution is made, to enter into good and sufficient security to be approved of by such Magistrate for the due performance of such judgment or order as the Court of Appeal shall think fit to make thereupon. And the Court of Appeal may reverse or alter the judgment of the Magistrate, as justice shall require; and in case the record of the Magistrate shall not appear to furnish sufficient evidence or information for the due determination of the case, may remit the said record to the Magistrate, with instructions in regard to the taking or setting out of further evidence or information; or may order the parties, or either of them, to produce, at some convenient time, to the Court of Appeal such further proof as may seem necessary or desirable; or such Court may take such other course as may lead to the just, speedy, and, as much as may be, inexpensive settlement of the case, making such order in regard to costs as justice shall require.

28. When, and as often as any Court of Resident Magistrate shall sentence any person, upon conviction, to be imprisoned with or without hard labour for any period not exceeding one month or to pay any fine not exceeding £5, or to the confiscation of property amounting in value to any sum not exceeding £5, or to receive any number of lashes or cuts, the Magistrate pronouncing such sentence shall forward to the Chief Magistrate of Basutoland for his consideration as soon as practicable, and not later than fourteen days next after the determination of the case, the record of the proceedings of the case,

together with such remarks, if any, as he may desire to append; and in case the said proceedings shall appear to such Chief Magistrate to be in accordance with real and substantial justice, he shall endorse his certificate to that effect upon the said proceedings, and the said proceedings shall then be returned to the Magistrate by whom the same shall have been transmitted; and any Magistrate forwarding any such record shall inform the person convicted of the day upon which such record shall be forwarded, and it shall be lawful for any person duly acting for such convicted person to peruse, and, if need be, take a copy of such record, whilst in the possession of the Chief Magistrate, and it shall be lawful for such person, should he think fit, acting as aforesaid, to set down the case contained in such record for argument before the Chief Magistrate. If, upon considering the proceedings aforesaid, it shall appear to the Chief Magistrate that the same are not in accordance with real and substantial justice, or that doubt exists whether or not they are in such accordance, as shall be lawful for the said Chief Magistrate to alter or reverse the sentence of the Magistrate, and to set aside or correct the said proceedings, and, when it shall appear necessary or proper to do so, to remit such case to the said Magistrate, with such instructions relative to the further proceedings to be had in such case, as to the said Chief Magistrate shall seem calculated to promote the ends of real and substantial justice; but the said Chief Magistrate shall have no power to increase any sentence.

29. No civil or criminal case, originating prior to the meeting of Basuto Chiefs and people held by Sir P. E. Wodehouse at the Koro-Koro on the 22nd of February, 1869, shall be entertained by, or before, any Magistrate, unless all parties thereto agree together to refer the case for the decision of such Magistrate.

30. The rules, orders, and regulations respecting the manner and form of proceeding in civil and criminal cases before the Court of the Chief Magistrate and the Courts of the Resident Magistrates respectively in Basutoland shall, *mutatis mutandis*, and as far as the circumstances of the country well admit, be the same as those from time to time in existence as to the Courts of Resident Magistrates in the Cape Colony.

31. A tariff of fees to be taken by the officers of the Court of the Chief Magistrate and of the Resident Magistrates in Basutoland will be framed and drawn up by the Chief Magistrate, and after approval by the Governor and publication in the *Government Gazette*, shall have the force of law in Basutoland, but the same may be from time to time altered as aforesaid.

MARRIAGES.

1. It shall not be lawful for any person to compel any woman to enter into a contract of marriage, or to marry against her wish.

2. Any marriage celebrated by any minister of the Christian religion, according to the rites of the same, or by any civil marriage officer, duly appointed by the Governor to solemnise marriage, shall be taken to be in all respects as valid and binding, and to have the same effect upon the parties to the same, and their issue and property as a marriage contracted under the marriage laws of the Cape Colony.

3. All questions of divorce or separation arising between persons married by a minister of the Christian religion, or by a civil marriage officer as aforesaid, except as hereinafter mentioned, shall be decided according to law then in force in the Cape Colony, and shall be heard and decided before the Chief Magistrate.

4. All questions of divorce which have arisen, or which may arise, in respect of marriages celebrated between Basutos by a minister of the Christian religion, before the publication of the Regulations of Sir P. E. Wodehouse, dated 13th May, 1870, shall be tried and decided according to the laws and customs of the Basutos in force at the time of such celebration, and may be tried summarily before any Court of Resident Magistrates in Basutoland.

5. All other questions (including divorce of parties married according to the laws and customs of the Basutos) which may arise, or have arisen, in respect of marriages celebrated between Basutos before publication of the aforesaid Regulations of Sir P. E. Wodehouse, shall be tried and decided before any Resident Magistrate, in conformity with the Basuto laws and customs in force at the time of such celebration.

6. No registration of a marriage solemnised by a minister of religion, or a marriage officer as aforesaid, other than that prescribed by the 21st section of the Marriage Ordinance of the Cape Colony, of September, 1838, or the Marriage Act, 1860, of the said Colony, shall be necessary; and all marriages registered as aforesaid, since the 13th of May, 1870, shall be considered as legally registered.

7. It shall be optional for any persons, hereafter married according to the Basuto custom, to register the first of the said marriages in the office of the Resident Magistrate for the district in which such marriage was celebrated, or in the office of the Resident Magistrate in which the parties reside, and also, at the same time, to register the dowry or cattle (if any) given in consideration of any such marriage; provided that such registration shall take place within one month after the celebration of such marriage.

8. A registration fee of two shillings and sixpence shall be payable for the purposes of Government for the registration of all marriages, whether celebrated according to the rites of the Christian religion, before a marriage officer as aforesaid, or according to the custom of the Basutos.

9. All divorces between parties married according to Basuto custom since the publication of the said Regulation of 1870, may be tried and decided in the Court of any Resident Magistrate.

10. In the event of any person, after having contracted a marriage, according to the rites of the Christian religion, or before a marriage officer as aforesaid, taking another wife according to the custom of the Basutos, he shall be considered to be guilty of Bigamy, and, after due proof and conviction thereof, shall be liable to the pains and penalties attached to that crime by the law of the Cape Colony.

11. In the event of the death of any person, married by a minister of the Christian religion, or by a marriage officer as aforesaid, or of a person who has died leaving a will or other testamentary writing, made according to the Cape law, all questions with regard to the registration of the will (if any), and the administration of the estate and property of such person, shall be regulated by the provisions of Ordinance No. 104, or any other law of the Cape Colony having reference to the disposition of property, in so far as it shall be deemed applicable to the circumstances of the country, the name of the Chief Magistrate of Basutoland being considered as inserted wherever the name of the Master of the Supreme Court appears in the said Ordinance or in any such law.

12. If any person shall die not having availed himself or herself of the preceding section by making a will, all questions in respect to

inheritance or guardianship shall be decided, in the case of Europeans according to the law of the Cape Colony, and in the case of Basutos or other natives according to Basuto law and custom.

13. If the husband of any woman, who has been married according to Basuto custom, shall die, she shall be at liberty to contract a second marriage at her discretion, but in the event of her so remarrying, the custody ("khodiso") or guardianship ("bodisa") of her children (if any) of the former marriage shall be regulated according to Basuto law and custom.

14. In the event of a man and his wife married according to Basuto custom, both becoming converted to Christianity, and being remarried by a minister of the Christian religion, or by a marriage officer as aforesaid, then in that case the issue (if any) of their previous Basuto marriage, as well as the issue (if any) of the Christian or civil marriage, shall come under the operation of the law of the Cape Colony, as provided by the 2nd section of this part of those Regulations, provided, however, that nothing herein contained shall affect the rights (if any) of any children of either of the said spouses born of a marriage contracted according to Basuto law and custom.

AGE OF MAJORITY.

All persons male or female, when they shall attain, or who have attained the full age of twenty-one years, shall be deemed to have attained the legal age of majority.

LANDS, HUT TAX, POUNDS, PASSES, &c.

1. The right of allotting the land for the occupation of the several members of the tribe is vested in the Governor.
2. For the purpose of this allotment the territory will be subdivided into such and so many districts or wards as may from time to time be found necessary.
3. This sub-division will be made by the Governor's Agent, subject to the approval of the Governor, and one of the chiefs or headmen will be nominated to the superintendence of each sub-division.
4. Each such chief or headman will, as soon as practicable, submit to the Governor's Agent a list of the members of the tribe resident within, or belonging to his sub-division, to whom he proposes that a tract of land should be allotted for occupation; and such allotment subject to such alteration and amendment as may be found necessary by the said Agent, shall be made accordingly, and lists of all such allotments shall be thereupon made, and kept of record in the said Agent's office.
5. No addition or alteration of such list shall be made except with the approval of the said Agent after communication with the chief or headman of the sub-division to which the same shall relate.
6. Every person, to whom any such allotment shall be made, shall be bound to pay to the said Agent, or to the Magistrate of the district, for the purposes of the Government of Basutoland, a hut tax at the rate of ten shillings per annum for every hut that may be erected for the occupation of a family on such land.
7. In computing the liability of any person for payment of the hut tax, it shall be held that payment at the rate of ten shillings per annum shall become due for each wife of any person residing on any

such lot, whether a separate hut shall be erected for the use of each such wife or not. The tax shall be also payable for every hut occupied by any unmarried man.

8. The hut tax hereby declared to be payable shall become due on the 1st day of July in each year. But it shall be lawful for the Governor, from time to time, to fix some other day on which the same shall become payable; provided that not more than one such payment shall at any time be declared to be payable within twelve months.

9. The hut tax hereby declared to be payable, may be paid by the person liable for the same, either in money or in grain, or in stock, at the option of such person. The Governor's Agent shall, in each year, fix the value at which such grain or stock shall be received.

10. It shall be the duty of the chief or headman of the sub-division to assist in the collection of the tax due from the persons residing in his sub-division, and to report to the Resident Magistrate of the district all defaulters.

11. A receipt of the amount of tax paid by each person, signed by the Resident Magistrate of the district, or by some person thereto authorized by him, shall be delivered to the person paying.

12. In the event of a failure or refusal on the part of any person liable to hut tax to pay the same, the amount due may be recovered under a judgment of the Court of the Magistrate of the district, by sale of so much of the property of such person as may be sufficient to cover the amount due with any expenses that may have been incurred for the recovery of the same; and it shall be lawful for the Magistrate of the district, if he shall think fit so to do, and if he cannot obtain payment of the tax, to eject the person in default from the occupation of the land, or to sentence the same person to imprisonment for any period not exceeding two months.

13. Every resident of Basutoland leaving Basutoland shall be provided with a pass signed by a Resident Magistrate or by his order; and any such person, leaving Basutoland without such a pass shall, upon conviction, be liable to a fine not exceeding twenty shillings; and all persons entering Basutoland must be reported to the Resident Magistrate of the district by the chief or headman of the village in which they are, within ten days after their arrival: the report must include the number and description of persons, and an account of any property they may have brought with them. Any chief or headman of a village neglecting to comply with this Regulation shall be liable, on conviction, to a fine not exceeding £5 sterling.

14. The Governor's Agent is empowered to establish one or more pound or pounds in each district, and to appoint some fit and proper person to be poundmaster or keeper of every such pound; and it shall be competent for the Governor's Agent to dismiss any such poundmaster or keeper for misconduct. The Governor's Agent shall frame a Code of Regulations for the management of such pounds and publish the same for general information in the English, Dutch, and Sesuto languages.

TRADING REGULATIONS.

1. No person shall be allowed to trade in Basutoland unless he shall first have obtained a licence for that purpose from the Governor's Agent, or from a Magistrate in Basutoland.

2. Every such licence will remain in force for the term stated therein, not exceeding in any case the term of twelve months from the date thereof.

3. Such licence may authorize the holder, either to move from place to place for the purpose of his trade, or to establish some fixed trading station at a place to be approved by the Governor's Agent.

4. The Governor's Agent will be at liberty, if he shall consider it necessary so to do, to refuse to issue any such licence on the original application, or to refuse to issue a fresh licence on the expiration of any preceding licence.

5. In any case in which the renewal of the licence shall be refused as aforesaid, and in any case in which a licence shall be forfeited, as hereinafter provided, the holder of such previous or forfeited licences shall be permitted, at any time within three months (unless the same shall have become liable to seizure) to remove the materials of any building which he may have erected at his trading station, together with any movable property belonging to him; and failing such removal within the time appointed, such materials and property may be removed and sold by order of the Governor's Agent, and the proceeds of such sale shall be applied, as far as may be necessary, to the payment of all expenses incurred, and the balance shall be paid to the owner of the same. No claim to compensation for loss incurred by such removal will be admitted. But such trader will be allowed to continue trading to the end of the three months, on paying in advance at the beginning of each of these months, the sum of £1 sterling.

6. For the purpose hereof the term "trading" shall be taken to include exchange or barter.

7. The sale of wine, beer, and spirituous liquors is strictly prohibited. Any person convicted thereof shall be liable to a penalty not exceeding the sum of twenty pounds sterling, and in the case of a second or subsequent conviction, shall be liable to a penalty not exceeding the sum of forty pounds sterling, and in the case of a holder of any trading licence, he shall be liable, in addition to the forfeiture of his licence, at the discretion of the Governor's Agent; and all wine, beer, or spirituous liquors that may be found in the possession of the person convicted shall be forfeited. No wine, beer, or spirituous liquors shall be brought into Basutoland without the permission in writing of the Governor's Agent, or of the Resident Magistrate of the district first had and obtained, and if any person shall bring any wine, beer, or spirituous liquor into Basutoland without having previously obtained the permission in writing above mentioned, such wine, beer, and spirituous liquors shall be forfeited, and every such person shall for every such offence be liable to a penalty not exceeding twenty pounds sterling.

8. Any person trading without a licence as mentioned in the 1st regulation, or after the expiration of the term for which it shall have been granted, or in violation of the conditions thereof, or after the same shall have been forfeited, shall be liable, on conviction, to a penalty not exceeding ten pounds sterling.

9. It shall be lawful for any police officer, or other person authorized thereto by the Governor's Agent, or by a Magistrate at any time to demand the production, by any person trading, of his licence, and any such person refusing or failing to produce the same, will be liable on conviction to a penalty not exceeding ten pounds.

10. Any trading station, or premises, or wagon, or other vehicle used for the purposes of trade shall at all times be liable to the examination of any person thereto authorized in writing by the Governor's Agent, or by a Magistrate; and the owner or person in charge

of any such station, premises, wagon or vehicle, who shall obstruct such examination shall be liable, on conviction, to a penalty not exceeding ten pounds.

11. The amount payable for a trading licence shall be ten pounds for one year. All licences shall expire on the 31st December of each year. A licence taken out before the 30th June in any year shall be paid for at the full rate of an annual licence, but if taken out after the 30th June then only five pounds will be charged. All licences shall be paid for in full at the time of issue.

12. Any wagon, or conveyance being the property of, or employed in the service of a trader holding a licence, will be allowed to pass freely between his residence, and the boundaries of Basotuland, by any of the regular wagon roads.

13. A hawker's or travelling trader's licence, without any vehicle or with only one vehicle, shall be paid for at the rate of one pound per month or fraction of a month, for every vehicle exceeding one an additional sum of one pound shall be paid.

14. All persons entering Basotuland with wagons for the purpose of purchasing corn from the licenced traders will obtain the necessary permits from the several Magistrates, or from the officers in charge of police stations, and on their return will produce a certificate from the trader of the quantity of corn sold by him; and in the event of the corn in the wagon being found to exceed that stated in the certificate the surplus will be seized and forfeited, and the person in charge of the wagon shall be liable to a penalty of five shillings for each bushel of such surplus, and the wagon and corn may be detained until such penalty be paid.

15. No holder of a trading licence shall be allowed to keep at his trading station more than two hundred animals-(horses, cattle, sheep, goats, and pigs included) whether they be his own property or that of some other person.

16. No transfer of any licence will be valid unless the same be executed in the presence of the Governor's Agent, a Magistrate, or some person thereto authorized by such Agent or Magistrate, nor unless the same be recorded by such Agent, Magistrate, or other person, to whom the sum of two shillings and sixpence will be paid for the purpose of the Government for every such transfer.

17. All Basutos conveying grain of any kind out of the country for sale will be required to take a pass for each vehicle, and for each pack-horse, ox, cow, or bearer employed for that purpose, and the sum of two shillings and sixpence shall be paid for each pass for a vehicle, and threepence for each pack-horse, ox, cow, or bearer. All persons removing grain without such pass shall be liable to a fine not exceeding one pound sterling; and in default of payment, to imprisonment for a period not exceeding one month.

18. No person shall deliver to any other person any gun or pistol, or any lock, stock, barrel, or other part of a gun or pistol, or any percussion caps, or any gunpowder, or cartridges, or any lead, without the written sanction of the Magistrate of the District, under a penalty not exceeding Five Hundred Pounds Sterling, or under pain of imprisonment for any period not exceeding seven years. The Magistrate of the District shall not be bound to assign any reason for refusing to sanction any such delivery.

19. No gunpowder or cartridges, gun, or pistol, or lock, stock, barrel, or any other part of any gun or pistol, and no percussion caps,

shall be brought into Basutoland without the permission in writing of the Resident Magistrate of the district first had and obtained, and if any person shall bring any of the said articles into Basutoland without having previously obtained the permission in writing above mentioned, such article or articles shall be forfeited to Her Majesty the Queen, and such person shall for every such offence be liable to a penalty not exceeding One Hundred Pounds Sterling, or to imprisonment for any period not exceeding two years.

20. Any person applying for any such permission as aforesaid to such Resident Magistrate, shall do so in writing; which writing shall set forth the place to which it is intended to take the articles described in such application; and no such Resident Magistrate shall grant any such permission as aforesaid to any person to bring any of the articles aforesaid into Basutoland until he shall have transmitted such written application with his report thereon, to the Governor's Agent, and shall have received the said Governor's Agent's authority to grant the permission sought.

21. The standard weights and measures from time to time in use in the rest of the Colony of the Cape of Good Hope shall be the standard weights and measures to be used in Basutoland.

22. Any penalties imposed by these regulations may be sued for before any Magistrate in Basutoland, and all such penalties may be recovered by the seizure and sale of any property belonging to the person convicted, and one half of all penalties recovered under these regulations shall in each case be paid to the person on whose information the conviction shall have been obtained, and the balance shall be paid to Her Majesty for the use of the Government of Basutoland.

STAMPS, POSTAGE, &c.

There shall be payable to Her Majesty, in Basutoland, the same duties upon stamps and licences, upon the transfer of immovable property, and upon sales by auction, as may, from time to time, be payable in the rest of the Colony of the Cape of Good Hope.

And the laws, for the time being, of the said Colony relating to posts, post-offices, and postage shall also be in force in Basutoland; but so, however, that postage paid, or a postage stamp of the proper value affixed, in Basutoland, shall cover postage to all parts of the Cape Colony, and beyond, and vice versa.

GENERAL.

In the interpretation of these regulations, unless there be something in the language, subject, or context thereof repugnant to such interpretation, the term "Magistrate" or "Resident Magistrate" shall be taken to include "Assistant Magistrate" and "Assistant Resident Magistrate," and words of the singular number shall include the plural number, and words of the plural number shall include the

singular number; and words of the masculine gender shall include females as well as males; and the term "imprisonment" shall be taken to mean imprisonment, with or without hard labour.

GOD SAVE THE QUEEN!

Given under my hand and the Public Seal of the
Colony of the Cape of Good Hope, this 29th day of March, 1877.

HENRY BARKLY,
Governor.

By command of His Excellency the Governor,

J. C. MOLTENO,
Colonial Secretary.

No. 41.

SCHEDULE A.

Form of the Oath of Allegiance.

I, A.B., do sincerely promise and swear that I will be faithful, and bear true allegiance to Her Majesty Queen Victoria. So help me God!

Form of Oath of Office.

I, A.B., do promise and swear that I will faithfully and diligently execute, to the best of my abilities, the several duties of the office of Resident Magistrate. So help me God!

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The first part of the report is devoted to a general survey of the situation in the country. It is found that the country is in a state of general depression, and that the people are suffering from want and distress. The cause of this is attributed to the war, and the consequent destruction of property and the loss of life.

The second part of the report is devoted to a detailed account of the operations of the various departments of the government. It is found that the operations of these departments are generally well conducted, and that the government is doing its best to maintain order and to promote the welfare of the people.

The third part of the report is devoted to a summary of the principal events of the year. It is found that the year has been a year of general depression, and that the people are suffering from want and distress. The cause of this is attributed to the war, and the consequent destruction of property and the loss of life.

The fourth part of the report is devoted to a summary of the principal events of the year. It is found that the year has been a year of general depression, and that the people are suffering from want and distress. The cause of this is attributed to the war, and the consequent destruction of property and the loss of life.

The fifth part of the report is devoted to a summary of the principal events of the year. It is found that the year has been a year of general depression, and that the people are suffering from want and distress. The cause of this is attributed to the war, and the consequent destruction of property and the loss of life.

The sixth part of the report is devoted to a summary of the principal events of the year. It is found that the year has been a year of general depression, and that the people are suffering from want and distress. The cause of this is attributed to the war, and the consequent destruction of property and the loss of life.

The seventh part of the report is devoted to a summary of the principal events of the year. It is found that the year has been a year of general depression, and that the people are suffering from want and distress. The cause of this is attributed to the war, and the consequent destruction of property and the loss of life.

The eighth part of the report is devoted to a summary of the principal events of the year. It is found that the year has been a year of general depression, and that the people are suffering from want and distress. The cause of this is attributed to the war, and the consequent destruction of property and the loss of life.



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