personal experience with exempted natives. A question such as this: "Do you realise that when you get married, at your death, your estate will be divided equally between your heirs on the one hand and your wife on the other, which means that your wife will be in a better position than your children and that she may get married to another man and so divert your property into another family?" usually evokes the reply, "It is absurd to allow one's property to be taken away by one's widow; it ought to go to one's brothers if there are no children in the family." This is explicable on Native grounds because the ownership of property is kept within the family; it is handed down from generation to generation through the male descendants, and so the grant of half of it to somebody like the widow who is in the last analysis not a member of the family and may alienate it out of the family is regarded as anomalous. On the other hand some Natives who realise the full implications of exemption take it up when they have no children, for the special purpose of diverting their property by right of will and by community of property from their male relatives, especially where the latter have made no contribution to the family estate. The general confusion resulting from this state of affairs can well be imagined.
There was no provision made for the revocation of exemption, and perhaps rightly so, for it involved, as already explained, a change of status in all legal relations and affected for example the property rights of the dependants of the individual concerned. Therefore unless the law authorising the revocation of Letters of Exemption for social and other lapses also made provision for the safeguarding of the accrued or vested rights of his wife and children, if any, it would be inequitable. It would be a case of robbing Peter's dependants to pay Peter (who might gain by a change of status) or nobody at all.

In the Transkeian Territories where Native law was also recognised two types of exemption were given under Act 39 of 1887 which may be called (i) Complete Exemption, and (ii) Partial Exemption. Complete Exemption was given to those Natives who were registered as Parliamentary voters, the qualifications for voters being partly proprietary (owning property worth £75), partly economic (earning £50 per annum), and partly educational (ability to read and write). It gave the registered voter complete exemption from all Native law and from all other laws intended to apply to Natives as Natives, e.g. the Pass Laws. Partial Exemption is given to those Natives who (i) hold a certificate from
the Education Department of qualification as elementary school teachers, (ii) hold an Inspector's Certificate that they have reached the fourth standard or any higher educational standard, or (iii) Graduates or undergraduates of a South African University, or (iv) Ministers of the Gospel duly admitted into any Christian Church. It will be noted that the educational qualifications for partial exemption are much higher than those for complete exemption, but there are no proprietary or economic qualifications for partial exemption. The obvious question this raises is, "What is a better prerequisite for the proper exercise of franchise rights, a high educational standard or a high economic standard?" Comment on that is needless. Partial Exemption entitled its holders to freedom from certain laws intended to apply to Natives as Natives such as the Pass Laws or the Liquor Laws, but in other respects left them subject to Native law as well as to other laws differentially affecting Natives. An important difference between the Natal and the Transkeian systems of exemption is that according to the latter no application is necessary—the mere possession of them automatically confers the type of exemption covered by the qualifications of the individual. Thus the Parliamentary voter has to make proper application
to be registered as a voter, but once his name gets on the voters' list, he gets all the privileges of complete exemption automatically; the partial exemption holder has to bestir himself to get his "fourth standard" or higher educational qualification, but once he makes that hurdle, all the rights of partial exemption follow therefrom. The result of this automatic grant of exemption makes the Pass Law a dead letter in the Cape, for there is no easy way of distinguishing between those who possess the qualifications and those who do not.

In the Transvaal under Proclamation 35 of 1901 and Ordinance 26 or 1902 and in the Orange Free State under ordinance 2 of 1903 exemption was granted from the Pass Laws only to qualified teachers in active service and ministers of religion of recognised Christian Churches. In the Transvaal besides letters of exemption Registration Certificates, renewable annually on the payment of £1 were granted to Native Tradesmen and artisans and others who could not qualify for the other type of exemption.

Under Section 31 of the Native Administration Act 38 of 1927 the exemption laws of the Transvaal, Orange Free State and Natal were repealed and also the Cape Act 39 of
1887 to the extent that it is conflict with the Native Administration Act. For these types of exemption the Act proposes to substitute a system based on the following principles: (i) In any case in which he may deem fit, the Governor-General may grant to any Native a letter of exemption exempting the recipient from such laws, specially affecting Natives, or as much of such laws as may be specified in such letter; Provided that no such exemption shall be granted under this section from any provision of law regulating the ownership of occupation of land, or imposing taxation or controlling the sale, supply, or possession of intoxicating liquor.  
(ii) Any such exemption may be made subject to any condition imposed by the Governor-General and specified in such letter;  
(iii) Any letter of exemption issued under any law included in the Schedule to this Act shall be deemed to have been granted under (i).  
(iv) Any letter of exemption granted under (i) or referred to in (iii) may at any time be cancelled by the Governor-General without assigning any reason.  
(v) The Governor-General may make regulations prescribing the forms of application for letters of exemption, the particulars to be submitted therewith, the method of regis-
The regulation of such letters, the fees which may be imposed, the form of issue of documents certifying the fact of exemption, the requirements as to production of such documents and the penalties for wilfully false statements made in connection with any application for exemption.

No regulations have been drawn up under which it will be possible for Natives to apply for exemption. This delay has given the Native public the impression that the Government does not intend to proceed with this matter, and this, taken together with the repeal of previous exemption laws, is taken as indicative of the Government's policy to deny all Natives the privileges of electing to be subject to the ordinary law of the land. If ever the regulations are drawn up, the exemption granted under them will be only from laws specially affecting Natives (e.g. Pass Laws) to be specified in the letter, and not from the operation of Native Law. In fact the present holders of exemption have been automatically deprived of their rights by subsection 3 of section 1 and they would be hard put to it to prove that they are not subject to Native Law. Such rights as present holders of exemption have can be taken away at the discretion of the Governor-General by the cancellation of their letters. An
example of action taken under this section was the can-
cellation in 1929 of the Exemption of Allison George Cham-
pion, a leader of a Native Industrial and Commercial Work-
ers Union, who was alleged to be promoting ill-feeling
between black and white in Natal.

It appears that the Native public has been done a
great injustice here. This is a good example of that
giving something with one hand and taking away something with
the other which has destroyed or is destroying the Native's
belief in the South African Government's protestations of
just intentions towards him. Exemption from Native law,
on the one hand, and exemption from the Pass Laws or any
other laws specially affecting Natives; on the other ought
not to be confused. One deals with complicated questions
of status and relationships of the individual Native and
the Native society to which he belongs; the other is an
administrative affair concerning the relations between
black and white. The two are in entirely different cate-
gories, and the issues involved in each ought as far as
possible to be settled without reference to the other.

Native Law was evolved under a particular set of circumstances
not obtaining now, and if our law is to follow the facts,
where persons feel on bona fide grounds that they want to
be relieved from its operation, machinery ought to be pro-
vided for this purpose. The same applies to things like
Pass Laws. If the time has come for Natives to be given
exemption from them, let the machinery be provided. But
as the law now stands, in one place it seems to favour ex-
emption from Native law, but in another it proposes to pro-
vide machinery for relief of a totally different kind.

A workable and just arrangement would be that exemption
be granted from Native law on application with the qualifi-
cations similar to the Natal ones; I would support cancele-
lation where the holder does not live up to the standard
presupposed by his exemption, but with a right of appeal
to the Court and also with the proviso that where cancellation
takes place, the accrued and accruing rights of the individ-
ual's dependants be preserved. Furthermore I would suggest
that holding letters of exemption from Native law be disre-
garded for purposes of exemption from Pass Laws, etc., and
that different conditions be set up. The purposes of the
two being different, it ought not to be impossible to draw
up regulations consonant with their differing aims. Just
as we would not think of making the obtaining of a motor
driver's license dependent upon whether he is married by
Christian or civil rights, because the two things belong to different categories, similarly we should separate our statutory laws for regulating the movements or other activities of Natives from their private rights and duties of a purely social nature.

The preamble to this Act declares that the aim is to provide for the better control and management of Native affairs, and in every respect it is an admirable state of legislation. It represents a step in the right direction of the consideration of Native affairs as a matter of national, not merely provincial, importance. Although it introduces a certain uniformity and consistency in it as an experiment, the conclusion which needs just arising in the Native mind when it is proposed to bring a wider or different set of purposes and regulations so provided as the Public Trustee of the Native Administration. (Act 30 of 1897). Although this is "area for unity", as General Smith has described it, has been misguided by those as evidence of a tendency which is calculated to magnify the local differences, it undoubtedly has important consequences dealing with a princi-
CHAPTER V. THE FUTURE OF NATIVE LAW.

1. Criticism of the Native Administration Act. Before dealing with the probable future of Native Law, we must take an occasion to comment on one or two features of the Native Administration Act that we have not referred to before except very indirectly. The preamble to this Act declares that its aim is to provide for the better control and management of Native affairs, and in many respects it is an admirable piece of legislation. It represents a step in the right direction of the consideration of Native Affairs as a matter of national, not merely Provincial importance, in South Africa. It endeavours to remove many of the anomalies hitherto obtaining in Native Administration and to introduce greater uniformity and consistency in it so as to minimise the confusion which needs must arise in the Native mind when it is exposed to such a welter of different purposes and objectives as prevailed hitherto. Centralisation in Native Affairs is the keynote of the policy behind the Native Administration Act 38 of 1927. Although this "craze for uniformity", as General Smuts has described it, has been regarded by some as evidence of a bureaucracy which is calculated to ignore noteworthy local differences, it undoubtedly has its merits for those dealing with a prim-
itive group accustomed to an internal harmony of culture which is unknown in modern society.

Perhaps the most outstanding impression that the Act makes upon one is its bold attempt to rehabilitate Native forms of government and social control. The first Chapter, dealing with Administration, makes the Governor-General of the Union Supreme Chief of all the Natives in the Provinces of Natal, Transvaal, and the Orange Free State with all such rights and powers "as may be from time to time vested in him in respect of the Natives of Natal."* The Cape was excluded from this, probably because of its long tradition of not delegating any authority to Native chiefs there; it is really a territory without any Chiefs, and so it would be a misnomer to talk of a Supreme Chief of a place with no minor chiefs. Below the Supreme come the Chief Native Commissioners who supervise the work of the Native Commissioners, additional, and assistant Native Commissioners. To them are responsible the chiefs of the various tribes, the sections or subdivisions of which are under the control of Headmen who exercise authority over Kraalheads. Thus the hierarchy of the officers of Native Administrative control may be represented as follows:

*See Section 1 of Act 36 of 1927.
Supreme Chief - The Governor-General
Minister of Native Affairs
Chief Native Commissioner
Native Commissioner
Native Chief
Headman
Kraalhead
Inmate of Kraal

It must be noted that as a rule the Governor-General exercises his powers as Supreme Chief through the Minister of Native Affairs.

With regard to the rights and powers of the Supreme Chief the section quoted refers us to the Province of Natal from which the system of recognising the Governor-General as Supreme Chief was derived. These powers were laid down in the Natal Code of Native Law, of 1891, sections 32 and to 42. Under it the Governor exercised all political power over Natives in Natal; he appointed and removed Chiefs; he decided questions of heirship to deceased chiefs; he could divide and amalgamate tribes; he might call out armed men or levies and had power to call upon Natives to supply labour for public purposes; he might remove tribes or portions of tribes or individual Natives; he was the upper
guardian of Native orphans and minors; he could punish political offenders and impose penalties for disobedience to his orders; he might impose a fine upon a Native community as a whole for suppressing evidence of crime; and finally his actions as Supreme Chief were not cognisable by the Courts.*

It is significant to know that these powers were laid down in a Statute passed in 1891 with the Zulu wars against King Cetshwayo still fresh in the minds of the legislators. In fact from the time of the arrival of the Dutch voortrekkers in Natal about 1836 right to the close of the 19th century there was frequent trouble between the Zulu kings and the white rulers of the country.** In order to restore peace and order in the country it was necessary that some strong central authority should be established and so the Governor of the Colony as Supreme Chief was given powers somewhat analogous to those held by a General or a Commander-in-Chief of the army during Martial Law. There was also undoubtedly a feeling that the conspicuous success of the Zulu kings in resisting white forces with their superior

*See Natal Law 19 of 1891, Sections 32 to 42.

**See Gibson, T. Y. "Story of the Zulus" Longmans, Green & Co. 1911.
weapons, arms and methods of fighting was due to their absolute despotism. Thousands of Zulus had fled from the wrath of their kings who spared no cowards in battle to the more benign rule of the white man, and so it did not seem unreasonable to rule the Natives in Natal with the same firmness and despotism, perhaps a little watered down, to which they were accustomed in Zululand. But it was little realised what a price the iron rule of the Zulu kings had been bought and was maintained at, and to take that as a precedent for future government of the Natives was, in the opinion of the writer, rather shortsighted. In any event, whatever may have been expedient in 1891, the wide discretionary powers given to the Governor-General by this Act of 1927 based as they are admittedly on the conceptions of 1891 are not in keeping with modern conditions of Native life. The suspension of the right of appeal to the courts is especially dangerous in a situation such as exists in South Africa where one group is in a position of dominance over another; under such circumstances it seems particularly valuable to have an independent body such as the Supreme Court of South Africa, with its almost unsullied reputation for justice, to act as the custodian of the rights of the subject race.
Another important departure from past practice in Native Affairs sanctioned by the Native Administration Act is the delegation of the legislative powers of Parliament to the Governor-General, i.e. the substitution by legislation by proclamation in Native Affairs of the ordinary method of having legislation introduced into and passed by Parliament after a full discussion there. Again this reform was derived from Native Territory where it had been in operation for many years. I refer to the Transkeian Territories where for nearly 50 years legislation by proclamation was employed in Native Affairs with great success, the argument being that if it was successful in the Transkei, it ought to be so in the rest of the Union.

The advantages of legislation by proclamation are stated as follows by Rogers in his "Native Administration in South Africa": "The key-note of the system is its flexibility and elasticity, attributed which rendered it possible for the Transkeian Administration to adapt its organisation to the ever changing needs of a primitive people rapidly emerging from barbarism and to keep pace with advancing notions... Legislation by proclamation allows too of
emergencies being dealt with as they arise, when prompt
official action may be imperative, and in this connection
it must be borne in mind that large Native areas are pec-
uliarly to circumstances and conditions requiring immediate
action. The system has the supreme advantage of removing
to a great degree questions of Native Administration from
the arena of party politics; and it is particularly suit-
able for application in the Native areas of the Union today
having regard to the varied and diverse conditions obtain-
ing in those areas in different parts of the country. The
different native tribes have not reached the same stage
of civilisation and development. In some parts, e.g. the
Transkei, the people are comparatively advanced and progres-
sive; in others, e.g. Northern Transvaal, they remain
steeped in barbarism. Under the stress and strain of
parliamentary life today, it is not possible for a Legis-
lature, whose attention is, and must of necessity be,
occupied mainly with European affairs, to devote the time
and consideration necessary for investigating the diverse
conditions existing in Native areas in different parts of
the Union with a view to deciding what modification of
any law should be introduced to meet the requirements of
any particular area or community. Parliament cannot do
more than legislate on broad lines for the Native population as a whole and under dictatorial legislation alone is it possible to legislate for the Natives according to their varying needs in their own areas in different parts of the country." The case for legislation by proclamation has been very strongly put, but it is only as a temporary measure that it can be tolerated. It must be realised that its success depends upon "the talents" of the individuals who use it, for after all the Governor-General is in the last analysis the Native Commissioner or the local magistrate on whose recommendations proclamations are devised and promulgated. The success of this method of legislation in the Transkeiian Territories was due not so much to administrative machinery as to the excellence of the administrators who directed its affairs, and to the sympathetic consideration for native affairs which was characteristic of the Cape Parliament in which the Natives were represented. These officers realized that a primitive people had "changing needs," could "emerge from barbarism" and required to keep pace with advancing conditions. But what would happen with officers who believed the contrary that primitive people should not

*Rogers, H. "Native Administration in South Africa" p. 22.
and cannot advance? Today we have a Government that can
by no stretch of imagination be compared with the old Cape
Parliament in its attitude towards Native affairs, whose
outlook towards the Native judging by its legislation is
in the main harsh, negative and restrictive, whose "prompt
official action" is directed far more to dealing with so-
called agitators than to the amelioration of "conditions
requiring immediate action" among law-abiding Natives. The
desire to remove native legislation "from the arena of
party politics" may be only a specious argument for the
prevention of and avoidance of sound criticism by those
who are in a position to offer it, and the desire to have
the power to disregard Native or other opinion in the
matter with impunity. There is nothing to compel the
administration to carry out the intention of the Legislature,
e.g. to make proclamations on all matters referred to it.
It may be one-sided in its making of proclamations. For
example no regulations have been drawn up concerning ex-
emption, although this was authorised as far back as 1927;
presumably because exemption is contrary to the policy of
the Government as conceived by present officials; but in
the meantime the Governor-General has found time for pro-
clamations prohibiting the meeting of Natives in groups of
more than ten in locations, reserves and missions in Natal without the permission of the Chief or Headman, for the cutting of wood in Bechuanaland, the holding of mock-war dances, the entry of tourists into native reserves, etc.

Finally if Parliament, the supreme legislative authority of the country, does not give native affairs the attention which they deserve, it will not have any more time for proclamations on native affairs. Granted that our legislators ought to rely more than they have done in the past on experts conversant with local variations, free discussion of every aspect of a piece of legislation before it becomes law—and Parliament is the place for that par excellence—is absolutely indispensable. It is our South African Parliament, not Native affairs, that needs reform, and the Native question will never get anything more than this tinkering with it by means of proclamation until the Native has adequate representation in the supreme legislative authority. Not until then will it be fully realised that Native Affairs are not a thing apart, but a matter essentially South African in all its ramifications. In the meantime as already

*See Rogers, H. "Native Administration in South Africa" pp 26-29 for examples of recent proclamations.
pointed out, we must support edictal legislation as a temporary measure and hope that it will give us some of the advantages claimed for it. The main objections to it, to summarize them, are (1) that it does not afford the general public any opportunity for consideration and discussion of any measure before it becomes law, (ii) that it invests the Executive Government with autocratic powers which should be exercised by the supreme legislative authority, Parliament, (iii) that it is liable to abuse.

In order to meet these objections the following safeguards have been suggested and adopted with regard to the proclamations of the Supreme Chief:*

(a) the stipulation that proclamations must be published in the Government Gazette in draft form for general information at least one month prior to promulgation;
(b) the necessity for bringing proclamations to the notice of Parliament in the manner prescribed and the provision for the repeal or modification of any proclamation at the instance of Parliament signified by resolution of both Houses;
(c) the power vested in the Native Affairs Commission of recording its dissent from any provision contained in a proc-

*See Rogers, H. op. cit. p. 24.
lamation must be brought to the notice of Parliament.

Thus for example the revised Code of Native Law in Natal was first published in draft form in 1931, when the public was given an opportunity of bringing forward recommendations for its amendment; these, were accepted, were incorporated into the Code which was finally promulgated in amended form in September 1932, so that it may be taken that the measure was given sufficient consideration by everybody entitled to be heard on it. But this does not affect our conviction that legislation by proclamation is wrong in principle.

2. The Future of Native Law. What is likely to be the future of Native Law in South Africa? This is a matter for speculation and it may perhaps be a fruitless academic undertaking to attempt to forecast the development of this one aspect of Native Life; when one does not know what the future place of the Bantu will be in the body politic of South Africa. However, there are several possibilities which we might consider briefly in order to see to what extent they are either probable or desirable.

In the first place one line of development might be the complete disappearance of Native Law and its replacement by means of European law. This state of affairs would not
be deplored by those who contend that the future of the Bantu lies in Western civilisation*, and that the sooner they forget all about their Native customs which do not fit into their present and future background, the better it will be for them. On the other hand there are those who would heave a sigh of bitter regret if Native law were so completely superseded by European law that none but antiquarians could tell that it had ever existed. For them Native Law has a picturesqueness, a simplicity and a unity of design that are supremely attractive and that add to the extraordinary variety of life in South Africa.

In any event if Native law is ultimately going to disappear it will do so either naturally or by force or perhaps both. If its disappearance is left to a natural process of evolution keeping pace with the gradual development of the Bantu in other directions it will cover a long period of time and will perhaps not be accompanied by any regrettable results. On the other hand if its disappearance is going to be encompassed by means of prohibitive legislation, it might cause dislocation and too rapid a disintegration in Native society, with perhaps disastrous

results at least in the beginning. The Bantu are at present in a state of transition; they are being called upon by stress of circumstances social, economic and otherwise to make their adjustment at a remarkable speed. The Native farmer who previously was content with raising just sufficient food for the consumption of his own family is now being called upon to study and practise modern methods of marketing his goods; the borrower who in a more leisurely generation could delegate the payment of his matrimonial and other debts to an unwitting posterity must now learn that debts are prescribable and that time is of the essence of some contracts; the education of his children which was left to Nature and to incidental attention and participation in the ordinary activities of life now costs him a trip to the industrial centres with their restless activity. Is this rate of development conducive to depth and height as well as breadth in his adjustment? All the machinery we have built up for giving effect to Native law and custom will probably help to steady the process of its eventual disappearance, and so will our policy of segregation; but South Africa is a land of rapid changes and so there is no knowing what will happen. Our present system of recognition
does contemplate the use of force with regard to the dis-
appearance of certain features of Native law. Where these
features are found to be repugnant to natural justice or
public policy as conceived by our courts they are peremp-
torily prohibited, e.g. the "smelling out" and execution
of wizards, the sacrifice of human beings on ceremonial
occasions, the putting to death of those who failed to
carry out an order of a chief, etc. But in other respects
it is held that just because a native custom does not tally
with the procedure and the customs established by peoples
in a more advanced state of civilisation does not make it
necessarily incompatible with natural justice or public
policy.

Secondly instead of disappearing completely Native
law might develop as a separate substantive system of
jurisprudence. We have seen that according to the present
organisation of our Native judicial administration, the
Native Court system has been carefully separated, so far as
civil law is concerned, from the European system, so that
the latter has no authority over the former. Therefore
the Native Appeal Courts are free to develop Native law
according to its own genius and the spirit of the people
who evolved it. There is no judicial machinery for check-
ing the activities of the Native Appeal Court save where it overrules its own decisions when the Appellate Division may be called in to settle the question. The power given to the Native Appeal Court to develop Native Law is similar to that given to the Appellate Division to develop Roman-Dutch Law. The Appellate Division is, of course, free to incorporate into South African Law anything of value which it finds in other systems of law such as the English and the American; but all additions are made to harmonise with the spirit of Roman-Dutch Law whose authorities are invariably followed if their dicta are not inconsistent with South African Statute law. Thus consideration is not required to make contracts binding in South Africa, though it is in English law, nor is any alimony payable to a wife after a divorce in South Africa although it may be in some countries; such rights do not exist in Roman-Dutch Law and if they are to be created, that must be done by the Legislature. Thus it seems as if Native Law ought to have a bright future ahead of it as a separate system of law.

But there are certain practical difficulties which almost destroy the value of the analogy of the development of Roman-Dutch law as far as Native law is concerned. Roman-

Dutch law was the only legal system fully recognised as the
common law of the country and it developed with the country. It probably would not have had much chance if it had to contest its place with English law, i.e. if English law was used in cases between English people in South Africa, and Roman-Dutch law between Dutch litigants, with perhaps the right of exemption one way or the other. One of them would have had to give way. Similarly if Native law had to be developed in an independent Native State, it might have a chance of thriving as a separate system. But where it has to contend with a system which has the prestige value of being followed by the dominant group in the country, its chances of survival on the theory of parallel development are very slender. The very fact that Section II of the Administration Act does not make it obligatory for Native Commissioners' Courts to apply Native Law in civil disputes between Natives but gives him a discretion to apply European law will militate against its separate development. Native law is under this section apparently recognised only temporarily to be used where there is no remedy in European law in the case in point. There is no intention to develop Native law as such.

Another difficulty in the way of parallel development is the fact that all mixed cases, i.e. cases between Natives
and non-Natives must be tried by European law. According to the present state of things in South Africa, cases between Native and non-Native are bound to increase as their social, economic, political and other contacts increase. This will mean an increase in European law cases, thus Roman-Dutch law will develop at the expense of Native law.

Moreover Native law was evolved under a totally different set of circumstances from those applying today. As time passes it will become more and more irrelevant to the types of disputes that will occur between Native and Native. Instead of disputes about lobola, we shall find an increase in cases about trade transactions, the validity and the interpretation of wills, etc., matters which are not the result of nor peculiar to customs followed by Natives. When this happens there will be a greater and greater clamour on the part of Natives and others for the abolition of Native law as a separate system of law. Even now in questions of customs followed by Natives, cases between educated and uneducated, between members of different tribes are bound to cause difficulty. Applying the law of the place of residence of the defendant is suggested as a way out, section II (2) of Act 38 of 1927, but the uned-
ucated may clamour for Native law to be applied, while the educated may feel he is being done an injustice under those circumstances. This is probably the reason why the Law as it stands today makes no provision for exemption from Native law, because it is realised that so many Natives would seek relief from its operation that it would have to be abolished in a short time.

A third possible line of development for Native law is its gradual assimilation to European law so that it will contribute its quota to what will ultimately be called not Roman-Dutch law nor Native law but South African Law. The Native law principle of collective responsibility has already contributed the Spoor Law to our Stock-Theft legislation,* and the Native law interrogation of the husband or the wife in criminal charges against either of the spouses is now part of our law of procedure and evidence. It is perhaps not unreasonable to suppose that the Native law principle of primogeniture might be taken over at least in the devolution of land by will instead of the Roman-Dutch law system of equal division among the heirs. It might contribute to the development of a less technical

*See Sections 200 and 263 of Cape Act 24 of 1886 (Transkei Penal Code).
and less expensive system of land transfer and registration or to the strengthening of family life in South Africa. But if this is to be achieved then the Appellate Division, the highest court of the land must be given power to review the decisions of the Native Appeal Court. The Appellate Division has on its bench presumably the best legal minds in South Africa and from their experience and knowledge of jurisprudence they ought to be in the best position to bring about this assimilation of Native law to Roman-Dutch law by judicial interpretation till it gives rise to as South African Law with which all the sections of the population shall be equally at home. When that has happened, time will perhaps be found for the compilation of a Handbook of South African Law for general use in all the courts of the land and incorporating the fundamental principles of Institutes of all South African law.

Conclusion.

For the writer the last is the only line of development which Native Law seems to have open to it. However, one might feel on sentimental and other grounds that Native Law should be allowed to develop freely as a substantive system of jurisprudence, it seems idle to permit race consciousness and sympathy for a noble experiment to make one
ignore the fact that it is fighting a losing battle. Perhaps one might have had better reason for greater success if this process of avowed rehabilitation of native customs and institutions for the purpose of founding Native progress securely upon them had been begun with the earnestness that characterises present efforts in this direction in an earlier day and generation. If South Africa had given heed earlier to the recommendations of Commission after Commission on Native affairs, especially those of the great Native Affairs Commission of 1903, the story of Native development might have been different. Even if the situation is not now definitely beyond repair, the most one can say for Native Law and Custom is that it will undoubtedly leave its impression on South African Law as shown above. If it is going to do this, it will have to be more diligently studied so that its fundamental principles may be brought to light and laid under contribution.
Abbreviations.

A.D.    Appellate Division of the Supreme Court of South Afr.
B.B.    British Bechuanaland
C.M.Cir. Chief Magistrate’s Circular—Transkeian Territories
E.D.C.  Eastern Districts Court of the Supreme Court
N.A.C.  Native Appeal Court of the Transkeian Territories
N.A.C.(C & O) Native Appeal Court (Cape and Orange Free State)
N.A.C.(N & T) Native Appeal Court (Natal and Transvaal)
N.H.C.  Native High Court (of Natal)
T.P.D.  Transvaal Provincial Division of the Supreme Court
T.S.    Transvaal Supreme Court (of Pre-Union days)
Statutes.

Cape Statutes bearing on Native Law especially
(a) the Native Succession Act 18 of 1864
(b) the Transkeian Penal Code Act 24 of 1886
(c) the Hofmeyr Act 30 of 1887

Natal Statutes bearing on Native Law especially
(a) the Natal Code of Native Law 19 of 1891
(b) Act 40 of 1898
(c) Act 26 of 1865

Transvaal Statutes bearing on Native Law especially
(a) Law 4 of 1885
(b) Law 3 of 1897
(c) Law 35 of 1901
(d) Law 25 of 1902

Orange Free State Statutes bearing on Native Law especially
(a) Law 9 of 1898
(b) Law 26 of 1899
(c) Law 2 of 1903

Union Statutes, Bills, Proclamations, etc., on Native Law especially
(a) the Native Disputes Bill of 1912
(b) the Native Administration Bill of 1917
(c) the Native Lands' Act 27 of 1913
(d) the Native Administration Act 33 of 1927 as amended in 1929
(e) the Regulations drawn up under Act 33 of 1927
(f) the Revised Natal Code of Native Law of 1932
(g) Proclamations 142 of 1910 and 145 of 1923
Law Reports.

Reports of the Native Appeal Court of the Transkei up to 1927
Reports of the Native High Court of Natal up to 1927
Reports of the Native Appeal Court (Natal and Transvaal) 1929-31
Reports of the Native Appeal Court (Cape and Free State) 1929-31
Reports of leading cases on Native Law in the decisions of the different divisions of the Supreme Court of South Africa.

Commissions.

Report of the Natal Native Commission 1881
Report of the Cape Native Laws and Customs Commission 1883
Report of the Native Economic Commission 1930-32
Official Yearbooks of the Union of South Africa

Magazines dealing with African Culture


Bantu Studies: published by the University of the Witwatersrand, Johannesburg

Publications of the South African Association for the Advancement of Science, Section B dealing with Social Anthropology.

Reports of the South African Institute of Race Relations, Johannesburg

Books.


Blaine, H. Native Courts Practice. Juta. Cape Town. 1931


Goodhart, A.L.: *Essays in Jurisprudence*. Cambridge University. 1931

Harries, S.: *Bapedi Laws and Customs*. Hortors, Johannesburg. 1929

Hartland, E.S.: *Primitive Law*. Methuen. London. 1924


Holland, T.E.: *Jurisprudence*. Oxford. 1924


Rogers, H.: *Native Administration in South Africa*. Johannesburg. 1933

Salmond, J.: *Jurisprudence*

Seymour, W.M.: *Native Law and Custom*. Juta. Cape Town. 1911

Soga, J.H.: *Amakosa Life and Customs*. Lovedale. 1931


Stow, G.W.: *The Native Races of South Africa*. London. 1905


