

NOTES OF PROCEEDINGS AT CHIEF'S KGOTLA, SEROWE,ON 4th SEPTEMBER, 1935.

Present: Capt. G. E. Nettelton, Resident Magistrate.
W. R. McIntosh, Esq., Clerk.
Interpreter Mogodi.

Headman S. G. Seretse, representing the
Acting Chief Tshekedi.

S.G. SERETSE:

I have called this meeting as I have before in connection with what the Chief was required for when some delegates were sent to Pretoria. These delegates will tell you, and if the Magistrate has anything to tell you he will also tell you.

MATHIBA:

We arrived at Pretoria at the call of the High Commissioner. Although there was a lot said, there is one principal thing. The High Commissioner said that there were laws which had been made and promulgated on the 4th January 1935: today it was eight months since promulgation; and that during that time the law had not been carried out, and that decisions were being based on the old law and not the new. His Excellency said this was wrong and that he should punish us with the penalties provided, namely £50 fine. He said that he would not impose the fine now for what had taken place in the past, but that he could not protect us from further breaches. His Excellency said that he wanted to know why the law was not been acted upon, and he asked Chief Bathoen to reply. The Chief said that this was a difficult law to him, and the High Commissioner asked him to explain his difficulties. The Chief Bathoen said that he was not able to choose people to rule with him because he would be subjected to criticism in his choice, but he had nevertheless submitted 93 names to the Magistrate. In many instances, the Chief said,
customs.../

customs are the same and the Bangwaketsi custom of junior, senior and Chief's kgotlas agrees with ours. The High Commissioner to provide for appeals to the Chief's kgotla.

His Excellency said that within four weeks Chief Bathoen should start ruling in accordance with the new law, and when he heard that this was being done he would regularise their past omissions.

In the first place the Chiefs Bathoen and Tshekedi discussed the law and agreed to this law, and afterwards you wrote a petition in which you said you did not wish this law. This was said afterwards and after you had agreed to the law.

The High Commissioner expressed his regrets about Tshekedi's illness and hoped that God would soon heal him. We were asked to tell the Chief that he should also start in cooperation with the Magistrate; the names of the people who must function should be prepared. This was just what I grasped.

INKOBELE:

Mathiba has said what I heard. The words to Chief Bathoen also referred to the Bamangwato. I understood the words of His Excellency when he said that we must be guided by these new laws.

SEITSHIRO:

Mathiba's words are correct, namely, that we should act according to these new laws. The High Commissioner asked Bathoen if he was going to rule according to the new law. He said he was unable to say "refuse", but that he was going to consult the tribe; the tribe would refuse because they had refused to be nominated. His Excellency said that in that event it would be proved that the Chief was not a strong Chief. We were told that

we.../

we must go according to the new laws. The words spoken to Bathoen apply to us, and even if the Chief was sick his deputy should act with the Magistrate.

Mathiba explained that there were four principal kgotlas in Serowe, representing the outlying districts. If we are unable to settle a matter in our kgotla we go to a higher kgotla, and then to the Chief's kgotla which is composed of the four kgotlas.

MAGISTRATE:

I greet Headman Seretse and the Bamangwato. I am sorry that Chief Tshekedi is not here today. You have looked to him to lead you and you will miss him. I have known the Bamangwato and Chief for eight years now and during that time I have been a friend of the Chief and tribe. What you have heard is a fair account of the meeting. The attitude of the High Commissioner on these Proclamations is unmistakable. He called the Chief and Chief's representatives to give them instructions and to ask them for an explanation. I will tell you what he said. He said:

"I have called you here to explain to me why the Proclamations have not been enforced. I do not propose to listen to any further argument. I merely want an explanation of your conduct. The time for discussion is past. I will recapitulate the stages by which the Proclamations came into force. It was not hasty legislation - it began five years ago when the Acting Chief Tshekedi was in London. He saw Lord Passfield and he was informed of the intention to take measures to put legal procedure in the Tribes on a definite well-defined and legal basis. Since then the position has been under constant examination, and Sir Herbert Stanley prepared drafts and they were translated into Setsoana. Last year Sir Herbert Stanley had a conference at Cape Town with Chiefs Tshekedi and Bathoen, and very full discussion ensued. Tshekedi submitted a Memorandum of observations and Bathoen submitted views which were most carefully considered by Sir Herbert Stanley before he submitted his drafts to London.

"Sir Herbert's last act was to sign the Proclamations on the 4th January 1935. The Proclamations were then submitted to the King for his signification of approval.

Subsequently a Petition to the King was submitted by Tshekedi and to the Secretary of State by Bathoen. The reply of the King has been received and it is intimated that His Majesty had

approved.../

"approved of the Proclamations and could not accept the Petition. All that side of the question has now been disposed of, but I would add that if the Proclamations need amendment it will be considered. The only way we can arrive at the actual amendments necessary is by actual practice.

I have summoned you here today to explain why the Proclamations have not been enforced. The explanation is all the more necessary because in other Reserves the Proclamations are working. I have one more thing to say. I do not feel sure that you understand how very serious the position is. The Proclamations are the law of the land and have been the law of the land for months. You have failed to comply with the law and have disobeyed the law. I understand you have tried cases under the old procedure which is not law. Not long ago at Gaberones I spoke to the Chiefs and even since then you have given judgments under the old law. I want you to realise how very serious a thing it is to put yourself in opposition to the law. There are penalties but I am not pressing those at the moment. I would rather say this. I heard much of the Chief's loyalty and desire to remain under the British Government. I should be very sorry to doubt the genuineness of that loyalty or the reality of that desire. But what am I to think when I find you neglecting the laws of the land and defying the Administration? The first test of loyalty is a scrupulous regard for law. That is true of all the King's subjects and especially for people who have set an example like Chiefs. I hope you will understand how very grave this is. I will now ask the Chief to explain why he has not enforced the Proclamations.

I would say this to Tshekedi's Headmen. I do not suppose they will wish to speak or say anything regarding the Chief's actions and position, but I am sure they have listened very carefully and I would ask them to report fully to the Chief all that they have heard. They ~~will~~ should tell their Chief that I look to him to proceed on the lines I have explained to Bathoen to enforce the Proclamations. Captain Nettelton has been present. He and the Resident Commissioner fully know my mind on the subject and will be available to advise the Chief as soon as he is well enough to proceed.

Once again I wish to express my regrets at the illness of the Chief. If the Chief's illness is prolonged, which I hope it will not be, I imagine he will want to appoint an Acting Chief to act in his place and if so I shall expect the Acting Chief to proceed on lines I have described. I shall ask Captain Nettelton to keep in close touch and keep me informed of his health."

From this you will see that the attitude of the High Commissioner is unmistakeable. The time to talk is finished. There are the laws. Obey them. He said, "You say you are loyal to the King but you do not obey his laws. How can I put the two things together?" There was no mistake about his attitude.

One important thing the High Commissioner said was that until the law is put into practice it is not possible to tell where it is bad. If you buy a wagon you find out where it is weak by loading it up and going on a journey, and thereafter you strengthen it where it is weak.

(Headman S.G.Seretse asks the Magistrate to read reply sent to the Chief in answer to the Petition to the King - Magistrate reads reply.)

MEETING ADJOURNED UNTIL 3 p.m.

S.G.SERETSE:

I thank the Magistrate for the opportunity he gave us this morning of talking about these laws. This afternoon I bring the reply of the Bamangwato. They say that they have heard the message of the High Commissioner through the delegates. Their reply is still the same in which they say they are unable. They say that these laws are not their laws. That is all they say, and the Magistrate can also hear them.

MAGISTRATE:

Before we go any further I want to say that the High Commissioner will not accept that. He will go forward. I am only telling you, just as he told the Chief Bathoen, and you will see that he will go forward. I am only telling you what I heard him say. It is no use your saying you are unable. I heard that long ago. The High Commissioner asked Bathoen whether he was going back to put these laws into force. There are only two replies, yes or no. I take it your reply is no? Is that the reply, because I have to tell His Excellency?

GOREWANG:

It is just as Seretse has stated. We all being assembled here have nothing but that to say, because this is in connection with what we do not know.

We.../

We are unable. Had it been a law which we knew we would have accepted it long ago.

MOTSHOLAKOETSE:

The Magistrate said that the Chief had agreed to these laws, and I am sorry the Chief is not here so that he could be asked. The Magistrate and Chief are our representatives and as a Tribe we know nothing but look to them to guide us. We are unable to understand.

NONOFHANG:.../

CROWN
STANDARD
AGENTS

C
ST
AG

NONOFHANG:

I greet the Magistrate. We heard the words of the High Commissioner which came to us as a judgment. We natives and Europeans alike accept judgments in the same way; we know that after judgment there is no further argument. The judgment is that we should name people. I say that in this judgment we should be allowed to say something, I mean that the Government should understand that they have passed judgment on the tribe in a matter in which we do not agree. I do not say that we refuse the judgment, but I say that we are being pressed. In London Chief Tshekedi agreed to the proposed law if it was according to our custom. It seemed as if these proclamations would be first asked from us, but today these proclamations have been made law and brought to us without our being consulted, and they are not in accordance with our custom. If the laws had been framed in a similar way to how Professor Schapera is drawing up native law and custom, by consulting many people, we would have agreed.

MAGISTRATE:

We have finished discussing. I want to know whether you are going to carry out the laws or not.

NONOFHANG:

Although we shall be compelled to act in terms of these laws, the Government should be informed that we have never agreed to the laws; we do not like them.

SEITSHIRO.../

SEITSHIRO:

A junior cannot say to a high official that he refuses. I do not refuse to be under the Magistrate, but I refuse to be severely dealt with when I have not committed a crime. Today as there is no Chief, the people are at their homes, and it will be the same when these laws which we do not understand are pressed upon us. I do not refuse. All I can do is to hide myself. We have long been under the Government and we do what it wishes, but this matter is just like dogs chasing after a hare. The Chief has been told to carry out the law. We shall not refuse the Magistrate but we will refuse Tshokedi.

MANYAPHIRI:

The High Commissioner wishes to know whether we agree or refuse. These words are difficult to us. It is difficult for us to say that we shall act, and also to our father to say that we refuse. The only thing is that we are unable to act because it is not in accordance with our custom. In this proclamation it says that the High Commissioner has authority to make a law in consultation with the Chief, but in these proclamations the High Commissioner did not consult us. It says that the Chief should call the people into the kgotla and nominate people: that is not native custom. The Chief is born and made by God. The Government is pressing us, but we cannot act as we do not understand how this law was made. It took the Government five years to make the law, with their clever people, and we illiterate people are being asked to use it in a short time. Instead the Magistrate should give us forty years to think about it and to understand it. We do not refuse but in truth we do not understand it. Even when the Magistrate explains it we do not under-

stand it. We do not know how to act in terms of the Proclamations.

TIHANKANE:

We have heard the words. Before a man is beheaded he is allowed to speak. In regard to these laws, I definitely say that I will refuse although I will be punished. They are not our custom. If these laws were merely brought to me and I were not compelled, I would agree. The Chief has always disagreed, and I do not know when he agreed. It is very hard for one in authority like the Government to punish people like a cat killing a mouse. Our Government says it does not oppress people yet it does. These laws are said to be for the purpose of improving our courts, but the judgment of our court has been upheld in England. I think we shall be compelled by soldiers as before. Personally, I am not afraid to die. I die for the truth when I say that these laws are not in accordance with my custom.

BAISI:

I cannot understand but I will not agree to these laws. I will keep quiet and see what my King will do to me.

INYATSEN:

We are only unable. I am glad we speak in the absence of the Chief, so that it will be known that these are the words of the Bamangwato and not the Chief. We still have our Bamangwato custom but these laws are not similar. We are being compelled to climb a tree by first starting at the top; we are unable.

TSHWENE.../

TSHWENE:

We have a big complaint because our Magistrate has given us something that is severe and we do not agree to. It is not our custom to disagree with the Magistrate; it is the first time. It is on account of our hearts being sore, we are displeased that we cannot follow our law which is a servant of the Government. The Government representative is our master, and we leave it to the Government to decide. The snake has taken out its head, let its body be taken out and let us die. We have not seen our fault but we are surprised at the punishment.

KEBADILE:

These laws are not our custom, as it was promised they would be.

MAGISTRATE:

The laws should be put into effect so that defects can be discovered.

KEBADILE:

We refuse to make a council; it was made by God.

MAGISTRATE:

We want to know what God made.

KEBADILE:

We say that we are unable to nominate people. The Chief's advisers have been created.

MAGISTRATE:

Sir Herbert Stanley said that the Chief's councillors are not persons specially appointed by the Chief, but only persons who are entitled by right of birth. The Proclamation does not interfere with that custom; it requires the Chief to tell the Government who his Councillors are, so that the Government may know their names.

MATHIBA:

When I heard His Excellency he looked very serious, and the Magistrate looked the same. My only word is that a parent is patient with his child; if the child is disobedient the parent shows him and guides him until the child understands what his father wishes him to do. If a parent goes to a child in an angry manner before the child knows what is his intention, he spoils the child. We are sons of the Government and we look to you as our father and protector. At one time we asked that someone should be sent to explain the laws to us, but our father has not taken notice of our request. I heard the Magistrate say that if we did not act the High Commissioner would go forward. I believe it. He is strong, but he will probably kill his own son, yet his son is not refusing: we only say that we are unable. We asked that one who is accustomed to these laws should come. Perhaps when he is amongst us he will explain the laws to us. Although we do not understand, it is not to say we refuse to obey our Government, as of old times. We still refuse as a son to a father. We have no thought of fighting against our father, who is bound to listen to his son and explain to him. Today we are just like women; even if we are killed we would be killed just like women. We ask that the laws should be explained to us, even though our father had determined to act. To ask for an explanation is not a refusal.

PETER SEBINA:

Our words are those spoken by Mathiba. We say we are unable. I wish that in sending your report that you just put in the words of Mathiba. We have

heard.../

heard that His Excellency wishes to know whether we shall act in terms of the Proclamation or not. I say our only words of reply are those of Mathiba.

MAGISTRATE:

I have heard what you say. You are all talking the same way. I do not think we can continue any further. You are quite clear about the High Commissioner's attitude, and I do not think he is going back one yard in what he wants done. The unfortunate thing to my mind is that the Chief is not here today; it is a great pity. The High Commissioner is expecting the Chiefs Bathoen and Tshekedi to name their councillors. He is looking to the Chief now, that is the first step, and the responsibility is on the Chief. That is why I say it is a pity the Chief is not here. The responsibility has been placed on him by the Proclamation.

I shall report to the Resident Commissioner, for the High Commissioner's information, what has taken place, but I think things are very definite. There is no question about anything: the position is clear. That is all I want to say. I thank Seretse and people for the meeting.