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1 Papers relating to German atrocities of breaching
the rules of War in Africa...

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2 Despatch to the Governor of the East Africa
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EUROPEAN WAR.

PAPERS

RELATING TO

GERMAN ATROCITIES, AND BREACHES OF
THE RULES OF WAR, IN AFRICA.

Presented to both Houses of Parliament by Command of His Majesty.

July, 1916.



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FO

SOUTHERN RHODESIA.

CORRESPONDENCE

WITH THE

Anti-Slavery and Aborigines Protection Society

RELATING TO THE

NATIVE RESERVES IN SOUTHERN RHODESIA.

No. 1.

THE ANTI-SLAVERY AND ABORIGINES PROTECTION SOCIETY to
COLONIAL OFFICE.

(Received 17th October, 1918.)

[Answered by No. 2.]

Denison House, Vauxhall Bridge Road, London, S.W.,

SIR,

16th October, 1918.

WE beg leave to submit to you certain considerations affecting native races in South Africa, which, in our opinion, point to a unique opportunity for securing a general native land settlement of both occupation and ownership south of the Zambesi.

1. The Committee of the Society, acting upon legal advice, assumed large responsibilities in the recent reference of the Rhodesian Land Case. This responsibility was undertaken because we were advised that there was a possibility of securing from the Judicial Committee a declaration upon Imperial obligations, towards native races of the British Commonwealth, which might open a new era in the evolution of Colonial development. In this respect the judgment was disappointing, but the general question of title having by the judgment been disposed of, the duty and responsibility of defining these Imperial obligations towards the native races of Southern Rhodesia is now clearly thrown upon the Crown.

2. The second element in the situation is that arising within the Union from the land legislation of General Botha of 1913 and subsequently. His Majesty's Government is aware that the Society had advised the natives of the Union territories not to oppose the principle of legislation which had received Royal sanction, but to work for an extension of the beneficial features of the proposals. The situation to-day, as His Majesty's Government know, is very much that of an *impasse*, and is certainly one of great difficulty.

3. We are of opinion that in securing a settlement of the land question of Southern Rhodesia the opportunity might be taken to adjust this problem with those of the Protectorates and of the Union territories. The amendment of certain parts of the Act of Union appears to have been contemplated by the terms of that Act in the course of next year, and this, coupled with the new situation created by the War, points to the probability of some political reconstruction in South Africa affecting the Protectorates; and it would seem important that any land settlement of Southern Rhodesia should harmonize with that of the Protectorates.

In view of these issues, all of them of large and capital importance, we appeal to His Majesty's Government to seize the opportunity to take steps in conjunction with the Union Government to set up a Commission, or possibly a Select Committee, to consider and report upon the application of broad principles of land settlement amongst the races of Africa south of the Zambesi. We are watching closely the movements of political and industrial thought in these territories, and are firmly convinced that the present time is opportune for securing a settlement satisfactory alike to the white colonists and to the indigenous races.

SOUTHERN RHODESIA.

The more particular object of our appeal with regard to Southern Rhodesia arises from the recent judgment.* The submissions we propose laying before His Majesty's Government are twofold:—(a) Land Tenure; (b) The provision of costs

We submit that whatever the tenure accorded to the natives, it should be a secure one, and should be extended to all indigenous people wherever they have been settled on the "unalienated" land recently in dispute.

If this can be secured to the natives by the Secretary of State, it would follow that the present system of imposing upon certain natives rent as well as direct and indirect administrative taxation would automatically cease.

One effect of the judgment would seem to be that large revenues derived from native sources, certainly not less than £100,000, and placed to the credit of the commercial accounts of the Chartered Company, will be passed over to the administrative account. We submit that these funds would be of incalculable benefit if they could be treated as a Trust Fund, and placed under the control of the Native Commissioners for, amongst other purposes, the improvement of native conditions by providing such badly needed facilities as wells of water for the people, and dipping tanks for their cattle.

The Secretary of State will have observed that whilst vesting in the Crown a legal title to Southern Rhodesian land, the Judicial Committee devoted a considerable portion of their judgment to the native position, and say in one place:—

"Their Lordships think it sufficient to say that, except in so far, if at all, as the rights of the Crown are subject to those of the natives and the Company, nothing has been shown to have happened or to have been done that would prevent the Crown, if and when the Company's tenure of the administration of Southern Rhodesia determines, from disposing of the lands then remaining unalienated by any lawful means and in favour of any persons or purposes, as it may duly be advised."

Our Committee does not wish to press the legal aspect of the question so much as to appeal to His Majesty's Government now that full control rests in the Crown to confer upon the natives of Southern Rhodesia occupation rights both adequate and secure.

We ask that a Delimitation Committee, including a representative from the Native Affairs Department, be appointed under terms of reference, which will include the following:—

1. Final delimitation of reserves as recommended by the 1917 Reserves Commission, subject to the proviso that no native tribe which can show that it has been in beneficial occupation of its lands for a period of twenty years be removed against the wish of the people themselves.
2. The granting of secure occupancy title to natives on "unalienated" land outside the reserves in all cases where they can show beneficial occupancy for a period of twenty years.

We also ask that the natives on the "unalienated" land outside the reserves may be relieved from the obligation of paying both a direct administrative head-tax and a rent for land, and that they may be placed on the same footing as the natives on the reserves who pay a head-tax only for administrative purposes.

Our second appeal to the Secretary of State is that the native costs of the recent reference to the Privy Council should be paid from public funds. We rest this appeal primarily upon the resolution* passed by the Legislative Council which provided that the costs of the inhabitants and people should be defrayed out of revenue. We submit respectfully that to limit the operation of this resolution to the 10,000 white settlers and deny it to the 800,000 native inhabitants would be manifestly unjust, and we venture to support this plea by the following considerations:—

(1) The revenue from which the costs will under this resolution be drawn is provided as to approximately one-half by the native inhabitants, who not only pay an appreciable share of the indirect but the entire direct taxation of the Protectorate.

(2) The Judicial Committee stated:—

"By the disinterested liberality of persons in this country, their lordships had the advantage of hearing the case for the natives, who were themselves incapable of urging, and perhaps unconscious of possessing any case at all. Undoubtedly this enquiry has thereby been rendered more complete. . . ."

(3) The white settlers did not undertake the presentation of the native case, but a reference to the speeches of counsel for the settlers will show how considerable a part of his case Mr. P. O. Lawrence was able to make of the material prepared under instructions of the Society on behalf of the natives

* Resolution appended (see page 4).

(4) We were glad to note that in the speech of the Attorney-General the Crown was also able to make effective use of some of the native material, particularly one of the affidavits, which the representative of our solicitors had been able to secure at considerable expense in South Africa.

(5) The Committee of this Society assumed the responsibility for raising funds to meet the costs, first, because we believed that subject to the Judicial Committee agreeing to allow a statement of the native case, strong grounds could then be advanced for the payment of native costs, and secondly because we believed that an appeal to the native chiefs would result in large funds being provided by the natives. When the representative of our solicitors reached South Africa he was informed by the High Commissioner that, in view of conditions arising out of the War, the Secretary of State could not permit any appeal being made to the chiefs to contribute to the costs of their case. The solicitors and the Society immediately gave instructions to their representative to act in strict accordance with this expression of the wishes of the Secretary of State.

For these reasons we appeal to the Secretary of State to place the coloured inhabitants of Southern Rhodesia upon the same footing as to costs as that of the white inhabitants. The total costs of the case are not yet complete, but we believe that by the exercise of rigid economy they are less than those of either of the other parties to the reference. The costs are estimated to amount to about £7,000, and for the purpose of meeting them, the Society raised loans of slightly over £6,000.

The question of providing the costs for the native case from public funds is of relatively secondary importance, except to our Society and its friends, but to them it is a burden of considerable weight, and we venture to suggest that the expression "inhabitants and people of Southern Rhodesia" in the resolution of the Rhodesian Legislative Council must in fairness be taken to mean inhabitants and people, regardless of colour.

It is suggested that these costs would be a legitimate charge upon the large sums of money derived from native sources and hitherto placed to the commercial credit of the Company, but which, by the happy issue of the judgment, will now be refunded to the administrative accounts.

Failing that method, we would urge that the costs should, with those of the Crown, be borne by the Treasury, because the result of the judgment must mean a considerable ultimate relief to the financial liability of the Crown.

On the major question of land tenure it appears to us that the British Commonwealth has arrived at an epoch in Colonial development pregnant with great issues for good or ill, and that amongst these none is greater than that of a land settlement on just and sound lines between the white and coloured races of Africa south of the Zambesi. We are happy to believe that there are men well-informed and of large experience and responsibility who would willingly devote the time and thought necessary to a comprehensive study of the situation, and to report the result of their deliberations; such a report would probably prove an invaluable contribution to a new era in what promises to become the United States of South Africa.

We are, &c.,
T. F. VICTOR BUXTON,
 President.
HENRY BENTINCK,
 Chairman.
CHARLES ROBERTS,
 Vice-Chairman.
E. W. BROOKS,
 Treasurer.
J. H. OLDHAM,
 Representing the Edinburgh Committee.
HAROLD G. JUDD,
 Representing the Glasgow Committee
TRAVERS BUXTON,
 Secretary.
JOHN H. HARRIS,
 Organizing Secretary.

Annexure to No. 1.

THE FOLLOWING RESOLUTIONS WERE PASSED BY THE LEGISLATIVE COUNCIL OF RHODESIA.

(1) THAT, with reference to the submission of the questions of the ownership of the unalienated land to the Privy Council, the Administration be requested to provide the sum of £5,000 to defray the cost of presenting the case of the inhabitants and people of Rhodesia to the Privy Council.

(2) That the sum so provided be placed at the disposal of a Committee of three or more of their own number, selected by the elected members of the Legislative Council, with authority to the members so elected to expend the amount, or so much thereof as they may deem necessary, in collecting evidence and ensuring the presentation of the claim of the inhabitants and people to the best advantage, including the engagement of such professional assistance as they consider advisable.

No 2.

COLONIAL OFFICE to THE ANTI-SLAVERY AND ABORIGINES PROTECTION SOCIETY.

SIR,

Downing Street, 22nd November, 1918.

I AM directed by Mr. Secretary Long to refer to the letter of the 16th October,* which was left by the deputation from the Anti-Slavery and Aborigines Protection Society which waited upon him on that date in order to submit certain considerations affecting native races in South Africa, and to request you to inform your Committee that a copy of the letter is being sent to the High Commissioner for South Africa.

2. Mr. Long has considered carefully the representations of your Committee as to the possibility of securing a general settlement of the native land question for the whole of Africa south of the Zambesi, but he regrets that he cannot regard as practicable the suggestion that His Majesty's Government and the Union Government should appoint a Commission or Select Committee to report on the matter, whilst as regards the special question of land settlement in Southern Rhodesia the proposals made by your Committee do not appear to be consistent with the principles on which the Native Reserves Commission of 1915 was appointed and carried out its work.

3. Mr. Long has also considered the further representations of your Committee to the effect that the native costs of the recent reference to the Privy Council regarding the ownership of the unalienated lands in Southern Rhodesia should be paid from public funds, but he fears that this is a matter which he must leave to the British South Africa Company and the Legislative Council of Southern Rhodesia.

I am, &c.,

HENRY LAMBERT.

No. 3.

THE ANTI-SLAVERY AND ABORIGINES PROTECTION SOCIETY to COLONIAL OFFICE.

(Received 22nd February, 1919.)

[Answered by No. 4.]

Denison House, Vauxhall Bridge Road,

MY LORD,

London, S.W., 21st February, 1919.

WE have received an earnest appeal from the Rev. Shirley Cripps in Mashonaland to make some further effort to save many thousands of Mashonas from the impending eviction from their ancestral homes.

Our Committee has no reason to question the facts set forth by Mr. Shirley Cripps. This gentleman has been the trusted representative of the Society for the Propagation of the Gospel in the Charter District for seventeen years, and his

devotion to his native flock is well-known. It is only after fruitless appeals to the Chartered Company locally that he, in common with other missionaries and certain settlers, now urges us to bring the facts to the notice of His Majesty's Government and the public of this country.

The immediate danger is with regard to the Sabi Reserve, occupied by nearly 40,000 people. In view of the possibility of a railway being built, a strip twelve miles wide is to be cut off the reserve throughout the district, involving a total of nearly 300,000 acres. The normal "railway strip," where white interests may be affected is, we understand, a width of fifty yards only. Mr. Cripps informs us that the taking of this twelve-mile-wide belt will involve the eviction of a large part of the 40,000 persons, and the destruction of their kraals, ancestral grounds, native farms, and, in fact, the obliteration of a considerable native agricultural industry which has been so patiently built up that the natives in this area are using 1,400 ploughs.

We gather that no immediate steps are contemplated for the construction of a railway, and until there is some probability of the land being really required for that purpose, we cannot see any necessity for commencing the evictions. The removal of natives from a twelve-mile belt seems a needless act of cruelty when it is remembered that a fifty-yard strip only is required when it affects white men. We also observe that the land to which it is proposed to move these thousands of people is only six miles away, and that although they could have settled there at any time within the last hundred years, it has remained uninhabited. This seems to show conclusively that the land from which the people are to be evicted is at least more habitable and fertile than that to which they are to be expelled. The significance of this is obvious.

Our Committee is, of course, aware that this proposed eviction was recommended by the "Reserves Commission," but the circumstances (which have already formed the subject of representations by our Committee) attending the constitution and procedure of that Committee were so notorious that the missionaries and many settlers believed that its recommendations could not be acted upon.

Our correspondents in Southern Rhodesia are urging upon us the importance of early publicity, and therefore, unless any special reasons exist in the opinion of the Secretary of State for delaying publication, we propose sending this appeal to the Press.

We have, &c.
 TRAVERS BUXTON,
 Secretary.
 JOHN H. HARRIS
 Organising Secretary.

No. 4.

COLONIAL OFFICE to THE ANTI-SLAVERY AND ABORIGINES
 PROTECTION SOCIETY.

[Answered by No. 5.]

SIR,

Downing Street, 4th March, 1919.

I AM directed by Lord Milner to acknowledge the receipt of your letter of the 21st February* regarding the position of the native occupants of the Sabi Reserve in Southern Rhodesia.

2. As your Committee will observe from the report of the Southern Rhodesia Native Reserves Commission [Cd. 8674], this reserve was 1,553,536 acres in extent, and was occupied by 37,000 natives, giving an acreage per head of 41.9. It is proposed to reduce the reserve by about 291,800 acres, an area which will clearly contain only a small proportion of the native population.

3. Your Committee are apparently under the impression that it is proposed to evict forthwith the natives at present resident on the belt of land which is to be excluded from the reserve. I am to point out, however, that the Native Reserves Commission (*vide* paragraphs 43 and 44 of the Final Report) contemplated that an ample period of grace should be given to natives living on the surrendered reserves. The present position is that, under the provisions of Article 85 (1) of

the Southern Rhodesia Order in Council of 1898,* no natives can be removed from the reserves except after full inquiry by, or by order of, the Administrator in Executive Council, approved by the High Commissioner. As no Order in Council reconstituting the reserves in accordance with the recommendations of the Commission has yet been made, this safeguard, of course, still holds good; and though no definite statement can be made as to the terms of the proposed Order in Council, regarding which the Secretary of State is still in communication with the High Commissioner, it is contemplated that the Order will provide that for some period of years no native shall be removed from any of the surrendered areas, except in accordance with the provisions of Article 85 (1) of the 1898 Order in Council.

4. The attention of your Committee is specially directed in this connexion to paragraph 59 of the report of the Commission, which made it clear that the proposed reduction of the Sabi Reserve would have been suggested apart from any question of the land being required for the railway. As the Commissioners state, "the country along the line that a railway is likely to take is thinly populated, and it will be no hardship for the kraals affected to move in the course of several years a maximum distance of six miles."

5. I am to add that Lord Milner is not aware of any circumstances connected with the constitution and procedure of the Commission which should give rise to the belief that its recommendations should not be adopted. The Commission was appointed by the High Commissioner for South Africa with the full approval of His Majesty's Government, and was presided over by an officer who has since been promoted to be Governor of Uganda.

6. Lord Milner would be obliged, if your Committee still think it necessary to publish your letter, if this reply could be sent to the Press at the same time

I am, &c.,
HENRY LAMBERT.

No. 5.

THE ANTI-SLAVERY AND ABORIGINES PROTECTION SOCIETY to
COLONIAL OFFICE.

(Received 18th March, 1919.)

[Answered by No. 6.]

Denison House, Vauxhall Bridge Road,

SIR,

London, S.W., 17th March, 1919.

WE beg to acknowledge your letter of 4th instant,† which has been laid before our Committee. We were requested to say that the Committee welcomes the information that it is not proposed to "evict forthwith" the natives from the Sabi Reserve, and that we are informing our correspondents in Rhodesia, but that our Committee deplors the fact that these evictions are apparently only a matter of time.

The members of our Committee were much impressed by the statement that "Lord Milner is not aware of any circumstances connected with the constitution and procedure of the Commission which should give rise to the belief that its recommendations should not be adopted." We beg to submit a few of the principal reasons for this view. Others are the subject of enquiry, and, if substantiated, we propose bringing them to the notice of Lord Milner.

For several years there has been an agitation in Southern Rhodesia for cutting down the native reserves. There is, of course, nothing surprising in this

* NOTE.—Article 85 is as follows:—

"85. (1) No natives shall be removed from any kraal or from any land assigned to them for occupation, except after full inquiry by, and by order of, the Administrator in Executive Council approved by the High Commissioner.

"(2) If any person without such order removes or attempts to remove any native from any kraal or from land unless in execution of the process of a competent court, he shall, in addition to any other proceedings to which he is liable, be guilty of an offence against this Order, and on conviction before the High Court shall be liable to imprisonment, with or without hard labour, for any period not exceeding two years, or to a fine not exceeding one hundred pounds sterling, or to both."

† No. 4.

fact, which is fairly common in Dependency territories. But this agitation for cutting down the reserves has been fostered very largely by the Land Department of the Chartered Company, the head of which is a very efficient and vigorous servant of the Commercial Branch of the Company. This gentleman (Mr. Atherstone) has been recognised locally as the leader of the agitation for cutting down the reserves. The defence of the integrity of the reserve lands has been led by the missionaries, and, to their honour, by the officials of the Native Affairs Department.

In 1914, after discussion with the Company, a Commission of three was agreed upon. Two names were suggested, one an official in Bechuanaland, and another an ex-official of the Company. His Majesty's Government, in agreeing to the appointment of this Commission, pointedly and in writing suggested to the Company the obvious desirability of their nominating as the third member an official of the Native Affairs Department. The Chartered Company completely ignored this suggestion, and made the surprising nomination of Sir F. Newton – surprising because so important and arduous an undertaking as travelling through and investigating the reserves seemed an impossible task to impose upon Sir F. Newton. In a very few weeks what had locally seemed obvious happened; the Commission held its first sitting on June 4th, 1914, and as early as July 14th Sir F. Newton's place was taken by Mr. Atherstone, the head of the Company's land department, and the recognised leader of the movement for cutting down the reserves. When the Company discovered that their original nominee could not serve, another opportunity clearly presented itself to carry out the wishes of His Majesty's Government and allow an official of the Native Affairs Department to act as alternate member. The omission to do this is another striking illustration of the Company's determination to ignore the suggestion of His Majesty's Government. Thenceforward it can hardly be a matter for surprise that, by reason of his position and access to information, the Company's chief land agent became the dominating influence on the Commission.

These are the principal reasons which gave rise to the sanguine belief held locally that a report issued by a Commission so heavily weighted against the natives could hardly be accepted as an impartial document. To our Committee it was no surprise that, when issued, the report recommended the cutting down of the native reserves by 6,000,000 acres and substituting elsewhere 5,000,000 acres, without any knowledge of the number of natives destined for ultimate eviction—a result deplorable for the natives, but, as the late Sir Starr Jameson said, a result “very satisfactory” for the shareholders of the Chartered Company.

Our Committee begs to say that nothing in the White Book shows whether His Majesty's Government approved or regretted the action of the Company in so deliberately ignoring Lord Harcourt's emphatic and obviously equitable suggestion that a representative of the Native Affairs Department should be placed on the Commission, or of the procedure by which the Company's chief land agent became a substitute for Sir F. Newton.

As we understand that evictions, when they do begin, will probably commence with the Sabi Reserve, we would point out that when, in 1910, Mr. Atherstone first urged cutting down this reserve, he appears to have done so upon a miscalculation of fifty per cent. in the density of the population. If he did not, in fact make such an error, then the alternative must be accepted that the population has increased by fifty per cent. in four years, in which case it would seem most undesirable to reduce the reserve.

In view of your communication of 4th instant, we do not propose publishing the correspondence until Lord Milner has had an opportunity of considering the above explanation. But in view of information in our possession, we beg leave to enquire whether we are to understand, as would appear from paragraph 3 of your letter under reply, that the Chartered Company is not yet empowered to allocate to itself portions of the 6,000,000 acres of reserves.

We are, &c
TRAVERS BUXTON,
 Secretary.
JOHN H. HARRIS
 Organising Secretary.

COLONIAL OFFICE to THE ANTI-SLAVERY AND ABORIGINES
PROTECTION SOCIETY.

[Answered by No. 7.]

SIR,

Downing Street, 4th April, 1919.

I AM directed by Lord Milner to acknowledge the receipt of your letter of the 17th March * regarding the Southern Rhodesia Native Reserves Commission.

2. Lord Milner thinks it well to point out that this Commission was appointed on the initiative of His Majesty's Government, and that two out of the three members who composed it were nominated by Lord Harcourt, who was then Secretary of State for the Colonies. As regards the appointment of Mr. Newton (now Sir F. Newton), the British South Africa Company explained, in nominating him, that the appointment would leave the senior officer of the Native Department (i.e., the Chief Native Commissioner), who, if the appointment had been made from the Native Department, would naturally have been selected, free to give evidence before the Commission; a view which was accepted by Lord Harcourt. Subsequently the High Commissioner for South Africa, Lord Gladstone, telegraphed that, as the proceedings of the Commission appeared likely to be protracted and to entail absence in remote districts for long periods, the Administrator of Southern Rhodesia had recommended the appointment of Mr. Atherstone, the Surveyor-General, who had valuable knowledge of the land generally, and especially the reserves, as an alternate member for Sir F. J. Newton. The High Commissioner stated that he proposed to approve the appointment, and his proposal was agreed to by the Secretary of State.

3. As regards your Committee's observations regarding Mr. Atherstone's views as to the reserves, it may be pointed out that, as will be seen from paragraphs 41-42 of the report of the Native Reserves Commission, these views were founded on figures which showed that some of the areas, among them the Sabi Reserve, which had been assigned to the natives, were found on being surveyed to be far in excess of what had been supposed. It is relevant in this connexion to mention that a Conference of Superintendents of Natives in 1909 (which included Mr. H. J. Taylor, Chief Native Commissioner since November, 1913) reported: "In certain localities the reserve land is excessive, while in others it is insufficient for the needs of the particular community, and that condition necessitates a careful readjustment," and further that the Native Reserves Commission (paragraph 36, page 21, of [Cd. 8674]), in referring to the Lands Office of the British South Africa Company, stated that it "had shown itself to be candid and reasonable There has been no attempt to influence the Commission in favour of the white settler as against the native."

4. As regards the last paragraph of your letter, Lord Milner is advised that, pending the issue of the proposed Order in Council referred to in the letter from this Department of the 4th March,† the lands which it is proposed to release from the reserves in accordance with the recommendations of the Commission must still be regarded as native reserves.

5 I am to add that Lord Milner notes with regret that Mr J. H. Harris wrote to the "New Statesman" regarding the Sabi Reserve without waiting for the receipt of a reply from this office to your letter of the 21st February.‡ Lord Milner would be glad if, in the circumstances, your Committee would now publish the complete correspondence.

I am, &c..

HENRY LAMBERT.

* No. 5.

† No. 4.

‡ No. 3.

No. 7.

THE ANTI-SLAVERY AND ABORIGINES PROTECTION SOCIETY to
COLONIAL OFFICE.

(Received 16th April, 1919.)

[Answered by No. 10.]

Denison House, Vauxhall Bridge Road,

London, S.W., 14th April, 1919.

SIR,

WE beg to acknowledge your communication of the 4th instant,* and in conclusion desire to say that our Committee holds very strongly to the following governing principle with regard to land reserves for natives, viz. :—

That once native reserves have been officially allotted to indigenous tribes the title to them should be a secure one, and that portions of reserve land should only be alienated from the natives for indispensable public works, and then only upon the same conditions as those applying to the alienation of lands occupied by white settlers.

It is because the recommendations of the Rhodesian Reserves Commission so flagrantly violated this principle that our Committee has ventured so strongly to criticise the terms of their report.

The explanation offered to His Majesty's Government by the Chartered Company for their neglect of the emphatic request for the appointment upon the Commission of an official of the Native Affairs Department appears to us to be a singularly weak one. A reference to the despatch in question shows that Lord Harcourt at no time expressed a desire for the nomination upon the Commission of "the senior officer," but for the nomination of "a senior officer," of whom there were several, including Mr. Taylor's colleague, Mr. Jackson. The Secretary of State will remember that Mr. Jackson served on the Commission of 1911, and his nomination would therefore have been specially appropriate.

The point of the Society's allegations, however, is not directed towards the responsibility for the appointment, but to the fact that the official ultimately nominated as alternate could not, by reason of the office which he held, and his previous commitments upon the question he was called upon to decide, be regarded as unbiassed, and that he was consequently unsuited to occupy a dominant position where impartiality was above all things essential. Our Committee has plainly stated that this official was the principal commercial land agent for the shareholders of the Company, whose first official duty must always be that of controlling as much land as possible and securing the best terms for the shareholders in sales and leases. Secondly, that he had for years worked as strenuously to obtain a reduction of the reserves in the interests of the shareholders, as the missionaries and officials of the Native Affairs Department had sought to maintain the reserves in their integrity.

We observe that these serious allegations are not contested, and we therefore respectfully urge upon Lord Milner the propriety of his reconsidering the whole subject. Failing this, we urge that when the Order in Council is issued the Company's powers of eviction shall be severely limited, and that provision shall be made for ample compensation for natives evicted from their kraals and gardens.

We beg now to draw the most earnest attention of His Majesty's Government to a statement which, so far as we are aware, has not been contradicted, and which appeared in the "Buluwayo Chronicle" on the 6th of December last. This statement alleges that, without waiting for the Order in Council, the Company is actually taking for its own commercial ranches, and thereby for its own commercial benefit, a large portion of the land cut off from the native reserves. It is unfortunate that the Company should have presumed thus far to anticipate His Majesty's Order in Council, and such action, if it has taken place, is directly contrary to the assurances given to our Committee by Lord Milner in paragraph 4 of his letter under reply. It was the knowledge of this extraordinary fact, if it be a fact, and of the private intimations of impending evictions which led to Mr. Harris sounding, over his own signature, a warning note in the "New Statesman."

* No. 6.

We beg to thank Lord Milner for his permission to issue to the Press the complete correspondence.

We are, &c.,
 TRAVERS BUXTON,
 Secretary.
 JOHN H. HARRIS
 Organising Secretary.

Enclosure in No. 7.

"THE BULUWAYO CHRONICLE," 6th December, 1918.

Native Reserves.

SIR,

IN the last annual report of the British South Africa Company the following passage occurs on page 11: "The Company's ranches and estates—certain land intervening between the Tokwe and Nuanetsi Ranches **reverted* to the Company as the result of the recommendations of the Native Reserves Commission. **It has consequently become* possible to incorporate the Tokwe Ranch with the Nuanetsi Ranch, with the object of securing greater economy in working expenses and better control over the movements of stock."

What does this mean in plain English? Apparently that certain land, formerly native reserve, has been annexed by the Company for their own commercial undertakings. Did the Company cast envious eyes upon this "Naboth's vineyard," and was this one reason for the appointment of the Native Reserves Commission? It would be interesting to know if the Imperial authorities have been informed of the Company's action, and whether it meets with their approval. Surely this is another urgent reason why the administration of Rhodesia by a commercial company should cease at the earliest possible moment

I am, &c.,
 RHODESIAN SETTLER.

The Editor, "Buluwayo Chronicle."
 Umtali. November 28th.

No. 8.

THE ANTI-SLAVERY AND ABORIGINES PROTECTION SOCIETY to
 COLONIAL OFFICE.

(Received 1st May, 1919.)

[*Answered by No. 10.*]

Denison House, Vauxhall Bridge Road, London, S.W.,

SIR,

30th April, 1919

THE recent correspondence with the Secretary of State upon the question of the Rhodesian reserves is now ready for issue to the Press, but Sir Victor Buxton, our President, and the Committee are of the opinion that, in view of the nature of the discussion at the deputation to Lord Milner on Tuesday, this should not be published without first ascertaining whether Lord Milner would prefer that we should refrain from issuing it until after we have received a considered reply to the Society's representations.

In any case it would seem desirable to amend this before publication in one or two particulars. We beg to ask whether Lord Milner would allow us to substitute the words "Surveyor-General for the Company" (descriptive of Mr. Atherstone) for "Commercial Land Agent for the shareholders of the Company."

We also beg to ask whether, in the event of immediate publication, Lord Milner would permit us to append the following:—

"Subsequent to the above correspondence a deputation from the Committee was received by Lord Milner, who discussed fully with its members the land question of Southern Rhodesia as it affects the natives."

I am, &c.,
 TRAVERS BUXTON,
 Secretary.

No. 9.

THE ANTI-SLAVERY AND ABORIGINES PROTECTION SOCIETY to
COLONIAL OFFICE.

(Received 5th May, 1919.)

Denison House, 296, Vauxhall Bridge Road, London, S.W.1.

SIR,

3rd May, 1919

At the request of the Rev. Shearley Cripps, of Mashonaland, I enclose here-
with correspondence* which has just taken place between Mr. Cripps and the
Administrator of the British South Africa Company in Rhodesia.

Yours truly,

JOHN H. HARRIS.

Enclosure in No. 9.

YOUR HONOUR,

Enkeldoorn, Mashonaland, 3rd October, 1918.

I AM forwarding to you the materials I have gathered for a protest against
the proposed reduction of the Sabi Reserve. I gather from your official communi-
cation received by me last week that my former protests are now both thrown out
by yourself or by the Lord High Commissioner. I should like your own opinion,
though, on the materials enclosed. If you do not think it worth while for me,
after my former futile protests, to put this third one into shape and present it
myself in South Africa, will you please, of your kindness say so, and return the
materials to me? It seems to me that a protest framed by somebody more influ-
ential and able than myself in such matters might obtain a hearing at home.

Yours sincerely, &c.,

ARTHUR S. CRIPPS

MATERIALS FOR A PROTEST AGAINST THAT PROPOSED REDUCTION OF THE SABI
RESERVE (CHARTER DISTRICT, MASHONALAND) TO WHICH, WITH OTHER RECOM-
MENDATIONS OF THE SOUTHERN RHODESIA NATIVE RESERVES COMMISSION, THE
BRITISH COLONIAL OFFICE HAS GIVEN A GENERAL ASSENT.

Put together by Arthur Shearley Cripps.

(For the most part of his time since March, 1901, resident in Charter
District, Mashonaland.)

THE PROPOSED REDUCTION.

ON page 44 of the Commission's papers occurs the following recommendation
as to the reserve in question: "This is a very large reserve, and is thinly populated
throughout; moreover, it marches with other large reserves, and forms altogether an
immense tract of reserved land. The Commission is of opinion that some consider-
able reduction should be made in the total area of this reserve. It understands
that it is proposed to build a railway from Umvuma to Odgi We recom-
mend, in lieu of a definite geographical line, that a belt of land twelve miles wide
be surrendered, with the railway as its central line. This belt of land will amount
to approximately 291,800 acres"

SUGGESTIONS FOR A PROTEST.

1. It is submitted that:—

1. As it appears on page 22 of the Commission's printed papers, a statement
(given in August, 1908: was it not given when the British South Africa Company
were considering the advisability of providing the Lemco Company with a tract of
ranching ground?) was made by the Surveyor-General of the Territory, which
contains the following significant passage:—

"Allowing a most liberal estimate of land for this total population and
their stock, as well as making provision for large increases in both, the
reserves (in the Charter District) can well be reduced by 1,000,000 acres."

The author of this very questionable statement became in due course a member
(alternate) of the Reserves Commission, which has advised a less reduction than
this individual had already publicly advocated, a less one, but still a very grave one

* NOTE.—The correspondence received consists only of Mr. Cripps' letter and memorandum.

2. The investigation as to the details of the Sabi Reserve, made before the Commission arrived in the Charter District, appears to have rested for the main part not on inquiries made from the local Native Administrative Department, but on a report made by a specially paid investigation agent representing and paid by the Commercial Branch of the British South Africa Company (at that time an interested claimant of Southern Rhodesia's unalienated land).

3. Apparently the members of the Commission, on their official visit to the reserve, did *not* visit personally the part they considered likely to be surrendered under the terms of their recommendation.

4. According to the summary of evidence tendered to the Commission (section 65, page 62), the Native Commissioner of the district was not in favour of surrendering any of the Reserves. A missionary of long residence in the district (section 66) is recorded in the same summary to have submitted documentary evidence as to the increase in population and to the desirability of retaining the present Sabi Reserve without curtailment. Native chiefs (section 64) from the same district are recorded to have stated that their country had been cut up into farms, and consequently, in addition to the native tax, they had to pay rent to the farmers. Another native chief (section 63) stated that half his land had been given out in farms, and that owing to pressure being put on natives on farms, his country was becoming congested. Another (section 63) stated he was alarmed at a railway survey being made through his country, and it would mean that farms also would be surveyed. He and another chief referred to the pressure caused by natives from farms settling in their country. Other chiefs (sections 57 and 60) gave evidence—two of them to the effect that they were living outside the reserves, and these asked that sufficient land might be provided for them and their people, two of them (living on the reserve in question) as to the land they occupied having been handed down to them by their ancestors, and their hope that none of it was to be taken from them.

Very little practical sympathy seems to have been evoked from the Commission in response to this body of evidence, and with regard to one of the last-mentioned chiefs' plea (that of Chief Magaya) it is noteworthy that the great bulk of his ancestral land has been marked for surrender, should the Commission's anticipation as to the likely railway route prove true.

5. Moreover, should the Commission's forecast as to the route taken by the proposed railway be justified, it may be estimated that a population of about 4,000 natives, at present living on the indicated twelve-mile belt, may be disturbed. In that case the northern part of the dismembered reserve may prove very inadequate for those who by natural tribal affinity may be drawn to seek accommodation among the dwellers thereon, rather than in the southern part. The twelve-mile belt, as proposed, may, by dint of private farms and consequent restrictions on cattle movement, interpose a very formidable barrier between the northern and southern relics of this great reserve—by far the most valuable land settlement asset of our district's large native population—a district much affected already by the taking up of farms.

6. There is a very large proportion of ground estimated as bad—waterless or rocky—by the Native Department,* I suppose, in this Sabi Reserve, the sum of whose total acreage sounds so highly imposing. The acreage assigned to natives in Southern Rhodesian reserves may impress English readers of the Commission's papers quite favourably as compared with other South African reserve acreages. But who that knows either the Rhodesian granite veldt, or the details of Rhodesian land settlement, as circumscribed by local conditions of soil and climate, is likely to consider about 30½ acres per head an excessive provision for all natives of the Charter District? Yet it seems that this was what was provided for them approximately when the Commission was deliberating, this only—according to a rough estimate.

7. It appears to be very likely that the native population on the reserves of the district has made a large increase since the Commission sat. (The method recently laid down for estimating native population from number of tax-payers seems likely to have under-estimated natives considerably.) Also it would appear that a considerable number of natives have moved from private lands on to our reserves since then.

*A Native Department official writes to me: "If I remember rightly, I estimate a quarter or one-third as bad, i.e., mountainous or rocky ground, and dry, waterless stretches."

8. The Charter District is surely in one way the leading district in all Mashonaland in revolutionizing its agriculture under European influence. A recent computation made the ploughs owned by natives in the district no fewer than about 1,400. Why should this district, then, be singled out for such drastic reserve land diminution? The reason seems far from obvious. Where in the Commission's papers is there any special notice of any substantial outstanding agricultural progress that this particular district (Charter) has made?

9. *No attempt is being made to unreasonably block a railway's construction through the reserve in question.* The argument as to section 84 of the Order in Council (1898) on page 25 of the Commission's papers may be open to question, and a *quid pro quo* compensation elsewhere (in that case) should be obtained in respect of the ordinary fifty-yard-wide strip required for railway purposes, but it is submitted in all earnestness that only a fifty-yard strip ought to be taken at most for a railway (*not a twelve-mile belt*) just as would probably be taken in the case of adjacent land to the Sabi Reserve belonging to the Lands and Minerals Exploring Company

10. As to the objection (if urged) that the reserve is too large for a single reserve, and marches with other large reserves, why not seek to provide some new tract of reserve-land in substitution for any moderate area subtracted from the Sabi Reserve? (There is much land acquired very cheaply not very far away. Any Land Board sitting on questions arising out of the land judgment might well consider in this connection the million acres or so taken up by the British South Africa Company at a curiously low figure per acre or morgen (some ten years, perhaps, ago), for their Rhodesdale Estate).

ARTHUR S. CRIPPS

Charter District, Mashonaland,
3rd October, 1918.

No. 10.

COLONIAL OFFICE to THE ANTI-SLAVERY AND ABORIGINES
PROTECTION SOCIETY.

[Answered by No. 11.]

SIR,

Downing Street, 29th May, 1919.

I AM directed by Viscount Milner to acknowledge the receipt of your letter of the 30th of April,* regarding the recent correspondence with your Society on the question of the reserves in Southern Rhodesia and the deputation which was received by his lordship at the Colonial Office on the 29th ultimo.

2. As explained to the deputation, Lord Milner is not prepared to question the competence of, or recommendations made by the Southern Rhodesia Native Reserves Commission of 1915, which was appointed by one of his predecessors, and the report of which had been examined and approved by the High Commissioner for South Africa and adopted by another of Lord Milner's predecessors. A copy of a memorandum prepared in this Office, which deals with the general question of the position of the natives in the Southern Rhodesia reserves is enclosed.

3. Lord Milner does not feel that he can agree to publication of the correspondence being made simply with the correction suggested in the second paragraph of your letter of the 30th of April,* as it would appear that both your letters of the 17th of March and the 14th of April† were written under a misapprehension regarding the position of Mr. Atherstone. Lord Milner does not now think it necessary to press for the publication of any of this correspondence, but if the Society desire to publish it, he considers that it must be published in complete form, including the present letter.

4. As his lordship stated to the deputation, he has been informed by the British South Africa Company that Mr. Atherstone is not, and has never been, a member of the Company's Land Settlement Department, or a servant of the commercial branch of the Company. The head of the Company's Land Settlement Department is Mr. Frank Inskipp. Mr. Atherstone holds the office of Surveyor-General of Southern Rhodesia, and is a purely administrative officer.

* No. 8.

† Nos. 5 and 7.

5. I am further to enclose a copy of a letter which has been received from Mr. A. S. Cripps, of Southern Rhodesia, calling attention to certain inaccuracies contained in your original letter of the 21st of February.*

6. I am to take this opportunity also to refer to the penultimate paragraph of your letter of the 14th of April,† which it is observed is based on an anonymous communication to the *Bulawayo Chronicle*, and I am to remark that the case in question appears to be that of the Matibi Reserve, which is dealt with on page 48 of [Cd. 8674], where the reasons given for reducing the reserve are that it is "immensely in excess of all possible requirements, present and future," and "no hardship will be inflicted on the scattered natives occupying these immense tracts of land." The area of this reserve before the reduction recommended by the Commission was 3,480,000 acres, giving an acreage per head of 568 acres.

7. Lord Milner has carefully considered the question of payment of the costs of the native case in the special reference to the Judicial Committee of the Privy Council, and is satisfied that he cannot take any action. He can only adhere to the view of his predecessor communicated to you in the Colonial Office letter of 22nd November.‡

I am, &c.,
G GRINDLE.

Enclosure 1 in No 10.

POSITION OF THE NATIVES IN THE RESERVES IN SOUTHERN RHODESIA.

Memorandum.

THE Southern Rhodesia Order in Council of 1898, which is the main instrument relating to the administration of Southern Rhodesia, provides in Article 81 that, "The Company (British South Africa Company) shall from time to time assign to the natives inhabiting Southern Rhodesia land sufficient for their occupation, whether as tribes or portions of tribes, and suitable for their agricultural and pastoral requirements, including in all cases a fair and equitable proportion of springs or permanent water." The Order in Council also provides (section 85) that "no natives shall be removed from any kraal or from any land assigned to them for occupation, except after full inquiry by, and by order of, the Administrator in Executive Council approved by the High Commissioner."

Large areas of land have been set aside as reserves for the natives by the British South Africa Company in pursuance of the terms of the Order in Council; and in 1913 His Majesty's Government suggested, in view partly of the rapid increase of white settlement in Southern Rhodesia, that it would be desirable to appoint a Commission to examine the reserves and inquire into their sufficiency for the present and future requirements of the natives. The British South Africa Company agreed to the appointment of this Commission on the understanding that the delimitation of the reserves thus to be arrived at should be final, and that Article 81 of the Order in Council of 1898 would then be revised accordingly. This condition was accepted by Mr. Harcourt, who was then Secretary of State for the Colonies. The correspondence leading up to the appointment of the Commission, with the reports issued by it, are printed in the Parliamentary Paper [Cd. 8674] (a copy of which accompanies this memorandum). The Commission was composed of two representatives nominated by His Majesty's Government, viz., Mr. R. T. Coryndon (then Resident Commissioner of Swaziland and now Governor of Uganda), Chairman, and Colonel E. C. F. Garraway (now Resident Commissioner of Basutoland) and one member nominated by the British South Africa Company, viz., Sir F. J. Newton (Treasurer of Southern Rhodesia), for whom Mr. W. T. Atherstone (Surveyor-General) was appointed later to act as alternate. The result of the inquiries of the Commission indicated that in some cases an enlargement of the reserves was necessary, but that in other districts areas of land had, owing to inaccurate surveys, been set apart which were altogether excessive for the requirements of the natives in those districts. In one case (that of the Sabi Reserve) the reserve, the size of which had originally been fixed by the Native Commissioner at 400,000 acres, was found in fact to contain over a million-and-a-half acres (see paragraphs 41 and 42 of the report). It may be mentioned that the acreage per head of the population on the reserves was found to be 50 55 acres, being very greatly in excess of that in

* No. 3.

† No. 7.

‡ No. 2.

any other South African territory except the Bechuanaland Protectorate (*vide* Statistics on page 66 of the report). Allowing for reductions in some places and extensions in others, the recommendations of the Commission involved on the whole the reduction of the reserves from 20,491,151 acres to 19,428,691 acres. It will be seen, on studying the Commission's report, that this result was only arrived at after a most careful examination of the whole question and of each individual reserve.

The recommendations of the Commission were accepted by His Majesty's Government, after consultation with the High Commissioner for South Africa; and Mr. Long, who was then Secretary of State for the Colonies, informed the Company that he would be prepared, in pursuance of the undertaking previously given, to agree to the repeal of Article 81 of the Order in Council of 1898, which would be replaced by a provision finally securing the reserves as readjusted in accordance with the Commission's recommendations.

It has apparently been thought in some quarters that these proposals involve the immediate eviction of the natives at present resident in the portions of the reserves which are to be surrendered. This is not the case. The Native Reserves Commission (*vide* paragraphs 43 and 44 of the Final Report) contemplated that an ample period of grace should be given to natives living in the surrendered reserves.

The present position is that, under Article 85 of the Order in Council of 1898 (quoted above) no natives can be removed from these areas except after full inquiry by, and by order of, the Administrator in Executive Council, approved by the High Commissioner. As no Order in Council reconstituting the reserves, in accordance with the recommendations of the Commission, has yet been made, this safeguard still holds good; and though no definite statement can be made as to the terms of the proposed Order in Council, regarding which the Secretary of State is still in communication with the High Commissioner, it is contemplated that the Order will provide that for some time to come no natives shall be removed from any of the surrendered areas except in accordance with the provisions of Article 85 of the 1898 Order in Council. Even then in the majority of cases there should be no necessity for compulsory removal, as it is usually open to natives to enter into labour agreements with new white settlers or to stay on as rent-paying tenants; and so long as the lands remained unsold the natives would no doubt, if unwilling to move, be able to stay on subject only to the payment of the usual rent, which is now £1 per annum per male adult.

The question has been raised as to the position created by the judgment of the Judicial Committee of the Privy Council in the special reference as to the ownership of the unalienated land in Southern Rhodesia. This judgment does not in any way affect the position of the natives, which is determined solely by the provisions of the Order in Council. These provisions will be maintained except in so far as it is necessary, as explained above, to amend them in order to give effect to the recommendations of the Native Reserves Commission.

Colonial Office,
April, 1919.

Enclosure 2 in No. 10.

Enkeldoorn, Southern Rhodesia,

YOUR HONOUR,

31st March, 1919.

I BEG to submit, with regard to a memorial addressed to you, dated the 21st of February, 1919, and signed by the Secretary and Organizing Secretary of the Aborigines Protection Society, wherein a protest of my own against the imminent reduction of the Sabi Native Reserve, Charter District, is championed, that certain inaccuracies appear to have crept into the appeal as it has been addressed to you. I have asked the Organizing Secretary of the Aborigines Protection Society to forward you the text of my own protest (presented not to the Chartered Company here, but to the Imperial Resident Commissioner), for I think it is right for you to see it, should the matter be still under discussion.

I myself believe that the case against the reduction of the reserve in question is a strong one. It would, indeed, be a pity if it should be prejudiced by any inaccuracies of statement, however slight. With regard to the memorial that has

been addressed to you, I hasten to submit the following trustworthy corrections and suggestions, which you may regard as approximately up-to-date (having been compiled in the present month):—

The 1,400 given as the number of native ploughs applies to the whole district of Charter.

The population affected by the proposed reduction would probably number three or four thousand souls.

The land they would have to remove to is not only six miles away, but in many cases the natives would have to move considerable distances to find suitable places.

The ground adjoining the twelve-mile strip is not necessarily all bad and uninhabitable.

From the latest communication there is no intention of interfering with the natives on the twelve-mile strip, and it is probably safe to say they are secure for some years, according to at least one opinion that carries weight, there being no prospect apparent of a railway being built in the near future. Yet I would submit that their tenure is precarious. On the other hand, other facts are to be remembered, amongst them the probable eviction of a large population from the Exploring Lands and Minerals Company's ground. Many, in fact the majority, I am told, will have to find refuge on the Sabi Reserve and are likely to settle on what will later be the twelve-mile strip. The people warned to leave by the Exploring Lands and Minerals Company's local ranger represent a population of about two thousand souls. I am glad to hear that, in response to representations made, his Company have now extended the time of grace to 1920. Many, as I understand, are fulfilling, or have fulfilled, their obligations so that the position is much relieved. As to the statement in the aforesaid memorial that the missionaries and many settlers believed that the Reserves Commission's recommendations would not be acted on: Speaking for myself, I was enthusiastic about the presentment of the natives' case in the Southern Rhodesia Land Hearing as tending to counterbalance the real danger to native interests threatened by the Southern Rhodesia Reserves Commission.

In conclusion, I most earnestly deprecate the reduction of the Sabi Reserve for reasons stated in my own memorial of protest, which I presented to the Resident Commissioner out here, and (on his final rejection of it) forwarded to the Organizing Secretary of the Aborigines Protection Society. I earnestly ask your honour to move for the production of my own memorial, as forwarded, and to give it your earnest consideration in the interests of Mashonaland in particular, and our Empire generally.

Yours respectfully,

ARTHUR SHEARLY CRIPPS.

The Right Honourable Viscount Milner,
His Majesty's Principal Secretary of State
for the Colonies,
Colonial Office, London S.W.

No. 11

THE ANTI-SLAVERY AND ABORIGINES PROTECTION SOCIETY
to COLONIAL OFFICE.

(Received 7th June, 1919.)

Denison House, Vauxhall Bridge Road,

SIR,

London, S.W., 6th June, 1919.

WE are instructed by our Committee to acknowledge your communication dated 29th ultimo,* and to say that we much regret that His Majesty's Government is unwilling to take any action either upon the land question or upon the question of the costs incurred in preparing the case for the Judicial Committee of the Privy Council.

* No. 10.

Lord Milner will, we are confident, agree that the Society has spared no effort to obtain some measure of satisfaction before, as a last resort, making an appeal to the British public here and in the Dominions and Dependencies.

We are, etc.,
TRAVERS BUXTON,
 Secretary.
JOHN H. HARRIS.
 Organizing Secretary.

No. 12

THE ANTI-SLAVERY AND ABORIGINES PROTECTION SOCIETY to
 COLONIAL OFFICE.

(Received 30th July, 1919.)

[Answered by No. 13.]

Denison House, Vauxhall Bridge Road, London, S.W.,
 29th July, 1919.

SIR,

OUR Committee is receiving a considerable amount of evidence which points to the fact that several officials of the British South Africa Company are warning native occupants that they will be evicted unless they remove from their cultivated lands.

As this conduct is causing much anxiety to the missionaries, and is at the same time leading to unrest amongst the natives, our Committee proposes, unless Lord Milner disapproves, to circulate among the missionaries and others interested in the fate of the natives, the following passage from the communication of the Secretary of State to the Society, dated 4th March last* :—

“The present position is that, under the provisions of Article 85 (1) of the Southern Rhodesia Order in Council of 1898, no natives can be removed from the reserves except after full inquiry by, or by order of the Administrator in Executive Council, approved by the High Commissioner. As no Order in Council reconstituting the reserves in accordance with the recommendations of the Commission has yet been made, this safeguard of course still holds good; and though no definite statement can be made as to the terms of the proposed Order in Council, regarding which the Secretary of State is still in communication with the High Commissioner, it is contemplated that the Order will provide that for some period of years no native shall be removed from any of the surrendered areas except in accordance with the provisions of Article 85 (1) of the 1898 Order in Council.”

We are, &c.,
TRAVERS BUXTON,
 Secretary.
JOHN H. HARRIS,
 Organizing Secretary.

No. 13.

COLONIAL OFFICE to THE ANTI-SLAVERY AND ABORIGINES
 PROTECTION SOCIETY.

SIR,

Downing Street, 6th August, 1919.

I AM directed by Lord Milner to acknowledge the receipt of your letter of the 29th of July, † and to inform you that he has no observations to offer on the proposal to circulate an extract from the letter from this Department of the 4th of March last* regarding the position of the natives in Southern Rhodesia.

I am, &c.,
HENRY LAMBERT.

No. 14

THE ANTI-SLAVERY AND ABORIGINES PROTECTION SOCIETY to
COLONIAL OFFICE.

(Received 23rd August, 1919.)

[Answered by No. 15.]

Denison House, Vauxhall Bridge Road, London, S.W.,

22nd August, 1919.

SIR,

WE beg leave to draw the attention of Lord Milner to the explicit character of the assurances given to the Committee of this Society with reference to the removal of natives from six million acres by which the reserves in Southern Rhodesia have been reduced.

The general tenor of replies to the Society's representations, and to questions in Parliament, has been that no such removals could take place yet, whilst on the 4th March* last the Committee was reassured by Lord Milner pointing out that "the present position is that under the provisions of Article 85 (1) of the Southern Rhodesia Order in Council of 1898 no natives can be removed from the reserves except after full inquiry by, or by order of, the Administrator in Executive Council approved by the High Commissioner. As no Order in Council reconstituting the reserves in accordance with the recommendations of the Commission has yet been made this safeguard of course still holds good, and though no definite statement can be made as to the terms of the proposed Order in Council, regarding which the Secretary of State is still in communication with the High Commissioner, it is contemplated that the Order will provide that for some period of years no native shall be removed from any of the surrendered areas except in accordance with the provisions of Article 85 (1) of the 1898 Order in Council."

Our Committee anticipated that this reply to the Society had been brought to the notice of the British South Africa Company with a view to preventing any removals, of which some evidence was reaching us. We are now confronted with what appears to be authoritative evidence that the fears entertained by our Committee, and the statements made by it, have all along been well founded. In the issue of *South Africa* for 16th August the following passage occurs in a paragraph upon the report of the Native Commissioner, Mr. H. J. Taylor: "The changes necessary in consequence of the recommendations of the Native Reserves Commission are being carried out without difficulty, the natives moving unhesitatingly to the land which has been allotted for their exclusive use."

Our Committee begs to ask whether the Society is right in assuming that the British South Africa Company is acting upon the recommendations of the Reserves Commission without waiting for the issue of the Order in Council to which Lord Milner referred in his letter of 4th March last.*

We are, &c.,

TRAVERS BUXTON,

Secretary.

JOHN H. HARRIS,

Organizing Secretary.

No. 15

COLONIAL OFFICE to THE ANTI-SLAVERY AND ABORIGINES
PROTECTION SOCIETY.

SIR,

Downing Street, 30th August, 1919.

I AM directed by Lord Milner to acknowledge the receipt of your letter of the 22nd of August† regarding the removal of natives from territory formerly included in the native reserves in Southern Rhodesia, and to transmit to you a copy of the report of the Chief Native Commissioner, Southern Rhodesia, for the year 1918.

The full text of Mr. H. J. Taylor's remarks will be found on page 2 of the report.‡

I am, &c.,

HENRY LAMBERT.

* No. 4

† No. 14

‡ An extract only is printed.

Enclosure in No. 15.

EXTRACT FROM THE REPORT OF THE CHIEF NATIVE COMMISSIONER FOR SOUTHERN RHODESIA FOR THE YEAR 1918.

GRADUAL effect is being given to the recommendations made by the Native Reserves Commission. The changes are being carried out smoothly and satisfactorily. There has been no necessity to exercise compulsion; natives are moving of their own accord into the areas assigned, wherever they feel disinclined to remain on land no longer reserved for their exclusive occupation. The certainty of tenure thus conferred is greatly appreciated by the natives, and it is to be anticipated that this factor will react on the use which they will make of the land. It is proposed to undertake the survey of the areas reserved wherever there is any difficulty in determining the boundaries during the course of the coming year.

Arrangements are being concluded to carry out a programme of road construction in native reserves. Financial assistance will be given to the natives on terms which have been accepted by the chiefs and headmen.

No. 16.

COLONIAL OFFICE to THE ANTI-SLAVERY AND ABORIGINES PROTECTION SOCIETY.

[Answered by No. 17.]

SIR,

Downing Street, 8th September, 1919

WITH reference to recent correspondence regarding the Southern Rhodesia Native Reserves Commission, I am directed by Viscount Milner to transmit to you the accompanying extract from a memorandum which has been submitted by Mr. W. J. Atherstone, Surveyor-General of Southern Rhodesia, regarding his position in relation to the Commission.

Lord Milner would be glad to know what steps the Society proposes to take to correct the statements with regard to Mr. Atherstone to which circulation has been given in the two pamphlets issued by the Society, and in the letter from Mr. Harris, published in the "New Statesman" of the 8th March.

I am, &c.,

HENRY LAMBERT

Enclosure in No. 16.

MEMORANDUM BY THE SURVEYOR-GENERAL.

(Extract.)

THE SECRETARY,
DEPARTMENT OF ADMINISTRATOR,

Native Reserves in Southern Rhodesia.

UNDER cover of your minute of 19th May certain correspondence, being particularly the letter dated 17th March last from the Anti-Slavery and Aborigines Protection Society to the Colonial Office, and the Colonial Office letter of 4th April, in reply, has been submitted for the favour of my remarks. I regret that, through indisposition, my reply has been delayed.

I am very glad to have this opportunity to make some statements on the subject in some little self-defence against the allegations averred against me, quite unjustifiably, and in some explanation of matters affecting the native reserves and the Native Reserves Commission report. Mr Harris has also asserted on other occasions that publicly and privately I have never ceased to press for the reduction of the native reserves; that is not true, and it is an unfair and unreasonable statement to make.

To deal, however, with the letter of 17th March from the Anti-Slavery and Aborigines Protection Society, it is stated therein that "for several years there has been an agitation in Southern Rhodesia for cutting down native reserves, etc."

"There is, of course, nothing surprising in this fact, which is fairly common in Dependency territories. But this agitation for cutting down the reserves has been fostered very largely by the Land Department of the Chartered Company, the head of which is a very efficient and vigorous servant of the commercial

branch of the Company; this gentleman (Mr. Atherstone) has been recognized locally as the leader of the agitation for cutting down the reserves." Though I am an inhabitant of Southern Rhodesia I have heard and know nothing of any such agitation, and I am certainly in no way connected with it; I feel myself on perfectly secure ground in asserting that there is no agitation of the kind by any responsible body or individual. As has been pointed out elsewhere, I am not the head of the Chartered Company's Land Department, nor a servant of the commercial branch of the Company.

There are two occasions only, whether they be considered to be public or private is immaterial, in which I have dealt with the reduction of native reserves. I will take the last first, as it can be dismissed in a few lines. I wrote a statement that I considered some of the very small reserves should, for sundry reasons given, be done away with as reserves; before dealing with the matter I submitted it to the Chief Native Commissioner, who called for reports from the Native Commissioners; the general opinion expressed by the Native Commissioners at that time was against me, and I let the subject drop. As some confirmation of my views I may refer to paragraph 75 of the report of the Native Reserves Commission, a decision to the determination of which at the time I purposely made no observations.

The first occasion on which I dealt with a matter of reduction of reserves arose in 1908. Mr. Longden, an elected member of the Legislative Council, brought forward, so far as I now remember, some motion that the native reserves as then defined should be considered to be a final allocation of land for the purpose, and that they should be demarcated and surveyed. The ministerial head, who replied to Mr. Longden, asked me for some observations and figures on the subject. In compliance with this request I wrote a minute to him, which ultimately, by consent, was reproduced in the appendices to the report of the Native Affairs Committee of Inquiry, 1910-11.* That minute of mine dealt solely with the aspect as to whether the time was opportune for the demarcation and survey of the reserves as a final assignment. It did not pretend to be a disquisition on reserves, or the final requirements of the needs of the natives; my knowledge of the subject then was quite inadequate for me to state what my opinion would be in regard to the future needs of the natives or what new reserves, if any, might be necessary; I merely desired to show that, with such information as I had before me, I did not consider that the reserves should at that time be beaconed and surveyed as a final assignment. In those days reserves could readily be increased under the provisions of the Order in Council of 1898, but it was scarcely possible to reduce existing reserves; therefore, if excessively large reserves were beaconed and maintained indefinitely and new reserves as proved requisite were created, reserved areas would become greatly in excess of all legitimate requirements. And it might be remembered that at the time that I wrote the minute it was intended only for the private information of the ministerial head to whom it was addressed.

With these exceptions, and the evidence I gave, by request, before the Native Affairs Committee of Inquiry, 1910-11, I have not concerned myself with the policy, the demarcation, or the constitution of native reserves, nor with native interests (all of which are, to my knowledge, in most capable and sympathetic hands), till I was appointed as an alternate member to Sir F. Newton on the Native Reserves Commission. In this connexion I think I might make some reference to the Society's statement that, by reason of my position and access to information, I became the dominating influence on the Commission. To anyone with knowledge of the personalities of the three members of the Commission this, of course, would appear ludicrous. I was, after all, only an alternate to Sir F. Newton, and all decisions taken were done with all the members being present.

Reference is made to figures of population quoted by myself in regard to the Sabi reserve. I find from my minute, written in August, 1908, and referred to above, I stated the Native Commissioner, when recommending the area as a native reserve (the recommendation being made in, about, 1901) estimated the population for which it was required at 21,438. The Commission's report, dated 16th December, 1915—some fourteen years later—gives the population of the Sabi reserve as 37,000.

4th June, 1919

W. J. ATHERSTONE.

* See Appendix II., page 52.

THE ANTI-SLAVERY AND ABORIGINES PROTECTION SOCIETY to THE
COLONIAL OFFICE.

(Received 22nd October, 1919.)

[Answered by No. 18.]

Denison House,

SIR,

Vauxhall Bridge Road, London, S.W., 21st October, 1919

WE beg leave to acknowledge the receipt of your letter dated the 8th September,* enclosing an extract from a memorandum by Mr. W. T. Atherstone, and stating that Lord Milner would be glad to know what steps this Society proposes to take to correct the statements with regard to Mr. Atherstone, to which circulation has been given in the two pamphlets issued by this Society and in the letter from Mr J. H. Harris, published in the *New Statesman* of the 8th March last.

In reply we are directed by our Committee to say that they regret that in their letter of the 17th of March last† Mr. Atherstone's official position was inaccurately referred to as that of a servant in the commercial branch of the British South Africa Company, instead of that of a professional or technical servant of that commercial company in a capacity dealing with the land, in all of which, except that already alienated to white men, the Company deemed itself (at that time) to have a commercial interest. The Committee will arrange that a proper correction shall be inserted in all copies of the published documents on this matter remaining in their possession, both of this passage and of any other that may appear, in view of Mr. Atherstone's representations, to be too unguardedly worded. They will also be glad, with Lord Milner's concurrence, to publish this acknowledgment of the misdescription referred to, together with the observations that follow, both upon this point and on the rest of Mr. Atherstone's memorandum.

But, in the first place, and before proceeding further with the reply to your letter, the Committee desires to point out that this Society neither makes, nor has intended, any personal imputation to Mr. Atherstone's discredit. That gentleman is, of course, fully entitled—it may even be regarded as his duty—to entertain a strong opinion on land policy and to press it when opportunity presents itself. What the Society is concerned with in this connexion is not, most certainly, to attack or disparage Mr. Atherstone—and they would greatly regret if anything they have written was interpreted by him as reflecting injuriously on him—but to secure an effectual recognition of this really important fact, namely, that to appoint an official of high authority in the service of the Chartered Company, directly interested, as it was, at the time, in the reduction of native reserves—an official whose opinion decidedly conflicted, and was widely known to conflict with, that of the Native Commissioners of the country upon this subject, and who was already publicly committed to such a reduction—upon a Commission of three, established to decide impartially upon the delimitation of these reserves, was not, *prima facie*, a defensible step in constituting a *quasi* judicial tribunal. It certainly was not, in fact, a procedure well calculated to confirm public confidence and satisfactorily to terminate a burning question of justice to South African native peoples.

With regard to Mr. Atherstone's objections to the arguments which have been used on behalf of this Society; our Committee considers that it has reliable ground for stating and maintaining the following propositions:—

The cutting down of the native reserves in Rhodesia in the interest of the Chartered Company (which claimed at that time to be entitled to all unalienated and the native reserve lands) is a policy which has been unequivocally and publicly advocated and discussed in common talk continuously for a number of years, by settlers and officials in Rhodesia.

The Society has spoken of this advocacy of policy as an "agitation." Mr. Atherstone says that he has heard and knows nothing of any such "agitation," that he is certainly in no way connected with it, and that there is no "agitation" of the kind by any responsible body or individual.

The Committee does not desire to dispute about the propriety of a name. It is prepared to substitute the term "contention" used by the Native Affairs Committee of Inquiry of 1910 in this connexion, for the term "agitation." The fact

that there has been such advocacy of policy in common discussion will hardly, the Committee conceives, be questioned. As has already been observed, "there is nothing surprising in it, and it is fairly common in Dependency territories." It is hardly necessary to refer to the case of East Africa as an example.

The authority, publicity, and importance of the Report of the Native Affairs Committee of Inquiry of 1910, above referred to, will again not be disputed. That report, paragraph 73, states:—

"The extent of reserves necessary has formed subject of question; it being contended by certain witnesses that the amount is excessive. The Surveyor-General" (Mr. Atherstone) "shares this view very decidedly."

Our Committee is not prepared to discredit the information which it has received to the effect that Mr. Atherstone's view, as above recorded, was matter of common knowledge and repute amongst persons in Rhodesia interested in this question on both sides, and that such knowledge and repute strengthened and fostered the contention of those with whom he so decidedly agreed.

It seems to our Committee fairly obvious, and the Committee believes that Lord Milner will recognize, that in such a community as that of Rhodesia, the case could hardly be otherwise. So far as our Society is aware, all authoritative statements with regard to the land of Rhodesia emanate from Mr. Atherstone, and it is to him that private individuals, as well as the Company's administration, look for land statistics. One of the official reasons given for substituting Mr. Atherstone for Sir F. Newton was, in fact, Mr. Atherstone's presumed knowledge of the land situation. Our Committee considers it fair, therefore, to say that, by reason of his position as Surveyor-General and his published opinions, he stood at the head of those to whose contention for the reduction of the native reserves we have referred, and, whilst it readily accepts the assurance conveyed in Mr. Atherstone's memorandum that he has not actively promoted any such agitation, it has reason to believe that he altogether under-rates the effect of his known and officially recorded attitude upon the question, and the far-reaching influence of his written and spoken expressions in favour of reducing the reserves.

It was because this effect was known, or at any rate believed in, by those whose case we are in this matter presenting, that such strong feeling has been expressed by their spokesmen in regard to the constitution of the Commission, especially when Mr. Atherstone's views were given effect to in the Commission's Report of 1917, to the extent of recommending the dispossession of natives over an area of six million acres of land, and reducing the whole reserves by one million acres. Our Committee begs leave to assure Lord Milner that neither the Committee nor any of the Society's officers invented this basis of criticism. Their surprise, indeed, is that the objectionable character, if not the short-sighted impolicy, of such an appointment to the Commission has not apparently been manifest to the Colonial Office.

Mr. Atherstone protests against a statement made by Mr. Harris in a letter to the *New Statesman*, that he has never ceased to press for the reduction of native reserves. Mr. Harris is responsible for his letter, which our Committee has no doubt was founded by him on reliable information, and they do not propose to take any steps in regard to it. But if Lord Milner should desire them to take into consideration the propriety of such a statement being made by one of their Secretaries, they would first inquire whether, in the proceedings of the Native Reserves Commission, Mr. Atherstone did or did not advocate the reduction of native reserves, or whether the reduction recommended by the Commission was carried against his view by his colleagues.

In view of the foregoing, and of the fact that the more information our Society obtains upon this expropriation of native reserves the more unjust and oppressive it appears, we beg leave to state the Society's attitude fully. At the same time we respectfully venture to express the opinion that if Lord Milner would submit the whole facts of this proposed expropriation in Rhodesia to a Select Committee of Parliament, or to any body of impartial men in this country, they could not fail to reach the conclusion that the Society's contention is correct, namely: *That the composition and work of the 1917 Reserves Commission was not calculated to produce impartial recommendations, and that the scales of justice were heavily weighted against the natives.*

It is, we submit, essential to consider the 1917 report in conjunction with that of the 1910 Committee appointed by the Chartered Company and composed of men who really knew the native question, including Mr. Stanley N. G. Jackson, the well-known Native Commissioner at Victoria. A large number of witnesses appeared

before this 1910 Committee, including officials, missionaries, and natives. Mr. Atherstone, the Surveyor-General, also appeared as a witness, and urged the view which the Committee say he held "very decidedly," that the native reserves were excessive. When this Rhodesian Committee of 1910 reported, they said:—

"The testimony of the Native Department officials is substantially against him (Mr. Atherstone). They point out that in certain reserves a large portion of the soil is poor, that water is deficient, and that certain localities are wholly unsuitable for human occupation."

This attitude of the 1910 Committee upon the reserves was not at all to the advantage of the Chartered Company, and it was adopted by men whose official positions we believe could not be terminated except by the consent of the Secretary of State, whilst we believe we are correct in stating that in this respect the position of the Surveyor-General was held at the pleasure of the Company, and could be terminated without any reference to the Secretary of State.

The 1917 Commission, upon which none of the Native Commissioners, in spite of Lord Harcourt's expressed opinion, were allowed to serve, set aside this 1910 opinion to the advantage of the Company at that time (1917) to the extent of 1,000,000 acres net, and dispossessed the natives over the other 5,000,000 acres, that is they recommended the removal of the natives from 6,000,000 acres to 5,000,000 acres elsewhere. This result, Sir Starr Jameson stated publicly, was "very satisfactory," to the shareholders, and constituted a real victory for those views which Mr. Atherstone had stated so "very decidedly," but which had been so emphatically rejected by the Rhodesian Committee of 1910.

The Chartered Company, being fully aware of the attitude of Mr. Atherstone upon the question of reserves, should, in our opinion, have drawn the attention of His Majesty's Government to it, whilst we cannot but express our regret that His Majesty's Government did not insist upon Lord Harcourt's equitable suggestion that a Senior Native Commissioner should serve upon the Commission. With the ultimate appointment of an official of Mr. Atherstone's known attitude this recommendation of the Secretary of State became, in our opinion, imperative. Our Society begs leave to say that it was the composition of the Commission as a whole which made the appointment of the Surveyor-General so regrettable; our Society would probably not have ventured a criticism if some element of impartiality had been on the Commission in the person either of a missionary, or, as His Majesty's Government advised, of a Senior Native Commissioner.

Nor was this all, for, according to available records,* the Chairman was one of the six hundred members of Dr. Jameson's force, who was entitled by the infamous "Victoria Agreement" to select six thousand acres of the best Matabele land, gold claims, and his share of the "loot" seized from the Matabele.

Moreover, there was upon the Commission no missionary, no representative of the public, no unofficial member of a Legislative Council; nor was a single native called to give evidence (in the accepted sense of the term "evidence") upon a matter which vitally affected many thousands of industrious natives. The Commissioners' explanation of this is that, they "felt that we might do more harm than good by questioning the natives upon a matter of which they were very likely to misunderstand the real scope, and to which also no effect could be given for a year or more."

The cursory examination of certain chiefs whom the Commissioners did consult, is not evidence, and it is only fair to the Commissioners to point out that they do not claim it as such, for they say:—

"We did not, as a rule, examine native chiefs unless there was some point to be elucidated or some definite information to be gained."

We beg now to adduce certain opinions of white men in Rhodesia. We cannot vouch for the accuracy of these opinions, but submit them to Lord Milner as an indication of the mind of the average man in Rhodesia. The names of some of these gentlemen we are not yet permitted to disclose in a document which we presume will become public, but the Society is prepared to supply them at once in confidence to Lord Milner.

The writer from whom the first extract is taken is a Rhodesian settler, and he says:—

"The three Commissioners might just as well have been three Chartered Company's directors, for, first, Bob Coryndon had never known any other master than the Chartered Company."

* "The Downfall of Lobengula," pages 12 and 292.

“Garraway was in Chartered Company’s employ as a District Surgeon in Bulawayo. . . . Newton, we all know, was actually in the Company’s employ.”

“I am convinced that the wrong done to the natives will be righted when the full facts are in the hands of the Home Parliament; for with all our faults real injustice is always righted by our people.”

This is the view of an ordinary white settler, who, as he says in his letter to a third party, is “not in touch with the A.P.S.” (Anti-Slavery and Aborigines Protection Society).

The following quotation is from one of the most respected men in Rhodesia, known, we believe, to Lord Milner, and certainly to every High Commissioner in South Africa during the last twenty-five years. and highly respected both in Rhodesia and in wide circles in this country; moreover, we understand he possesses probably more knowledge of native conditions than any other white man in Rhodesia. This gentleman says:—

“No time ought to be lost in getting the decision of the Rhodesian Government set aside, based on the report of the Reserves Commission. In response to the call of the British South Africa Company not a few of these local natives went to German East and elsewhere to serve their country, and they come back to find about 1,000,000 acres of land have been filched away. If you can get this restored it will be a tremendous boon. Anyhow, the carrying out of this recommendation should be delayed until a *fairer and more competent authority has been appointed to go into the matter and recommend.*”

A third correspondent, a leading citizen of Bulawayo, draws attention to the fact that the reserves have never been really surveyed, a statement for which there appears to be some warrant in the Reserves White Book. This gentleman says:—

“Now you may take it from me, most emphatically, the native reserves of Rhodesia have never been surveyed, and their total area can only be roughly approximated, because the greater portion of the land contiguous to the reserves is still unsurveyed. How easy for an error to be made of, say, five per cent on a million acres! Should the Commercial Department of the Company now take over a million acres, and it be found later that the area was over-estimated, what provision is there for restitution or compensation? I would suggest that inquiries be made, whether the area had been surveyed, if so, when, and by whom paid for, the Administration or commercial side?”

The fourth quotation we take from the Rev. Shearly Cripps, the well-known missionary of the Society for the Propagation of the Gospel, whose criticisms of the composition and work of the Commission have been quite as severe, if not more so, than those of our Committee. The following extracts are taken from the written protests (copies of which have come into our possession) from this gentleman to the High Commissioner in South Africa and to Lord Milner:—

“The author (Mr Atherstone) of this very questionable statement upon the excessive areas of the reserves became in due course a member (alternate) of the Reserves Commission, which has advised a less reduction than this individual *had already publicly advocated*,* a less one, but still a very grave one.”

A statement made direct to His Majesty’s Government, which shows that in the Charter Districts the public attitude of the Company’s Surveyor-General was well-known

Then follows a very serious allegation, which, if it had not been made officially to His Majesty’s Government, our Committee could scarcely have credited:—

“The investigation as to the detail of the Sabi Reserve made before the Commission arrived in the Charter District appears to have rested for the main part not on inquiries made from the local Native Administrative Departments, but on a report made by a specially paid investigation agent representing, and paid by, the Commercial Branch of the British South Africa Company” (at that time an interested claimant of Southern Rhodesia’s unalienated land).

If it is true that this procedure was adopted in the Charter District it would appear important to ascertain if it was also adopted elsewhere. If it was, this fact,

* Italics ours.—A. S. and A. P. S.

apart altogether from the composition of the Commission, would shatter the last vestige of confidence held by any disinterested person in the Commission's report.

The Committee of the Society expressly desires to state that it cannot accept any responsibility for an allegation so serious, but as it has been made to His Majesty's Government direct by a missionary of widely known literary reputation and of eighteen years' residence in Southern Rhodesia, it cannot be set aside without inquiry into its truth.

A fifth quotation is from a published letter in the *Bulawayo Chronicle*, 6th December, 1918, where the writer states that the Chartered Company was already adding to its cattle ranches areas of land cut off from the native reserves!

"What does this mean in plain English? Apparently that certain land, formerly native reserve, has been annexed by the Company for their own commercial undertakings. Did the Company cast envious eyes on this 'Naboth's Vineyard,' and was this one reason for the appointment of the Native Reserves Commission?"

The Committee of the Anti-Slavery and Aborigines Protection Society begs once again to appeal to His Majesty's Government to consider the advisability of dealing in broad and generous spirit with the natives of Southern Rhodesia. The technical misdescription of an official in the pay of the Chartered Company does not seem to our Committee to be of an importance in this correspondence with the Colonial Office commensurable with that of the unprecedented situation whereby an entire people has been dispossessed of every vestige of tribal ownership of land—divested of tribal rights over huts, homesteads, gardens, and what every student of Africa knows to be most sacred—the graveyards of their dead. The responsibility for the situation cannot be fairly visited on any one individual, nor limited to any one event, but it must not be overlooked that the situation owes its origin to a document which the Judicial Committee of the Privy Council has now declared for all time to be utterly worthless.

The members of our Committee have decided that it is their duty to attempt to secure the following objects:—

- (a) To obtain in those lands where there are no white men a secure title for all tribal units in the lands they are now beneficially occupying.
- (b) To secure payment (upon the same conditions as those of the white settlers) of the natives' costs of the Privy Council's reference.

The Committee of the Society has determined upon the above policy because the members are confident that these modest requests will appeal to the common-sense and justice of British citizens, and that it will receive increasing public support until they have been acceded to by some means or other, either now or in the immediate future.

Their claim that a revision of the situation may properly be strongly pressed for is reinforced by the circumstances that, whereas when the Commission, whose findings are impugned, was appointed the title to unalienated lands was undetermined and widely presumed or claimed to be vested in the Chartered Company, it is now decided to be vested in the Crown, and the natives, in their claim for justice and consideration, stand in this matter directly over against the British Sovereign and people to whom especially they have been accustomed to look for the vindication of their equitable rights against private and alien interests.

We are, &c.,

CHARLES ROBERTS,
President.
HENRY BENTINCK,
Chairman.
SYDNEY OLIVIER,
Vice-Chairman.
C. W. BROOKS,
T FOWELL BUXTON,
Joint Treasurers.
TRAVERS BUXTON,
Secretary.
JOHN H. HARRIS,
Organizing Secretary.

COLONIAL OFFICE to THE ANTI-SLAVERY AND ABORIGINES
PROTECTION SOCIETY.

[Answered by No. 19.]

SIR,

Downing Street, 18th December, 1919.

I AM directed to acknowledge the receipt of your letter of the 21st October,* relative to the Southern Rhodesia Native Reserves Commission.

2. The terms of reference to this Commission are set out on pages 15-16 of the Parliamentary Paper [Cd. 8674], in which the report of the Commission was published. Briefly, its duty was to make recommendations with a view to the final assignment of the native reserves in Southern Rhodesia.

3. In the pamphlet issued by your Society, entitled "An Appeal to the Parliament and People of Great Britain, the Dominions, and the Dependencies," the following account is given of the circumstances in which the Commission came to be appointed:—

"The story opens about 1910, when an agitation was started and fostered by the Chartered Company's Land Surveyor for cutting down the reserves in the interests of the Company. The Native Affairs Department and the missionaries were 'substantially against' the Land Surveyor. The knowledge of the agitation reached the ears of the High Commissioner. Some two or three years later a casual visit from one of the Directors to Lord Gladstone in the delightful surroundings of Arcadia, in Pretoria, led to the discussion of the question. This was the first official step, the rest was easy. A Commission of three members was appointed, and Lord Harcourt urged upon the Chartered Company the desirability of nominating a senior official of the Native Affairs Department. The Company ignored this suggestion, and nominated a gentleman who obviously could not serve, and when what was recognized locally as obvious, had become inevitable, a 'substitute' was found by the Company in the person of their Land Surveyor, who had for years publicly acted as the head and leader of the agitation for cutting down the reserves."

4. Apart from other inaccuracies, this account overlooks the fact that the question of the native reserves in South Africa, including Southern Rhodesia, was examined by the South Africa Native Affairs Commission, 1903-5. In their report, which was published in 1905 as a Parliamentary Paper [Cd. 2399], the Commission made the following recommendations:—

"That the time has arrived when the lands dedicated and set apart, or to be dedicated and set apart, as locations, reserves, or otherwise should be defined, delimited, and reserved for the natives by legislative enactment.

"(2) That this should be done with a view to finality in the provision of land for the native population, and that thereafter no more land should be reserved for native occupation."

The eventual necessity of the appointment of a special body with a view to a final assignment of the Native Reserves in Southern Rhodesia on the lines recommended in the Report of the South Africa Native Affairs Commission, 1903-5, had long been recognized by His Majesty's Government before any active steps were taken by them for that purpose, but it was not thought, until December, 1912, that the time had come to consider the appointment of such a body. In that month definite instructions were sent by the Secretary of State for the Colonies (Mr. Harcourt) to the High Commissioner (Lord Gladstone) to furnish a report on the subject. The outcome of the High Commissioner's report was the appointment of the Southern Rhodesia Native Reserves Commission. The initiative in the appointment of the Commission was thus taken by His Majesty's Government, acting solely in the interests of the natives of Southern Rhodesia, and it was further taken without prior consultation with the British South Africa Company, and without reference to any commercial interest of the Company.

There is accordingly no foundation whatever for the suggestion made in the "Appeal" that the Commission originated in a private arrangement between Lord Gladstone and a Director of the Company, or in any agitation in Southern Rhodesia.

5. It would, however, be correct to say that the appointment of such a Commission, while not expressly recommended in the Report of the Southern Rhodesia Native Affairs Committee, 1910-11, was necessary to carry out the following recommendations of the seventy-fourth paragraph of that report:—

“On the question generally, the Committee find that the reserves are adequate in area for the present needs of the natives, and for the reasonable expansion of the population in the future. The present delimitation of some reserves is, however, inconvenient. There are many small detached areas from which it would be advisable, if possible, to remove the occupants, in order that they may be located in the larger reserves, the size of which should be increased proportionately. The Committee learn that certain readjustments are otherwise necessary. Subject to these being carried out, we recommend that the various reserves be demarcated, and that the assignment be ratified by legislative enactment, so as to secure finality in regard to land reservation for exclusive native occupation.”

This Committee is described in your letter as “composed of men who really knew the native question, including Mr. Staley N. G. Jackson, the well-known Native Commissioner at Victoria.” It may be as well to add that the Report of the Conference of Superintendents of Natives (which included Mr. Staley Jackson), dated 16th October, 1909, and printed as one of the appendices to the Committee's report, also contained the following paragraph:—

“We consider that the aggregate area of the lands reserved for natives in Southern Rhodesia is ample for their present and future requirements, but would point out that in certain localities the reserve land is excessive while in others it is insufficient for the needs of the particular community, and that this condition necessitates a careful readjustment.”

6. The general history of the reserves in existence at the time of the appointment of the Southern Rhodesia Native Reserves Commission is set out in their report, but it is desirable to explain that these reserves were set apart for the occupation of the inhabitants of Southern Rhodesia as “tribes or portions of tribes,” i.e., for occupation under tribal conditions, and that the question to be determined by the Commission was the amount of land required for such occupation. The obligation imposed on the British South Africa Company to provide land for such occupation was not in any way less than the Crown would have assumed itself had the territory been under its direct control, and there is no suggestion that the provision made was inadequate. The fact that the unalienated lands have now been adjudged to be the property of the Crown does not in any way affect or entail the reconsideration of the recommendations of the Commission.

7. Lord Milner has already informed the Society that he is not prepared to question the recommendations of the Commission, the report of which had been examined and approved by the High Commissioner for South Africa and approved by his predecessor. The Society evidently attach great weight, and justly, to the views of the Native Department. It may, therefore, be pointed out that in deciding to recommend the adoption of the report the High Commissioner was largely influenced by the fact that the recommendations were understood to be generally acceptable to the Native Department, and nothing has occurred since to show that the views of the officials of the Native Department were misjudged. On one point of the first importance, viz., the movement to the reserves of the native occupants of those areas which are to be surrendered, it is expressly stated in the report (paragraph 44), that the Commission had the opinion of the Chief Native Commissioner that their recommendations were adequate.

8. It is estimated that the total number of natives on the land recommended by the Commission to be added to the reserves is 42,100, and that the total number of these in the surrendered areas is 48,000. Of these latter, the occupants of the Ramaquabane Reserve who are to be transferred to the new Semokwe Reserve number 12,900. The grounds for this particular transfer are set out in detail in the Commission's report (page 58 [Cd. 8674]), and the Society will have observed that the transfer had the approval of the Chief Native Commissioner, the Superintendent of Natives of the Bulawayo Circle, and the Native Commissioner of the District, and was assented to by the chief and his headmen. This movement of natives is described by the Commission as the most important recommended by them. The number of natives affected by the other surrenders is thus some 35,000, and when it is remembered that these surrenders amount to over 6,500,000 acres, it is

clear that the Commission did, as stated in the report, exercise particular care to comply with the instruction in their terms of appointment to bear in mind that the removal of natives from existing kraals and lands on a considerable scale should be avoided.

9. When the proposed Order in Council is issued assigning the reserves recommended by the Commission, the natives of Southern Rhodesia will have reserved to them by law, for their exclusive tribal occupation, over 19,000,000 acres of land. The Society continue, however, to cast reflections on the composition of the Commission, and now add further animadversions on the manner in which the Commission discharged its duties. It is idle to speculate whether identical recommendations would have been made if the Commission had been differently constituted, and Lord Milner has already informed the Society that he is not prepared to question the composition of the Commission. The gentleman nominated by Lord Gladstone for appointment as Chairman of the Commission was Mr. (now Sir) Robert Coryndon, the present Governor of Uganda. Lord Gladstone regarded him as eminently fitted to be Chairman by his experience of native affairs in Rhodesia, and by his experience in the settlement of Swaziland. At the time of his appointment to the Commission he had been for seven years serving directly under the Crown in Swaziland, for the first few months as Deputy Resident Commissioner, and afterwards as Resident Commissioner. In June, 1916, he was appointed Resident Commissioner of Basutoland, and in November, 1917, he was transferred to his present appointment. At the time of his transfer to Swaziland, he was Administrator of North-Western Rhodesia. The Chairman of the Society has recently drawn attention in the House of Commons to the fact that Sir R. Coryndon took part in the Matabele War of 1893, in terms which appeared to suggest that Sir R. Coryndon's bearing arms in that emergency, an emergency in which Imperial forces were also employed, unfitted him for subsequent service under the Crown, and for the chairmanship of the Southern Rhodesia Native Reserves Commission. From any such suggestion Colonel Amery recorded his emphatic dissent. The other gentleman selected by Lord Gladstone was Colonel Garraway, who was subsequently appointed to be Resident Commissioner of the Bechuanaland Protectorate, and is now Resident Commissioner of Basutoland. He is well known for his sympathy with the interests and feelings of the native races of South Africa. It is understood that he was connected with the service of the British South Africa Company for a few days at the end of 1895, when he was transferred from the Bechuanaland Police, with which he was employed as surgeon, to a similar position in the service of the Company. Neither gentleman has ever served in the Company's commercial department, and the same applies to Sir F. Newton and his alternate, Mr. Atherstone, the Treasurer and Surveyor-General of the Administration of Southern Rhodesia.

10. The Society's allegations against Mr. Atherstone have been effectively disposed of by the memorandum communicated in the letter from this Department of the 8th September* and it is much to be regretted that the Society should not be able to see that they have done him any greater injustice than that involved in a "technical misdescription." It is impossible for anyone who accepts (as the Society do) the statements made in Mr. Atherstone's memorandum to take such a view of the extract from the Society's "Appeal" quoted at the beginning of this letter, or of the following extract from another pamphlet of the Society called "A Great British Injustice to Native Races" — "A situation was actually created under which the Company's Chief Land Agent, who for years had been privately and publicly advocating the cutting down of reserves, was appointed." It is noted that the Society disclaim responsibility for Mr. J. H. Harris's letter to the *New Statesman* in March last, but as he is one of your co-signatories it is desirable to call attention to the fact that his remarks about Mr. Atherstone were of the same tenour as those officially promulgated by the Society. They were to the effect that the Company "ultimately secured as the principal and most active person on the Commission the presence of their Chief Land Agent, who had for years been prominently identified with proposals for cutting down the native reserves."

11. With the high opinion which it is evident the Society entertain for the Native Commissioners of Southern Rhodesia there can only be cordial agreement, and it is very satisfactory to gather that the Society in this respect endorse Lord Buxton's statement at Salisbury on 26th August, which ran:—

"Three things have struck me since I have had to do with Rhodesia as High Commissioner, and these have been emphasized on every occasion that I have had to deal with Rhodesia

"The third thing with which I have been struck, and I hope you will like me to say so, is the sympathetic administrative treatment of the natives and the attitude of the Europeans in Rhodesia in regard to the natives. I do not want on the present occasion to say more than that on the point. I may have an opportunity of referring to it again at greater length elsewhere as High Commissioner, and, therefore, in some sense responsible for the interest and welfare of the natives in Rhodesia. I have taken, naturally and hereditarily, a great interest in the question, and this I can say, and I desire to say it emphatically and seriously, that what I have seen and have learned the administrative treatment and the attitude of mind of the Europeans in Rhodesia with regard to the natives compares favourably with any other community in which Europeans have control of the natives."

If, however, it is held that Mr. Atherstone was unfitted for membership of the Commission by reason of the advice that he had given to the Administration in 1908 that certain reserves were excessive, the same view must be taken of all the signatories (including Mr. Staley Jackson) of the report of the Conference of Superintendents of Natives already mentioned, in which also the opinion was expressed that in certain localities the reserve land was excessive. One of the correspondents quoted in your letter mentions that the native reserves are for a large part unsurveyed. This fact, which was present to the mind of Mr. Harcourt when he took action for the appointment of the Commission at the end of 1912, appears to show that there was a special propriety in associating an expert surveyor with the work of the Commission.

12. As to the manner in which the Commission conducted their work, the care and zeal, and the sympathy for native interests with which the Commission carried out their duties are abundantly clear from their report. They had the advantage, as stated in the report, of being accompanied throughout every district by the Native Commissioner, or one of his staff, and doubtless this substantially contributed to the fact that their recommendations received the general approval of the Native Department. In the "Appeal" of the Society, it is stated that "no natives were allowed to give evidence before the Commission." The Reverend A. S. Cripps himself, in a published pamphlet, has described this statement as "obviously misleading." It is expressly stated in the report: "the projected movements of the Commission were advertised from time to time in the local Press in order to give the fullest opportunity to those interested to give evidence which might facilitate the inquiry. The officials of the Native Department were requested to notify the chiefs in their respective districts with the same object"; and, again, "every opportunity was afforded to officials, members of the public, and native chiefs and headmen to give evidence, though, as a rule, little advantage was taken of it." Further the summary of evidence appended to the report records the tenour of the evidence given by a number of native witnesses. The Society now seek to justify this misstatement by describing the evidence given by the native witnesses as not "evidence" in the accepted sense of that term, and by quoting a part of the following passage in the report:—

"The evidence given by the officials of the Native Department was relevant and valuable. We did not as a rule examine native chiefs unless there was some point to be elucidated or some definite information to be gained. In many reserves it was not possible, for various reasons, to consider any alteration of boundary, and in some other cases the direction which our recommendations must take was so obvious that the local chiefs were not examined. We felt that we might do more harm than good by questioning the natives upon a matter of which they were very likely to misunderstand the real scope, and to which also no effect could be given for a year or more."

13. Your letter is intended to convey the impression that the report of the Commission has given rise to a very great wave of indignation throughout Southern Rhodesia. No communications have reached His Majesty's Government from the territory which lend any support to such a suggestion. Only two protests have been received, one from the Reverend A. S. Cripps, who objects to the reduction of the Sabi Reserve, and the other from certain missionaries, who object to the reduction

of the Chiduku Reserve. Mr. Cripps, who protested to the High Commissioner, was informed by Lord Buxton that the arguments which he had advanced were not sufficient to justify the reconsideration of the Commission's recommendation. As to the comment which you make on the first extract from the protest by Mr. Cripps, enclosed in the Society's letter of the 3rd May,* it is observed that Mr. Cripps has merely derived his information from paragraph 41 of the Commission's report, in which passages from Mr. Atherstone's memorandum of August, 1908, were embodied. As regards the second extract, it is difficult to see what impropriety there can have been, either in the Company's obtaining a report on the district in question, or in the Commission's taking any such report into their consideration. The evidence taken by the Commission in regard to the Sabi Reserve appears in the summary appended to their report.

14. The high motives animating Mr. Cripps in protesting against the reduction of the Sabi Reserve are fully recognized, but as the Society relies on his support in the animadversions which it has made on the personnel of the Commission, it should be mentioned that Mr. Cripps was one of three missionaries who interviewed Lord Buxton at Salisbury on the 26th August. At this interview there was a discussion on the reflections on the integrity of the Southern Rhodesia Native Reserves Commission, contained in a pamphlet issued by Mr. Cripps, and at the end of the interview Mr. Cripps told Lord Buxton that he would strike out of his pamphlet the paragraph to which His Excellency had taken exception.

15. There is no objection to the publication of your letter, together with this reply, but I am to add that it is proposed to lay the whole correspondence with your Society before Parliament.

I am, &c.,

HENRY LAMBERT

No. 19.

THE ANTI-SLAVERY AND ABORIGINES PROTECTION SOCIETY to
COLONIAL OFFICE

(Received 7th January, 1920.)

[Answered by No. 20.]

Denison House, Vauxhall Bridge Road,

SIR,

London, S.W.1, 6th January, 1920.

I BEG leave to enclose a memorandum in reply to the last letter† from the Department on the subject of the Reserves Commission, to which it seemed to my Committee important to reply on several points. I regret that with every attempt to make the reply as brief as possible it has grown to a greater length than we anticipated.

We shall appreciate hearing from you the number and price of the White Book as soon as convenient.

I am, &c.,

TRAVERS BUXTON,
Secretary.

Enclosure in No. 19.

Denison House, Vauxhall Bridge Road,

SIR,

London, S.W.1, 6th January, 1920.

WE beg leave to acknowledge the receipt of your letter of the 18th of December last† which was submitted to our Committee, and to which we are instructed to reply as follows.

This letter deals with:—

- (a) Certain passages in documents published by the Society, to which exception is taken.
- (b) The substance and grounds of the appeal made by the Society to the Colonial Office, on behalf of the natives, as set forth in their correspondence with the Department.

* No. 9.

† No. 18.

The Committee, whilst it is quite prepared to accept criticism on (a), begs leave once more to point out that it is a matter distinct from (b) and of very much less public importance, and that, even if exception might reasonably be taken to any passages in their pamphlets in regard, for instance, to the position or responsibilities of individuals concerned in the history of the dealings with native land rights, this ought not to be allowed to prejudice consideration of those substantial facts in the case which they have presented to the Colonial Office, and which cannot be so disposed of, or are common ground.

The Committee feels quite sure that the Secretary of State will allow that, in judging of the ultimate merits of the claims of the natives of Southern Rhodesia to remain undisturbed on their lands, as urged by the Society in their letters to him, it is not reasonable to confuse these two topics, and they therefore, in their reply, take leave to keep them distinct.

In the Society's letter of the 21st October, 1919,* it was stated that they were quite prepared to substitute the word "contention" for "agitation" as the first local and unofficial step in securing a reduction of the Reserves. In the recital of events which led up to the appointment of the Rhodesian Reserves Commission, as set forth in the fourth paragraph of your letter under acknowledgment, it is now made clear to the Society for the first time that at the date in question, namely, December, 1912, His Majesty's Government had taken no account of the evidence contained in the local Native Affairs Committee's report, for the effect of that report is completely excluded from reference in that recital, and the action taken is affiliated directly to the report of the Commission of 1903-5. The Society had always presumed, and they consider not unnaturally, that His Majesty's Government was duly cognizant of the facts illustrated in this report, with which our Committee has all along been familiar. When, therefore, this part of your letter was read to our Committee, the members were greatly impressed with what seemed to them to have been a remarkable ignoring of material elements in this history, but they are bound to accept the assurance that the High Commissioner was also unaware of and unaffected by the local "discussions" or "contentions" disclosed in the 1910-1911 report, and that therefore the Society has been mistaken.

The facts, as now made clear, appeared to our Committee to account for much of what has been incomprehensible to our Society in the manner in which the matters in question have been dealt with. We are further, however, instructed to point out that the first letter in the White Book [Cd. 8674] unquestionably makes it also appear that the first definite *official* step in the matter was taken "as a result of an interview with Mr. Malcolm" (one of the Company's directors) and the High Commissioner, presumably at Arcadia, Pretoria.

There is not in this, nor in any other public document at our disposal, any indication whatever of the information which is now contained in your letter under acknowledgment, namely, that "in that month—December, 1912—definite instructions were sent by the Secretary of State for the Colonies, Mr. Harcourt, to the High Commissioner, Lord Gladstone, to furnish a report on the subject."

Our Committee realizes that the publication of this important circumstance may have escaped notice,—if so, a reference to it would be appreciated,—but the Committee feels sure that the Secretary of State will recognise that if a Public Department withholds from Parliament any record of such important particulars as that now communicated to the Society, namely, that the initiative in the appointment of the Commission was taken by His Majesty's Government, surprise can hardly be felt at any misrepresentation of history that may result from commentators accepting such documents as complete.

We would also point out in this connexion that the Committee had relied to a considerable extent upon the underlined passage in the following statement in the 1910-1911 report of the Rhodesian Native Affairs Committee:—

" that in certain reserves a large portion of the soil is poor, that water is deficient, and that certain localities are unsuitable for human occupation. Be that as it may, *as the assignment has been formally effected by the Company and approved by the Administration, it is questionable whether it can be materially varied as regards extent.*"

If the Society had known that the instructions now referred to had followed so closely upon the publication of the foregoing, and had been given without regard to it, the Committee would have immediately approached the Secretary of State upon the subject.

* No. 17.

Our Committee does not propose dealing further with what the Society regards as being the relatively less important matters, namely, the misdescription of an official by designating him as a "Land Agent" instead of a "Land Surveyor," or the history of this inception of the Reserves Commission, because it holds, rightly or wrongly, that the treatment by which the natives of Southern Rhodesia have been entirely dispossessed of all their land rights is of far greater public importance, and can only regret that it has not yet been able to persuade His Majesty's Government to accept the same view.

With regard to (b), it is common ground that the South Africa Native Affairs Commission of 1903-5 reported:—

"That the time has arrived when the lands dedicated and set apart or to be dedicated and set apart, as locations, reserves or otherwise should be defined, delimited and reserved for the natives by legislative enactment. That this should be done with a view to finality in the provision of land for the native population and that thereafter no more land should be reserved for native occupation"

This recommendation, it is important to remember, was made at a time when the assumption was fairly general that the natives of Rhodesia had lost their land rights—primarily by a Concession now declared "*valueless*." But even so, the recommendation was that Native Reserves should be *delimited* with a view to finality, not that natives should be removed from lands they already occupied. The Society has never raised any objection to this recommendation, nor has it in fact ever objected to a reduction of the reserves, provided such reduction only involved the alienation of uninhabitable, waterless or rock areas. But the reference to this passage appears to them to be the less relevant in criticism of what they have urged, both because what they have urged is quite consistent with it, and also in view of the fact that it was apparently ignored by His Majesty's Government for more than seven years. The Commission, we desire to emphasize, was of opinion that *the time had then come* for establishing *finality*; but His Majesty's Government are now proposing, after fifteen years' further sufferance (notwithstanding this report) of beneficial occupation, which has materially strengthened the claim of the natives to protection in such settlement, to approve the eviction of many thousands of them from their ancestral tenements and from lands brought into cultivation through years of industrial effort, without even, so far as appears, any intention of providing such compensation or solatium, for rebuilding their homes and preparing new farms, as would be the right of any persons so dealt with by the Government of any civilized State.

In your letter the opinion is expressed that the fact that the unalienated lands have now been adjudged to be the property of the Crown does not in any way affect or entail the reconsideration of the recommendations of the Commission. Whatever may be the justification of this opinion, it is astonishing to the Society, for it is incredible to them that the principle suggested can be interpreted as absolving the Crown from exercising its proprietary rights as paramount in succession to the extinct sovereignty, with special regard to the equitable claims of the natives, on the ground that another party, heretofore illegally claiming and exercising ownership, would not have done so. This opinion appears to our Committee to be in the most direct and violent conflict with the administrative principles affecting dependency land as laid down by the Colonial Office itself in the despatch of Lord Crewe, dated 15th July, 1908,* and addressed to the Governor of Fiji and also with the policy adopted in other African Protectorates.

Not merely is such an interpretation in conflict with the declared policy of the Crown in other Protectorates, but it also violates repeated public professions of the principle of trusteeship for the interests of native races in British Dependencies. It has always been held hitherto by the British Colonial Office that even conquest did not entitle the British Crown to confiscate absolutely all tribal rights in land—the only other claim is that of Concession, which in this case has been authoritatively adjudged "*valueless*."

It is admitted in the Colonial Office letter that it is now proposed to evict and remove from their established settlements not less than 35,000 natives. It is not denied that these people regard this prospect with great distress, and that missionaries interested in their welfare protest against it. The hardship

* H. L. 205, October, 1908

entailed in such an eviction is obvious to any student of African affairs—kraals will be destroyed, fields which have taken years to bring into a state of cultivation will have to be abandoned, all that the word “home” means to the African will be confiscated, whilst the people will see their most sacred places ruthlessly “developed” by white men to whom their homes and pasture lands will be sold.

The Committee observes that you state in paragraph 7 that:—

“The Society evidently attach (as we assuredly do) great weight, and justly, to the views of the Native Department. It may therefore be pointed out that in deciding to recommend the adoption of the Report the High Commissioner was largely influenced by the fact that the recommendations were understood to be generally acceptable to the Native Department, and nothing has occurred since to show that the views of the officials of the Native Department were misjudged.”

The grounds of this “understanding” are not indicated, but in a later passage (paragraph 12) this presumed approval is alluded to as a “fact.”

The members of our Committee must confess their inability to frame a reply suitable to this point because they cannot bring themselves to believe that His Majesty’s Government is unaware of the following passage which actually occurs in the Reserves Commission Report:—

“In a few cases, however, it has been impossible to avoid the fact that our recommendations have not been in accordance with the wishes of the Native Commissioner of the district.”

It is just such sentences as this that greatly increase our concern at the fact that the Company ignored Lord Harcourt’s explicit suggestion that a senior official of the Native Affairs Department should form part of the Commission. But the obvious hardship, serious though it be, involved in bringing about the eviction of 35,000 people, is but a part of what the Society fears. Their reading of the report of the Judicial Committee, coupled with the declaration of Sir Charles Coghlan on behalf of the Rhodesian settlers, leads them to anticipate that whatever the amount of the award fixed by Lord Cave’s Commission, that award will attach certainly to the lands occupied exclusively by the 115,000 natives outside the reserves, and possibly to those assigned to the 400,000 natives in the reserves. There will thus be set up a powerful incentive to evict another 115,000 natives outside the reserves, and possibly varying numbers over a period of years within the reserves. This is a most disquieting prospect.

The Society does not overlook the fact that His Majesty’s Government has repeatedly referred to the *final* delimitation of the native reserves, but again their reading of the situation is that this, too, is subject to the Order in Council of 23rd May, 1894, which seems to them, in the present circumstances, to render very precarious any land held anywhere in Rhodesia occupied by natives, whether reserved or not. Clauses 28 and 29, shortly stated, provide that, “upon good and sufficient cause shown,” the Company can secure such lands for the purpose of “mineral development,” “sites for townships,” “railways,” or “for any public works.”

Thus, if the suggested *finality of delimitation* is to be subject to the Order in Council of 1894, the Society must again emphasize that the natives of Rhodesia are not merely without ownership, but without security of occupation, for by a long experience they have learned how easy it is for vested interests to establish a “good and sufficient cause” for the eviction of native inhabitants from their lands.

With regard to the composition of the Reserves Commission, the Committee has nothing to add to, and nothing to withdraw from, what it has already written on that subject. It must, however, be pointed out, as the significance of what we wrote on its behalf has apparently escaped the Colonial Office, that we did not “suggest”—nor did its Chairman in the House of Commons—“that Sir R. Coryndon’s bearing arms in that emergency, an emergency in which Imperial forces were also employed, unfitted him for subsequent service under the Crown and for the chairmanship of the Southern Rhodesia Natives Reserves Commission.” What the Committee did suggest, and holds, is that a gentleman who owed the beginning of his official career to the fact that he took part in an attack on a country under an agreement which was being drawn up by the promoters of that attack, at the same moment that the highest representative of His Majesty’s Government in South Africa was giving formal assurances that no such thing was contemplated—an agreement that those who took part in it should receive large grants of natives’

lands and large shares of cattle to be seized from the natives—that this gentleman was, quite apart from any judgment of the quality of his subsequent service in Basutoland or elsewhere, not a suitable person to choose for the chairmanship of a Commission appointed to determine questions of those natives' rights still remaining in such land and property as he and his companions in arms had left to them.

Nor does the Committee conceive that if what is now publicly known as to the origins of the first Matabele War had been known to Lord Gladstone at the time, his Lordship would have selected Sir R. Coryndon for that position.

It is explained in your letter that the initiative in the appointment of the Reserves Commission was taken by His Majesty's Government, "acting solely in the interests of the natives, and without reference to any commercial interest of the Company." This statement is true only in so restricted and special a sense that the study of its meaning and of the background of the conditions out of which its degree of truth arises leads directly to confrontation with those salient and dominant facts of the whole position which the statement, as it stands, ignores.

It is true that Southern Rhodesia, having been invaded and being in process of colonization and settlement by Europeans, it is in the interest of the natives that some residue at least of the land of which they were the prior occupants should be reserved to them. Just so might a magistrate send a complainant to prison, solely in his own interest, to protect him from having his pockets picked any more, and without any reference to the commercial interests of the defendant.

But Sir S. Jameson himself represented the result of the Commission's labours as being highly satisfactory to his shareholders; and it appears allowable to presume that in expressing this judgment it was their commercial interests that he had in mind.

It is not a fact that the general policy of segregation of racial settlements in South Africa looks solely to the interests of the natives. It is no doubt conceived in part with that view, but it arose out of the demands of Europeans made in their own interests; and obviously, if Europeans had not come (in their own interests) into these countries, the policy would never have been heard of. But our Committee would venture to remind His Majesty's Government that, although the policy of segregating white and native land interests is being pursued within the South African Union, such a policy could only be applied in Southern Rhodesia by setting aside clause 33 of the 1894 Order in Council, and in the absence of information to the contrary, it is assumed that no such injustice is being contemplated.

It is still less true that the expropriation of natives from the lands which they have settled on and cultivated in Rhodesia looks solely to their interests. Such a proposition would be ridiculous, and the Society does not suggest that the Colonial Office meant to advance it. The expropriation of natives has only become expedient because it has been and is advantageous to Europeans to take either now or in the future, the lands which they have brought into a comparative state of cultivation. However desirable and right it may be to protect native occupants from unlimited further encroachments of this kind in the interests of the stronger race, it is quite unnecessary from this point of view to evict those who have still so far been allowed to remain in their own homes.

The Colonial Office has remonstrated with the Society for employing in its publications phraseology deemed misleading. The Society, for its part, deprecates the use by the Colonial Office, in its letters intended for publication, of a statement which, read as it stands, and by persons not familiar with the whole situation and history, would be so misleading as that which we have quoted.

The salient and dominant facts of the position, which the Colonial Office throughout this correspondence has appeared to treat as non-existent or negligible, are briefly these—The Mashonas and the Matabele (somewhat in the relations, though on a more barbarous level, of the Saxons and the Normans in early England) were settled in this country before Europeans came there at all. Europeans, desiring the land, picked a quarrel with the Matabele (the Society need not again rehearse the scandalous circumstances, which are much better understood now than they were at the time) and under pretext of a title doubly vicious—both in respect of this wrong and of the worthlessness of the Lippert concession—appropriated and alienated vast tracts of land and herds of cattle, ignoring any rights, not only of the Matabele overlords with whom they had picked their quarrel, but of the Mashonas (whom they used to assist them in "smashing" the Matabele, but gave to them no land or "loot," as they did to their white followers), who had perhaps

a closer and more legitimate interest in the soil, and imposed rents and taxation upon them for occupying their own settlements. The Colonial Office does not appear, in this correspondence, to recognize any kind of injustice or hardship to the natives in these operations, and, so far from entertaining the idea of insisting on any redress now that the illegality of the whole of the proceedings has been established beyond all question, proposes to continue and develop the process of expropriation, apparently without any compensation for disturbance, representing this policy as adopted "solely in the interests of the natives themselves."

Our Society most strongly protests against the final adoption of such an attitude by His Majesty's Government.

We beg leave to reaffirm that our Society intends to pursue, until its objective is attained, its attempt to secure the following objects:—

- (a) To obtain in those lands where there are no white men a secure title for all tribal units in the lands they are now beneficially occupying
- (b) To secure payment (upon the same conditions as those of the white settlers) of the natives' costs of the Privy Council's reference

Our Society has committed itself to this task because its members believe the above policy to be just, moderate, and in the real interests of the white men, no less than of the natives. They assure His Majesty's Government that neither lapse of time nor the obvious difficulties will be allowed to deter them from this objective, because they are convinced that sooner or later His Majesty's Government will be led to accept the views of the Society in a matter vital to Great Britain's widely proclaimed attitude of trusteeship for the inhabitants of British Dependencies.

As our Committee proposes publishing this reply and its communication of the 21st October,* with an advertisement clearly announcing the issue of the White Book, and urging the public to study it; we should appreciate being informed as early as possible of the number and price. This course would avoid any unnecessary printing, and would materially assist in making known the position of His Majesty's Government.

We are, &c.,

TRAVERS BUXTON,
Secretary.

JOHN H. HARRIS,
Organizing Secretary.

No. 20.

COLONIAL OFFICE to THE ANTI-SLAVERY AND ABORIGINES
PROTECTION SOCIETY.

SIR,

Downing Street, 29th January, 1920.

I AM directed to acknowledge the receipt of your letter of the 6th instant,† enclosing a memorandum on the subject of the native reserves in Southern Rhodesia and of the Society's costs in the recent Reference to the Privy Council, and I am to inform you that your letter and memorandum will be included in the Parliamentary Paper which it is proposed to issue, the number and price of which will be communicated to you as soon as possible.

2. The Secretary of State does not propose to examine in detail all the statements contained in your memorandum, but I am to observe that he does not understand why your Society supposes that the High Commissioner of South Africa or the Secretary of State overlooked the Southern Rhodesia Native Affairs Committee's Report of 1910, or why it should apparently be supposed that the policy of appointing the Native Reserves Commission was adopted at the instigation of Mr. Malcolm, seeing that the Blue Book containing the Report of the Commission [Cd. 8674] makes it quite clear (see particularly letters Nos. 1 and 2) that the British South Africa Company had been opposing the appointment of a Commission. Nor is it clear why your memorandum should express surprise at learning that the initiative in this matter was taken by His Majesty's Government, seeing that your Society, at least since the letter from this Department of the 4th April last,‡ must have been fully aware of the fact.

* No. 17.

† No. 19.

‡ No. 6.

3. With respect to the statement in your letter of what your Society regard as the substance and ground of their appeal, it appears to the Secretary of State that the Society's observations are largely based on a misapprehension of the legal and historical position. Legally, as is pointed out in the Colonial Office memorandum of April, 1919,* the decision of the Judicial Committee of the Privy Council in the land case does not in any way affect the position of the natives, which is determined solely by the provisions of the Orders in Council. This has been the position ever since 1894, when, as stated in the words of the judgment of the Privy Council, by the will of the Crown and in exercise of its rights, the old state of things, whatever its exact nature, as it was before 1893, passed away and another, and, as Their Lordships did not doubt, a better, was established in lieu of it. The Crown then became responsible for seeing that the natives were adequately provided with land for tribal purposes, and the supervision of the Imperial authorities has been exercised ever since, and will continue to be exercised as long as Southern Rhodesia does not enjoy full responsible Government.

4. It is observed that your Society state they do not object to the reduction of the reserves provided that such reduction only involved the alienation of uninhabitable, waterless or rock areas, and that their main objection is to the removal of natives from lands which they have already occupied. I am to point out in this connexion that it is understood that not a single native is affected by the reduction of the Shangani Reserve by 545,000 acres, and very few can be affected by the reduction of the Gwaai Reserve by 877,000 acres, in regard to which the Commissioners state that the portion recommended for surrender is practically uninhabited and of no use to the natives (see page 54 of [Cd. 8674]). I am to call attention also to the position as regards the Matibi Reserve (see page 49 of [Cd. 8674]), which is a large and very sparsely populated reserve, the northern part of which is stated to be immensely in excess of all possible native requirements present and future. These reductions alone account for over 4,000,000 acres. The other surrenders, as pointed out by the Commissioners, are largely in the nature of exchanges, the reasons for which are set out fully in the Commission's Report.

5. The Secretary of State does not propose to say anything further on what appears to him to be a quite baseless attack on Sir Robert Coryndon. With regard, however, to your Society's remarks regarding the first Matabele war, I am to remind you of what Mr Gladstone said in the House of Commons on the 9th November, 1893, as to the cause of that war, viz:—

“The immediate cause lies in the two demands made upon Lobengula, that he should put an end to a system of raids, which means after all the destruction of peace and industry in the country, and that he should withdraw his demand for the delivery over to him of a number of Mashonas, whom there is every reason to believe it is his object and intention to put to death.”

Further, as to the responsibility of the Imperial Government Mr. Gladstone said:—

“I can assure the Right Honourable Gentleman that we have not the smallest idea of any attempt to dissociate ourselves from responsibility for the war now unhappily being carried on. On the contrary I feel that while the Company, of course, has its own responsibility—and it is a serious responsibility—in respect to that war, yet the Government is obliged to acknowledge, as we do acknowledge, its responsibility also. It must have the chief share of responsibility, and any share that the Company may have must on this occasion be regarded as subordinate and secondary for the time to the responsibility that weighs upon Her Majesty's Government. We have deeply lamented it; we have endeavoured to avert it: the necessity for it has come upon us: that necessity we have frankly met and recognized.”

6. With regard to the Society's costs in the Privy Council Reference the Secretary of State has nothing to add to what has been said in previous letters from this Office

7. I am to take this opportunity to enclose a copy of a letter from Mr. H. S. Keigwin, a Native Commissioner and Assistant Magistrate of the Southern Rhodesian Administration, which has been communicated by the British South Africa Company, and which your Society will no doubt be interested to read.

I am, &c.,

HENRY LAMBERT.

Enclosure in No. 20.

DEAR SIR, 144, Folkestone Road, Dover, 27th December, 1919
 THOUGH not attempting a detailed answer to Mr. J. H. Harris' Appeal to the Parliament and People, I feel I can contribute some experienced criticism of some of the more important statements which may be of use to the Directors.

Bearing in mind the people we are dealing with, I feel it is important to point out my special qualifications in this matter. I have been for 17 years in close touch with the natives, for 9 years in actual charge of the largest district. From 1903 to 1906 I was among the Matabele, from 1906 to 1919 among the Mashona. In 1910 I was Secretary of the Native Affairs Commission, the recommendations of which were hailed by the missionaries, who saw in them a great measure of recognition and encouragement for their efforts on behalf of the natives.

Previous to my service with the British South Africa Company, I had been a scholar of one of England's greatest schools, and had graduated in Honours at Cambridge. My sympathies had been greatly with the Church and with Missionary Societies, among which I number many friends. My reports for years have shown that I was ever on the look out for anything that would help the natives to a larger life, while my training and subsequent work stand for a wide-minded and humane policy, just as wide—just as humane as that of any of the A.P.S.

I state all this in order that it may be understood that I have not, because of my residence in Africa, lost the right of being accepted as a fair and liberal-minded administrator of natives. I wish this to be thoroughly understood, so that the words I am about to write may not be set aside as those of a superficial thinker, or, worse still, of a time-server of no deep conviction.

The first point I would draw attention to is that when the Reserve Commission went round the country every Native Commissioner was given every opportunity to prepare his case, to consult with his natives, and then to state that case to the Commission, and produce any natives who desired, or were desired, to give evidence. I make bold to state that in almost every case the recommendations made by Native Commissioners were, as in my case, the mature calculations of years of first-hand experience of the requirements. Take my own district, Lomagundi. In 1902 an acting official of no experience in Native Administration, and with little knowledge of the country and the people, had proposed certain very small and scattered Reserves. My predecessor found these quite inadequate, and in 1909 he set about selecting larger and better-situated areas. In 1910 I took up the work where he had left it, and from then till the advent of the Reserve Commission I had this matter constantly in my mind. I travelled to every corner of the District, to some parts many times, covering thousands of miles, and discussing the question with all the natives. I was most careful to consider their wishes. I studied the question of soil pasture, building sites and water. Though my District was from 16,000 to 20,000 square miles in area I got to know every part of it and almost every native. When the Commission came I asked for over half a million acres of new reserves.

They were rather surprised, but they visited the localities, interviewed the chiefs, heard my juniors and cross-examined me most closely. As you will see from their report, they granted every acre I asked for. Mr. Atherstone was with them all the time, and was in entire sympathy with my views. And yet this is the district where more land was granted for native reserves than in any other. I can only emphasize my statement that this generous recognition of the natives' requirements exemplifies the entire fairness with which the natives have been treated.

My second point concerns the value of the soil. Mr. Harris admits that the area of the reserves is large. He says the soil is of a notoriously poor character. Now this is a statement that is either merest hearsay, and so of little value, or it is based on a very cursory inspection of a small area. In either case it is a misstatement. He says eighty-five per cent. of the reserves is granite. What percentage of Rhodesia is granite? Probably not less. What percentage of occupied farms is granite? What percentage of land previously worked by natives was granite?

My experience is that, with few exceptions, the natives have always worked granite, and actually prefer granite. In my district I was always trying to get the natives to work stiffer soils, but with very little success. There are a few small tribes that have worked rich pockets, but they even work granite as well, because they know the granite is safe. How

many a fine field of mealies or corn had I seen washed clean out in the rains, and nothing but the granite, or bush-veld lands to help them out! If we had set aside reserve lands of heavy chocolate or red soil, the natives would have refused to go to them. It must be remembered that the natives were primarily a pastoral people, and most of them preferred the granite as being the best for cattle. They knew that almost any soil will produce the crops they want, but granite offers best grazing. I doubt now whether granite is not considered by Europeans as the best country for mixed farming. It is certainly not the worst.

And now for the third—and, perhaps, most serious—point. Mr. Harris states that “the natives will pay almost anything rather than go into these territories; also that for the last hundred years and more there was nothing to prevent the natives from settling on these lands, but they have deliberately refrained from doing so.”

Let me deal with the latter part first.

This cannot surely be meant to apply to the Matabele, who have not been in the country for a hundred years, and who are to-day very largely on the same, or similar, ground to where we found them. As to the Mashona, they were always on the move, and it is rare to find a piece of country that has not been previously worked. The bush grows up again so quickly after a land is left that unless you can get to know from old natives you would never guess where lands had been. My own experience is that, with the exception of the richer and stiffer soils there is scarcely an acre of arable land that has not been worked at one time or another. The explanation of that, and of their choice of granite is the same. They chose the soil that was easiest to work. They relied on the burning of trees and weeds for fertilizing, and so they continually changed their lands, getting probably not more than two years' crops off the same piece. In my district, the Zwimba people, now in their reserve west of Hungani River, have been there before, and have zig-zagged across the river back for generations, as far as one can ascertain. The country on both sides is practically identical. The only consideration that limited their range was the popular understanding as to the jurisdiction of the different chiefs.

The contention that they have been driven away from ground hallowed by burials is very largely concocted. At one time I believed that this might be true. My experience proves to me that it is not a sound objection. Except in the case of the grave of some big chief, which is, as a rule, tended by his brothers, there is really no reverence shown for graves after a few years, and even that of the big chief rarely survives his generation. It is an idea that has in some cases been put into the natives' heads, and is not genuine. The native memory is short, and rarely profound. If there is any objection other than that of constitutional objection to effort, it is usually inspired by one or two old people, who dislike change, and want to die where they have lived. That is a natural feeling, and I personally have respected it in more than one instance. But, obviously, if the old were always waited on, it would never be possible to make the move. It is usually the thought of the work entailed, the cutting of poles, the erecting of new huts, and the making of new lands, all at a distance from the kraal, and then the carrying of their grain, a far larger labour than the carrying of their goods, to the new site. These are the things that most often prompt the conservative and unprogressive native to raise objections to move. A native finds it hard to throw his mind forward to anything. A move means a mental as well as a physical effort. He will always avoid it if he can, and in cases where it means a move to a distance, he will resist it to the last.

But there is a far more serious reason for some of those now outside the reserves remaining where they are, and being willing to pay almost anything rather than move into the reserves. Mr. Harris's statement is true, but true for a reason of which I would prefer to think him ignorant. The native will pay to stay where he is, because it pays him, and that it may do in many ways. There is, I believe, proximity to employment, especially for such as have good posts in offices and stores in towns. These and a few others are there for good reasons. But the great majority are there for reasons of gain in its worst form. I say with full realization of the seriousness of my assertion that the great majority of natives who have elected to stay where they are, and this most especially in proximity to towns, mines, and farms, are there to make what they can from the illicit sale of beer, and its attendant evils of prostitution, fraud, theft, and so forth. I speak of what I know. Years ago I had to get the Manager of the Eldorado Mine to co-operate

with me in suppressing the evils attendant on the visits of local men and women to the mine. There used to be strings of women, carrying pots of beer, or baskets of produce, visiting the mine and stopping there overnight, or perhaps for several nights. The Kaffir Beer Ordinance helped us to stop that, and at least openly it seemed there was an improvement. But I soon found that the mine boys were going to the kraals and the same evils were going on. How often have I had it said to me, "Why don't you move those natives away? My boys are always getting drunk and not turning up to work on Monday?" Often I have wished I could move all these kraals into the reserve, where they would at least be among their own people, and where we have power to lessen this evil traffic. It is the proximity to the natives, who are earning regular money, and who are probably without their own women, that prompts these kraals to pay to stay where they are. I know, too, that the heads of these kraals live on the proceeds of this evil traffic. Look up the cases of sale of Kaffir beer, and you will find the culprits are from these kraals. I know from bitter experience that what I say is true. It has been one of the greatest stumbling blocks in my path when I have desired to improve the natives. And these are the people that Mr. Harris would champion, and hold up as having been wronged by the Government. I wish I could get the opportunity of saying a few words on the public platform to a meeting of his supporters. They cannot know the facts, and Mr. Harris in his zeal has not tried to see anything that might injure his case.

I am aware that there are a large number of natives on private lands, who are there because of a mutual advantage accruing to the owners and themselves. I do not say that these are of a bad type, or engaged in nefarious practices. But they are certainly there not so much because they object to the reserves, but because it suits them. Some, as in Belingwe, look after sections of the Europeans' herds, some because they actually work for the European. But I do suggest that their lot might not be so good nor their chance of getting good terms with the European owners so strong, if it were not for the fact that both sides know that there is always the reserve for the natives to go to if they wish.

Mr. Harris's figures are not the latest, and his number of those who are outside the reserves is probably far over the true figures. He gives the total outside as over 300,000. In my district until quite recently, when the revised areas of reserves had been declared, several thousands of natives, who were actually living on that land, which has now been declared reserves, were counted as being on "unalienated" land. The same no doubt occurred in other districts. So that to-day his figures could be appreciably reduced. In any case there are so many considerations weighing with different natives, which even a Native Commissioner has some difficulty in fathoming, that it is impossible for Mr. Harris, or his informants, to form a true estimate of the position. He must know that, and it makes it all the more wrong, and really stupid, of him to slash out in such truculent fashion in his attack.

But there is one point whereon he is technically correct, and it is a thousand pities that it should not be dealt with without delay. Technically, and legally, I believe, it is correct to say that the native has no right to a single acre, because these reserves have not yet been formally assigned. Clear up this point, and Harris would not have a single sympathizer.

It is generally accepted in Rhodesia that these territories are set aside solely for the native. The Commission was for that object, and it told the natives so, just as every Native Commissioner has told them. The Administrator has told them so, the Chief Native Commissioner has told them. The natives realize it, and appreciate the point that it is country in which the European cannot buy a farm, nor settle. I maintain, and speak with experience, of the endorsement of native opinion, that this provision of reserves for natives only is the most popular, the most equitable, and the most sensible Administrative action. The total area is generous, the type of soil is suitable. The obligation, if any, now rests on the native. One has only to look back a few years, and one sees the Matabele as fugitives from Tschaka defeated later and driven north by the Boer, exposed to an attack by them at any time, a wandering section of a tribe, scarcely yet settled in the country to which they had fled. But for our arrival and the consequent ordering of the country, they would have done little in the way of agriculture, but would have carried on their brigandage till wiped out by some stronger force, or driven further north to begin it all over again. Longer established, but by no means indigenous, the Mashona were a motley crowd of mixed tribes, with no central tribal control, no

military organization, a prey to the first army that should attack them. They lived mostly in the hills, planting lands in the bush, never sure whether they would not be wiped out in the night. To-day they are down in the open, with ample room for lands, growing rich in flocks and herds, men and women secure from attack, free, and unmolested. Both tribes have the protection and the advice of the Native Department, while provision for their education and development is every day increasing. That a man can so shut his eyes to this beneficial result of less than thirty years' Chartered rule, and try to make out these same people to be the victims of ruthless spoliation passes understanding.

I am afraid this is both long and disjointed, but I offer it as the testimony of one who has had actual experience, and who yields to none in his sincerity for the welfare of these people.

I am, &c.,
H. S. KEIGWIN.

The Secretary,
British South Africa Company.

APPENDIX I.

SPECIAL REFERENCE AS TO THE OWNERSHIP OF THE UNALIENATED LAND IN SOUTHERN RHODESIA.

REPORT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL,
DELIVERED THE 29TH JULY, 1918.

Present at the hearing.

EARL LOREBURN.
LORD DUNEDIN.
LORD ATKINSON.
LORD SUMNER.
LORD SCOTT DICKSON.

[Delivered by LORD SUMNER.]

In view of the unusual character and general importance of the questions involved in this reference, their Lordships will state, publicly and fully, their reasons for the report, which they propose humbly to lay before His Majesty. It will be convenient to give some account of the history of the matter before coming to the particular points in controversy.

Under ordinances and regulations having the force of law and with the approval and assent of the Crown, the Company—the British South Africa Company to give it once for all its full title—has for many years past granted land and interests in land in Southern Rhodesia to numerous alienees. In a few cases it has purported to make grants to itself, but these may be disregarded. It is conceded, on the one hand, that by so doing it acquires and enjoys no further or better title than it had before, and, on the other hand, that under the Company's grants in their favour other parties acquire and enjoy a full and indefeasible title. There still remains unalienated a vast area of land, which consists partly of native reserves, partly of land in the Company's own occupation for ranching or other purposes, partly of country altogether waste and unsettled. It is to this area, known as "the unalienated lands," as to which the Company has never granted to others estates or interests therein, and so long as it does not so grant them, that the present case refers.

The Company was incorporated by Royal Charter on the 29th October, 1889, and, in accordance with clause 25, a deed of settlement was subsequently executed, which further defined the objects and purposes of the Company. It was a commercial enterprise, but among its objects were the following:—

"To undertake and carry on the government or administration of any territories, districts, or places in Africa, and generally to exercise all rights and powers granted by or exercisable under the charter, and particularly to improve, develop, and cultivate any lands included within the territories of the Company, to settle any such territories and lands, and to aid and promote immigration, to grant lands for terms of years or in perpetuity, and either absolutely or by way of mortgage or otherwise."

It was provided further:—

"Article 101 (2) the directors shall, as far as practicable, cause the accounts of the Company in relation to its African territories and property to be so kept that the cost of administration and police and the revenue, if any, derived therefrom shall appear separately from receipts in respect of commercial operations."

There is no doubt that, from the first, of all the lands included within the territories of the Company, none were of more importance or of more immediate interest than what is now called Southern Rhodesia.

Before 1898 this country consisted of two regions, not very clearly distinguished from one another, called Matabeleland and Mashonaland, and of these countries in and before 1893 Lobengula was the paramount chief, as his father Umsiligas or Moselikatse had been before him. Both were chiefs or kings not so much of a determinate territory as of their peoples or tribes. Thus, in his treaty of friendship and alliance in 1836 with the then Governor of the Cape Colony, Umsiligas is described as "King of the Abaqua Zooloo or Qua Machoban,"

and the treaty of 1888 describes his son, Lobengula, as "ruler of the tribe known as Amandabele together with the Mashona and the Makalaka, tributaries of the same." As a matter of right, the relation of the Mashonas to the Matabele was perhaps ambiguous; as a matter of fact it was mere sufferance and subjection, but questions of this kind are now immaterial, for about 1888 Her Majesty Queen Victoria recognized Lobengula as Sovereign of both peoples. The British Government stated to the Portuguese Government that he was "an independent King," "undisputed ruler over Matabeleland and Mashonaland," who had not parted with his sovereignty, though his territory was under British influence, and in 1889 the Colonial Secretary wrote to Lobengula himself saying that he, Lobengula, "is King of the country" (i.e., of Matabeleland), "and no one can exercise jurisdiction in it without his permission." Lobengula's sovereignty over what is now Southern Rhodesia is therefore the starting-point of the history of the land question there.

After a fashion Lobengula's was a regular Government in which the actual rule was his. He assigned to individuals "gardens" for their personal cultivation. Under a system of short tillage and long fallows no occupation lasted long, except perhaps that of the kraals themselves, which he apparently respected. The community was tribally organized. It had passed beyond the purely nomad stage though still remaining fluid. It practised a rude agriculture chiefly of mealies. Its wealth was mainly in cattle, and of that wealth the great bulk belonged to the King. What individual rights his subjects had is very doubtful.

No principle of legitimacy attached to the dynasty of Lobengula. Though he succeeded his father and left sons behind him, there was neither successor nor pretender to his throne. He had under him a kind of senate and a kind of popular assembly. He was expected to consult the council of *indunas* or chiefs in matters of moment. The assent of the assembled people added authority to his public acts and to their resentment or superstition he sacrificed his *indunas* as evil counsellors or ministers.

Among all the peoples belonging to the Bantu stock, who at different times have inhabited various regions of South Africa, there have no doubt been similar institutions and similar ideas and practices on the subject among others of their tribal lands. Contact with white men, and still more residence under their rule, have enlarged those ideas, and doubtless even in Lobengula's time there were races in South Africa, such as the Basutos, for example, who had made considerable progress, both in the idea of transferable property in tribal land and in usages for ensuring the assent of the tribe to alienation of it, but it does not appear that this was so with the Matabele, probably because of the isolation in which they lived:—

"When they were governed by their own customs and laws the notion of separate ownership in land or of the alienation of land by a chief or anyone else was foreign to their ideas" (1906 T.S. 135).

It cannot be said of the Matabele and the Mashonas in Lobengula's day that they had progressed towards a settled policy further than this, that they acknowledged a sovereign in the person of a tyrant.

The present case, accordingly, raises no question of white settlement among aborigines, destitute of any recognizable form of sovereignty. Equally little is there question of the rights attaching to civilized nations, who claim title by original discovery or in virtue of their occupation of coastal regions, backed by an unexplored interior. On the other hand it would be idle to ignore the fact that, between the subjects of Her Majesty Queen Victoria and those of this native monarch, whose sovereignty she was pleased to recognize, there was in all juridical conceptions a great gulf fixed which it would, perhaps, be only fanciful to try to span.

Matabeleland and Mashonaland chiefly lay on the high interior plateau of South Africa. The latter at any rate was well watered, but both were cut off from the sea and from white settlements by belts of unhealthy coast lands or by great tracts of arid and almost waterless country. They had been visited and explored for years by missionaries and by hunters and by traders, but they were served by no navigable highway and communication with them by oxwagon was tedious, hazardous, and slow. They had been to some extent prospected for minerals, and even before 1889 it had become manifest that the savage solitude, in which the Matabele people lived, could not long endure. As early as 1880 and 1882, to pass over previous concessions which came to nothing, Lobengula had granted mining concessions between the Ramaquaban and Shashi Rivers to predecessors in interest of the Tati Company. In 1888 the Assistant Commissioner stationed in Matabeleland reports, "there is quite a crowd of Europeans here at present and the chief does not know which way to turn," and on the 5th December the High Commissioner, transmitting to the Colonial Secretary a copy of a mining concession granted by Lobengula to Mr. C. D. Rudd, observes:—

"The rush of concession hunters, to Matabeleland has . . . produced a condition of affairs dangerous to the peace of the country. I trust, therefore, that the effect of this concession to a gentleman of character and financial standing will be to check the inroad of adventurers as well as to secure the cautious development of the country with a proper consideration for the feelings and prejudices of the natives."

It was under these circumstances that the Company commenced operations. The Imperial Government desired to avoid the scandal and disorder, to which a scramble for the natural resources of the country would lead, unless the white immigrants were placed under effective control, and to secure the aboriginal inhabitants in the conditions necessary to their tribal mode of life, until they should have become adapted to take their place in a civilized community. If this could be done without undertaking direct administrative responsibility, so much the better. On the other hand, those who had petitioned for the grant of the charter to the Company were influenced by patriotism as much as by profit, and desired to further the development of British South Africa consistently with Imperial policy and progress. Lobengula for his part was perturbed by the solicitations of the white suitors, who crowded round him, bearing gifts, to the value of which he was keenly alive, and pressing him for concessions, the nature of which he but dimly understood. As for his people, they were uncomprehending but apprehensive spectators.

The charter was granted in terms carefully adapted to meet this situation. The Colonial Secretary was influenced by the consideration that—

“if such a Company is incorporated by Royal Charter, its constitution, objects, and operations will become more directly subject to control by Her Majesty's Government than if it were left to these gentlemen to incorporate themselves under the Joint Stock Companies Acts, as they are entitled to do. In the latter case Her Majesty's Government would not be able effectually to prevent the Company from taking its own line of policy, which might possibly result in complications with native chiefs and others, necessitating military expenditure and perhaps even military operations.”

Accordingly the field of the Company's operations was so defined that, while the existing Protectorate south of 22° south latitude remained unaffected, beyond that boundary the Company was empowered to acquire from the lawful rulers (subject to the approval of the Secretary of State) certain powers of government or administration, and by clause 33 a “novel principle” was introduced, by which the administrative and public portion of the charter was made terminable at the end of twenty-five years, with provisions for shorter renewals, a provision which “precludes any objection, which might otherwise be made, that the grant of a charter locks up indefinitely a large portion of South Africa in the hands of a commercial association.” Approval was given to the Company's acquisition of the Rudd Concession, a concession from Lobengula of the exclusive right to minerals throughout his entire territory, but warning was expressly given that—

“whenever the Company thinks it necessary that there should be an armed police force in Lobengula's country, or elsewhere beyond the Protectorate, it will be proper that it should organize its own police . . . but it will, of course, be very important before introducing such a force into Matabeleland, whether in order to maintain the rights conferred by the concession granted to Mr Rudd and others or for any other lawful purpose, to ascertain clearly that its presence there will be acceptable to Lobengula The Company no doubt understands that the concession above referred to does not confer such powers of government or administration as are mentioned in clauses 3 and 4 of the charter. These powers will have to be obtained whenever a proper and favourable time for approaching Lobengula on the subject arrives.”

About two years afterwards Lobengula granted another concession, which recited as follows —

“Whereas I have granted a concession in respect of mineral rights and the rights incidental to mining only . . . and whereas large numbers of white people are coming into my territories, and it is desirable I should assign land to them, and whereas it is desirable that I should once and for all appoint some persons to act for me in these respects,”

and then proceeded to grant to Edward Amandus Lippert the exclusive right “to lay out, grant, or lease, for such period or periods as he may think fit, farms, townships, building plots, or grazing areas.” Now Herr Lippert was a German financier from Johannesburg, and he did not represent the group which was principally interested in the Company. This concession was assignable, a feature which probably constituted its chief value in Herr Lippert's eyes. At any rate it was not long before the Company bought it—at what price does not now matter.

Meantime, in the middle of 1890, and with the consent of the High Commissioner for South Africa, the Company sent a pioneer force to occupy Mashonaland. Their goal was some 1,700 miles from the southern coasts. They marched on foot for 1,000 miles, of which 400 were through dense forest, where their road had to be cut day by day. They arrived at their destination to find that, when the rains fell and the rivers rose and the drifts were closed, they were prisoners in the promised land, and such was the cost of transport that food rose to £70 a ton. Thus it was plain from the outset that if Mashonaland was to be developed for white settlement, a great mileage of communications of all kinds, roads, bridges, telegraphs, and ultimately railways, would be necessary, and that only after this had been proceeded with could any considerable number of white settlers be found or any land revenues worth mention be gathered in. Land grants were, however, promised to the pioneers, and in many cases were applied for. Power was given to the High Commissioner by Order in Council, dated the 9th May, 1891, to exercise in Mashonaland among other regions—

“all powers and jurisdiction which Her Majesty, at any time before or after the date of this order, had or may have within the limits of this order, and particularly from time to time by proclamation to provide for the administration of justice, the raising of revenue, and generally for the peace, order and good government of all persons within the limits of this order.”

The proclamation, under which the High Commissioner exercised these powers generally, was dated the 10th June, 1891. Three articles in this proclamation need particular mention—

“Article 43—No occupation or ownership . . . by any person of European birth or descent in respect of any land within the limits of the said order, and no concession or grant of any right, title or privilege to deal with or authorize the occupation or ownership of any such land shall be recognized as valid or legal until approved in such mode as the High Commissioner shall appoint.

“Article 45.—No concession or grant heretofore or hereafter made by any native chief . . . and no . . . document of procuration heretofore or hereafter granted by any such chief coupled with an interest in favour of some other person . . . shall be recognized by any Court of Law unless and until sanctioned and approved by Her Majesty's Secretary of State.

“Article 46—Nothing in this Proclamation contained shall be deemed in any wise to abridge or impair the powers, privileges, authorities or jurisdiction of the High Commissioner or of the British South Africa Company.”

By a separate proclamation, dated the 27th June, 1891, magistrates were appointed to exercise jurisdiction respectively at Fort Victoria, Fort Salisbury, Hartley Hill, and Umtali,

and in due course the Secretary of State signified his approval of both the Rudd and the Lippert Concessions. The Company under its powers made Regulations as to arms and liquor, police, and weights and measures, appropriate to a nascent settlement.

It was not long before the Administration thus established, resting on the assumption of jurisdiction by the Crown within the territorial sovereignty of a native ruler, and yet subject to the recognition of his rights as such, was no longer suitable to the condition of the country. The Matabele natives were wont to attack and massacre their neighbours from time to time and impi, or bodies of warriors, more or less disciplined and sometimes numbering thousands, were sent out by the King for this purpose. They raided Lomagunda early in the year 1892, and later sundry kraals in the direction of Tuli. In 1893, although 6,000 Matabele were absent on the warpath in the Barotse country, an impi was despatched against the Mashonas, it surrounded and penetrated the Company's settlement at Victoria, murdered many Mashonas, and threatened the white settlers. A collision followed, and operations against Buluwayo were undertaken. The Company raised a force, and when it approached Buluwayo, Lobengula, with a large body of Matabele, withdrew north-westward toward the Buby River in November. If any settlement was to be effected his capture, or his expulsion from the country, was necessary, for the Matabele people would not come in till they knew that there was no chance of his return to punish them for their surrender. Negotiations were useless. For some time his intentions, and even his whereabouts, were unknown. According to the evidence of his brother-in-law, Ingubugubu, he attempted to settle on the Shangani River and then fled again. At last, in February, 1894, trustworthy news came in that he had died in January of fever or smallpox, and this is the last that ever was heard of him. King Lobengula's kingdom perished with him. Probably he and his power were unregretted by the Matabele; it is certain that, as a result of his defeat and flight, where he had formerly reigned an undisputed monarch, there was now no longer any sovereign left. It has been suggested that, these operations were not really war, nor was their result a conquest; that, truly speaking, the Company simply restored order, which for the moment he had disturbed, stepped into his vacant place, as the leading inhabitant of all those regions, and discharged the royal functions, which he had abandoned, in the interest of peace, order, and good government. This argument is fanciful. Before Lobengula fled the white forces had fought three battles, one against an impi of 5,000 and the others against impi of 7,000 or 8,000 men. To those who recalled Isandula, fought not many years before, or the history of the earlier wars, which had driven Lobengula's father out of the Transvaal, the Matabele warriors were no mean foes. Not only were the Company's arms engaged but also Crown forces, namely, the Bechuanaland Border Police. Those who knew the facts at the time did not hesitate to speak, and rightly, so, of conquest, and if there was a conquest by the Company's arms then, by well settled constitutional practice, that conquest was on behalf of the Crown. It rested with Her Majesty's advisers to say what should be done with it.

Comparing 1891 with 1894, a great change had occurred. In 1891 the Company, deriving from its charter capacity to administer and govern, and from the Crown permission to do so, subject to the Crown's directions, could only seek the source of its actual administration in the governing Sovereign of the country, King Lobengula. In 1894 there was no native sovereignty under which it could exercise administration. Yet there was no change in the predominant objects either of the Crown or of the Company. The Crown was more than ever anxious to assure to the natives, now left without any political headship, security and prosperity under new conditions and new influences. In respect of the external relations of the country its policy was unaltered. The Company had made a beginning of white settlement under Lobengula's régime and was loyally anxious to continue it under whatever new régime the Crown might be advised to establish. In law the difference was crucial, and everybody saw that a new chapter had opened for Matabeleland and Mashonaland. As the Colonial Office wrote to the Company on the 4th November, 1893.—

"Correspondence has hitherto proceeded upon the supposition that at the close of hostilities it would be practicable to open negotiations with Lobengula in his capacity of King, and to come to a settlement with him as representing the Matabele people. But the circumstances have now, to all appearances materially altered, owing to the success achieved by the forces of the British South Africa Company, which has apparently resulted in the defeat of Lobengula and the destruction of his power. It seems, therefore, probable that when the hostilities come to an end, there will be no responsible chief left on the Matabele side with whom negotiations for a durable settlement could be entered upon with advantage; and it remains for Her Majesty's Government to consider in what manner the pacification and future government of the country can be best brought about."

A period intervened in the early part of 1894 when all arrangements were provisional pending discussion of the new settlement. Mr. Rhodes, addressing the Volunteers at Buluwayo on the 19th December, 1893, said.—

"It is agreed that the High Commissioner and myself should discuss the whole of the future mode of settlement to be hereafter decided upon. There will probably be reserves for natives, and the remainder will be what I might call public land, so that you will be the first entitled to select land . . . There will be thus native reserves, free grants to yourselves, and the balance of Crown land, not to be sold under 3s. per morgen . . . All these arrangements with regard to the settlement are subject to approval of the High Commissioner, and that is one of the principal reasons why I am hurrying down to Cape Town to confer with him."

On the 29th December the High Commissioner telegraphed to the Marquess of Ripon:—

"No Government is established in Matabeleland beyond what may be necessary to maintain order. There is no present extension of the Government of Mashonaland to Matabeleland. There is no appropriation of land. These questions are all dependent on future arrangements to be discussed between myself and Mr. Rhodes, and approved by Her Majesty's Government."

The conversations between the High Commissioner and Mr. Rhodes, who, since the 4th May, 1890, had held the Company's power of attorney in South Africa, were reported to the Colonial Office. In the result an agreement was entered into between Her Majesty's Government and the Company, dated the 23rd May, 1894, signed by the High Commissioner and sealed with the Company's seal, and effect was given to its provisions in the Matabeleland Order in Council of the 18th July, 1894. The first twenty-three clauses of the agreement applied to Mashonaland as well as to Matabeleland. Provision was made for the conduct of the administration by the Company under an Administrator and a Council of Four; for a Judge and Resident Magistrates; for legislation by ordinances, including ordinances for taxation, direct and indirect. The Administrator, the Judge, and the Members of Council were to be appointed by the Company with the approval of the Secretary of State, and the salaries of the Administrator and the Judge were to be paid by the Company. Then followed provisions relating to Matabeleland only. A "Land Commission" was to be appointed to deal with all questions as to native settlements, which was to "assign to the natives now inhabiting the said portion (i.e., Matabeleland) land sufficient and suitable for their agricultural and grazing requirements and cattle sufficient for their needs," the Company retaining "the mineral rights in, over, and under all land so assigned to natives." The Matabeleland Order in Council, 1894, gave effect to these provisions, and particularly paragraph 7 ran: "The Company shall have and may exercise the general administration of affairs within the limits of this Order" (which included both Matabeleland and Mashonaland); and by paragraph 26 it was provided that "there shall be a Court of Record, styled the High Court of Matabeleland, with full jurisdiction, civil and criminal, over all persons and over all matters within the limits of this Order," which was to administer the law of the Cape Colony in general. Where natives were in litigation with one another native law was to apply, so far as it was not repugnant to natural justice or to morality or to any Order in Council, Proclamation, or Ordinance.

A despatch from the Marquess of Ripon to the Acting High Commissioner, dated the day after this agreement was signed, states its nature and effect and the view of Her Majesty's Government so exactly that it is well to quote it in full. It referred first to a speech in the House of Commons by the Under-Secretary for the Colonies, in which, expressing "the general views of Her Majesty's Government," he had said:—

"In the charter no distinction is made between Matabeleland and Mashonaland, the latter being already practically occupied and governed by the Company. Nor can the point be ignored that the mining and land concessions held by the Company are applicable to Matabeleland as well as to Mashonaland, i.e., to the whole territory claimed by Lobengula. We must also bear in mind that the greater part of the operations now proceeding have been undertaken on the responsibility and at the expense of the Company."

The Colonial Secretary proceeded to say that Her Majesty's Government—

"came to the conclusion that under the existing circumstances there were serious objections to the creation of a Crown Colony in that region, or to placing Matabeleland under the direct administration of the High Commissioner. They determined, therefore, to avail themselves of the machinery at work in Mashonaland under the charter of the British South Africa Company and Her Majesty's Order in Council of the 9th May, 1891, and to extend the existing system with such modifications, as might be considered necessary, to that part of the country known as Matabeleland. They considered it essential, however, with a view to securities for good government, that the powers of guidance and control vested in the Imperial Government by the provisions of the charter and under the Order in Council should be exercised somewhat more fully than heretofore over the actions of the Company throughout their administrative area, especially in regard to the rights of and protection over the natives. . . . Her Majesty's Government . . . have finally decided on a scheme for the future administration of Mashonaland and Matabeleland, of which a copy is enclosed." (This was the above-mentioned agreement.) "This scheme, in which the substance of Sir H. Loch's proposal is embodied, has been agreed to by the British South Africa Company. . . . The new scheme of administration does not purport to supersede Her Majesty's Order in Council of the 9th May, 1891, or the British South Africa Company's charter of the 29th October, 1889, but should be read in connexion with those instruments as containing a development and reform of the existing scheme of administration."

The settlement of 1894 is of capital importance, because the rights and the system under which Southern Rhodesia has been since administered were in all essentials settled then. The Administrator published Survey Regulations in April, 1894, and a Registry of Deeds was established in May. The first paragraph of the Survey Regulations provided that any person entitled to receive a grant of land (which referred, *inter alia*, to pioneer and police grants, and to the rights of the Matabeleland Volunteers) might obtain a provisional title-deed on making application to the Company. In connexion with surveying and delimiting lands there were provisions for the service of notices on adjoining "owners," and for other proceedings by or in relation to them, and paragraph 27 provided that "for the purposes of these regulations the Administrator shall be deemed and taken to be an owner with regard to vacant or unallotted lands, and also with regard to native reserves." Next year the High Commissioner approved certain amending regulations, introduced "to remove all doubts alleged to have arisen with respect to the validity of acts done under and by virtue of the Survey Regulations of 1894," which provided that judicial notice should be taken of the said Survey Regulations . . . and all acts done . . . thereunder should be deemed and be taken to have been lawfully done, and that all unsurveyed land, held under grant from the Company, should be deemed to be held subject to the terms and conditions in those regulations. Further amended regulations were approved in 1898, and in adapting to Southern Rhodesia Survey Regulations in force in the Cape Colony, it was provided that for "Crown lands," the expression therein employed in antithesis to private property, there should be read in Southern Rhodesia "British South

Africa Company's land." In other regulations and documents similar expressions were used. On several occasions the attention of the Colonial Office was drawn to the subject of the ownership of unoccupied land in these parts of South Africa. Thus, in 1894, the Tati Concession Mining and Exploration Company (Limited) claimed to own all the land in its territory, and, in reporting to the High Commissioner, the Land Commission, constituted under the Matabeleland Order in Council of 1894, observes:—

"The Commission presumes from the terms of the Order in Council that all lands assigned by it for the occupation of natives are to be considered as 'Crown lands,' but for the sake of removing any doubt which may exist it is of opinion that the ownership therein should be declared to be vested in the British South Africa Company."

It does not appear, however, that, except in so far as the amended Survey Regulations of 1895 may deal with the subject, anything was done to declare definitely how this matter stood. In November of that year correspondence took place between the Company and the Colonial Office as to the strip of land along the eastern border of the Bechuanaland Protectorate, called the "railway strip," which was given up by the Chiefs Bathoen, Khama, and Sebele, for the construction of a railway to Buluwayo. As to this the Secretary of State instructed the High Commissioner that the Company "can consider itself owner of so much of the strip as has hitherto belonged to the three chiefs," and that the settlement with the Company "will include acquisition by them of title of land given up by Khama, Sebele, and Bathoen," but, when the Company itself wrote that it understood this land was to be "vested" in the Company, Mr. Chamberlain's reply was that, as the three chiefs had verbally abandoned their lands in the railway strip to the Government, he authorized the Company to take possession of them, and considered that "a transfer of any part of them by the Company would confer a good title," and there it was left.

The administration of Southern Rhodesia involved heavy cost. As must have been foreseen all along, the construction of roads, bridges, telegraphs, and railways was highly necessary, and could not but be expensive, while no adequate return for this outlay could be expected for a considerable time. It is not contested that there has been all along a deficit on administrative account in Southern Rhodesia, which the Company has had to meet from its own resources, and that the accumulation of annual debit balances now amounts to a large sum. How this sum is made up is not material to the present inquiry.

For several years the published accounts of the Company did not distinguish between sums received as consideration for, or in connexion with, the alienation of lands and other revenue, such as telegraph receipts, auction duty, and judicial fines collected in the course of administration. In 1896 the Secretary of State drew attention to the terms of Article 17 of the Charter, which required the Company to furnish before the commencement of each financial year an estimate for the ensuing year of its expenditure for administrative purposes and of its public revenue, and added:—

"The Company is not itself engaged in mining operations, nor does it engage in trade in any larger sense than Colonial Governments ordinarily do, which sell State property and produce, work railways and steamboats, or render services to the community, such as those of posts and telegraphs, which cannot properly be regarded as commercial undertakings. Mr. Chamberlain considers that in these altered circumstances all the receipts of the Company would properly appear on the revenue side of their estimates and accounts."

The Company did not challenge this, and after considerable delay, largely unavoidable, rendered accounts in purported compliance with this request, to which the Colonial Office took no exception. More has been made of this point and of the Company's conduct in regard to the form of its accounts at different times than they really deserve. What was done cannot be regarded either as an abandonment of its rights in the matter, if any, or as the foundation of a new right, if none theretofore existed. Mere erroneous acquiescence by the first party in the view of his rights asserted by the second neither extinguishes title in the one nor creates it in the other.

After the suppression of the Mashona rising of 1896, Her Majesty's Government took up the question of rendering more effective the machinery for the control of the Company's administration by the Crown, and eventually, in October, 1898, "The Southern Rhodesia Order in Council, 1898," was passed. This Order applied both to Matabeleland and to Mashonaland. It provided for the creation of a Legislative Council consisting of nominated members and elected members. One limitation on the powers of the Council should be quoted:—

"No fiscal vote or resolution shall be proposed in the said Council except by the Administrator acting on the instructions of the Company, or by his authority in writing previously obtained."

This Order superseded the Matabeleland Order in Council of 1894, but, apart from the creation of a Legislative Council, it generally followed the same lines with various extensions and supplementary provisions. It required the annual publication of detailed statements of the revenue and expenditure of Southern Rhodesia, and an annual audit of the accounts of the Company relating to all sums received and moneys expended by the Company, in connexion with the administration of Southern Rhodesia. From the supplementary Southern Rhodesia Order in Council, 1911, there need only be quoted two Articles:—

"6. The Legislative Council shall not consider any vote, resolution, or ordinance for the appropriation of any part of the public revenue or for any tax or impost that has not been first recommended to the Council by the Administrator during the same Session."

"7. Ordinances interfering with the land and other rights of the Company shall not be proceeded with except with the consent of the Administrator."

The Legislative Council was duly brought into existence and soon showed an active interest in the country's affairs. In 1902 the contention was raised in the course of its debates that the Company, "admitting for the moment for the sake of argument, but not otherwise, that it was the owner of the land in this country and the minerals under the ground," ought, as

an administrative body, to tax itself as a commercial body "in proportion to the property and interests which the said Company has in this territory." Here began the present controversy. In the face of doubts and contentions thus raised, the Company proceeded to remodel its annual estimates and accounts by excluding proceeds of land sales and other such receipts from its estimate of its administrative revenue. Presumably it regarded them as being in the same position as consideration received for the grant of mining rights, and carried them to its private commercial account. Eventually, on the 17th April, 1914, the Legislative Council of Southern Rhodesia passed a resolution as follows —

"(1) That the ownership of the unalienated land in Southern Rhodesia is not vested in, and has never been acquired by, the British South Africa Company as their commercial or private property, and that such powers of taking possession of, dealing with or disposing of land in Southern Rhodesia as have been or are possessed by the British South Africa Company have been created by virtue of authority conferred by Her Majesty the Queen in Council, and her successors upon the Company, as the governing body charged for the time being by Her Majesty in Council and her successors with the general administration of affairs within the said territory and responsible for the maintenance of law, order, and good government therein:

"(2) That if by the exercise of the said powers and the taking possession of, dealing with and disposing of the said land or by any other means, the British South Africa Company have acquired an ownership of the said land, such ownership is so vested in them as an administrative and public asset only, and the Company in their capacity other than a Government and Administration have no dominium or estate in or title to the said lands or to any moneys or revenues derived therefrom.

"(3) That on the said Company ceasing to be the Government of the said territory, and ceasing to exercise the administration of affairs therein all such lands as may be unalienated at such time shall be and remain the property of the Government of the said territory which shall take the place of the said Company, and the possession and administration of such land shall pass to such Government as public domain."

These contentions were disputed by the British South Africa Company, and, by Order in Council, dated the 16th July, 1914, His Majesty was graciously pleased to refer to this Board for hearing and consideration the *Question* "whether the contentions put forward in the said resolution of the 17th April, 1914, are well founded?" Their Lordships' jurisdiction in such matters arises under section 4 of "The Judicial Committee Act, 1833"

Counsel have been heard on behalf of the Company, of the elected members of the Legislative Council and of the natives respectively of Southern Rhodesia, and, finally, of the Crown. The Company is in possession of the unalienated lands, but, as this is not an action of ejection or a controversy depending upon the onus of proof, possession alone does not avail. The case raises positive questions as to ownership, and if their Lordships are not satisfied that the unalienated lands are the property of the Company, it is their duty to say so. They have to ascertain what the Company's rights are in order to decide whether or not they amount to ownership

The rights of the Crown again, on behalf of whom the Attorney-General asked for a positive declaration of right, are equally matters of proof. Theoretically it is possible to say that the unalienated lands do not belong to anybody, but this conclusion would be unreal, for the whole administrative policy and legislative system of rights in Southern Rhodesia rests on grants from the Company entered on a public register by way of solemn recognition and record of title of ownership. In a sense the Crown's position is residuary, for if these lands are not shown to belong to any private owner, the practical conclusion would seem to be that they are the Crown's, but here, too, unless it can be made to appear how and why they are the Crown's, the question of ownership cannot properly be answered in the Crown's favour.

The case of the elected members is in great measure identical with that of the Crown. In so far as they traverse the Company's case and dispute its rights, their contentions differ from those of the Crown in immaterial respects. In one point they are at issue with the Crown. They contend that the unalienated lands are the property of the Crown and not of the Company, but that even the Crown's power of dealing with them is now limited. With far-sighted care for the interests of unborn generations they urge that these lands are really an endowment for the future of Southern Rhodesia, and that, if and when the Company's administration comes to an end, the possession and disposition of the lands will not revert to the Crown, but that the Company's successors in the administration will, *ipso facto*, be entitled to the lands then remaining unalienated as administrative assets for the country's benefit. This involves the proposition that, by some action or course of events which binds the Crown, these lands have already been disposed of, prospectively, but definitively, so that the Company's successor in the administration, though newly appointed by direct commission from the Crown at its pleasure, would receive the lands not directly from the Crown but by succession to the Company. Such a case would be singular, for in general an administrator, when he resigns his commission to the Crown surrenders with it the property which he has been commissioned to administer. No such action or event was indicated, and this part of the case was only faintly urged. Their Lordships think it sufficient to say that, except in so far, if at all, as the rights of the Crown are subject to those of the natives and the Company, nothing has been shown to have happened or to have been done, that would prevent the Crown, if and when the Company's tenure of the administration of Southern Rhodesia determines, from disposing of the lands then remaining unalienated by any lawful means and in favour of any persons or purposes, as it may duly be advised.

By the disinterested liberality of persons in this country, their Lordships had the advantage of hearing the case for the natives, who were themselves incapable of urging, and perhaps unconscious of possessing any case at all. Undoubtedly this inquiry has thereby been rendered more complete. Although negative in form, since their case in answer to the questions mentioned in the order of reference was primarily that the unalienated lands were the property

neither of the Crown nor of the Company, in substance their case was that they were the owners of the unalienated lands long before either the Company or the Crown became concerned with them, and from time immemorial, that their title could not be divested without legislation, which had never been passed, or their own consent, which had never been given, and that the unalienated lands belong to them still. Hence, if the Company had any title at all, which was denied, it was only the title of a trustee, the beneficial interest remaining in the natives, and the legal title and right to possession reverting to them whenever the Company ceases to govern the country.

The evidence, by which this case was supported, was respectable but slender. The exigencies of the War had curtailed the collection of further materials in South Africa, but it is by no means certain that in any event any such could have been found. Their Lordships were invited to undertake or to direct some further inquiry, at a future date and under happier circumstances, but what power they were supposed to have for that purpose, or how this reference could be adjourned or provisionally disposed of pending such inquiry, did not appear. As the argument stood, it was really matter of conjecture to say what the rights of the original "natives" were and who the present "natives" are, who claim to be their successors in those rights.

Between 1893 and 1914 there has undoubtedly been much migration, emigration, and immigration of natives in Southern Rhodesia, and the aborigines of Lobengula's time have both changed and been scattered. It was said that the rights of the Matabele did not extend beyond a radius of sixty miles from Buluwayo, and that beyond that the Mashonas were the race entitled. Whether the Matabele or the Mashonas of to-day are, in any sense consistent with the transmission or descent of rights of property, identical with the Matabele or the Mashonas of more than twenty years ago is far from clear, and the fate of the Makalakas and the Maholies, once the slaves of Lobengula, is as obscure as their original rights. Lobengula was called a trustee of the lands for his people, an expression convenient and often used, but in this connexion altogether lacking in precision, and his right to alienate them was denied without the consent of his people in *pitso* assembled. It seems to be common ground that the ownership of the lands was "tribal" or "communal," but what precisely that means remains to be ascertained. In any case it was necessary that the argument should go the length of showing that the rights, whatever they exactly were, belonged to the category of rights of private property, such that upon a conquest it is to be presumed, in the absence of express confiscation or of subsequent expropriatory legislation, that the conqueror has respected them and forbore to diminish or modify them.

The estimation of the rights of aboriginal tribes is always inherently difficult. Some tribes are so low in the scale of social organization that their usages and conceptions of rights and duties are not to be reconciled with the institutions or the legal ideas of civilized society. Such a gulf cannot be bridged. It would be idle to impute to such people some shadow of the rights known to our law, and then to transmute it into the substance of transferable rights of property as we know them. In the present case it would make each and every person by a fictional inheritance a landed proprietor, "richer than all his tribe." On the other hand there are indigenous peoples, whose legal conceptions, though differently developed, are hardly less precise than our own. When once they have been studied and understood, they are no less enforceable than rights arising under English law. Between the two there is a wide tract of much ethnological interest but the position of the natives of Southern Rhodesia within it is very uncertain; clearly they approximate rather to the lower than to the higher limit. Lobengula's duties, if describable as those of a trustee, were duties of imperfect obligation. Except by fear or force he could not be made amenable. He was the father of his people, but his people may have had no more definite rights than if they had been the natural offspring of their chieftain. According to the argument, the natives before 1893 were owners of the whole of these vast regions in such a sense that, without their permission or that of their King and trustee, no traveller, still less a settler, could so much as enter without committing a trespass. If so, the maintenance of their rights was fatally inconsistent with white settlement of the country, and yet white settlement was the object of the whole forward movement, pioneered by the Company, and controlled by the Crown, and that object was successfully accomplished, with the result that the aboriginal system gave place to another prescribed by the Order in Council.

This fact makes further inquiry into the nature of the native rights unnecessary. If they were not in the nature of private rights, they were at the disposal of the Crown when Lobengula fled and his dominions were conquered—if they were, any actual disposition of them by the Crown upon a conquest, whether immediately in 1894 or four years later, would suffice to extinguish them as manifesting an intention expressly to exercise the right to do so. The Matabeleland Order in Council of 1894 and the Southern Rhodesia Order in Council of 1898 provided for native reserves, within which the tribal life of the natives might be continued under protection and control, and to the rest of the country the Company's officers and white men were admitted independently of any consent of the natives. The Company's alienations by grant are unquestionably valid, yet the natives have no share in them. The ownership of the reserves was, at least administratively, vested in the Company under the Southern Rhodesian Native Regulations promulgated by the High Commissioner in 1898, and with the consent of the Crown other dispositions of those reserves can be made by the Company from time to time. By the will of the Crown and in exercise of its rights, the old state of things whatever its exact nature, as it was before 1893, has passed away and another, and, as their Lordships do not doubt, a better, has been established in lieu of it. Whoever now owns the unalienated lands, the natives do not.

Like the natives, the Company desired to find a title, which would ante-date the conquest of Lobengula in 1893, and would confer such prior rights in property, or rights equivalent to property in the unalienated lands, as would be classed among the private rights, which a conqueror is deemed to respect, unless by appropriate action or legislation he expressly affects them. For ten years after 1893 the Lippert Concession is little heard of, but it was a grant from

Lobengula, while he was still sovereign of the country, and it referred to the lands generally. Accordingly it formed a part, and not an unimportant part, of the Company's case.

The Lippert concession was not one of those public acts by which one independent sovereign, however humble, enters into political relations with the agents of another. Instruments of that character have been common enough in the history of the British Empire. They derive their juridical character from their recognition and adoption by the Crown, and in interpreting them it must be borne in mind that they are State documents. The Lippert concession is not of this character. Like the Rudd concession, it received the approval of the High Commissioner on behalf of the Crown, but it is essentially a private contract though entered into by the concessionnaire with the paramount chief, and, like other legal documents, its effect must depend upon the construction of its terms according to ordinary legal rules. It is, indeed, of importance to the Company's case largely because it confers private rights, and is not in any sense a mere public act or act of State. Private concessions of large extent and of ambitious character, when obtained by white financiers from untutored aborigines, are generally and justly objects of close scrutiny, but their Lordships are relieved from the duty of inquiring into the circumstances under which this grant was made by the fact that competent officials reported to the High Commissioner, after making full inquiry under his direction, that the concession had been properly obtained and that its terms correctly expressed Lobengula's intentions and exactly reflected his understanding of the matter. This is a testimony to his enlightenment and acumen, which perhaps goes beyond what might have been supposed. It is still right not to leave out of account the known character of the King and his subjects, but there need be no hesitation about examining the language used in limiting the area and nature of the rights granted by the terms of the instrument, read in their substantial if not in their technical meaning. The Company did indeed contend for a canon of construction, alike novel and singular. Lobengula, it was said, had granted to Herr Lippert the right to allot the land to others and to take money in return; to dispose of the surface for one hundred years without being called to account, to do all that an owner could do and make out of it all that an owner could make. Thus he granted to him all the right of dealing with land of which he had any knowledge, and his ignorance of the nature of an estate in fee ought not to derogate from the amplitude of a grant, which was as wide as he knew how to make it. He reserved at any rate nothing but money considerations for himself, and, when the Lippert and the Rudd concessions fell into the same hands, the King had, in substance, sold his country out and out to the Company. Their Lordships cannot accept this argument. As well might it be said that a savage who sold ten bullocks, being the highest number up to which he knew how to count, had thereby sold his whole herd, numbering, in fact, many hundreds. In the questions referred to the Board ownership and property mean ownership and property as civilized people understand these words. They cannot be satisfied by any such general right of disposal as is here suggested. Their Lordships think that the real question is, what does the Lippert concession say?

Thus read, it is plain that the concession did not give the concessionnaire the right to use the land or to take the usufruct. It did not make any land his nor did it enable him to make it his own. What land he appropriated to others was to be appropriated in Lobengula's name. There were no words of conveyance—no estate or interest in land was vested in Herr Lippert. The concession was at most a personal contract. If it bound Lobengula's successors, they were such successors only as came to his throne under his title, and not successors to his sovereignty who came to it by right of the sword. If Lobengula broke the contract or revoked the concession, Herr Lippert's claim was a personal one, and was not supported by any right in or to the land. The Company, indeed, never acted under the concession. Its grants were not made in Lobengula's name nor did it pay the annual *douceur*, upon which the rights under it were conditional. The consequences of the construction which the Company puts on the document would indeed be extreme. It would follow that Herr Lippert was, or could become at pleasure, owner of the entire kingdom—for nothing is reserved in favour of the inhabitants—from the kraals of the King's wives to his father's grave or the scene of assembly of his *indunas* and his *pitso*. Thenceforward the entire tribe were sojourners on sufferance where they had ranged in arms, dependent on the good nature of this stranger from Johannesburg even for gardens, in which to grow their mealies, and pastures, on which to graze their cattle. The Lippert concession may have some value as helping to explain how and why the Crown came to confer the administration of Southern Rhodesia upon the Company, but as a title deed to the unalienated lands it is valueless. Accordingly it becomes unnecessary to consider either the powers of Lobengula to dispose of tribal lands or the effect of the approval and recognition of the concession by the Crown, and of the occupation which it is suggested that the Company enjoyed under it. The Crown recognised the concession for what it might be worth on its true interpretation, and the Company's occupation, whatever it rested on, did not rest on the Lippert concession. Recognition could give no title where none existed already. It is true that sundry speeches to shareholders, wise and otherwise, were quoted in which the Company claimed to own the whole country, though the Lippert concession was but little relied on and but rarely mentioned; but though these were sent to the Colonial Office, it is not shown that they were or ought to have been read there, or that, if they were read, the Crown was bound to take any notice of these domestic matters.

In default of the Lippert concession the Company places great reliance on occupation, long-standing and undisturbed. It is true that the period required for a title by prescription under Roman-Dutch law, which has been applied to Southern Rhodesia, has not yet elapsed, and that the Company's possession has not been held adversely to the Crown. Laying aside the language of directors' speeches and the form of the Company's accounts, because of their ambiguity, no one can say that its possession is not at least as referable to the administrative position, which it held under the Crown, as to an enjoyment independent of the Crown, or that it is inconsistent with the recognition of the Crown's overriding title. The fact of occupation is, however, relied on in various ways. It commenced, at any rate in Mashonaland before 1893. The Company does not (nor could it do so) assert a conquest for its own benefit, but it says that, enjoying certain rights under its charter, it occupied extensive tracts of country without objection from Lobengula during his reign, and then, after his flight and on a still larger scale, it took to itself the disposal

of a masterless land, now left vacant for the first comer who should prove strong enough to hold what he took. Thenceforward, with the recognition of the Crown or at least without its dissent, the Company claims that it did openly all that an owner could do, and enjoyed every advantage that ownership could have given, conveying land in its own name to grantees of its own choice, fixing the price and applying the purchase-money as it saw fit, and consistently doing what only an owner ought to do, under the very eyes of the Crown, and in a manner which cannot be reconciled with any title outstanding in the Crown. Thus, if the Crown did not give the land into the Company's hands, yet it was content to leave in the Company's hands all that it found there. The word "estoppel" was not indeed used, but the Company did not scruple to suggest that, if after all its expenditure in Southern Rhodesia, incurred in the belief that it was undisputed owner of the unalienated lands, the Crown succeeds in asserting a competing title, then it has not been fairly dealt with.

The questions in this reference refer to property and not to mere occupation. This must never be lost sight of. The charter simply gave capacity to own and to grant land, but in itself it granted none. It used, indeed, the expression "the Company's territories," but this referred to the area, within which those capacities might be exercised, and did not amount to an anticipatory grant by the Crown of land, which in 1889 was not the Crown's to bestow. The fact of occupation and especially the circumstances, under which it was taken and enjoyed, are significant and helpful in estimating what the rights of the Crown were and how far, if at all, the Crown conferred rights over the land on the Company, but in itself and by itself occupation is not title.

The Crown does not claim to have annexed Matabeleland and Mashonaland. No proclamation of annexation has ever been issued. Accordingly the Company contends that for want of it these regions have never belonged to the Crown, but that it has deliberately disinterested itself in regard to their ownership, and the conclusion suggested is that, if no one has now a better title than the Company, the inchoate title consisting of occupation is for present purposes property enough.

No doubt a proclamation annexing a conquered territory is a well understood mode in which a conquering power announces its will *urbi et orbi*. It has all the advantages (and the disadvantages) of publicity and precision. But it is only declaratory of a state of fact. In itself it is no more indispensable than is a declaration of war at the commencement of hostilities. As between State and State special authority may attach to this formal manner of announcing the exercise of sovereign rights, but the present question does not arise between State and State. It is one between sovereign and subject. The Crown has not assented to any legislative act, by which the declaration of its will has been restricted to one definite form or confined within particular limits of ceremonial or occasion. The Crown has not bound itself towards its subjects to determine its choice upon a conquest either out of hand or once and for all. If Her Majesty Queen Victoria was pleased to exercise her rights, when Lobengula was defeated by her and her subjects, as to one part of the dominions in 1894 and as to another part not until 1898, if she was pleased to do so by public acts of State, which indicate the same election and confer the same supreme rights of disposition over his conquered realm as annexation would have done, it is not for one of her subjects to challenge her policy or to dispute her manner of giving effect to it. The fact being established that a conquest of Lobengula and his dominions had occurred, the question is what Her Majesty's Government thereupon elected and intended to do in Her Majesty's name. It cannot be said that not to annex forthwith was a renunciation of all right to annex at any time, or that a disposition of the public lands in the conquered territories, as ample as if formal annexation had taken place, is less operative than if that form had been employed. The true view seems to be that if, when the Protecting Power of 1891 became the conquering power in 1893, and under the Orders in Council of 1894 and 1898 set up by its own authority its own appointee as administrator, and sanctioned a land system of white settlement and of native reserves, it was intended that the Crown should assume and exercise the right to dispose of the whole of the land not then in private ownership, then it made itself owner of the land to all intents and purposes as completely as any sovereign can be the owner of lands, which are *publici juris*, and that the forms of an annexation to itself followed by a grant and conveyance to others for the purpose of grants over to settlers do not avail by their presence or their absence to affect the substance of these acts of State.

It is true that strong expressions as to the importance and the significance of annexation in connexion with land ownership are to be found in the official despatches. Thus in 1885 Lord Derby writes that before annexation titles cannot issue in the name of the Queen but of the chief, to whom the land originally belonged, and in 1895, Lord Ripon, also speaking of Bechuanaland, states that it is a protectorate and therefore Great Britain does not claim the land rights, but both of these statements are made in reference to a territory, in which the existing sovereignty of native chiefs continued and was respected, and neither dealt with regions in which the Crown had created the special administrative system established for Matabeleland and Mashonaland by the Orders in Council of 1894 and 1898.

It is therefore necessary to examine the circumstances and features of that system in order to determine first of all, with what intention the Crown thus dealt with those countries; and, secondly, what is the true legal effect of those dealings as between the Crown and the Company. In 1894 the field was clear, for the native sovereignty was gone. There was relatively little in the nature of private ownership to encumber it. The Company's mineral rights under the Rudd concession, which were private rights, and have been continuously recognised by the Crown as valid, affected the surface in a very minor degree, and the white settlers, who held land by grant or occupation prior to 1894, and were recognised as private owners, fully entitled, affected the question even less. Beyond the Lippert concession, such as it was, the Company had acquired no general rights, administratively or otherwise, that presented any difficulty or are now material. Its powers had been created; its capital had been subscribed, and it was willing to raise more; its operations had begun and its staff was on the ground. The hands of Her Majesty's Government also were free. The existing Protectorate of 1891 did not preclude another form of administration, either concurrently with or in substitution for it. The exercise of the powers given by

the Foreign Jurisdiction Act did not operate as a negation of the exercise of other powers in the present, still less as a renunciation of the right to resort to them in the future. No interference was immediately to be apprehended from outside, for the Banyai Trek of 1891 had been stopped, and there was no threat of a repetition of it, and whatever Her Majesty's foreign policy and relations might require or be, the position in South Africa was for the time being not one of embarrassment. White settlement and the consolidation of British influence were objects common to both Crown and Company. Both desired to encourage white settlers generally to select and acquire land, and, on compliance with the prescribed formalities, they were to become absolute owners of their holdings. Plainly, if white settlement was to take place, the administration must go to considerable expense in developing the country, of which communications of all kinds were among the most pressing needs, while returns could not be looked for till some later period, possibly remote. It was also plain that the necessary effect of that expenditure, if judiciously made (as the growth of population and prosperity in Southern Rhodesia shows in the main that it was), must be to appreciate the unalienated lands, so that when sales had reimbursed outlays, the unsold residue would enrich its owners whoever they might be. In these conditions and with these facts before it the Crown elected not to incur the cost and responsibility of direct administration, but to entrust it to the Company, a commercial concern, which happened to be already administering part of the region, and the Company accepted the employment and undertook the burden of financing the administration.

One thing is most notable. Nowhere is there any express grant of the unalienated lands by the Crown to the Company. The hypothesis that the Crown settled the lands, by conveying to the Company in trust to sell them and apply the proceeds to the necessities of administration, need not be considered. Not only is there no declaration of any such trust, no beneficiary named and no trust indicated, but there is no conveyance at all. The Crown never and the Company always executed the grants to the settlers. The deeds are under the Company's seal, attested, be it observed, by the administrator and not by the directors or secretary. Nor was any instrument given to the Company, such as would correspond to the commission, which it is the practice to confer on a colonial governor or administrator or to a power of attorney, authorising the Company to sell and convey lands on behalf of the Crown. Again these are matters of form. No law restricts the power of the Crown to confer the authority necessary for the above-mentioned purposes to one particular type of instrument. The ordinances and regulations, under which this system of making grants to settlers was carried on, had full legal effect. They are legislative acts under which, if the natives had enjoyed rights in the nature of private property, those rights would have been expropriated with sufficient clearness, and under which, as it was, the Company became empowered to grant in particular cases and in detail that of which the Crown was in this way disposing generally. In effect this code authorised the Company to dispose of lands owned by the Crown and to give title on its behalf. If one thing is more completely agreed in this matter than another it is that the grantees obtain an indisputable title and, as the Company is not shown to have any ownership of its own, then to make the title indisputable, it must have been given by the Company on behalf of the Crown, which had so acted as to warrant the conclusion that it had taken to itself the ownership and the right of disposal. It is not that there was an intermediate grant by the Crown to the Company followed by the Company's grant to the alienees. The implication of a universal grant of the unalienated lands by the Crown to the Company without a word said or a paper signed is an impossible conclusion. The Company contends that the way in which it has in fact disposed of the unalienated lands and their profits and proceeds, indicates some sufficient form of ownership of the land and of title to the moneys. The elected members say the said moneys are applicable only to defray the current costs of administration and do not belong to the Company as a commercial concern. Presumably, if and when these revenues by themselves suffice to meet the expenditure of the current year, it is meant that the Company would under all circumstances be bound so to apply them and could not by otherwise disposing of them justify resort to its powers of taxation generally. It may be said at once that the use of the word ownership in this connection is a misuse of terms. The uncontested disposal of lands, as upon a grant for value, may be indicative of ownership in the grantor or it may not; if, as is here the case, it is otherwise explained and is indicative of a particular authority from the Crown in that behalf as owner, no further or other inference arises from the practice of disposing of the lands direct. As to the revenue thence accruing other considerations arise.

If a landowner, desiring to develop his estates, for sale, loath or unable to meet immediate outlay or to take personal trouble, employs a commercial agent, natural or incorporate, to do this for him, obviously he would, if matters stopped there, come under definite legal obligations to his employee. English law in such a connection speaks of an implied contract, not that it supposes that the parties actually made a parol agreement but forgot to record it, or had identical intentions in mind but omitted to express them, but this is the accepted terminology, under which legal effect is given to such relations. In the present case, however, their Lordships do not propose to deal with the question referred to them under any terms of art peculiar to municipal law. They desire to take a broader view.

Alike by the common and by the civil law certain legal incidents attach *de jure* to the relationship, which is constituted by the grant of an authority on the one hand, to be exercised for the benefit of the grantor, and the exercise of that authority by the recipient of it on the other according to his mandate. It is not that this arises out of some unexpressed stipulation: it is annexed to the relationship. True it is, that by stipulation these incidents can be rebutted and negated, and the stipulation may be express or implied; it may be established by words and writing or by circumstances and conduct. One of these incidents is this. If in the exercise of the authority conferred, the party authorised is obliged to expend his own moneys in the discharge of the authority conferred upon him, it is incident to the relationship, that he is entitled to look to his principal and employer for reimbursement. This may be so either absolutely or *sub modo*: it depends on the circumstances of the case. He may be entitled to claim repayment directly in money or only to reimburse himself in a particular way or to have the opportunity of reim-

bursment secured to him from a particular source. This again depends on an inference from the whole circumstances of the case, to be collected, just as stipulations excluding such reimbursement altogether might be collected, by considering the intention of the parties. The material point is that the right to reimbursement presumptively exists. If it is to be negatived this has to be shown affirmatively by inference from what is said or done.

Since it was certainly necessary for the Company in the exercise of its authority as administrators of Southern Rhodesia under the Crown to expend its own moneys for the purposes of the administration—a thing clearly obvious from the first—the question is what, if anything, limits or excludes the right to reimbursement therefrom arising? Has it been excluded by an express agreement? In 1894, before the issue of the Matabeleland Order in Council, what was called an agreement was entered into between the Company and the Crown, but it did not purport to reduce into writing the entirety of their relations. In form it was unilateral. It did not deal with the general question of rights of property. It made no provision for the grant of powers by the Crown, and left to implication or to separate arrangement the nature and extent of the authority under which the Company was to act. It is correctly described by its authors on the part of the Crown as an arranged scheme for the outlines and general form of the administration to be established. This then will not suffice to exclude the right to reimbursement by express agreement. Nor do the general circumstances rebut the presumption of such a right. It is true that there is in private affairs a presumption that if a commercial agent is employed he is entitled to a reasonable remuneration for his work, and yet no one suggests that the Company has any claim to remuneration. This, however, finds its own explanation in circumstances which do not affect the right to reimbursement. The Company had extensive mineral interests, which might under a good administration of the country become highly valuable. Obviously it desired to keep in its hands after the fall of Lobengula the administration, which it was already carrying on for its own benefit as well as for that of settlers, and it is not unreasonable to suppose that in a public matter like administration its directors were not minded to drive a hard bargain with the Crown. There is nothing, however, to show that to gratuitous administration, as far as the services of its own officers were concerned, the Company either would or could propose to add the gratuitous endowment of that administration at the expense of the shareholders.

It is, moreover, to be collected from the communications which passed between Mr Rhodes and Lord Ripon, and still more clearly from the course pursued, that the Company was not intended to have any right to call directly upon the Crown while its administration continued. It was to sell land, to fix prices, to arrange terms of payment, to apply the revenue from the land and the proceeds of the sales, and if in process of time sales increased or prices went up year by year, then the advances to be made in the early years might be expected to diminish and eventually to cease, and the process of reducing the adverse balance on account of past development might begin and finally be carried to a successful issue. Once, in February, 1898, the Company proposed a definite arrangement in the form of what they called a "principle," that "all future administrative expenditure not met by revenue, as also a fair proportion of past expenditure of the same nature should . . . be regarded as a first charge upon the country, and eventually be constituted a public debt." This was a proposal to saddle a young community, not yet advanced to self-government, with a charge, first on the land alienated as well as unalienated, and then upon the personal liability of the taxpayers, a charge which must be satisfied whether the sales of the lands and the administration revenue prospered or not, and it is not surprising that it met with no support from the Crown. The reply in July was that Mr. Secretary "must decline to pledge Her Majesty's Government in advance to acknowledging anything in the nature of a public debt or of a charge on the administration, as distinguished from the Company itself, which has been placed in possession of all the assets of the country." In a word, the Queen's Government refused to relieve itself of an Imperial liability by transferring it to a local population still imperfectly organized. It is possible that this refusal was not intended to be final, for Mr. Attorney, in his argument before their Lordships on behalf of the Crown, admitted that "these adverse balances, so far as legitimate, must, when the time comes, be converted into a public debt." Accordingly, the matter remained one between the Company and the Crown, and the Company continued to be entitled to apply the proceeds of land sold in reduction of the proper cost of the administration, whether incurred in the current year or in the past.

Furthermore, the charter itself reserved to the Crown the right, at the end of twenty-five years from its date and thereafter at the end of every succeeding decade, to repeal so much of the charter as relates to administrative and public matters, and thereby to put an end to the Company's capacity to administer Southern Rhodesia, and this right is in addition to whatever right the Crown might have independently of this reservation to revoke its appointment of the Company as administrator and to repeal the Order in Council. The Company's right to reimbursement was therefore limited thus far at any rate, that it had not any perpetual or immutable right to continue to conduct the realization of the unalienated lands for the purpose of accomplishing its own reimbursement. On the other hand, nothing confers on the Crown under the form or by the procedure of exercising this power, the right to take away from the Company a right already accrued or a title already conferred upon it. Hence it follows that, in the event of the exercise of this power by the Crown, the Company must have the right to look to the Crown to secure to it, either out of the proceeds of further sales of the lands, by whomsoever made, or, if the Crown should grant away these lands or proceeds to others, then from public funds, the due reimbursement of any outstanding balance of aggregated advances made by it for necessary and proper expenditure upon the public administration of Southern Rhodesia. With items or details, with the amounts or the book-keeping of such expenditure, and with the terms of reimbursement their Lordships have nothing to do.

It may be a matter of regret that, on a subject so important, it should have been thought fit to leave the rights of the parties to be ascertained by a legal inquiry, whether, on a review of the whole circumstances and history of the transactions, there can be found any sufficient evidence of an intention to exclude a legal right, which arises *prima facie*, by operation of law from the

relation in which the Crown placed the Company towards itself, but so it is. In matters of business reticences and reserves sooner or later come home to roost. In 1894 a single sentence, either in an Order in Council or in a simple agreement, would have resolved the questions which have for so many years given rise to conflicting opinions in Southern Rhodesia, and all the more easily because at that time the value of the whole of the country was unproved and problematical. Matabeleland and Mashonaland were rich in promise, the right to enjoy the fruition might well have been determined before, and not after, the field was tilled and the harvest began to whiten. As it is, the conclusion is one of legal inference, but there is some satisfaction in reflecting that nothing has appeared upon the record to show that this conclusion differs substantially from that which would have commended itself to the negotiators on both sides, if they had thought it opportune to deal with the question.

Their Lordships will humbly report to His Majesty that they affirm the first paragraph of the resolution passed on the 17th April, 1914, and deny the third, and that as to the second they say that, so long as the British South Africa Company continues to administer Southern Rhodesia under the Crown, it is entitled to dispose of the unalienated lands in due course of administration, and to apply the moneys or revenues derived therefrom in duly reimbursing all proper outlays on administrative account in the current or in past years, and, if its administration of Southern Rhodesia should be determined by the Crown, then the right to look to the Crown to secure to it (either out of the proceeds of further sales of the lands by whomsoever made, or, if the Crown should grant away these lands or proceeds to others, from public funds), the due reimbursement of any outstanding balance of aggregated advances made by it for necessary and proper expenditure upon the administration of Southern Rhodesia. This, however, and the other rights hereinbefore mentioned, do not vest in it dominium or estate in or title to the said unalienated lands.

APPENDIX II.

NATIVE RESERVES—SOUTHERN RHODESIA.*

REPORT BY THE SURVEYOR-GENERAL.

THERE are two points raised in Mr. Longden's final reply in the debate on the matter of native reserves and the survey thereof, i.e., the reserves are very much larger than they were supposed to be, and the definition of these reserves by erection of proper beacons.

The statement contained in the first is quite true in many cases, and I will proceed to detail a few in confirmation. The converse applies in a few instances, though with one exception the differences are not material.

When recommending the Sabi Reserves the Native Commissioner estimated it contained 400,000 acres, and was required for a population of 21,488. According to the maps this reserve scales 1,554,000 acres, and its boundaries are in several parts defined by survey. Very long stretches of rivers form the boundaries in most parts, and where these rivers abut on the Melsetter District they are defined by survey also. Thus it is very probable that the map area is not very wide of the mark. The present population of this reserve is 26,000 souls. This reserve is in the Charter Native District. In the same district is the Narira Reserve, which is estimated to contain 38,000 acres for a population of 4,785. The correct area is about 111,351 acres and the present population 3,000 souls.

To deal with the Charter District as a whole, the four reserves total 1,737,241 acres; the population thereon is 31,500 souls; the population in the whole Charter District is 49,000 souls, the married men numbering 4,125, the stock in the whole district is 7,000 cattle and 31,000 sheep and goats, and 40,500 acres are under cultivation. These are the estimated figures. Two of the reserves are fixed by surveys. Allowing a most liberal estimate of land for this total population and their stock, as well as making provision for large increases in both, the reserves can well be reduced by one million acres.

Then I might turn to the Ndanga Native District. Ndanga Reserve, estimated area (when proposed) 100,000 acres for 22,000 souls; present population thereon 24,000 souls; map's area 639,195 acres. The four reserves in this district were estimated at 168,500 acres; the map areas are 775,781 acres. The population of the whole district is very large, i.e., estimated at 66,000 souls, there are 11,226 married males. Stock estimated at 20,000 cattle, 47,550 sheep and goats, and it is estimated 60,000 acres are cultivated. Should it ever be required to put this population on the reserves, the present reserves would be none too great. But it appears to me that the disposition of reserves might with advantage be reviewed and altered to meet the requirements of the country as a whole. The present population on the Ndanga District Reserves is 32,300 souls, 6,290 being adult males, and the cattle thereon number 9,760; acreage under cultivation, 29,500.

Chibi Native District.—Chibi Reserve was estimated at 768,000 acres for 14,185 people; map area is 1,051,920 acres; present population 22,400, 5,200 being adult males. The Native Commissioner estimated that, owing to the mountainous nature of some parts of the reserve, and other parts being waterless, some 448,000 acres alone would be fit for cultivation. As the whole reserve is more or less sketched on the maps it is not possible to say which is the more correct area. But I think, in view of the enormous areas of the two reserves, Chibi and Mtibi, of this district, general figures may be considered. The areas of the two reserves total 4,537,860 acres; the present population thereon is 29,900 souls; present number of cattle 12,000. The figures for the whole district are 33,500 souls, of whom 4,179 are married males; cattle 12,880; sheep and goats 36,400; acres cultivated 28,500. Originally the Native Commissioner estimated there would only be 1,344,000 acres fit for cultivation. Allowing a liberal

* This report is an Appendix to the Report of the Native Affairs Committee of Inquiry, 1910-11, presented to the Legislative Council of Southern Rhodesia in 1911.

estimate of land for the present population of the whole district and their stock, plus a large increase, the reserves would still be largely in excess of requirements, and, considering the enormous extent of country they cover, it would appear advisable to reconsider their constitution. Some parts of the Mtibi Reserve would form an excellent game reserve, and this should be well worthy of consideration. The Native Commissioner also makes this suggestion.

The Gutu and Chilimanzi Native Districts might be dealt with together, as statistics given in the Chief Native Commissioner's yearly report refer to these as one district.

For the Gutu Reserve the estimated population was 22,750, and the acreage required about 50,000 acres, the present population on the reserve is 12,300, of which 4,300 are adult males, the map area is 562,015 acres. The Native Commissioner, when he submitted the boundaries for approval and subsequent proclamation, made the following remarks.—“The reserve forms about half of Gutu's country, and probably there is more land in it than is really required, but it is very difficult to say without going over the country, especially as there is a good deal of granite in some parts of it. If the reserve is found to be too large later on, parts of it can be easily thrown open.”

The Chilimanzi Reserve was estimated at 40,000 acres, on which there were about 400 adult natives with another 400 adults living just outside. The map area of this reserve, as defined by the Native Department, is 215,430 acres, the population now thereon is 6,564, of which 1,800 are adult males, cattle are 1,560, acreage cultivated is estimated at 16,250 acres.

The three reserves of these two districts total 885,418 acres; the present population thereon is 20,176 souls, cattle 10,372. The population in the whole of the two districts is 41,000 souls, of which there are 6,848 married males, cattle are 17,000, sheep and goats 48,500, acreage under cultivation 19,217. Bearing in mind that all the natives of a district are not likely to settle in reserves, the acreage now held as reserves in these districts is really more than is requisite. But especially so does this become the case when all these reserves before mentioned are considered, with others adjoining, as a whole, and in their relative positions huge areas adjoin each other and others are quite near. For over-estimation I might also mention the three reserves. Mutema, Murvusha, and Mutambra, in the Melsetter District. Mutema estimated area 42,330 acres, map area 135,175 acres; present population is 3,000, of which 730 are adult males; cattle 316, sheep and goats 1,336. Murvusha estimated area 33,865 acres, map area 146,746 acres, present population is 1,880, of which 438 are adult males; cattle 60, sheep and goats 1,138. Mutambra estimated area 31,748 acres, map area 86,778 acres; present population 871, of which 259 are adult males, cattle 20, sheep and goats 260.

Dealing with these three reserves as a whole, the total extent is 368,699 acres, the population on them and on the adjoining vacant land is 10,909 souls, of which there are 2,858 adult males; the stock of this population is 675 and 5,497 sheep and goats. These reserves also adjoin other huge reserves, and it seems to me their extents are very large. The Native Commissioner reported that in the flat country of the Sabi Valley there are only small parts which can be worked by natives, owing to the absence of water, and that droughts are frequent and severe; also that if it were possible to irrigate on a large scale the valleys would be very productive, otherwise they are not fit for occupation.

I have no figures for the Maranka Reserve, but the acreage is very large, being some 554,000 acres in extent. This reserve adjoins some of the others previously referred to. Without going into further specific details, still I might mention that the native reserves in North and South Mazoe and in Mrewa in extent total 2,700,700 acres, the present population in these reserves being 31,884 souls, of which there are 8,570 adult males, these people own 3,885 cattle. In the whole of these three districts there are estimated to be 36,645 souls, of whom 6,042 are married males; the cattle total 4,540, and sheep and goats 25,620. It is obvious therefore that these reserves are extremely excessive.

So far I have only dealt with the Mashonaland reserves, but, with the exception of the Shangani and Gwaai Reserves, the Matabeleland reserves, taken as a whole, are not so excessive. And I understand the land in the Shangani and Gwaai Reserves would hardly be of use for other purposes. However, for the population for which these two reserves are required, their extents are enormous, and should be considered in any similar manner to the others mentioned.

I have gone into the above matter somewhat at length, as it also bears upon the consideration of the question of beaconing the reserves. It seems to me obvious that the reserves taken as a whole are excessive; and it hardly appears that their disposition is in every case to the advantage of the country.

In my opinion many of the reserves should be reduced in area; and this can only be done after proper inspections, the advantages of the country as a whole and the interests of the natives being taken into proper consideration. I think, consequently, that it is not desirable to beacon any one reserve till it is finally decided that such reserve is of proper dimensions and in a suitable position.

On the general question of beaconing reserves it has been shown, in previous correspondence, that of the ninety-eight reserves tabulated, twenty-two are demarcated by beacons which are fixed by existing surveys. Eighteen have definitely known boundaries, which can be followed on the ground; and some sixteen others are in such outlying parts or have such known boundaries that they would not hamper land settlement work, and in many cases can be traced for any other purposes.

Of the remainder, twenty-one are partly beaconed by existing farms which are surveyed, and in addition to which many of the remaining sides are rivers and streams, though in some of these cases it is difficult to tell on the ground where the reserves begin and end along these rivers and streams. The latter remark applies also to the remaining reserves—not above referred to, and which have rivers and streams for many of their boundaries.

If the reserves were beaconed in such places where their boundaries are at present not beaconed, and where these cannot be followed upon the ground by natural lines, it would help in only a very few instances settlers seeking land to suit their requirements, and for such cases the Estates Office have on their staff a man capable of assisting proper selection; where this is

accomplished, and the selection is beaconed and surveyed, further beaconing of the reserves naturally results. The beaconing of long lines boundaries of reserves would be of no practical value to anyone, unless many line beacons were placed, which would naturally mean much expense. The beacons at the end only of such long lines would not be of any greater value than the points given in the definition of the reserves, where such points can be traced upon the ground. Where such points cannot be traced upon the ground a beacon would, of course, prove useful, but, as I have stated above, it would not be of much practical value for defining long boundary lines, unless many intermediate beacons were also placed. And if these intermediate beacons had to be placed on lines it would mean much survey work and great expense.

In lieu of having very long, straight lines between points as boundaries, it would be feasible to place beacons more or less in sight of one another, and on as prominent points as possible, following more natural boundaries. This would be a great advantage, provided always the reserves are not increased thereby. This procedure could be gradually carried out as farms, lying more or less along reserve borders, are selected and subsequently surveyed. With the aid of various officials, I would not anticipate much difficulty generally, on the part of an applicant for land, in placing a farm more or less along a reserve border, sufficiently in proper position, so that when survey is completed the applicant finds he can obtain what is useful to him.

Should it be decided to beacon any of the reserves, the beacons placed should contain plates, with full description of what they represent.

From what I have learnt, I believe that reserves contain land which is not used, and not desired, by natives, but which might be useful for other purposes. And it seems quite probable that many reserves could, with general advantage, be altered in position and shape, or, in parts, absolute relocation. For this reason, and the fact that, in my opinion, many reserves should be reduced in area, I do not think it is an opportune time to generally beacon the reserves.

Any alteration of reserves would, of course, entail careful and lengthy inspections.

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