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NATIVE LABOUR LAW AND PRACTICE IN PAPUA

BY
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AUSTRALIA:

THE LAW BOOK CO. OF AUSTRALASIA LTD.

Sydney . . . 151 Phillip Street
Melbourne . . . 425 Chancery Lane
Brisbane . . . 31 Adelaide Street

1924

X:9:Z9332

F1

SIMMONS LIMITED
PRINTERS
HARRIS ST., SYDNEY

4826

Registered by the Postmaster-General for transmission through the post as a book.

Author's Preface.

THIS work was originally conceived in the form of a concise practical handbook on Native Labor Law and Procedure, such as might be useful to those in Papua who, through unfamiliarity with the technical side of native labour matters, would be likely to find such a volume useful as a supplementary reference guide to the complexities of the Native Labour Ordinances and Regulations as amended from time to time, and as some form of assistance in the handling of the clerical side of native labour routine in the Territory.

It was found, however, as preparation proceeded, that its scope might with advantage be extended and amplified to that of a Text-book on Native Labour Law and Practice, and I have accordingly prepared the subject matter in a series of consecutively numbered paragraphs, each of which bears its reference to the precise section of the Ordinance or Regulation governing it. The whole is fully cross-indexed to give ready access to any point that may arise for consideration by an enquirer.

Arranging and consolidating into distinct and self-contained Parts, the full law and procedure as it affects various different interests and groups, or classes of inquirers (employers, recruiters, masters of vessels, traders, planters, &c.) was felt to be an essential in any work intended for universal ready-reference, and this has accordingly been carefully done, though involving necessarily some little repetition throughout the volume. If it serves to give a clear and comprehensive statement of law and procedure from each of the principal standpoints suggested, unencumbered in each case by a mass of intruding matter of no interest along the particular line of inquiry in hand, its purpose has been gained, and one of the principal obstacles to a clear knowledge of the intricacies of the Ordinances and Regulations by "the man in the street" has been, it is hoped, satisfactorily overcome.

No claim is made that this volume contains anything that quite the majority of planters, business people and employers of labour generally in the Territory are not fully familiar with already, and every care has been exercised to introduce in the text as little in the way of independent comment as seems consistent with presenting the law in an intelligent and reasonable form.

At the same time, I venture to hope that the scope of the work, and its method of arrangement, may give it rather more than a purely local interest, and that the bold and fearless native policy adopted by the Australian Administration in Papua, attracting, as it has, the attention of the world; may justify the belief that a clear presentation of the Native Labour Law and Practice of Papua may be of some interest also to students of native problems and administration in other parts of the Empire. •

CHAS. F. JACKSON.

February, 1922.

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Note on Publication.

Unavoidable delays in bringing the MSS. of this book to publication necessarily leaves time for minor Amendments, Proclamations, etc., to issue, in connection with the Ordinances and Regulations, but the general principle of Native Labour Law and Practice as dealt with herein is in no way affected.

THE AUTHOR.

Introduction.

PERHAPS no better introduction to the contents of this volume can be conceived than the remarks of His Excellency the Lieut.-Governor of Papua, J. H. P. Murray, C.M.G., in his "Review of the Australian Administration in Papua from 1907 to 1920," published early in 1921:—

DUTY OF THE PAPUAN GOVERNMENT.

Quoting his own Annual Report of 1914, His Excellency says in his *Review*:—"The duty of the Papuan Government—the duty, in fact, of any Government which wishes to remain true to the best traditions of Imperial Administration—is not only to develop the resources of the Territory, but also to preserve the Papuan and to raise him eventually to the highest civilization of which he is capable, for we wish Australia to have the credit of showing how the civilization of the twentieth century can be introduced among people of the Stone Age, not only without injury to them, but to their lasting benefit and permanent advancement.

"Now the settler has no such duty, and he is too often inclined to think that a Government which pursues this end, and is anxious to protect and assist the native in his rapid transit from savagery to civilization, is actuated by a sickly and unpractical sentimentality. Hence, in any tropical country which has a large native population at a low stage of development, there is apt to be a feeling of opposition to the Government on native questions, and the feeling of opposition easily passes into a general disapproval of everything the Government does, even in matters which are not connected with natives. This was the case, for instance, in the early days of Fiji, and history seems to be repeating itself in Papua."

THREE SOLUTIONS TO THE LABOUR PROBLEM.

Alleyne Ireland, a well-known writer on these subjects, is quoted in the *Review*, as follows: "In like circumstances a Government will always be faced by the labour problem, and it admits of only three solutions. If the natives refuse to work, as they have in all times in every tropical country, the development of which has been undertaken by Europeans or Americans, the first alternative is to abandon it (and thus rob the world of that economic contribution

which it has a right to expect from every territory which nature has endowed with economic resources); the next is to adopt the method which has made Java the most flourishing of all tropical countries—that is to say, force the natives to work (by prescribing a certain number of days of labour in the year for each native and visiting a default with heavy penalties); and the final alternative is to leave the natives alone and bring in outsiders who will do the work.”

His Excellency, Judge Murray, considers these three alternative solutions, and remarks:—

“Of these three solutions, the second—forced labour—was out of the question under an Australian Government, and the third—imported labour—was hardly likely to commend itself, as it was inconsistent with the object with which Papua had been annexed; and it seemed, therefore, if Mr. Ireland was correct, that we should be driven back upon the first solution and compelled to abandon the idea of development altogether—a confession of defeat which was, of course, impossible. And we should have been in a sorry plight, indeed, if the Papuan natives really had refused to work, in accordance with the rather rash generalization contained in the passage quoted. Fortunately, however, it turned out otherwise: the Papuans did not refuse to work, and Mr. Ireland’s dilemma was avoided.”

INDENTURED *versus* FREE LABOUR—A POLICY DECIDED.

The *Review* continues: “Now there are two systems of labour recognised in the tropics—the indenture system, and the system of free labour. Under the former the native is bound to work, and the employer to maintain him and pay him wages, during a fixed term; under the latter he can leave at any time, and may be discharged at any time, on a short notice. Naturally the former system requires much more stringent and much more detailed Regulations than the latter.

“Indentured labour is common in the Pacific, *e.g.*, in the Solomons, Fiji, and the former German New Guinea, and it exists side by side with free labour in the Federated Malay States and elsewhere; free labour existed in, among other places, Ceylon, the Federated Malay States, and Java.

“The importation of labour from other countries under indenture is probably doomed in the Crown Colonies throughout the Empire, if one may judge from a recent debate in the House of Commons (*The Sydney Morning Herald*, 28th April, 1920). But this does not directly concern us in Papua, and the indenture system as applied to indigenous labour is free from many of the difficulties which are inseparable from the importation of indentured labour from abroad.

“ Still, any system of indenture is open to objection, for there is too much compulsion about it on the side both of the Employer and of the Employee ; and as a permanent institution it cannot be looked upon as satisfactory.

“ Free labour, however, postulates certain qualities which the Papuan lacks, but which we hope he may eventually acquire, that is, determination and perseverance—the power of making up his mind as to what he wants and then sticking to it.”

INDENTURE SYSTEM ADOPTED—FREE LABOUR THE IDEAL.

The *Review* continues : “ Free labour was, therefore, out of the question in Papua, and the only alternative was to adopt the system of indenture that was already in existence, and to try to work through that system to an ultimate ideal of free labour. This can only be done by a very gradual and careful modification of the restrictions incidental to indenture, and by an avoidance of anything that might have the effect of stereotyping that system as a permanent part of our policy. It will not be in this generation that we shall be able to substitute free labour for indenture, but free labour is surely the system which we must seek to establish eventually.

“As I have said again and again, there is not, and, so far as I know, there never has been, any systematic ill treatment of labour in Papua ; but in spite of this fact, and in spite of the fact that many employers go out of their way to make indentured labour as little irksome as possible to the native, I do not think that labour under indenture will ever become popular with the natives of Papua, or will ever be adopted by them as part of their ordinary scheme of life. I am, of course, aware that a certain amount of cruelty and oppression is probably inseparable from the control by a superior race of an inferior race of different colour, but, even if all this could be abolished, although more men would doubtless come to work than are coming now, I should still feel doubtful as to the ultimate success of the system.

“ Thus indenture is not altogether a popular institution in Papua, and although, so far there has always been up to the present year (1919-1920), roughly speaking enough labour available to carry on the work of the Territory, still, the employer is in a state of constant anxiety ; he has enough labour for the moment, but perhaps 30 of his boys are time-expired in six weeks, and 20 more in three months, and how can he be sure that he will be able to replace them in time to prevent his work from going back ? This is a real difficulty even if, as a matter of fact, he always does replace them, because the uncertainty makes it impossible for him to be sure of carrying out a definite programme.

“ There seems to be no remedy for this uncertainty, which is probably inseparable from the settlement of a sparsely-populated

country dependent entirely upon indigenous and voluntary labour. Certainly it would be no remedy to increase the term of employment from the present maximum (three years) to say five or seven, and with still greater certainty the state of things would be no better if the indenture system were abolished.

“ Progress towards the establishment of free labour must be very slow, partly for the reason that, as recruiting extends, fresh tribes of raw and utterly ignorant natives will come in as labourers who must be bound strictly, or they will never do their work, and who, on the other hand, require all the guidance and protection that the existing law can give them. The most important advance in the direction of free labour has been by a provision exempting certain natives from indenture under certain circumstances, but I understand that no one, either employer or employed, has so far made any use of this provision. It has been thought sometimes that it would be possible to exempt the natives of certain districts from indenture altogether, or to increase the period (now fixed at three months) during which such natives might work as free, or, as it is called in Papua, “ casual,” labourers, but the general opinion has been against it.”

WORKING OF THE INDENTURE SYSTEM IN PAPUA.

“ The Native Labour Ordinance and Regulations in force in Papua are much the same as those in force in other countries where labour is employed under indenture, and indeed this is generally admitted by the most hostile of our critics ; but it has been complained that we enforce them too strictly, whereas, we have been told, in more favored lands they are not enforced at all. Such complaints have generally been in connection with inspections of plantations by officers of the Department of Native Affairs, who, it has been said, are too fond of ‘ coddling ’ the native and of harassing the employer.

“ I have been able to find no justification for this complaint, which is not an unusual one in tropical dependencies, and I think that the more far-seeing employers would now admit that, if there had been more ‘ coddling ’ in the past, there would be more labour available to-day.

“ For it must be remembered that our natives, unlike, *e.g.*, the Tamils in India, are usually under no strong economic compulsion to go to work, for they can, as a rule, live fairly well in their villages ; that is to say, they will, generally speaking, have enough to eat, though they may have to do without the various European articles to which they have been accustomed. They suffer severely, at times, and in certain parts, from drought and famine, but as a rule they can get enough bush food (even in times of drought) to keep themselves alive ; and in fact it is often at these times that they are

least anxious to go to work—they prefer, they say, to stay with their wives and children and help them through. And their answer to any cruelty or ill-treatment would be simply a refusal to work, which (if persisted in) would speedily bring the Territory to ruin, for all our development depends on the native.

“ But there has been no such general refusal, and in the Annual Report for 1914-15 I was able, after dealing with the satisfactory state of the labour supply and explaining that most of the recruits seemed still to come from the old recruiting grounds, to attribute the increase in the number of labourers ‘ to the fact that the natives are getting more familiar with the white man’s ways and more dependent on the white man’s goods, and to the fact that the labourer in the great majority of cases, can rely upon receiving fair treatment.’ Then, after saying that there had never, so far as I knew, been anything like systematic ill-treatment of natives, either by miners or planters, and that I thought that the treatment received by labourers was better than it used to be, I went on—‘ The improvement is partly due to the fact that planter and plantation labourer have come to understand one another better, and partly to the activity of the officers of the Native Affairs Department in seeing that the requirements of the Native Labour Ordinance and Regulations are carried out. Hitherto it has not often been considered necessary to prosecute ; in many instances where the Ordinance and Regulations have not been complied with it has been thought sufficient to call the attention of the manager to the omission. As a result of the action of this Department the condition of the labourers generally (especially as regards their housing) has distinctly improved of late years, and work on plantations has in consequence become more popular. The ample provision which is made on so many plantations for the supply of native food has also an important effect in the same direction, for many labourers were no doubt repelled by the monotony of the daily rice ration.’ ”

THE LABOUR SUPPLY.

In regard to the future of the native labour supply, the *Review* goes on to say :—

“ There is no means of ascertaining the exact number of labourers at work during any given year. It has been said that there were nearly 13,000 natives working in 1914, just before the war, but the figures are apt to mislead, unless it is remembered that included in that number are 3,702 “ casual ” labourers—that is, labourers not under indenture, whose numbers can only be guessed at, and who work for any period not exceeding three months. Probably the correct number would be about 10,000, an increase of about five-fold since 1906.

“ This is certainly a very encouraging record, but the important

question is, what further increase is possible? . . . All that we can be sure of is that the labour supply is not capable of indefinite expansion, and, further, that, as a matter of administration, it is not desirable to allow the villages to be depleted of their young men, even if they are willing to go.

“ Various suggestions have been made with the view of increasing the supply. Government recruiting is one of them, but there is no reason to suppose that the Government could get labour for other people any more readily than a private recruiter could; and Government recruiting would, I fear, only be successful if the natives got it into their heads that it was a matter of compulsion, and that, of course, would be the very thing which we should wish to avoid.”

INDENTURE OF WOMEN.

“ A suggestion which has received careful consideration is that women should be “ signed on ” as well as men. Under the present law a woman may accompany her husband on to a plantation where he has contracted to work, and, if she likes to work, she may, but she must be paid for it; also she must be provided with food and decent accommodation. Few women take advantage of this permission, and I should think that, unless regular employment can be found which they are willing to accept, they probably cause more trouble than they are worth. They cannot be ‘ signed-on.’

“ The advantages of keeping the family together are obvious; the men are more contented if they have their womenfolk with them, husband and wife live together, and children may be born to them, the villages escape the evil effect of the constant drain of young men which goes on under the present system, and there is more labour available, for there is a lot of light work on plantations which can be done by women and even by children. It is, however, worthy of note that women are not ‘ signed-on ’ under indenture in any British Possession or Protectorate in the Pacific—not in the Gilbert and Ellice Group, nor in the Solomons; and even in Fiji, where the importation of Indian women under indenture has been allowed, the native Fijian women are expressly excepted from the Labour Ordinance.

“ A closer investigation shows arguments against the indenture of women. Clearly, I think, no British Government would allow the indenture of any but married women, accompanying their husbands and working with them at the same place, and the result would be that the number of women recruited would be very small. In German New Guinea, to a labour force of over 20,000 ‘ boys,’ there are but 1400 women—that is, about 7 per cent.—so that the number of labourers is not materially increased by recruiting women, and there is a danger of a state of domestic chaos arising such as that which has been reported to exist among the Indians in Fiji. Then

there is the question of desertion. At present a male deserter is punished with imprisonment, but a female deserter is not—she can only be fined. A fine not backed up with imprisonment is not very effective, and would be no deterrent to a woman who wished to run away; and yet there is a natural unwillingness on the part of the local Legislature to sanction the imprisonment of women for what, after all, is really only a breach of contract. Again, if the husband was imprisoned for any offence, *e.g.*, breach of duty—the wife would be left absolutely unprotected on the plantation; and it is the consideration of difficulties such as these which has induced us to follow the precedent set by the other British Territories. There is also a fallacy in the idea that women ‘signed-on’ with their husbands would bear and rear families. It is probable that, among the strange surroundings of plantation life, but few women would bear children; they would miss the traditional precautions which surround a pregnant woman in her village, and few of such children as might be born would be likely to survive.”

PLANTATION SETTLEMENTS.

“Another suggestion that has been made is that labourers should form settlements or villages of their own on the estates on which they are employed, signing on from time to time, but going home at night to their families, who would be living in this plantation settlement. Schools would be provided, and a Church, and the women and children might be employed at such light work as was required, in addition to which they might be allowed a plot of land for each family as a garden. The scheme sounds attractive, but it is feared that the result would be to transform the present race of peasant proprietors into a landless proletariat, entirely dependent on the plantation for their livelihood.”

CHILD LABOUR.

“As regards child labour, which has been advocated with some reason as a useful education for the native, the general principle we have arrived at is that a child of school age, *i.e.*, under 14, should go to school and not to work. In this again we agree with the other British Possessions in the Pacific.”

FUNDAMENTAL LABOUR DIFFICULTIES.

The *Review* continues: “But these suggestions, even if they were all adopted and all proved successful, could not amount to more than temporary palliatives, for, after all, the real labour difficulty arises from the sparseness of population, and is one which no legislative or administrative skill can remove. All the Administration can do is to see that a ‘boy’ when he does sign on is fairly treated, sufficiently fed, and decently housed, so that he and his friends may be encouraged to sign on again, and, further, to see that

the Government influence is extended throughout the Territory so as to enlarge the area for recruiting. This has been done ; but the facts remain that out of a population of 250,000, we can never hope that more than 20,000 will ever be regularly employed, even if the whole Territory were completely pacified and if recruiting were organised on the most effective system, and that, as a matter of fact, we are not likely, at any rate for some time to come, to get nearly so many. Further, it should never be forgotten that over-recruiting may have a disastrous effect upon the future of the Territory, and may necessitate the absolute prohibition of recruiting in the districts affected."

EXCESSIVE RECRUITING.

" This is one of the points where the Government and the employer are likely to come into the sharpest conflict. Anyone, of course, will admit the abstract proposition that the Government should take care that recruiting is not carried so far as to cause a diminution of population in a district, and further, that, if such a result appeared probable, it is the Government's duty to prevent it, even if necessary by closing the district altogether. But in any particular case the action of the Government would almost certainly be loudly condemned.

" Subject to what I have said above, the labour problem is really one which in a large degree, may be solved by the employers themselves ; and those employers, and they are many, who treat their labour well are all assisting to solve it. But it should never be forgotten that the limiting factor is the lack of population."

QUALITY OF PAPUAN LABOUR.

Under this head, His Excellency remarks : "As to its quality it is really impossible to express an opinion, for it varies so much according to the district from which it is drawn. Some of the labour from the sago swamps of the Western rivers is, I think, admittedly very bad indeed. These people, many of them, have no gardens and live principally on sago and grubs, and their physique and apparent intelligence are such as one might expect.

" Labour from other parts of the Territory is very much better, but it is hard to say how it compares with, *e.g.*, Tamil labour, as I have no common measure. *A priori*, one would expect the industrial races of Asia to be immeasurably superior to the non-industrial tribes of Papua who, barely a generation ago, were still in a state of utter savagery, but, in fact, it would appear that the difference is not so great. Thus, I have been told by a planter, who has had experience of both, that, for the upkeep of a plantation, 100 Tamils would be equal to 125 Papuans of the better sort, but that, for clearing, the stronger Papuans, *e.g.*, natives of the Mambare district,

would be at least equal to Tamils. In mining work the Papuan seems to do better, and I have heard of individual ' mining boys ' who, it was said, could do as much work as an European, the general efficiency in some places being rated as high as half of that of an European.

“ It is said that in ordinary navy work a native of Kiwai Island in the Fly River will get through a bigger task than a Tamil, but an argument based on casual statements of this kind should not be pressed too far. It is, I believe, generally acknowledged that Papuan labour is improving, but on the other hand, as the demand increases, inferior labour will inevitably come forward.”

His Excellency's Review, from which the above remarks are extracted, cover a very wide range of thought and work over a long period of years, and forms an excellent reference volume for all who are interested in native problems, in any capacity, throughout native communities in all parts of the world. The conclusions reached may not necessarily be fully and universally shared by all who read, but are none the less important and valuable on record, and may well prepare the way for a ready appreciation of the Native Labour Law and Practice in Papua as presented in this volume.

CHAS. F. JACKSON.

PORT MORESBY,
February, 1922.

PART I.

The Native Labour Ordinance for Employers.

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PART I.

THE NATIVE LABOUR ORDINANCE FOR EMPLOYERS.

The Native Labour Ordinance, and regulations made thereunder, form the principal part of the law in Papua governing the working relations between Europeans and the native population.

This Ordinance, however, does not apply to natives in Government employ, who are subject only to "The Native Crown Servants Ordinance," whilst under indenture to the Government.

In order to reduce the complexities of the Native Labour Ordinance to the most readily assimilable form for the general reader, it is desirable to adopt some convenient method of classification of the subject matter.

Part I. is confined to the provisions of the Ordinance as they apply directly to the Employer, and the first thing an Employer wants to know all about is the procedure in recruiting and engaging the native or natives he intends to employ.

P.L.

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