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• THE AUTHOR

# NATIVE LABOUR LAW AND PRACTICE IN PAPUA

BY  
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## Author's Preface.

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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.**

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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.

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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.”

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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.

## CHAPTER I.

## RECRUITING AND ENGAGING THE NATIVE.

1.—*The definition of a "Native,"* under the Native Labour Ordinance, is: "An aboriginal native of the Territory of Papua." Consequently, half-castes, and coloured persons resident in Papua who belong to places beyond the Territory, are not subject to this ordinance, but are subject to the provisions of "The Transactions with Natives Ordinance," as dealt with in Part VIII., the term "Native" there having a different interpretation, as will be seen. (N.L.O., Sec. 3.)

2.—*The first principle* to be borne in mind in connection with the engagement of natives as servants, labourers, &c., is that the law does not permit a native to be employed by any person for a longer period than *three months* except under the written Contract of Service prescribed by the Ordinance. (N.L.O., Sec. 22.)

The only exceptions are:—

- (a) Mission teachers, or native students receiving instruction with a view to becoming mission teachers.
- (b) Natives exempted by the Department of Native Affairs and Control.

Exemptions under the latter exception may, of course, be applied for in any case which an employer considers worthy of it, and the decision rests with the Department. It may here be remarked that the Administration looks forward to the time when the Papuan native will be so far advanced in education, civilization and the spirit of self-reliance as to no longer need the protection of a Contract of Service and Native Labour Ordinance, with all the present complex restrictions and safeguards. See Preface (*Extract from the Lieut.-Governor J. H. P. Murray's "Review of the Australian Administration in Papua from 1907 to 1920).*

3.—Although it is permitted to make use of a native's services for any period up to three months without entering into a Contract of Service, this *does not give the right to remove him more than 40 miles from his home* (or 100 miles in a Settled Labour District) for the purpose. (N.L.O., Sec. 10 (2).)

4.—There is a certain exception under which it is *not permissible to employ a native longer than one month* without a written contract of Service. This, however, will be found fully dealt with in Part IX. dealing with the Pearl, Pearl Shell and Beche-de-Mer Ordinance. (Pearl, Pearl Shell and Beche-de-Mer Ordinance, Sec. 31.)

5.—*The next important principle* is, that no native child, male or female, who is under the age—or apparent age—of fourteen years,

is permitted to be employed for any period, either with or without Contract of Service, unless there is no school that it can attend within a mile of its home. If there is no such school, even then the child still must not be employed unless the consent of the parent or guardian is given. (N.L.O., Sec. 22A.)

6.—*The fees for Engaging a native under Contract of Service total 6/-, being 1/- for the Recruiter's Statement and 5/- for the Contract of Service. (N.L.O., Sched. M.)*

7.—*Every Native must first be "recruited" before he can be engaged under Contract of Service, and the prescribed "Recruiter's Statement" must be filled in and signed. It must be a true statement. It certifies who the recruiter is, the name of the native recruited, his village, the date and place of recruiting, period for which recruited, rate of pay, nature of employment, and place to be employed. The form is kept at all Native Labour Offices, and a specimen is given here :—*

(Schedule E)

PAPUA.

STATEMENT

*Under Section 24 of the "Native Labour Ordinance, 1911-1920."*

I,..... of.....  
in the Territory of Papua,....., state as follows :—

The Schedule hereto contains true particulars of the names of certain natives recruited [by me or by.....a native assistant in my employ, or by.....an unlicensed person acting as my agent or by me, an European overseer in the regular employment of.....and under his written authority] and of the date on and place at which they were recruited and of the particulars of the names of their villages and of the employment for which they were recruited.

SCHEDULE.

Name of Native.	Native's Village and Division.	Period for which engaged.	Rate of Pay.	At what to be employed.	Place where to be employed.	Date on which recruited.	Place where recruited

DATED AT.....  
this.....day of.....19.....  
*Licensed Recruiter or Employer or European Overseer for.....*

8.—*The Employer himself may be the recruiter, but not necessarily so. The Ordinance indicates clearly who is the recruiter, by defining what constitutes the act of recruiting :*

"A native shall be deemed to be recruited when he is solicited and consents, or he offers and his offer is accepted, to engage for or to be employed in any form of service, or to leave any place where he may then be, with a view to, or for the purpose of, being so engaged or employed." (N.L.O., Sec. 3.)

9.—Generally speaking, no person is permitted to recruit natives without a *Recruiter's License*, and the subject of Licensed Recruiters is fully dealt with in Part II. *It is not necessary to hold a Recruiter's License* in the following cases :—

- (A.) If a person wishes to recruit a native for his own employ he can do so without a license, and he signs the Recruiter's Statement as "Employer."
- (B.) If an employer has a European Overseer in his regular service he may authorise such overseer in writing to recruit natives to work for him in any capacity. In this case, such overseer must personally sign the Recruiter's Statement as "European Overseer for the Employer."
- (C.) If a person wishes to obtain a native for "domestic service only" in his own employ, he is entitled to the assistance of any unlicensed person to recruit such native, and he signs the Recruiter's Statement himself as employer, but fills in, in the proper place on the form, the name of the unlicensed person who obtained the native for him. This solely applies to domestic servants.

The above are the three exceptions to the general law that no person may recruit natives without a license.

10.—It may be mentioned here that an employer, or his European Overseer, in recruiting natives for the employer's service only, may *make use of the services of a native assistant to obtain recruits*, subject to the native assistant being under a contract of service to such employer or overseer, in which such duties are specially included as part of the contract. The employer or overseer must be in the same Division and *not more than ten miles from his native assistant* whilst using him for recruiting. No person other than the employer or overseer, or other native assistants, or natives of villages within a radius of ten miles, must accompany any native assistant when recruiting, and the *native assistant must not carry any firearms* or accompany any person who does so, other than his employer or overseer. (N.L.O., Sec. 82 ; N.L.O., Stat. Rules No. 10 of 1917.)

11.—It is also permissible to make use of the *services of a local village native* (not signed-on), provided such native does not recruit beyond a radius of ten miles from his own village and from a point on the

sea-coast where the employer is located at the time. The European cannot send a local village native to a distant inland or coastal village (beyond ten miles) to obtain recruits, nor send a message to a local native of such distant inland or coastal village (beyond ten miles) to bring him recruits from that village or district. In other words, *the European must personally be within easy access* of any natives who may be approached with a view to recruiting, so that such prospective recruits may not have to make unduly long journeys to get in direct touch with the European on whose behalf the native agents claim to be acting. (N.L.O., Sec. 82.)

12.—It should be remembered that the employer or overseer is personally liable for *any illegal act committed by a native assistant or local native* acting on his behalf, in the same way and to the same extent as if he had himself committed the illegal act. (N.L.O., Sec. 82 (3).)

The principal illegality to guard against is that of inducing a native by *fraud, intimidation, coercion or misrepresentation* to engage for service, or to leave any place where he may be for the purpose of so engaging. (N.L.O., Sec. 81.)

13.—No native who holds an *Arms Permit* may be used to obtain recruits. A shooting boy, or a local native with a gun permit, cannot therefore, be made use of in recruiting. (N.L.O., Sec. 82 (4).)

14.—Next comes the question of *Signing-on the native when recruited*. In all cases other than the three exceptions given above, it is not only necessary for the recruiter to sign the Recruiter's Statement preliminary to the "signing-on," but he must also *personally take the recruit* before the prescribed Government Official for engagement. *An agent may, however, be used* to take the native before the official, if the native is recruited for the employer's service by the employer or his European overseer, personally. The agent must produce with the native his authority in writing to so act for the employer or overseer, together with the employer or overseer's signed Recruiter's Statement relating to the recruit. If recruited by an overseer (who must be authorised in writing by his employer) the overseer's authority must be produced with the Recruiter's Statement. (N.L.O., Sec. 20 ; N.L.O., Stat. Rules No. 2 of 1920.)

This privilege of using an agent to attend to the routine of "signing-on" the native before the Government is a great convenience to employers living any distance from a Government Office, but care must be taken to *send the signed Recruiter's Statement to the agent with the native*.

15.—The "signing-on" of the native is as follows :—

On the Recruiting Statement being handed in to the Government Official (who must be a Magistrate, Inspector, or Qualified

Officer) the details of the contract are transferred from the Statement to a Contract of Service form, a specimen of which is given here :—

Schedule F.

PAPUA.  
CONTRACT OF SERVICE.

Under Section 25 of the " Native Labour Ordinance 1911-18."

Statement No..... No.....  
 Date Recruited.....  
 Name of Recruiter.....  
 Name of Employer..... Residence..... Occupation.....  
 Name of Guarantor or Nature of Security taken..... Form of Guarantee Schedule G. Form.....  
 Office of Lodgment of Guarantee..... Distinguishing No. of Guarantee: No..... Name of Interpreter.....  
 Number of Original Contract of Service..... (If a Re-engagement). Fees on Receipt No.....

Native's Name.	Native's Signature.	Home of Native (Village and District.)	Period for which Native engaged.	Rate of Wages to be paid Native per Month and periods when wages are payable.	Nature of Occupation Native to be employed at.	Places at or Veasels on which Native to serve.	Places at which Native may be paid off.

The abovenamed Employer hereby undertakes to return the abovenamed native to his home, as above specified, immediately after the said native has been paid off for his services under this Contract.

Dated at.....this.....day of.....19.....

Employer or Agent.....

The amount of £.....has been deposited with me on account of the above Contract. Receipt No.....

Signed by the said Employer and by the said Native in my presence.....

Magistrate, Inspector, or Qualified Officer.

From this form it will be seen that the " periods when wages are payable " and " places at which the native may be paid off " are added to the particulars already given on the Recruiter's Statement.

Both of these matters are subject to the official's control when the native is being signed-on. For example :—

(a) *Periods when Wages are payable.*—The employer is not bound to pay wages at less than monthly periods, but with the official's approval the wages may be made payable on the Contract monthly, quarterly, at expiry, or otherwise as convenient. There is usually little difficulty over this matter in the case of domestic servants, store hands, and various other classes of responsible natives ; but in certain cases the official may consider it inadvisable to allow the native to receive any part of his wages until expiry of the contract. For example : Where by native custom the indentured labourer is expected to return to his village at the end of his indenture carrying back to his family or tribe the full reward of his work, in the shape of a trade-box full of goods, steel implements, clothing, tobacco, &c., &c., as in the case of the usual agricultural labourer, then the practice of the Government is to discourage the possibility of the native squandering his wages during his term of service and returning home practically penniless when time expired, or, perhaps compelled to seek fresh employment instead of returning home. (N.L.O., Sec. 51.)

(b) *Places at which Native may be Paid Off.*—In this matter, also, the official considers the interests of the native, and the place of payment is deemed of such importance in the contract that once it is inserted no magistrate, or other official but the Commissioner for Native Affairs and Control, is empowered to vary it. Moreover, an indisputably good reason is expected to be shewn to the Commissioner before the power is exercised of interfering with the place of payment stated on the Contract. To illustrate the principle involved : If a native of the North East Coast signs on for agricultural work in, say, the Gulf Division, it is unlikely that the employer will be permitted by the Contract to pay the native in the Gulf Division unless there is a special reason for doing so, as the probable result would be that most of the native's pay or trade goods would have disappeared before he had reached his home at the other side of the Territory. The place of payment would more likely be made Samarai, as the last point of call on the homeward journey, where his money could be spent with advantage. (N.L.O., Sec. 33 (3).)

(c) It is, however, recognised that when a plantation labourer is indentured for a period of three years it is natural during such a long period for the native to want to spend a few shillings on himself occasionally, and the rule has been adopted under Order-in-Council that in such contracts the *plantation may be specified as one of the places where the native may be paid up to one-sixth of the wages earned.* The plantations usually keep a small store of trade goods, tobacco, &c., to meet the ordinary needs of the labourers in these cases, and it is provided that the payments can only be made in the presence•



of a magistrate, and subject to his approval of the invoices for goods sold. A schedule of stock and prices, approved by the magistrate, has to be kept at the plantation. In such contracts the balance of the wages (five-sixths) must be made payable only at expiry of service. (Order-in-Council of 8/7/15.)

*Signing the Contract.*—When all the details are completed on the contract they are explained to the native by the official (through an interpreter where necessary) and on the native expressing his understanding and approval of the terms and attesting the contract by “touching the pen,” i.e., making his mark on the contract before the official, the employer then signs, after which the official adds his own signature at the foot. One copy is handed to the employer, one kept and filed by the official for his own office and various other copies are made for departmental purposes. The contract is thereafter identified by the distinguishing number and station printed on it—e.g., “1913 Port Moresby,” “2071 Kerema,” &c., as the case may be. An official receipt is issued for the fees, 6/-.

(d) *Medical Inspection.*—It may here be mentioned that at the towns of Port Moresby and Samarai, where Government medical officers are stationed, a native presented for signing-on is first sent by the official to the Government medical officer accompanied by a “medical form” setting out the class of work for which it is proposed to engage the native. The medical officer examines the recruit and certifies on the form whether he is passed as medically and physically fit for such work. If “passed,” the signing-on proceeds, but if “rejected” the reason for rejection is stated on the form and the native is where necessary sent to hospital for treatment at Government expense, and cannot be signed on until discharged cured. If the rejection of the recruit is due to some incurable complaint or deformity he must be returned home by the recruiter. (N.L.O., Sec. 20 (2).)

At other Government Stations throughout the Territory, where there is no medical officer available, the rejection of a recruit on the ground of physical unfitness necessarily rests with the signing-on official who inspects each recruit presented before sanctioning the engagement. (N.L.O., Sec. 23.)

(e) *It rests in the discretion of the Signing-on Official* at all times whether he shall sanction the engagement of any native brought before him; but in the case of a refusal the reason must be stated to the intending employer, and be reported to the Commissioner for Native Affairs and Control. (N.L.O., Sec. 23.)

(f) *It is the duty of the official* to satisfy himself that fair wages are offered and will be paid, that the native is willing, and that there is no reason to suspect that the native will be unfairly treated, or not returned to his home in due course. Usually the official will require

a deposit of the return passage fare for the native and *three months' wages in advance*, and thereafter wages lodged monthly in advance. If this is not done, some surety must sign a guarantee to cover the whole of the wages and probable expenses of the contract. Business firms frequently arrange to guarantee their customers' contracts, under suitable mutual arrangement. See Part VI., relating to Guarantors. (N.L.O., Sec. 29.)

(g) The *Term of Service* is not permitted to exceed *three years*, and power is reserved to the Lieut.-Governor by proclamation to reduce the maximum term for natives of any particular locality. In the case of natives engaged for *mining and carrying*, the maximum term of service permitted is *eighteen months*, except in such parts of the Territory and under such conditions as the Lieut.-Governor may order. (N.L.O., Sec. 26.)

(h) A native's *term of service commences* on the day on which he enters into the contract of service. A contract is not permitted, for instance, to be ante-dated or post-dated, to serve any special convenience of employer or native. A native may be willing, for example, to engage under contract of service, but wish to commence work from some date in the future; the employer decides to secure the arrangement by signing the native on at once before he changes his mind; but in such case *wages begin to accrue under the contract forthwith*, whether the native is working or not. Or, in another case, the native may have been already working for some time by mutual arrangement before a convenient opportunity occurs to sign him on under contract of service. In such case the *contract cannot be dated back* to the day the native commenced work; any wages it is desired to pay for the free period can be either added specifically to the rate of wages on the new contract, or paid to the native as a separate transaction before he is signed on. (N.L.O., Sec. 27.)

(i) A person who engages a native under contract of service knowing at the time that the native is *already under contract of service to another person* (e.g., a deserter from his first employ) is guilty of an offence against the Ordinance punishable by imprisonment. It sometimes occurs that a native whilst a deserter from his employer will apply for and obtain engagement under contract of service with another employer, concealing from the second employer that he is a deserter. In any such case *the second contract is null and void*. (N.L.O., Sec. 35A.)

(k) No action can be brought upon any contract, express or implied, made by a native while under contract of service. (N.L.O., Sec. 90.)

## CHAPTER 2.

## RE-ENGAGING.

16.—The procedure in re engaging a native is the *same as for the first engagement*. When the native is time expired under the first contract, and paid off, he can be immediately re-recruited for a further term, subject to exceptions mentioned below. A new Recruiter's Statement is filled in and signed, and a new contract is made for the re-engagement. The *Same fees*, 6/-, are payable.

(a) The following *restrictions* are placed on the re-engagement of natives—

A native must not be away from his village for a longer period than *four years* at one time. Provided, therefore, the re-engagement does not carry the native beyond the four-years period since he was last in his village, such re-engagement is permitted. In all other cases the native must *first be returned to his village* before re-engaging. (N.L.O., Sec. 26).

Before a three-years' contract can be made with a native to *follow on a previous three-years' contract*, a period of *one full year* must elapse after return of the native to his village.

The above restrictions are all subject to relaxation, on application to the Commissioner for Native Affairs and Control. In the case of *household servants and artisans* the Commissioner will not withhold his sanction for continuous re-engagements unless there seems a special reason for refusing. In the case of *general labourers*, however, no relaxation of the restrictions can be expected save in exceptional circumstances.

## CHAPTER 3.

## RATIONS.

17.—The obligation is imposed upon every employer to supply his native employee with *good and sufficient food* so long as the native is either expressly or by implication under his care or charge. (N.L.O., Sec. 47.)

This obligation can, however, be modified in any degree, or abrogated, in the case of a native under contract of service, by special provision embodied in the contract; but where there is no such special provision the rationing of the native must be in accordance with the Government regulations as set out below, which apply to *all natives except household servants*. Household servants simply have to be provided with "Sufficient good food as required," without special regard to the undermentioned scale. (N.L.O., Reg. 23.)

The regulation Scale of ration issue is :—

*Daily food issue*—Any of the following four methods may be adopted for daily diet :—

- (1) 1½ lbs. Rice ; (with sugar, treacle or biscuits added in the proportion of 1lb. per week, or with coconut added in the proportion of 4 oz., per day.)
- (2) 1lb. Rice, ½ lb. Beans ; (with the rice there must be sugar, treacle, biscuit or coconut added as above ; with the beans there must be 1 oz. dripping and ½ teaspoonful of bicarbonate of soda or one-sixth teaspoonful of ordinary washing soda added with each ½lb. of beans.) It is directed that the beans should be boiled continuously for 4 hours, first adding the soda ; the dripping and salt (see weekly issue) should be added before taking off the fire. As water evaporates during boiling more water should be added.
- (3) 1½lbs. Sago (with sugar, treacle, biscuits or coconut added, as for rice.)
- (4) 7 lbs. (uncooked weight) yams, taro, sweet potatoes, or other vegetable equivalent as may be allowed by the Commissioner. (N.L.O., Reg. 24).

The following *substitutes have received official sanction* :—

- (a) For rice or sago—maize-meal occasionally, provided that sugar or treacle in the proportion of 1 lb. per week be issued with it.
- (b) For daily ration—Objection will not be raised to the issue of a sufficiency of flour, wheatmeal, peas or wheat, properly cooked and served to the satisfaction of the Commissioner, Chief Inspector or deputy, provided that each native receives one full meal of rice per day properly cooked and served before 8 a.m.
- (c) For daily ration—If it is found that flour, wheat and other food is a success, an application to reduce the quantity of rice may be considered by the Commissioner. (Departmental Letter.)

*Weekly food issue*—Either one or other of the following must be issued weekly :—

- (a) 1 lb. meat, without bone, and 1 oz. salt.
- (b) 1 lb. fish, and 1 oz. salt. (N.L.O., Reg. 24.)

*Other ration issues*—In addition to food, the following extras are included in the compulsory ration scale :—

- 2 ozs. soap per week.
- 1½ sticks tobacco per week. (The tobacco sticks must be of a weight equal to 29 sticks to the pound.) N.L.O., Reg. 24)

The above lists are prescribed by the Ordinance as the *minimum ration* to be supplied to each native under contract of service.

18.—*Fire, water and cooking utensils.* The Ordinance also imposes on the employer the obligation to supply the native with *good and sufficient water*, and, if necessary, *the means of preparing food.* (N.L.O., Sec. 47.)

#### CHAPTER 4.

#### CLOTHING AND BEDDING.

19.—Every employer must provide his native employee with *good and sufficient clothing and bedding* so long as the native is either expressly or by implication under his care or charge. (N.L.O. Sec. 47.)

In the case of a native under contract of service this obligation can be modified in any degree, or abrogated, by a special provision embodied in the contract; but where there is no such special provision the clothing and bedding must be issued in accordance with the regulations, as given below.

*Articles to be provided for the native by the employer free of cost :—*

*Clothing*—1 loin-cloth (or “ rami ”) once in every three months —(4 per year). (N.L.O., Reg. 15.)

During the recent war and until further notice the Government agreed not to strictly enforce the quarterly loin-cloth issue (owing to high prices and shortage of stocks) in the case of plantation and other labourers whose places of work were not in immediate proximity to centres of European settlement. All natives, however, whilst in or near European settlements, and whilst travelling, must be properly clothed. The relaxation referred to only applies to natives while actually at work on plantations, &c., where the usual native working “ sihi ” is permitted as sufficient for working purposes. (Departmental Letter.)

*Bedding*—One *new blanket* at the time the contract is entered into, and thereafter at the commencement of each year or part of a year covered by the contract of service. (N.L.O., Reg. 15.)

The blanket must be of a size and quality deemed “ good and sufficient ” for the purpose of bedding, the standard to be observed being at the Commissioner’s discretion. The usual standard set is that of the blankets issued to native Crown Servants. (N.L.O., Reg. 15A.)

*Exception permitted.* In the case of natives signed on as carriers only, it is permitted to issue instead of the

blanket a two-yards length of double-width calico, which must be in addition to any calico supplied for swag-slings. (N.L.O., Reg. 15.)

*Mosquito nets* or other protection against mosquitoes must be provided when the Commissioner for Native Affairs or a Magistrate directs. Certain working districts are gazetted to fall permanently under this order, and the Commissioner or local Magistrate can always advise an inquirer on this point. (N.L.O., Reg. 15.)

## CHAPTER 5.

### HOUSING.

20.—The obligation is imposed upon every employer to provide his native employee with *good and sufficient shelter and sleeping quarters*, so long as the native is either expressly or by implication under his care or charge. (N.L.O., Sec. 47.)

In the case of a native under contract of service this obligation can be modified in any degree, or abrogated, by a special provision in the contract; but where there is no such special provision the shelter and sleeping quarters must be in accordance with the regulations, as specified below.

- (1) When the native sleeps at his place of employment a suitable dwelling must be provided for him. It must be fit for habitation in the opinion of the Commissioner or a Magistrate or inspector, and the dwelling must not be assigned to a greater number of natives at one time than approved by the above officials. (N.L.O., Reg. 11; N.L.O., Reg. 12.)
- (2) No dwelling must have more than 40 *natives* assigned to it, or dwelling in it. If it is a closed building there must be a minimum of 300 cubic feet of air space per native; if an open building (*i.e.*, a building having a free passage of air through it) a minimum of 150 cubic feet of air space per native is sufficient. (N.L.O., Reg. 13.)
- (3) *Each native must have to himself* a sleeping space of 7ft. x 3ft. on a sleeping platform of even surface and close fitted so as to be draught proof, built at least 18 inches above the floor. (N.L.O., Reg. 13.)

A magistrate has power to *destroy any building* in which a native is or has been living or working, if in his opinion it is in such a filthy or unwholesome condition as would be likely to endanger the health of the native. This power, however, is not exercised by a magistrate without an inquiry, after first posting due notice in a conspicuous place. (N.L.O., Sec. 62.)

20A.—In the case of natives employed at work in the town of Port Moresby (other than domestic servants), the sleeping quarters must be provided outside the town boundaries. (N.L.O., Reg. 27.)

## CHAPTER 6.

### HEALTH OF THE NATIVE.

21.—(a) The ordinance provides that no native shall be required to perform any work for which he is *physically unfit*. If a native, therefore, becomes at any time physically unfit for any particular work he cannot be lawfully compelled to perform such work. (N.L.O., Sec. 82c.)

(b) An employer must provide his native employees with *good and sufficient medicine*, so long as the natives are either expressly or by implication under his care or charge. This obligation is subject to any special provision in the contract, but failing such special provision the *Regulations must be followed* as specified below. (N.L.O., Sec. 47).

(c) An employer of *more than 10 natives* must keep on hand a sufficient stock of the following drugs, &c., for use as required:—

Epsom salts, castor oil, lint, bandages, lysol or carbolic acid, boric or zinc ointment, sulphur ointment, bluestone, laudanum, quinine, permanganate of potash. (N.L.O., Reg. 22.)

For *more than 30 natives* the following additional items must be on hand:—

Thermometer, chlorate of potash tabloids, paregoric, Easton's syrup, crude carbolic acid for disinfection, adhesive plaster, official book of instructions.

(d) The *Official Medical Hand Book* is obtainable from the Government Printer, price 3/6.

(e) Where the *number of natives exceeds fifty*, a building must be set apart for natives who may require medical attention. The building must be certified as sufficient by an officer of the Department of Native Affairs or a Magistrate. (N.L.O., Reg. 10.)

(f) The order of any officer of the Department of Native Affairs, magistrate or inspector, is sufficient authority for the admission of any native to a Native Hospital, subject to examination by the medical officer, and an employer must immediately remove his native employee to the hospital when ordered by such official, provided the hospital is *within 10 miles of the native*. (N.L.O., Reg. 16.; N.L.O., Reg. 17.)

(g) When the native is admitted, the employer becomes liable for *hospital fees* at the prescribed rates. An exception, however, is made in cases of venereal disease, or sickness contracted by the native during desertion from his employment, no fees being then chargeable to the employer. (N.L.O., Reg. 19.)

(h) If a native continues in hospital after the expiration of his contract *all fees cease* as at the date of such expiry of contract. (N.L.O., Reg. 20.)

(i) The ordinance requires that every employer of more than 10 natives must make a *daily inspection of his native quarters*, either himself or by a European in his employ, to ensure due care of the sick; and the preservation of cleanliness. (N.L.O., Reg. 8.)

(k) *Latrines* must be provided and maintained in a convenient position from the native quarters—*one latrine for every 30 or less natives*—and these must be kept in a proper sanitary condition. (N.L.O., Reg. 9.)

(l) On the first Saturday of each calendar month an employer is required to cause the whole of the clothing, blankets, curtains, and bedding of his native labourers to be *thoroughly boiled and cleansed*. (N.L.O., Reg. 57.)

(m) It is lawful for a magistrate to *destroy any building* which is or has been occupied by natives, or in which natives are or have been employed, if in his opinion the building or any part of it is in such a filthy or unwholesome condition that the health of any native labourer is likely to be endangered by working or living in it. A magistrate will not, however, exercise this power without inquiry upon due notice to be posted in some conspicuous place upon the building. (N.L.O., Sec. 62.)

It is also lawful for a magistrate to *proclaim any piece of ground an infected area* if he has reasonable ground for supposing that it would be prejudicial to the health of natives to work or live within it. A notice to that effect is posted in some conspicuous place within the area, and an employer thereupon becomes liable for an offence if any native in his employ subsequently works or lives within it. Before issuing such proclamation the magistrate will hold an inquiry, due notice of which will be posted on the land concerned. (N.L.O., Sec. 62.)

(n) The quarters of native labourers working in Port Moresby (other than domestic servants), which must be situated outside the limits of the town, are required to be *kept clean, well drained, and free from rubbish*. This applies to both buildings and surroundings. The quarters must also be provided with a suitable latrine, kept in a proper sanitary condition. (N.L.O., Reg. 28.)

(p) In the case of *epidemic disease* occurring in the Territory..



very stringent regulations must be observed. Any place in the Territory, on being declared by Gazette notice to be a *centre of epidemic disease*, at once becomes subject to special regulations. (N.L.O., Reg. 31.)

(q) The contracts of service of all or any native labourers in any locality *where an epidemic exists or is expected* may be suspended by proclamation in the Gazette. The employer is not liable to pay wages during the period of suspension, but the term of suspension nevertheless runs on as part of the contract term; that is, the native is due to be paid off and returned home on the original expiry date of the contract, irrespective of any period of suspension that may have occurred, though *wages are deducted for the suspended period*. (N.L.O., Sec. 65; N.L.O., Sec. 66.)

(r) During the period of suspension, all labourers affected by the proclamation fall *under the control of an officer appointed for the purpose*, called the superintendent. In the event of no specially appointed superintendent the nearest magistrate becomes the superintendent. He has authority over all Government officers employed in connection with the labourers except the Government Medical Officer and his medical staff. (N.L.O., Sec. 67.)

The labourers must proceed to any place specified by the superintendent, and obey all orders given by any Government Officer for construction of buildings, roads and latrines, digging trenches, carriage of stores and building and other material, cleansing of native camps and quarters, attendance at hospital, and any other matters considered desirable for the welfare of labourers within the proclaimed area. *Such work is without payment*, but if employed on other work the wages will be fixed by the superintendent. (N.L.O., Sec. 68.)

The employers of the natives whose contracts are suspended continue *liable to provide rations*, but may pay according to a regulation rate in lieu of rations. A refusal or failure on the part of the employer to provide rations, or pay for same, is declared to be a sufficient reason for refusing to sanction any subsequent engagement or hiring of a native labourer by the employer, or the transfer of a native labourer to him.

(s) All native labourers *leaving a centre of epidemic* must be first taken to Port Moresby or Samarai, where medical examination is available, before they can proceed to their destination. (N.L.O., Reg. 32.)

(t) The *master of a vessel* carrying native labourers from a centre of epidemic, or having an outbreak of dysentery on board, must proceed at once to Port Moresby or Samarai without landing or taking on board any other native. If both Port Moresby and Samarai are between the centre of epidemic and the natives' destination he

must visit both ports in turn without taking aboard any other native, or landing any native, unless with the Government medical officer's consent. He must report to the Government medical officer immediately on arrival at Port Moresby or Samarai, and follow all reasonable directions for cleansing and disinfecting his vessel. If directed, he must take his native passengers to any place set aside for the purpose. (N.L.O., Reg. 33.)

*The owner or charterer of the vessel* is equally liable with the master for any breach of these regulations. (N.L.O., Reg. 36.)

(v) If the natives are detained at any place by order of the medical officer, the employer continues liable to provide their rations, but may arrange to pay a regulation rate fortnightly in advance in lieu of rations. (N.L.O., Reg. 37.)

(w) Sick natives who are *within ten miles of a hospital* in a centre of epidemic must be immediately sent to the hospital by the employer, and the ordinary hospital fees are payable. (N.L.O., Reg. 38.)

(x) Special regulations are in force to control what are termed "*Infected centres*," as distinct from Centres of Epidemic. A centre of epidemic has to be gazetted as such, but any place becomes an Infected Centre immediately a native labourer contracts dysentery. The place continues to be an Infected Centre until the expiration of two months from the date when the last case of dysentery existed there. (N.L.O., Reg. 48.)

(y) To protect plantation labourers from infection, an employer may order his natives *not to visit any Infected Centre*; or, if he deems it advisable to be still more strict in his precautions, he may order them *not to leave the boundaries of his own plantation*, during any period up to 4 weeks, without his permission or the permission of a magistrate. The employer on issuing such an order must at once report it in writing to the nearest magistrate, giving his reasons for the order, and the magistrate will in his discretion confirm, cancel or vary the order, and inform the employer of his decision. The employer then must convey any cancellation or variation so made to his native labourers. Any *disobedience to the order by a native labourer* is punishable by fine or imprisonment. (N.L.O., Reg. 46.)

The employer of native labourers upon an Infected Centre may *forbid any native not in his employ* to enter or remain upon such Infected Centre, and the native is punishable by fine or imprisonment for disobedience. (N.L.O., Reg. 47.)

(aa) All native labourers *leaving an Infected Centre* must be first taken for examination to the nearest Government medical officer before proceeding to their destination, and must not be allowed to mix or come into personal communication with other natives until so examined. The medical officer may direct them to be taken to some special place set aside for the purpose until discharged on

his order. The employer remains liable for rations, or for payment at the regulation rate in lieu of rations. (N.L.O., Reg. 49; N.L.O., Reg. 50; N.L.O., Reg. 51.)

(ab) No native labourer, time expired or otherwise, *who has had dysentery*, may be taken or sent to any other place where dysentery is non-existent, until two months after his recovery, without the written consent of a Government medical officer. (N.L.O., Reg. 53.)

(ac) *Dysentery must be immediately reported* by the employer to the nearest magistrate, and the patient must be removed to a hospital, or Government dysentery camp hospital, if there is one *within ten miles*. If it is more than ten miles and within fifty miles he must either *remove the native to such hospital or isolate him* under the following conditions:—

(ad) (a) Isolation to be in a separate building from natives who are apparently free from dysentery.

(b) A special attendant to be provided to look after the patient.

(c) Neither patient nor attendant to communicate or mix with other natives. (N.L.O., Reg. 54; N.L.O., Reg. 55 (3); N.L.O., Reg. 55 (2); N.L.O., Reg. 55 (1).)

(ae) The *transport of a dysentery case* to a hospital or camp hospital must be under the following conditions:—

(a) The patient to be placed in charge of a European or reliable native.

(b) Proper medicines and disinfectants to be provided, and to be properly and efficiently used on the journey.

(c) Proper means of transport to be provided for the journey.

(d) The usual route to the hospital to be used.

(e) The patient not to be allowed in contact or personal communication with any persons other than his attendants. (N.L.O., Reg. 55 (4).)

(af) Ordinary *hospital fees* are payable by the employer for period of treatment. (N.L.O. Reg. 55 (5).)

(ag) A patient refusing to proceed to any place set aside for him, as above, or leaving without the permission of a Government medical officer or the person in charge, is liable to six months' imprisonment. (N.L.O., Reg. 56.)

(ah) All rams, blankets and clothing of native labourers about to leave a Centre of Epidemic or Infected Centre are required to be *thoroughly boiled before leaving*, or to be *burned and replaced* with similar new articles. (N.L.O., Reg. 58.)

22.—Special regulations regarding *native labourers passing through Port Moresby* are permanently in force, as under:—

- (a) No native labourer, time expired or otherwise, who is once in *Port Moresby* or within a radius of 15 miles, may be removed beyond that radius for any purpose without the written permission of a Government medical officer at *Port Moresby*. (N.L.O., Reg. 40.)
- (b) When it is desired to remove a native for any purpose beyond the 15-mile radius, a permit must be obtained by application on a form printed for the purpose, obtainable from the medical department. (N.L.O. Reg. 41.) A specimen of the form is given here:—

SCHEDULE.

NOTICE OF INTENTION TO REMOVE NATIVES FROM PORT MORESBY DISTRICT.

(Native Labour Regulations No. 41.)

No.

I, \_\_\_\_\_  
 hereby give notice that on or about the \_\_\_\_\_ day of \_\_\_\_\_, 192\_\_\_\_, I intend to remove the under-mentioned natives from the *Port Moresby* district—  
 (a) to their homes in the \_\_\_\_\_ division:  
 (b) to work at \_\_\_\_\_ in the \_\_\_\_\_ division  
 by the vessel \_\_\_\_\_ leaving *Port Moresby* on the afore-mentioned date.  
 The natives mentioned herein are at present sleeping at \_\_\_\_\_  
 During the past two months the said natives have been working and living only at \_\_\_\_\_ in the \_\_\_\_\_ division. There are no cases of sickness amongst them as far as I can see; no case of dysentery or other infectious disease has occurred among them during the last two months as far as I can ascertain; and no case of dysentery or other infectious disease has occurred among natives living at the same plantation, encampment, or quarter within the last four weeks as far as I can ascertain, except:—

*Port Moresby*, \_\_\_\_\_ Signature.....  
 ...../...../192.... *Employer or Agent.*

Name of native.	No. of contract of service.	Place contract entered into.

The natives are sent to the medical department with the above application, and are medically inspected.

A *Permit to Remove* the natives, or any of them, may then be issued by the medical officer, either unconditionally or subject to the observance of any reasonable instructions and precautions he may think fit to impose. A specimen permit is given here. (N.L.O., Reg. 42.)

## PERMIT.

No:

(Under Native Labour Regulation, "Gazette" No. 17 of 1912).

## REMOVAL OF NATIVES FROM THE PORT MORESBY DISTRICT.

PERMIT.....Natives, as hereunder:—

Employer .....

Names of Natives.....

.....

.....

.....

No of Contract of Service.....

.....

entered into at.....

to leave Port Moresby District for:—

(a) their homes in the.....Division;

(b) to work at.....in the.....

Division by the.....leaving on or about the.....day  
of.....19.....for GOVERNMENT MEDICAL OFFICER,  
PORT MORESBY.

/ /

---

**THIS PERMIT becomes invalid if any of the above natives become affected with dysentery or other infectious disease, or if native occupying the same quarters as any of these boys become affected with dysentery or any other infectious disease.**

---

23.—When a vessel is carrying native labourers from Port Moresby to any destination beyond Samarai, the master must call in at Samarai and report to the Government medical officer, and carry out any reasonable instructions received there. The owner or master of the vessel is equally liable with the master for the master's default. (N.L.O., Reg. 41.)

24.—Wages during hospital detention. It may be here noted that in all cases of treatment of a native labourer in a Government hospital the question of whether his wages continue to accrue during the period of detention in hospital depends entirely on whether, in the medical officer's opinion:—

- (a) the injury or illness is the fault of the native; or
- (b) arises out of and in the course of the native's employment, or through the act or default of employer or European overseer. (N.L.O., Sec. 51.)

If, for instance, the native receives injury in a private quarrel, or whilst a deserter, or contracts venereal disease, he cannot claim wages whilst being treated in a Government hospital. The employer should get the contract of service endorsed by the officer in charge of the hospital, shewing the period of hospital detention for deduction of wages.

24a.—The native hospital fees in force as from 1st January, 1922, are:—

- (a) Inpatients 2/- a day.
- (b) Outpatients 1/- a day.

The employer is liable for the hospital fees of his native employee in all cases excepting venereal disease or sickness contracted by the native whilst a deserter.

## CHAPTER 7.

### WORKING THE NATIVE.

25.—The first principle to be observed in working natives in Papua is, that no native may be employed by any person for a *longer period than three months*, except under written contract of service. A native is *deemed to be employed* if he works continuously for, or in the interests of, a person, and that person accepts or takes the benefit of the work done, although there is no agreement between the two, either express or implied. (N.L.O., Sec. 22.)

The only exceptions to this rule that natives must be worked under written contract of service, are:—

- (a), Mission teachers, or native students who are receiving instruction with a view to becoming mission teachers.
- (b) Natives exempted by the Department of Native Affairs and Control.

An employer may submit any native to the Department for exemption under exception (b) above, if it is considered the case deserves exemption.

26.—The Ordinance provides that the place or places at which a native is to work *must be specified in the contract*. If, after the contract is made, it is desired to work the native at some additional place not specified in the contract, application should be made to a magistrate to vary the contract by including such additional place. The magistrate will require the native to first express his consent, as a variation can only be made with the consent of the parties. In this connection it should be noted that:—

“ any person who by act or omission contravenes any of the provisions of the Native Labour Ordinance ”  
is guilty of an offence. Care should therefore be exercised to have the contract of service properly drawn up, and its provisions adhered to. (N.L.O., Sec. 25 (2) ; N.L.O., Sec., 85.)

27.—While the native is at work the *contract must be kept at the place where he is employed*, and must be produced, upon demand,

to the Commissioner, inspector or any other authorised official. (N.L.O., Sec. 25 (5); N.L.O., Sec. 63.)

28.—The place or places of work are required to be individually named in the contract in a manner that will clearly identify them. An exception, however, is made when a native is signed on for *domestic service only*; in such case the contract can be made for "The Territory," thus enabling the employer to take the native about the territory without hindrance as circumstances may require. The distinction "domestic service only" should be noted. It has been declared, for instance, that when a contract includes the duties of shooting boy the latitude given for domestic servants cannot be allowed, and the particular place or places of work must be specified for the shooting boy. (N.L.O. Sec. 25A.)

29.—*Too much care cannot be exercised* in stating in the contract the nature of the work to be performed, as there is always the possibility that occasion may arise to seek the aid of the Court to enforce the contract. The native is liable for neglecting or refusing to perform any work allotted to him under the contract, and the Court will be guided by the provisions of the contract in deciding whether any particular work was lawfully allotted to the native. (N.L.O., Sec. 72.; N.L.O., Reg. 4.)

For instance, it would be a mistake to sign a native on for "general labour" on a plantation, when it is intended to use him solely as a cook or for other special duties. The distinction should be made clear in the contract, otherwise a Court would almost certainly uphold the native in the event of his refusing duty under his contract for anything outside recognised "general labour," *i.e.*, field tasks, &c., with the general gangs.

Similarly, a native engaged as "store boy" would be upheld by a Court in refusing to perform domestic duties, even though house and store may be the one building. The contract in such case should be "store and house boy," clearly indicating that the native has understood and agreed to the classes of duties intended to be allotted to him.

The above examples are sufficient to illustrate the principle that should be adhered to in engaging a native for any form of work under a contract of service. A contract of service with a native is a *legal document*, just as binding at law as any other valid contract, and when it comes under dispute before a Court the established rules of law apply in interpreting its provisions. For instance, when a contract specifies a certain class of work, and the native objects to perform other duties allotted which are not ordinarily and reasonably included in that class, the law will not assume that such other duties were intended by the parties to be embraced in the contract

if it were possible and reasonable to have worried the contract in the first place so as to clearly include them, and the opportunity to do so was neglected.

30.—*Certain precautions are enjoined where work may be dangerous*, in character or potentially. When a native is signed on to work for an employer who has boilers or machinery in use, the break-down of which might cause *injury or loss of life*, the plant must be certified at least once a year as being in good order by an inspector approved for the purpose. A native employed in feeding machinery must not be permitted by his employer to wear a shirt or long-sleeved singlet, or any protection to the hand except a glove. (N.L.O., Sec. 96; N.L.O., Sec. 95.)

31.—It is specially laid down that no native under contract of service shall be required to perform any work for which he is *physically unfit*, and this provision of course continues to apply throughout the period of service. It does not necessarily follow that a native who was originally passed by a medical officer as physically fit at the time of signing-on, will continue physically fit for the same work until the end of the contract. (N.L.O., Sec. 82c.)

32.—A native labourer cannot be *compelled to work on Sundays* except for:—

- (1) Attending to domestic duties.
- (2) Attending to animals.
- (3) Necessary work for the safety of a mine.
- (4) Necessary attention to machinery to prevent serious stoppage.
- (5) Sudden emergency.
- (6) Preservation of life or property.
- (7) Rubber tapping and factory work when agreed to in the contract of service. (N.L.O., Reg. 2.)

*Natives signed on as crew of a boat or vessel* do not come under the regulation prohibiting Sunday work.

With regard to *rubber-tapping and factory work on Sunday* (exception No. 7 as above), when this is permitted by the contract of service the employer must observe the following conditions:—

- (a) The Sunday's work must not exceed 5 hours, and must cease by 1 o'clock p.m.
- (b) Three half-days (afternoons) in the same week in addition to half-day Saturday, must be allowed off. (N.L.O., Reg. 2.)

33.—*Hours of work for native labourers* (with the exception of household servants) are limited by regulation, and are counted exclusive of meal time. Not more than 10 hours in any one day.



are allowed, and the total working hours for the week must not exceed fifty except in cases of emergency. (N.L.O., Reg. 3.)

34.—*Plantation Register*.—A special register of native labourers is prescribed to be kept upon a plantation, and in the case of any person or company controlling more than one plantation a duplicate register in respect of each plantation must be kept at the principal residence, place of business, or registered office of that person or company, in the Territory. The registers and duplicate registers are to be produced on request at all reasonable times to the commissioner or any officer of his department, or any officer appointed under the Native Labour Ordinance. (N.L.O., Reg. No. 2 of 3/2/15.) The form of register is as under:—

SCHEDULE.

Register of Native labourers employed by  
at                      Plantation.

Contract of Service No.	Place of Engagement.	Native's Name.	Village and Division	Date of Arrival and where from	Date of Departure and Destination.	Remarks.

NOTE.—If a native labourer returns after having left a plantation, his name and all other particulars concerning him required by this schedule must be inserted afresh.

35.—Special regulations prescribe the *maximum loads for native carriers*. Any native regularly employed as a carrier under contract of service must not be compelled or permitted to carry a load exceeding 50 lbs. in weight, exclusive of blanket or calico and the carrier's own food for the journey. If the load exceeds 30 lbs. gross the day's journey must not be made longer than 12 miles, or from one rest house to the next. (N.L.O., Reg. 26.)

36.—Under certain circumstances natives can be *worked outside the limit of the Territory of Papua*, but a special permit must be obtained. The commissioner or any magistrate may grant a permit to allow a signed-on native to work outside the Territory as follows.—

- (a) For fishing in the Gulf of Papua.
- (b) To proceed as boatman or seaman to any port in Queensland or (late) German New Guinea

(c) To proceed for a single voyage (and return) as a seaman to any port in Australia, to Dutch New Guinea, or to any of the Western Pacific islands that may be approved by proclamation. (N.L.O., Sec. 38.)

The form of permit is given here:—

SCHEDULE. 1.

PERMIT.

Under Section 39 of the "Native Labour Ordinance 1911."

Name of Employer.	Residence or place of Business of Employer.	Name of Native.	Residence of Native	Nature of Occupation at which native is to be employed.	Name of Vessel	Nature of security taken.

The native shall be returned by the employer to \_\_\_\_\_, in the said territory.

SPECIAL CONDITIONS.

(Set out conditions, if any.)

This Permit shall be in force up to and inclusive of the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

Signature of Officer.....

Title .....

The permit is subject to security being given that the native will not be transferred to any other person or allowed to be employed on any vessel save that mentioned in the permit, and that the native will be brought back to the territory, and all other conditions of the permit observed. The security must be by bond in the following sums

- For each native            £100
- For 10 natives or less    £250
- For 20 natives or less    £500
- For 30 natives or less    £750
- For over 30 natives       £1000. (N.L.O., Sec. 41.)

37.—The fees are:—

(a) For the permit, 1/-.

(b) For the guarantee, 1/- for every 10 natives or less.

For a specimen form in guarantee, see Part VI. relating to guarantors. (N.L.O., Sched. M.)

## Working the Native

38.—A permit can also be obtained to remove a native for educational purposes, or as a *personal attendant*, to any part of the *Australian Commonwealth* subject to security of not less than £100 for each native. The commissioner usually grants this permit, but in cases of emergency a magistrate may do so, subject to reporting the fact and the cause of emergency to the commissioner. (N.L.O., Sec. 43; N.L.O., Sec. 44): The form of permit issued is given here.

## SCHEDULE J.

## PERMIT.

Under Section 44 of the "Native Labour Ordinance, 1911."

Name of Person to whom Permit is issued.	Name of Native.	Residence of Native.	Name of Vessel in which Native to be Removed.	Place Without the Territory Native is to Reside In.	Purpose for which Native to be Removed

## SPECIAL CONDITIONS.

(Set out conditions, if any.)

This Permit shall be in force up to and inclusive of the            day of  
19 .

Dated at            this            day of            19 .  
Signature of Officer.....  
Title.....

39.—A specimen of a suitable form for the security is given here, and it is advisable to prepare the form in duplicate and hand it in, duly signed, when making application for the permit, and thus obviate inconvenient delay.

## TERRITORY OF PAPUA.

## GUARANTEE UNDER SECTION 44 N.L.O., 1911-20.

WHEREAS            of            has applied for a permit to remove a native named            of            in the said Territory who is under contract of Service to the said            being Contract of Service No.            entered into at            on the            day of            , as a personal attendant [or for educational purposes] to the Commonwealth of Australia.

AND WHEREAS the said            is a *bona fide* resident of the said Territory. THEREFORE in consideration of such Permit being granted we the said and            of            hereby bind ourselves jointly and severally to the Crown in the sum of £100 (one hundred pounds) as security that the said            will only take the said native            to the place or places authorised by the said Permit and will return the said            to            in the

said Territory on or before the time stated in the Permit, and that the said will duly perform and carry out the conditions named in the said Permit and the provisions of the Native Labour Ordinance 1911-20 insofar as such provisions govern the relations between the said and the said native.

AND I (or we) the said (Guarantor) further covenant and agree to pay the wages accruing to the said native until his return to in the said Territory in accordance with the provisions of the said Permit.

AND I (OR WE) the said (Guarantor) further agree and declare that the non-performance or non-observance by the said (employer) of the aforesaid matters shall be deemed by ME (OR US) to be a breach of this guarantee.

Dated at in the said Territory this day of 19  
 SIGNED by the said (Employer) Signature.  
 and the said (Guarantor) Signature.  
 IN THE PRESENCE OF (Witness) Signature.  
 J.P.

40.—The fees payable are:—

For the permit 10/-.

For the guarantee 1/- for every 10 natives or less. (N.L.O., Sched M.)

41.—It is not permissible to work native labourers, other than domestic servants, *after 7 o'clock in the evening* within the town boundaries of Port Moresby or on the town wharves or jetties, without the written consent of a magistrate or inspector. Such consent is readily obtained for the purpose of loading and discharging steamers and for other necessary night work. (N.L.O., Reg. 29.)

## CHAPTER 8.

### NATIVE OFFENCES AND PUNISHMENT.

41a.—One of the most difficult things sometimes for a newcomer to the territory to understand is the official policy in Papua of stern suppression of assaults of every description on native servants and labourers, and the privilege extended to natives to take Court proceedings against their employers, with or without the assistance of the Department of Native Affairs and Control, for anything that can be technically or legally defined to be an "assault." A cuff, or box on the ears, of course, as readily falls under the forbidden category of "assault" as a severe bodily chastisement inflicting definite temporary injuries, and the newcomer is astonished to find that many natives are only too ready to take the fullest advantage of their privilege to "make court" on every opportunity offering, and that conviction and fines against the employer are inevitable if the assault, whatever its nature, is proved.

The principle guiding the administrative policy is that, as definite punishments are provided by the Native Labour Ordinance for specific offences on the part of indentured natives, recourse should be had by the employer to the legal remedy provided for such offences. The administration takes the attitude that the mere fact of entering into a business agreement (or Contract of Service) with a native does not entitle one party (the European) to assault the other party (the native) whenever so disposed, or by way of correction for breaches of duty.

After more or less lengthy residence in the Territory, one gets more or less used to the relationship that has to be maintained between master and native servant; but to the new arrival—more particularly one who has not previously worked or lived amongst native races—it is frequently very galling to find one's only legitimate remedy is the "ponderous machinery of the law" (often enough a difficult, tedious and expensive remedy) for all the many petty delinquencies of native employees, when a "cuffing" or even a "sound thrashing" at times, seems so much more suited to the particular occasion, offence and individual.

Under tacit encouragement, natives will readily fall into the habit of "running to the Government" and "making court," and it is to be expected that this tendency should be most pronounced and noticeable at or near the seat of Government (Port Moresby), where the Department of Native Affairs and Control has its office always available to patiently hear the complaints and grievances, real or imaginary, of every native, and to take any action considered desirable on the native's behalf. Elsewhere in the Territory the native's appeal is to the resident district magistrate who, with the varied and heavy responsibilities of a big district on his shoulders, is apt to rather forcibly discourage any disposition on the part of native employees to take up his time without serious cause of complaint.

No one can be more ready than the native to take the fullest advantage of a situation where a sympathetic (or, to him, apparently sympathetic) official presides to hear patiently and solemnly anything and everything he has to say, including of course on occasions the most ingeniously coloured "stories." From this fact arises much of the irritation felt by Europeans and the difficulty experienced in realising the unenviable position in which officers of the Department of Native Affairs (more particularly) are placed. Time alone serves to establish the mean of a reasonable "give and take" tolerance and mutual understanding between employers of labour and officials, until eventually it is only on rare occasions that an official's discretion is feared, and clumsy or ill-considered interferences anathematised.

It may be reasonably concluded that the guiding principle behind the administrative policy is the necessity to render impossible (so far as the law can do so) in a British Country where Europeans of mixed temperaments and antecedents are working and living under health conditions that tend to exaggerate "nerves" and "liver," the adoption of a general spirit of domineering and careless brutality in relations with the native population, such as history has shewn may readily develop into dangerous license if unchecked, and which is considered inimical to the best ideals of the moral development of backward races.

Exactly how far officials may be liable to overstep the mark in the opposite direction to the extent of "coddling" the natives to the disadvantage of all concerned, is of course one of those burning questions in all native countries upon which it cannot be hoped there will ever be universal agreement.

Perhaps the first and most important offence to deal with in the present chapter is *Desertion*.

42.—*A female native* who has entered into a contract of service as a domestic servant and deserts without reasonable cause is liable to a fine equal to three months' wages, but cannot be imprisoned. (N.L.O., Sec. 73.)

43.—*A male native* deserting without reasonable cause whilst under contract of service is liable either to a fine, or to imprisonment up to three months, and forfeiture of wages during the period of his absence from duty, such lost time to be added to the contract term. (N.L.O., Sec. 73.)

44.—In all prosecutions for desertion the court must be satisfied that the native had no reasonable cause for deserting, that being the essence of the offence. It is not always recognised by employers that "desertion" in itself is not a punishable offence at all—the offence consists in deserting "*without reasonable cause*."

Reasonable cause for desertion may be classified under two general heads:—

- (a) Assault on the native.
- (b) Failure of the employer to comply with any of the conditions of the contract of service, or any of the general obligations imposed upon him as an employer under the Native Labour Ordinance.

The general obligations of the employer towards the native are as dealt with throughout this book.

45.—Immediately a native deserts, the employer (or the person who is for the time being the native's master) is required to lodge



receive his wages personally, then the Government collects the amount due from the employer for the purpose of forwarding to the native's village.

46.—It will thus be seen that if an employer wishes a deserter arrested and returned to work he must go to a good deal more trouble than merely lodging a notice of desertion. He must *appear before a Justice of the Peace or a Magistrate* and make a formal sworn complaint in writing that the native deserted without reasonable cause. A specimen complaint is given here:—

## TERRITORY OF PAPUA.

To wit: (Place) COMPLAINT SWORN.  
 THE COMPLAINT of of in the said Territory, made  
 before a Justice of the Peace for the said Territory, WHO SAYS THAT  
 on the day of at in the Petty Sessions District of  
 the Division of the said Territory of in the said  
 Territory, being a male native who has entered into a contract of service under  
 the provisions of the Native Labour Ordinance 1911-20, did without reasonable  
 cause desert from such service, contrary to the Act in such case made and  
 provided.

WHEREUPON the said prays that I the said will proceed  
 in the said premises according to law.

Sworn before me at in the said  
 Territory this day of 19  
 (Signed)..... } (Signature of Complainant.)  
 Justice of the Peace.

On the swearing of the above complaint a warrant for the deserter's arrest will issue and when the native is apprehended a date for the hearing of the complaint will be set down and the employer or his representative must *appear at court* to give sworn evidence.

It should always be remembered that an officer of the Department of Native Affairs and Control, or any Native Labour Inspector, may appear in Court on the native's behalf to conduct his defence, or may if necessary engage a solicitor to defend the native, if it comes to their knowledge that the *deserter appears to have had reasonable cause* to desert.

46a.—On *conviction* for desertion, the Court may, if it appears necessary, order the native to be taken into custody and *handed over to the employer* at any particular place to be named, either at once or on completing any sentence of imprisonment imposed, for the purpose of compelling him to complete his service. If there are any expenses to be incurred in carrying out the order—*e.g.*, food for the journey, &c., these are paid or arranged for in advance by the employer. (N.L.O., Sec. 75; N.L.O., Sec. 76.)



47.—It sometimes occurs that a native will desert from his employer, and engage under a fresh contract with another employer while the original contract is still in force. In such cases the *second contract is null and void*, and the native is liable to six months' imprisonment. The second employer is also liable if he knew at the time that the native was already under contract of service. (N.L.O., Sec. 35A.)

48.—A native who *neglects without reasonable cause to enter his service after signing-on* is subject to the same penalty as for desertion. (N.L.O., Sec. 73.)

49.—Neglect by the native without reasonable cause, *to perform any work* which under the contract it is his duty to perform, is made punishable under Section 72 of the Ordinance with a fine or 14 days' imprisonment in the case of a male native. In the case of a female native a fine only is imposed. (N.L.O., Sec. 72.)

The same offence, however, will be found included with others under the Regulations (Reg. 4) carrying a higher maximum fine or imprisonment up to six months (*ultra vires*). (N.L.O., Reg. 4.)

50.—This higher penalty is made applicable under the regulations to all the following offences:—

Without ill health or other lawful excuse—

- (a) Absenting from work.
- (b) Failing to shew ordinary diligence.
- (c) Neglecting or refusing to perform or complete allotted work.
- (d) Neglecting or refusing to amend work previously improperly or carelessly performed. (N.L.O., Reg. 4.)

51.—The following offences by native labourers are also punishable:—

- (1) Selling or bartering rations (except tobacco) or blanket or mosquito net supplied by employers. (N.L.O., Sec. 72A.)
- (2) Inducing a signed-on native to desert. (N.L.O., Sec. 83.)
- (3) Knowingly aiding or assisting a signed-on native to desert. (N.L.O., Sec. 84.)
- (4) Persuading or attempting to persuade a signed-on native to absent himself or cease work. (N.L.O., Reg. 14.)
- (5) Maiming, wounding, or ill-using horse, cattle or other live stock of his employer through negligence. (NOTE.—Wilful wounding, &c., is a matter for criminal prosecution.) (N.L.O., Reg. 5.)
- (6) Smoking, or carrying or using fire on any part of a plantation other than the native quarters, contrary to orders. (N.L.O., Reg. 6.)

- (7) Keeping dwelling in a filthy or unwholesome state. (N.L.O., Reg. 7.)
- (8) Refusing or neglecting to remove any nuisance accumulated or placed near dwelling. (N.L.O., Reg. 7.)
- (9) Committing any nuisance within 60 yards of fresh water or non-tidal river or streams, reservoir, dwelling, or common thoroughfare. (N.L.O., Reg. 7.)
- (10) Causing damage or loss of property of employer through neglect, or careless or other improper conduct. (N.L.O., Reg. 14.)

52.—No native labourer other than a domestic servant is permitted to be *within the town boundaries of Port Moresby* or on the towns wharves or jetties, after 7 o'clock in the evening, without written consent of a magistrate or inspector. (N.L.O., Reg. 29.)

53.—There is also a Native Regulation (not under the Native Labour Ordinance) which is made applicable to natives engaged under the Native Labour Ordinance in such places only as may be notified in the Gazette from time to time. It is applicable in Port Moresby, and renders it a punishable offence for the native to be *absent from his quarters after 9 p.m.* without the written consent of his employer, or other sufficient excuse. (Regulations for Native Matters, No. 69.)

Domestic servants and others are usually given a "paper" in some such form as the following:—

Bearer            has permission to be absent from quarters  
until            o'clock.

Date

Employer

54.—A native sentenced to imprisonment for any offence whilst under contract of service is *not entitled to wages during the period of imprisonment*, and the time lost through imprisonment has to be made up in the contract. (N.L.O., Sec. 80.)

## CHAPTER 9.

### VARYING THE CONTRACT.

55.—When a contract of service is once signed, the place at which wages are to be paid and the obligation to return the native home at expiry *cannot be varied* except by the Commissioner for Native Affairs and Control. (N.L.O., Sec. 33 (3).)

56.—Any of the other terms of the contract *can be varied* at any time by a magistrate on application, subject to the consent of both employer and native. (N.L.O., Sec. 33 (2)).

57.—The magistrate may, however, under certain specified circumstances, absolve an employer from liability to fulfil any of his obligations, including maintaining a native and returning him home. The following conditions give the magistrate power to absolve:—

- (a) Death of the native.
- (b) Desertion without reasonable cause.
- (c) Refusal before a magistrate or inspector to return home.
- (d) Unwillingness to return home at employer's wish.
- (e) Under committal for an indictable offence.
- (f) Undergoing imprisonment for an offence other than under the Native Labour Ordinance. (N.L.O., Sec. 49.)

The Certificate to Absolve carries a fee of 1/-, and is in the following form:—

**SCHEDULE K.**

**CERTIFICATE.**

Under Section 49 of the "Native Labour Ordinance, 1911."

I, \_\_\_\_\_ of \_\_\_\_\_, in the Territory of Papua, \_\_\_\_\_, hereby absolve \_\_\_\_\_ of \_\_\_\_\_, from all liability in respect of \_\_\_\_\_ the following obligations:—

[Set out obligations from which responsible person is absolved.]

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

Signed. Resident Magistrate,  
or Inspector.

58.—For ordinary variations of any of the general terms of the contract *no fee is payable*, the magistrate either endorsing the contract itself or attaching a note of variation on a departmental form.

59.—In addition to ordinary variation of a contract by mutual consent of the parties, a *Court of Petty Sessions may vary any of the terms of a contract* in adjudicating on any complaint between employer and native. (N.L.O., Sec. 34.)

60.—*It is unlawful* for any person, not authorised by the Ordinance to do so, to *alter a contract of service* after it has been duly signed and attested. (N.L.O., Sec. 25 (4).)

## CHAPTER 10.

## CANCELLING THE CONTRACT.

61.—The cancellation of a contract of service, for any cause is left in the hands of a magistrate. (N.L.O., Sec. 33.)

The cancellation may be applied for:—

(a) By the employer.

(b) By the native (or the Department of Native Affairs and Control, or any inspector, on the native's behalf.)

62.—*In the former case*, the employer need only satisfy the magistrate of the incompetency, or inefficiency of the native, or that the native is creating or fostering a bad influence among his fellow labourers, or that he is damaging or endangering the interests of his employers by disobedience to orders or by the serious and deliberate neglect of his duties, or in any other way. (N.L.O., Sec. 34.)

63.—*In the latter case*, serious or repeated assault, or grave or continuous neglect of any of the obligations imposed upon the employer by the Native Labour Ordinance, will usually result in summary cancellation of the contract by the magistrate after the hearing of the inquiry or charge in connection with the matter of complaint. (N.L.O., Sec. 33 (1), clauses c, d.)

The cancellation of a contract of service is effected either by the magistrate endorsing the contract to that effect, or by attaching a note of cancellation on a departmental form.

64.—When a contract is cancelled the *Magistrate determines what wages (if any) shall be paid* to the native. The amount determined must not be more than would have been payable if the native had completed his term of service. Unless the native enters into a fresh contract of service the responsibility still rests upon the employer to *return him to his home* after cancellation. (N.L.O., Sec. 33 (2).)

65.—An employer is not entitled to discharge a native against his will when under contract of service, but any native may be *paid off by mutual consent* during the currency of the contract, and in such case the contract is endorsed accordingly. (N.L.O., Sec. 35.)

66.—It sometimes occurs that a native is recruited and signed on to an employer by a licensed recruiter, and when handed over to the employer is found to be *physically unfit* for the work he is to perform under the contract. In such case the employer should immediately submit the native to the nearest Government Medical Officer for examination, and if found to be unfit the medical officer

**Cancelling the Contract**

will issue his certificate accordingly. The procedure then is to forward the contract of service with the certificate to the magistrate applying for *cancellation of the contract without wages* on the grounds that the native is unfit to perform his contract and has not commenced work. The native, meanwhile, is returned home by the first opportunity, and if the medical certificate has been obtained within 14 days of the date of the contract the expense of returning the native home is *borne by the Government* instead of by the employer. The passage fare home is recovered from the Government by means of the usual official refund voucher form issued by the treasury and obtainable at most Government Offices, as under. (Order-in-Council, 8/7/15.)

DEPARTMENTAL Registration No.....	PAPUA. REFUND ACCOUNT. _____ _____	[Original]. TREASURY. Voucher No..... Cheque No.....
--------------------------------------	---	---

Dr. to.....

If this claim is for the recovery of a double payment, one receipt must be furnished herewith.

**REFUND FROM\*** .....

\*If Refund of Revenue, insert Division as well as Head and sub-Head of Revenue. If Refund of Trust Fund, insert particular Trust Fund Account.

Date of rendering the Claim.	Particulars of and grounds upon which this Claim is based.	Amount.
		£   s.   d.
	To Passage fare home per " " on (date) for native contract of service No. signed-on at (place) on (date), and certified physically unfit by the Government Medical Officer at on  NOTE.—The certificate of the Receiver of Public Moneys is to be given at the back hereof.	
<b>TOTAL—</b>	pounds	
	shillings                      pence	£
Signature of Claimant—		
.....		

Cancelling the Contract

I, certify that this Account is correct as regards computations, castings, rates of charge, and the faithful performance of the services charged.

.....Person incurring the expense. Date / /

I certify that this Account is correct within the meaning of Regulation No. 47 of the Financial Regulations.

.....Certifying Officer Date / /

I certify that the Funds for the above Service are legally available.

/ / 19

..... Treasurer.

RECEIVED on the.....19 the sum of pounds shillings pence, in full payment of the above Account.

Witness to payment and Signature—

N.B.—The Person signing the Voucher as claimant must, when the Voucher is paid, also sign the Receipt.

CERTIFICATE OF THE RECEIVER OF PUBLIC MONEYS.

I CERTIFY that the sum of £.....was received at this Office on the..... day of.....19..., and was included in an amount of £.....paid to the .....Account on that date.

.....Receiver of Public Moneys, at.....

ORDER No. 1.

I HEREBY authorise the amount of this account to be paid to my account with

1d. Stamp Duty

at.....

.....Signature of Claimant.

ORDER No. 2.

I HEREBY direct that an Order authorising the bearer thereof to receive the amount of this account to be transmitted to me.

.....Signature of Claimant.

.....Address.

DIRECTIONS.

If the claimant is unable to attend in person at the Department, he may obtain payment by signing one of the above Orders.

By filling up and signing Order No. 1, and affixing a 1d. duty stamp, he may direct the amount to be paid to his credit at any bank, or with any firm.

By signing Order No. 2, he may obtain an Order Form by registered post, which, when signed by him, may be collected by bearer. This Order will be paid by the Department if the signature thereon agrees with the signature of Claimant on this account.

The voucher form, filled in as indicated, should be forwarded in duplicate to the Commissioner for Native Affairs and Control for certification, after which the amount is payable by the Treasury.

## Transferring or Hiring

### CHAPTER 11.

#### TRANSFERRING OR HIRING.

67.—The power to transfer or hire-out a native who is under contract of service is *entirely subject to the native's consent*. Provided such consent is expressed before him a magistrate may arrange the transfer or hire of a native from one employer to another either by endorsing the contract or attaching a note of transfer or a permit to hire, as the case may be. (N.L.O., Sec. 32 (2).)

*No fees are payable.* The right to transfer or hire is *subject to any proclamation* that may be made from time to time prohibiting the transfer or hire of natives of any particular district.

68.—*The effect of a transfer* is that all liability is passed on to the new employer along with the native, the transferee becoming, for all legal purposes, the employer. It is necessary for the transferee to *find another guarantor* to take the place of the original employer's guarantor, as a guarantor's liability ceases if a native is transferred from the employer on whose behalf the guarantee was signed in the first place. (N.L.O., Sec. 32 (3).)

69.—*The hiring-out of a native*, on the other hand, *does not release the employer* from the obligation of paying wages and returning the native home, unless the magistrate expressly releases him under the terms of the permit to hire. The magistrate may impose any conditions he considers necessary in connection with the permit to hire, including security from the person who is hiring the native. With the exceptions mentioned above, the person who hires a native assumes the relationship and general responsibilities of employer during the currency of the permit. (N.L.O., Sec. 23 (4).)

### CHAPTER 12.

#### DEATH DURING CONTRACT.

70.—The death of the employer puts an end to the contract, but if there are two or more joint employers only the death of all of them terminates the contract. (N.L.O., Sec. 35.)

71.—If the native dies whilst under contract of service, it is obligatory upon the employer, or the person for the time being in charge of the native, to lodge a "*Notice of Death*," with the nearest magistrate or inspector. There is a printed form which can be obtained for the purpose. (N.L.O., Sec. 31.)

A specimen is given here :—

(N.L. No. 7.)

TERRITORY OF PAPUA.

NOTICE OF DEATH.

NATIVE LABOUR ORDINANCE, 1911-1918.  
(Sec. 31.)

To the Magistrate, Inspector or Qualified Officer at

In accordance with the provisions of Section 31 of the *Native Labour Ordinance, 1911-1918*, I beg to report the undermentioned death of a native under Contract of Service:—

Contract of Service No.

Date of Contract of Service:

Place at which Contract of Service entered into:

Name of Native:

Village, District and Division of Native:

Date of death:

Cause of death (if known):

Place at which death occurred:

Payments on account of wages (if any) made to Native, £ s. d.

Deductions (if any) under Conviction or Order of Magistrate, £ s. d.

Amount due to Native to time of death, £ s. d.

To whom has this sum been paid?

Name of person for whom Native was working at time of death:

Was Native hired out or transferred to this person

REMARKS:

.....  
*Employer or Agent.*

Date:

This "Notice of Death" was lodged with me on the            day of  
19 .

.....  
*Resident Magistrate or Inspector.*

NOTE.—A copy of this Notice must be sent by the office receiving it to:—

- (a) the office where Contract of Service was entered into;
- (b) the Magistrate of the Division where the Native usually resides;
- (c) the Magistrate of the Division where the Native was employed;
- (d) the office where the Native may be paid off under the Contract of Service;
- (e) the Commissioner for Native Affairs.

The amount of wages due to the deceased native should be paid by the employer into the office where he lodges the Notice of Death. The office receiving the amount should forward it without delay to the Resident Magistrate of the place where the native was to have been paid off under the Contract of Service, and the latter will proceed to have the amount handed over to the next of kin.

Neglect to immediately report the death of a Native under Contract of Service to the nearest Magistrate or Inspector renders the employer liable to a penalty of £50.

The following particulars are required for the information of the Government Medical Department:—

1. \*Date of arrival of deceased native on the plantation (or other place of employment) and general condition of health?
2. \*General condition of other natives who arrived with deceased from the same district or other place of employment?
3. Previous illnesses of or accident to deceased native on the plantation (or other place of employment) and date of same?
4. †Date anything wrong with the deceased, was first noticed and symptoms then observed?
5. Date deceased left off work and kind of work he was doing?
6. †Date of death and additional symptoms noticed before death?
7. Ration deceased has been supplied with during the last six months (and more especially how much native food has been supplied)?



8. Are there or have there been recently on the plantation (or other place of employment) similar cases not ending fatally ?

---

\* " Condition attracted no attention," or " condition good," or " condition thin," or as the case may be. "

† Mention presence of pain or swelling and locality of the same, presence of vomiting, diarrhoea, passage of blood or mucus, cough, difficulty in breathing, wasting, weakness or inability to stand, refusal of food, etc., and temperature if same was taken with a thermometer.

72.—In lodging the Notice of Death, the wages due to date of death should be lodged with it and an official receipt obtained. The receipt should then be attached to the contract and kept by the employer in the same way as a receipt for any other payment would be kept.

73.—The contract automatically *terminates with the death of the native.*

74.—*The wages of a deceased native* when lodged with the Government, are entered by the official in a cash book kept for the purpose, and at the first opportunity the amount is sent on to the magistrate in charge of the district in which the native's village is situated, for payment to the deceased's next of-kin. The necessary receipts, duly witnessed, are obtained by the magistrate, and passed through the Treasury to the Auditor-General

75.—Failure of the employer to *immediately notify* the death of a native employee to the nearest magistrate or inspector is a punishable offence. (N.L.O., Sec. 31.)

76.—A Magistrate or Justice of the Peace may conduct a *Coroner's Inquest* on the death of any native, where such death appears likely to have been due to other than natural causes. The exhumation of the body may be ordered if considered necessary, in cases where burial has already taken place. (Coroner's Ordinance.)

*Whenever a dead body is found*, or any sudden death, or death attended with suspicious circumstances, occurs, it is a punishable offence for any person knowing or becoming acquainted with the fact to neglect to give notice forthwith to the nearest Coroner, European Officer or Constable of Police. Every Magistrate and Justice of the Peace is a Coroner for the Territory of Papua. (Coroner's Ordinance.)

77.—Any property belonging to a deceased native labourer should be handed over to the Government, as well as the wages due on the contract of service. Any Magistrate, inspector or qualified officer is empowered to demand and receive, and take legal proceedings in his own name to recover, property belonging to a deceased native. (N.L.O., Sec. 56.)

## CHAPTER 13.

## PAYMENT OF WAGES.

78.—The place or places at which wages are to be paid are stated on the contract of service at time of engagement, and cannot subsequently be altered by any official other than the Commissioner for Native Affairs and Control. It is therefore an important point to attend to when engaging a native. (N.L.O., Sec. 25 (2a), Sec. 53; N.L.O., Sec. 33 (3).)

The Magistrate or inspector before whom a native is signed on always has *discretion* in regard to fixing the places of payment, and the interests of the native are considered in this respect, having regard to the most favorable places for the spending of wages earned, and the safeguarding of the native's purchases so that he will return with them safely to his home. (N.L.O., Sec. 28.)

79.—The periods at which it is desired to pay wages should also receive attention. If there is no wish expressed to the contrary the contract is usually made payable "at Expiry." If, however, it is desired for any reason to pay the native yearly, half-yearly, quarterly, monthly, or "as desired," this should be stated on the contract.

80.—*No payment made otherwise than as stated on the contract is valid*, even with the consent of the native. (N.L.O., Sec. 53.)

As regards domestic servants, natives of adjacent villages, and responsible natives such as boss-boys, &c., there is usually no difficulty in arranging for payment of wages "as desired," or at short stated intervals. There will be found, however, *an official objection* to making a contract for an ordinary agricultural or general labourer payable otherwise than at expiry, as it is not deemed to be in the natives' interest to have his money to spend or misuse before he has an opportunity to return to his home.

81.—Provision, however, is made to allow a plantation labourer who is engaged for a 3-years' term, to have his contract so arranged that the plantation at which he is to work may be made one of the places at which he may receive part of his wages, viz., up to *one-sixth of the amount earned*. This provision must be attended to at the time of making the contract, as unless specially embodied in the contract the privilege does not apply. Such payments, to be valid, must be made in the presence of a Magistrate. (Order-in-Council, 8/7/15.)

82.—For legal purposes, a native's wages are deemed to have been earned and to have become due to him day by day, commencing

from the day on which he entered into the contract of service, but an employer is *not bound to pay wages at less than monthly periods* during the currency of a contract. (N.L.O., Sec. 51.)

83.—All wages due to a native under contract of service must be *paid in the presence* of a Magistrate, inspector or qualified officer, the amount being endorsed on the back of the contract and attested by the official. It is not essential for the employer to attend with the native when payment is made. Any responsible agent can do so. In the case of advances and small payments it is a common practice to send the money and contract in an envelope to the official by the hands of the native concerned, who brings back the contract duly endorsed. (N.L.O., Sec. 52.)

84.—The entire amount of wages earned by a native under his contract must be actually paid to him before an official, in legal tender. *No deductions* for private debts or loans between the employer and native are recognised. (N.L.O., Sec. 54.)

85.—In cases where it is considered necessary for the protection of the native, the official before whom payment is made is empowered to take the wages into his custody. When he does so he notifies the Commissioner for Native Affairs and Control and passes the money through his official books. (N.L.O., Sec. 54A.)

86.—*Wages are not payable* to a native during time lost under treatment in a Government hospital, if his admission is not due to the act or default of the employer or a European employee, or does not arise out of and in the course of the native's employment. If, for instance, a native labourer has to go to hospital for treatment for venereal disease, or for an injury received in a private quarrel or whilst a deserter, he *loses his wages* for the period absent from work in hospital. The proper course for the employer is to send the contract of service to the officer in charge of the hospital for endorsement of deduction of wages for the period in hospital. (N.L.O., Sec. 51.)

87.—*Wages are also forfeited for any period in gaol*, and the Magistrate by whom the native is sentenced will endorse the contract of service accordingly, on application. (N.L.O., Sec. 80.)

88.—*Wages are also forfeited* for the entire period during which a native is absent from his service, if he is convicted of *desertion, or neglect to enter service*. The Magistrate convicting the native will make the necessary endorsement on the contract of service, on application. (N.L.O., Sec. 77.)

89.—Wages due to a native may be *sued for* at any time, either by the native or by the Government on the native's behalf. (N.L.O., Sec. 51.)

90.—It is specially provided by the Ordinance that *wages due to a native rank over and above all other debts* by an employer and take priority over all mortgages and other charges on the employer's property. The transfer or devolution of the property does not clear it from this responsibility (except in the case of personal chattels in the hands of *bona fide* purchasers without notice), so that when property is changing hands it is necessary for the transferee to protect himself in this respect. Interest at 8 per cent. per annum may be added to wages due, and to the costs of recovering same, and may be enforced at the suit of the Commissioner. (N.L.O., Sec. 55A.)

91.—It is also provided by the Ordinance that all moneys due by an employer to his surety by way of *refund of moneys paid by the surety* on the employer's behalf on a guarantee under the Native Labour Ordinance rank next to native wages as a preferential charge on the employer's property. (N.L.O., Sec. 55B.)

92.—Wages due or property belonging to a deceased native may be handed over to any magistrate, inspector or qualified officer, and a proper official receipt should be obtained in doing so. Such officials are empowered to demand and receive, and take legal proceedings in their own names, if necessary, *to recover wages due or property* belonging to a deceased native. (N.L.O., Sec. 56.)

#### CHAPTER 14.

##### TRADING WITH A NATIVE EMPLOYEE.

93.—Except with the *written consent of a Magistrate*, an employer is *not permitted to trade* with his native employee (*i.e.*, to sell goods to such a native, or exchange, barter or deal in goods with such native) during the currency of a contract of service, nor for six weeks after the native is paid off. To trade with the native employee through the agency of another person is equally forbidden. (N.L.O., Sec. 54 (2).)

A Magistrate's consent *to trading is not withheld* in the principal townships, such as Port Moresby, Samarai, Daru, &c., where such conditions can be imposed as will enable officials to keep an effective check on the prices at which goods are sold, to store and look after the native's purchases, and generally to safeguard the native in

matters where he might be unable to suitably protect himself, until he can be safely sent home with his possessions intact.

It is recognised, however, that an agricultural labourer who enters into a 3-years' contract to work on a plantation, may reasonably be allowed to make small purchases to a certain limited extent out of his earnings during the currency of the contract, and it is therefore provided that when a 3-years' contract is made the plantation where the native is to be employed may be specified on the contract as one of the places where he may be paid not exceeding *one-sixth part of the wages earned by him*. In such cases the consent of the Magistrate is given for the employer to trade with the native to that extent at the plantation store. Certain conditions are laid down to bring such trading under the same form of supervision as in the townships—*e.g.*, submitting goods purchased and invoices for the Magistrate's approval; submitting stock-list and price-list of the plantation store for the Magistrate's approval, &c. (Order-in-Council, 8/7/15.)

The whole system of protection of a native labourer's wages and purchases rests not only on the moral obligation of the Government to ensure the native fair treatment but also on the principle that it is considered advantageous from the native labour recruiting point of view in the long run to see that a native labourer gets back to his village with as good a return as possible in the shape of trade goods and money for his period of indentured labour.

In many cases, employers who personally recruit their own labour year after year, amongst whom are many miners and small plantation owners, go to considerable trouble to see that their "boys" obtain the very best value for their wages in the stores, and that they arrive back safely in their villages with the full value of their earnings. The importance of this to the employer, when he is seeking fresh recruits from the same district, is recognised.

## CHAPTER 15.

### RETURNING THE NATIVE HOME.

94.—Every employer who engages a native under contract of service *signs an undertaking* as part of the contract to return the native to his village as specified in the contract immediately after the native is paid off for his services. *The undertaking will be found printed on every contract of service form.* (N.L.O., Sched. F.)

95.—The mistake is sometimes made by employers that if a native is not recruited at his village it is not necessary to return him there, *e.g.*, if a Mambare native is found unemployed in Port Moresby

and is recruited in Port Moresby for work in the Port Moresby district, that it is not necessary to return him to Mambare when paid off. This conclusion is arrived at on the argument that a native's "home" is defined to be, "the usual place of residence of a native or the place where he was recruited." Careful reference to the contract of service, however, will shew that the employer distinctly undertakes, when signing the contract, to return the native "to his home as above specified," *i.e.*, to the native's village as named in the contract.

96.—It should be remembered that an employer's liability continues until the native is *safely returned home*, and does not cease on putting the native aboard a vessel to be taken home. (N.L.O., Sec. 47 (1) clause (a).)

97.—Masters of vessels upon which a native is carried for return home may fail to return him home, or neglect to do so without unnecessary delay, and in that case such failure or neglect is regarded under the Ordinance as the failure or neglect of the employer, who is liable to prosecution accordingly. The best the employer can do is to *recover from the master of the vessel* by a separate action any fines, costs or expenses he may have suffered in the matter. (N.L.O., Sec. 47 (2).)

98.—It is important, also, to bear in mind that the employer is required to return with the native his *trade box or other possessions*. If he fails to do so, the Government may do so and recover expenses by action against the employer. (N.L.O., Sec. 48.)

99.—If any native is not returned home as required by law, the Commissioner or any Magistrate may take charge of him, and maintain him and return him home, and recover all expenses of so doing by action against the employer. (N.L.O., Sec. 48.)

100.—In addition to the obligation to return the native home, it is imperative to return him "*without unnecessary delay at the expiration of his term of service.*" Paying-off a native should not therefore be unnecessarily delayed when the contract term has expired. (N.L.O., Sec. 27.)

101.—There are certain cases in which the employer may be absolved in writing by a Magistrate from the obligation to return a native home, and the following are declared by the Ordinance to be good reasons for absolving the employer:—

- (a) That the native has without reasonable excuse deserted from his service.
- (b) That the native refuses to return home. Such refusal to be declared in the presence of the Magistrate or inspector.

- (c) That when the employer wished to return him home the native was not willing to return.
- (d) That the native is in custody under committal for an indictable offence.
- (e) That the native is in prison under a sentence imposed for an offence outside the Native Labour Ordinance. (N.L.O., Sec. 49.)

102.—In returning a native home from Port Moresby, a "Notice of Intention to Remove," must be sent to the Government Medical Officer on the printed form a specimen of which is given under Chapter 7 on "Health." If the native passes medical examination a permit is then issued to the employer who should send it on board the vessel accompanying the native, or to the office of the vessel's agents when engaging a passage. It is a punishable offence for an employer to remove or permit the removal of his native labourer, beyond a fifteen-mile radius of Port Moresby without such a permit. (N.L.O., Reg. 41.)

103.—In returning a native home the following general obligation under the Ordinance deserves note:—

"From the time when the native was taken away until he is returned to the place whence he was taken, to supply him with good and sufficient water, food, medicine, shelter, sleeping quarters, clothing and bedding, and (if necessary) the means of preparing food." (N.L.O., Sec. 47.)

104.—In many cases, particularly where a native is recruited from some far inland village, it is difficult for the employer to ensure the safe return of the native to his home after leaving a vessel at the nearest point on the sea-coast. In such cases the local resident Magistrate will assist, and this has been notified by Gazette Nos. 9 and 13 of 1920 for the information of employers. The Magistrate will charge the employer with costs of maintenance and any necessary expenses of transport incurred, but this must be arranged through the Commissioner for Native Affairs. (Gazettes 9 & 13 of 1920.)

## PART II.

### THE NATIVE LABOUR ORDINANCE FOR RECRUITERS.

The majority of the indentured native labour of the Territory is recruited by Licensed Recruiters. It is found by the plantation and mining companies, &c., who employ large numbers of indentured natives all the year round, that in order to keep labour supplies up to requirements it is necessary to have licensed recruiters constantly at work in various parts of the Territory recruiting and sending in batches of new labour to replace the constant stream of time expired "boys" being paid off and returned home.

The employer will give a written order to a licensed recruiter authorising him to recruit up to a specified number of natives for a certain class of work and at a certain rate of wages and period of service. The recruiter presents this order to the Magistrate before whom he takes his recruits, shewing that he has authority to engage the natives on behalf of the employer, and he then signs the contracts of service as agent for the employer and despatches the natives accompanied with the respective contracts of service, to the employer. He receives recruiting fees according to arrangement varying from £3, £5, and £7 per native for one, two and three year contracts respectively, up to whatever may be the ruling rate for the time being. The recruiter usually has to distribute a good deal of trade goods of various kinds at his own expense to the prospective recruits, and perhaps to their relatives and others in the villages, before the natives consent to leave their homes, competition amongst recruiters over a long course of years having established this practice as a recognised expense of the recruiting business.

The purpose of this chapter is to set out the relationship between recruiter and employer in regard to recruits, on the one hand, and the special points of the Native Labour Ordinance which a licensed recruiter must bear in mind to avoid difficulties with the Government, on the other hand. For it should be recognised at the outset that very special attention has been paid by the Legislature, in framing the Ordinance with its various amendments from time to time to the necessity for safeguarding the native against improper methods of recruiting.

105.—As regards the *relations of the employer with recruiters* he is first of all concerned to see that the recruits he has to pay recruiting fees for are physically fit for the work for which the recruiter has signed them on for him. It is a common practice to insert a condition



in the written order to the recruiter that the recruits must pass a Government Medical Officer's examination before they will be accepted and paid for. To safeguard the employer as far as possible the Ordinance provides that where a recruit has been signed on to an employer by a licensed recruiter, and such recruit when received by the employer is considered by him to be physically unfit for the work to be performed under the contract, the employer may submit the recruit to the nearest Government Medical Officer for examination, and if certified as unfit the native will be sent home at the expense of the Government provided that the medical certificate has been obtained within fourteen days of the date of engagement of the recruit. (Order-in-Council, 8/7/15.)

106.—The procedure for the employer, in the event of a reject in this way, would be to have the contract cancelled and the return passage fare claimed by refund voucher from the Government, in the manner detailed in Chapter 10 of Part I., on "Cancelling the Contract."

107.—The question of cost of maintenance of the reject until he can be sent home again, is one that rests between the employer and recruiter, as also the question of any other expenses (such as hospital fees, &c.), incurred by the employer on account of the reject. It may happen for instance that a native recruit is in such a condition that he has to be sent to hospital before he can be returned home, in which case hospital fees accrue (the native being under contract of service) and this is an additional "dead" expense which it remains for the employer to safeguard himself against in his arrangements with the recruiter.

The recruiter expects to be paid at the agreed rate for every signed-on recruit who is accepted and sent to work, plus the signing-on fees paid out of pocket on the employer's behalf (but not usually the recruiter's statement fee 1/-) and the cost of the necessary issue of a calico to each native by way of clothing to enable him to be signed on. The recruiter, on the other hand, is usually required to deliver the recruit to the employer at the plantation, mine, or office of the employer or agent as may be arranged, free of passage charges or other expenses.

108.—*The responsibilities of the licensed Recruiter* under the Native Labour Ordinance have now to be considered, and it may be well to first state the procedure to follow when it is desired to obtain a *Recruiter's License*.

109.—In the first place, only such officials as are specially authorised by the Lieut.-Governor for the purpose may issue a recruiter's license. The resident Magistrates of Port Moresby and

Samarai are so authorised, and inquiry can always be made of Magistrates in other districts as to the nearest authorised official. *The license is good for one year*, and may be renewed annually. The fee is £1 for issue, and £1 on each subsequent renewal. (N.L.O., Sec. 14.)

110.—*No person who is not a European* can obtain a recruiter's license. (N.L.O., Sec. 14.)

111.—The license may be issued at the discretion of the official either for the whole of the Territory or for any specified district or districts, and the recruiter is restricted in his operations accordingly.

112.—The issue of a license at any time is *purely discretionary*, and it may at any time be *suspended* by a Magistrate or *revoked* by the Lieut.-Governor ; but no license is suspended or revoked without a formal inquiry after due notice to the recruiter. (N.L.O., Sec. 17.)

113.—The applicant for a recruiter's license is required to pass a *medical examination* before a Government Medical Officer, whose certificate is obtained and handed in to the Magistrate on applying for the license. There is no medical fee.

114.—Before a license is issued the applicant must give surety in the sum of £50 for the due observance of the provisions of the Native Labour Ordinance, a guarantee being signed by the applicant and the surety in the following form printed for the purpose:— (N.L.O., Sec. 15.)

#### SCHEDULE D.

#### GUARANTEE BY RECRUITER.

Under Section 15 of the " Native Labour Ordinance, 1911-20."

WHEREAS, of has applied for a recruiting license, and it is necessary that the said should give security before such a license can issue to him :

Now, therefore, we the said and of hereby bind ourselves jointly and severally to the Crown in the sum of Fifty pounds (£50) as security for the due observance by the said and his representatives of the provisions of the Native Labour Ordinance 1911-20, that apply to persons to whom recruiting licenses have been issued.

AND we declare that the non-observance by the said or by any of his representatives of any of the aforesaid provisions shall be deemed to be a breach by us of this guarantee.

AND we declare that this guarantee shall apply to and cover any recruiting license or licenses that may be at any time issued to the said

Dated at this day of 19 .  
Signed by the said }  
in the presence of }

P.L.

115.—The fee payable for the above guarantee is 1/-. (N.L.O., Sched. M.)

Having obtained a recruiter's license, the recruiter becomes subject to certain important responsibilities under the Ordinance, and it is essential that these be well studied.

116.—In the first place, if the recruiter uses a ship the *ship also must be licensed* and be used only under his immediate personal supervision and control. The ship's license is subject to revocation or suspension in the same way as the recruiter's license. (N.L.O., Sec. 16; N.L.O., Sec. 17.)

117.—Any Magistrate, officer of customs, European member of the police force or other person authorised by the Lieut.-Governor, who finds an unlicensed ship being used in recruiting, may cause the ship to be *seized and detained* until a prosecution for breach of the Ordinance has been heard and determined. (N.L.O., Sec. 18.)

118.—A vessel under 6 tons is *not eligible for a license*. (N.L.O., Sec. 14.)

119.—When a native is recruited, the recruiter must personally take charge of and be responsible for the native, and must "declare" him on the prescribed recruiter's statement form without unnecessary delay at the Government station nearest to the native's home, or nearest along the route towards the place where the native is to work. The statement form is as given in Part I., Chapter I, "Recruiting and Engaging." (N.L.O., Sec. 20.)

120.—In cases where the circumstances warrant it, a Magistrate of a division can *issue a permit* for a period up to 12 months to take recruits to some other station to be named, but such permit is subject to cancellation after inquiry upon due notice to the recruiter. (N.L.O., Sec. 19.)

121.—If the Government official at the proper station is absent, or if from any sufficient cause it is difficult to communicate with such official, the recruiter may take the native to the next nearest station along the route, but in doing so it is necessary to lodge a written explanation of the necessity for carrying the native past the proper station. This will be required by the official before whom the recruiter presents the native.

122.—Power is reserved to the Lieut.-Governor to declare by proclamation that natives recruited in a certain district must be taken to a Government station of the division in which such district is situated, and no other. (N.L.O., Sec. 19.)

123.—In the event of the native, after being recruited, failing or declining to sign-on for any reason, the obligation still rests upon the recruiter to personally take charge of and be responsible for him until he has been returned home, or until the recruiter has been absolved in writing by a Magistrate, inspector or qualified officer from all further responsibility. (N.L.O., Secs. 11, 20.)

124.—*A recruit may be transferred* by one licensed recruiter to another, but not without the written sanction of a Magistrate. Such sanction is not given until the prescribed recruiter's statement is first made and signed by the original recruiter, whereupon the Magistrate's sanction for transfer is endorsed on it. (N.L.O., Sec. 32 (1).)

125.—Power is reserved to the Lieut.-Governor to close any district against recruiting, and to close any particular place or district as a work place for natives. Such proclamation can be declared a temporary one or otherwise, and may be conditional or unconditional. (N.L.O., Sec. 21.)

126.—Much misconception is liable to exist as to *what constitutes the act of recruiting a native*, and many people will quite innocently "recruit" a native for their service and then send him to some convenient agent with the request to engage the native on their behalf—the agent acting as the recruiter. The act of recruiting a native has been clearly defined in the Native Labour Ordinance as follows:—

"A native shall be deemed to be recruited when he is solicited and consents, or he offers and his offer is accepted, to engage for or to be employed in any form of service, or to leave any place where he may then be with a view to or for the purpose of his being so engaged or employed." (N.L.O., Sec. 3.)

The responsibility of being the recruiter, for the purposes of the Ordinance, is thus clearly upon the person who first arranges with a native to proceed to any place with a view to signing-on. Whether the native does actually sign-on as a result, or not, is a matter that does not affect the question of recruiting.

127.—A recruiter who recruits a native knowing at the time that such native is *already under contract of service*, is liable to imprisonment with hard labour for a period not exceeding six months. It sometimes occurs that a native who is a deserter from an employer will endeavour to recruit under another contract of service. Any such second contract is *null and void*. (N.L.O., Sec. 35A (2); N.L.O. Sec. 35A (1).)

128.—When a native is taken away by any person from any place in the Territory for any purpose whatever, the following duties

are imposed upon the person who took the native away, and upon any person who expressly or by implication accepted the care or charge of him :—

- (a) When the purpose for which the native was taken away has been accomplished, to return him to his home.
- (b) From the time when the native was taken away until he is returned to the place whence he was taken, to supply him with good and sufficient water, food, medicine, shelter, sleeping quarters, clothing and bedding, and (if necessary) the means of preparing food. (N.L.O., Sec. 47.)

129.—Under certain conditions and restrictions, details of which are dealt with below, it is permissible to recruit by the agency of *native assistants* and of *local natives* of the district in which the European is operating. When this is done, any native recruited and taken away from any place by such native assistant or local native is deemed to be taken away by the European under whom they have acted. (N.L.O., Sec. 82 ; N.L.O., Sec. 47 (1A).)

130.—A *native recruiting assistant, i.e.*, a native engaged under contract of service to a licensed recruiter for the duties of “ recruiting assistant ” either solely or included and specified with other duties, may lawfully be used in obtaining recruits ; but unless such duties are specially included in the contract it is illegal to use him for recruiting. (N.L.O., Sec. 82 (1).)

The native assistant must not act as such unless his employer is in the same division of the Territory with him, and *not more than 10 miles distant*. The native assistant must not be accompanied by any other person than his employer, or other native assistants of the employer, or native residents of villages within a radius of 10 miles of him. *He must not carry firearms, or accompany any person (other than his employer) who does so.* (N.L.O., Stat. Rules, No. 10. 1917.)

131.—A *local native*, may be used to obtain recruits, provided such recruits are not recruited by him outside a radius of 10 miles of his own village and of the point on the sea-coast at which the licensed recruiter is located at the time. It is not permitted, for instance, to send a local native away to some distant inland or coastal tribe (beyond 10 miles) for the purpose of obtaining recruits and bringing them to the recruiter ; nor is it permitted to send a message to a native of some distant inland or coastal tribe to act as an agent to bring in recruits from that tribe. (N.L.O., Sec. 82.)

In other words *the licensed recruiter is required to be within easy personal access* of any natives whom it is proposed to recruit, in order that long journeys need not be undertaken by prospective recruits to get in touch with the European on whose behalf the native re-

recruiting agent claims to be acting, and that such recruits can pass directly from the protection of their own villages to the care and charge of a European, without dangerous delays.

132.—It is illegal to make use of the services of any native for recruiting if such native holds an Arms Permit. A signed-on shooting boy, or a local native who holds an Arms Permit, cannot therefore be made use of to obtain recruits. (N.L.O., Sec. 82 (4).)

133.—Any person who by *fraud, intimidation, coercion or misrepresentation* induces a native to engage himself as a labourer, or to leave his place of residence or any place at which he may then be, with a view to or for the purpose of engaging himself as a labourer, is guilty of an offence against the Ordinance. (N.L.O., Sec. 81.)

134.—*The licensed recruiter is liable* for any illegal act of his native assistant or local native for any breach of the Ordinance, in the same way and to the same extent as if he had himself committed the illegal act. (N.L.O., Sec. 82 (3).)

135.—It may occur that a licensed recruiter obtains an order to recruit a certain number of natives for an employer, and finds when he recruits the necessary labour and presents the natives before a Magistrate or other official for signing them on to the employer, that the official refuses to sanction the engagement of the natives to that particular employer without a *guarantee of at least one sufficient surety*, in such sum as he may consider reasonable, that the employer will carry out the terms of the contract of service and will comply with all the provisions of the Native Labour Ordinance. (N.L.O., Sec. 29.)

To get over this difficulty, the licensed recruiter, when he accepts an order for recruits from an employer, should ascertain whether such a guarantee is likely to be required in the particular case of that employer (it usually is required), and if so, he should see that the employer first obtains the necessary surety and hands him an official certificate of same, termed a "*Certificate of Lodgment of Guarantee*," which is a printed certificate in the following form:—

#### CERTIFICATE OF LODGMENT OF GUARANTEE.

I certify that a guarantee in Form 2 of Schedule G. of the Native Labour Ordinance 1911-20 has been lodged with me this day, from which the following particulars are taken:—

Office where guarantee lodged:  
Distinguishing number of guarantee:  
Name of intended recruiter:  
Name of intended employer:  
Name of surety:  
Number of natives stated in guarantee:  
Rate of wages per month of natives:

Certified this            day of            19 .

.....  
Magistrate.

This Certificate of Lodgment of Guarantee is sufficient for the recruiter to produce to the official before whom he presents his recruits for signing-on. The official *endorses on the certificate* the number of natives being signed-on, with particulars and date, so that it will shew when the full number of natives covered by the guarantee have been engaged. As soon as the full number are engaged the Certificate lapses and must be handed in to the official making the final endorsement.

In any case, *the certificate does not hold good indefinitely*. It must be returned to the Commissioner for Native Affairs and Control by the recruiter within six months from date of issue if it has not previously been handed in, fully endorsed, to a Magistrate. If, therefore, the recruiter has not been able to recruit the full number of natives authorised within the six months' time limit, he must arrange for the issue of a *fresh Certificate of Lodgment* before he can proceed further with his order. (N.L.O., Stat. Rules, No. 5, 1917.)

In order to ensure that Certificates of Lodgment return to the Commissioner within the prescribed six months, the Magistrate or other official is not permitted to endorse a certificate after *five months* from date of issue, or after *three months* from the date of the first endorsement.

136.—*Forbidden recruiting*. When by Order-in-Council any person has been forbidden the right of a license to recruit, he is also forbidden to act in the capacity of a European overseer for an employer, or an agent of an employer, for the purpose of recruiting natives, or to use a native assistant or local native to obtain recruits for an employer. (N.L.O., Stat. Rules, No. 1, 1918.)

137.—It is an offence against the Ordinance for any employer to engage or authorise such forbidden recruiter to obtain recruits, either directly or by a native assistant or local native. (N.L.O., Stat. Rules No. 1, 1918.)

### PART III.

#### THE NATIVE LABOUR ORDINANCE FOR MASTERS OF VESSELS.

138.—The following *definitions* are laid down for the purposes of the Ordinance:—

*A ship*, includes any description of vessel used in navigation not propelled by oars, excepting canoes.

*A vessel*, includes any description of boat or craft, except canoes owned and navigated by natives. (N.L.O., Sec. 3.)

139.—*The first important point* for masters of vessels is the provision that nothing in the Native Labour Ordinance dispenses with the necessity of complying with the *Navigation Act* or other laws relating to shipping or navigation that may be in force. At the same time, the *Navigation or Shipping Laws do not over-ride the Native Labour Ordinance* in any matter where natives are concerned. (N.L.O., Sec. 5.)

A common misconception, for example is that because a native crew may be signed-on under the ship's articles in compliance with the shipping laws, it is not therefore necessary to also sign them on by contract of service under the Native Labour Ordinance. To omit to do so is, of course, an offence against the Ordinance (subject to the three-months provision for casual labour and restrictions on removal of natives beyond the prescribed distance from their homes) and is punishable accordingly. All the provisions, also, of the Native Labour Ordinance must be observed, such as the *reporting of desertions and deaths, payment of wages before proper officials, &c.* (N.L.O., Sec. 22.)

140.—Masters of vessels are required to observe certain restrictions in connection with *carrying native passengers*. A vessel may carry as a *bona-fide* passenger any native from any part of the Territory to any other part of the Territory, provided that no native girl or woman be carried without the written consent of a Magistrate. Such written consent will not be given unless the native girl or woman is accompanied by her husband or other natural protector. (N.L.O., Sec. 37.)

141.—*No native girl or woman may be carried or kept on board* of any vessel except as a passenger under the above conditions. (N.L.O., Sec. 12.)



142.—Whenever the master of a vessel for himself or for some principal, takes a native from any place in the Territory for the purpose of getting him to enter into a contract of service, and the native does not enter into a contract it is incumbent upon the master of the vessel and his principal (if any), to return the native to his home. (N.L.O., Sec. 11.)

143.—Natives are not permitted by law to be removed from the Territory except under special permit, and the master of a vessel is liable for an offence against the Ordinance if a native is found to be unlawfully on board when the vessel is about to start, or has started, on a voyage from any place in the Territory to some place outside the Territory. The onus is upon the master of the vessel to prove that he did not intend to take the native away, and that the native did not intend to go away in the vessel, or that the native was on board without the master's knowledge or consent. (N.L.O., Sec. 13.)

144.—A permit can be obtained for removing beyond the Territory any native who is under contract of service for any of the following purposes:—

- (a) Fishing in the Gulf of Papua.
- (b) Proceeding as a boatman or seaman to any port in Queensland or (late German) New Guinea Territory.
- (c) Proceeding as a seaman for a single voyage and back—
  - (1) To any port or ports in Australia.
  - (2) To Dutch New Guinea.
  - (3) To any island or islands in the Western Pacific that may be proclaimed. (N.L.O., Sec. 38.)

145.—Sureties must be found before permit will be granted, the sums being:—

£100	for each native.
£250	for 10 natives or less.
£500	„ 20 „ „
£750	„ 30 „ „
£1000	„ over 30 natives.

A form of guarantee for the above will be found in Part VI., relating to “Guarantors.”

146.—When a master of a vessel is engaging a crew he *must not conclude* that because a native may be engaged for work for any period up to three months without a written contract of service, he can accordingly be carried as a member of the crew to any part of the Territory for that period without signing-on under the Ordinance. The same restrictions apply to the master of a vessel as to

any other employer, viz., that no native may be removed more than 40 miles from his home (or 100 miles in a settled labour district) except under written contract of service or for the purpose of taking him to a Magistrate or other official to be signed on under contract of service. (N.L.O., Sec. 10 (2).)

147.—Restriction is placed on the *number of natives that may be carried* on a vessel, by fixing a maximum of 2 persons per registered ton measurement plus tonnage measurement (if any) deducted for the master, seamen or apprentices. (N.L.O., Sec. 57.)

Thus, a vessel whose registered tonnage, plus tonnage space of quarters of master, seaman and apprentices if deducted in the registered tonnage, aggregates say 52 tons, would be entitled to carry 104 persons in all, including such master, seamen and apprentices.

In the case of *vessels of 25 tons and less*, this basis for computing personal accommodation is reduced again by the amount of cargo on board. A vessel of 25 tons down to 10 tons has to take one person short for each ton of cargo carried, while a *vessel of 10 tons and under* has to allow 2 persons short per ton of cargo.

*Vessels of over 25 tons* need make no allowance for cargo carried.

148.—The master of a vessel is responsible for providing good and sufficient *shelter and sleeping quarters* for any natives carried, either as passengers or crew; and if he is the person for the time being solely in charge of the natives he is also responsible to see that they are supplied with good and sufficient water, food, medicine, clothing and bedding, and (if necessary) the means of preparing food. (N.L.O., Sec. 47 (1a).)

149.—If a Magistrate has reasonable grounds for believing that a *vessel is not fit to carry natives* and he gives written notice to that effect to the master, the master is liable for an offence against the Ordinance if he carries natives before the notice is withdrawn. (N.L.O., Sec. 58.)

150.—Any Magistrate, inspector, or person specially authorised in writing, may *board and inspect any vessel* carrying or recruiting natives, and may require the production of any document that relates to the carrying, recruiting or employment of natives, whether such natives be at the time on board or not, and may examine any person on board in any way necessary in the due execution of his duty. To hinder or obstruct such official acting within his powers, or to refuse or withhold any document or information without lawful excuse when lawfully required by the official is an offence against the Ordinance. (N.L.O., Sec. 60.)

151.—The official may at all reasonable hours inspect any native in the service of any person and may question the native and his employer or any person who has charge of the native, on any matter affecting the welfare of the native. Any person so questioned is bound to answer on such matters. Hindering the official in inspecting the native, or refusing to answer or wilfully making false answers is an offence. (N.L.O., Sec. 61.)

152.—*A ship to be used for recruiting must be licensed*, and no vessel under six tons is eligible for a license. Any Magistrate, officer of customs, European member of the police force, or other authorised person who finds an unlicensed ship being used in recruiting may cause the ship to be seized and detained until a prosecution for breach of the Ordinance has been heard and determined. (N.L.O., Secs. 16 (1), 14; N.L.O., Sec. 18.)

153.—The issue of a ship's license is purely discretionary and may at any time be suspended by a Magistrate or revoked by the Lieut.-Governor, after inquiry upon due notice to the owner or lessee. (N.L.O., Sec. 17.)

154.—When the master of a vessel accepts *native passengers for returning home*, it is obligatory upon him to return such natives without unnecessary delay, otherwise the Commissioner, & Magistrate, or an inspector may take charge of them and return them, recovering by legal proceedings against the employer any expenses of so doing. The employer can then recover in the same way by action against the master of the vessel. (N.L.O., Sec. 47 (2).)

155.—*The Health regulations* relating to natives on board vessels, whether passengers or crew, require careful attention. It is an offence to remove any native labourer, time-expired or otherwise, from Port Moresby to a distance of more than 15 miles, without the written permission of a Government Medical Officer stationed at Port Moresby. (N.L.O., Reg. 40.)

156.—In the case of an employer sending home *time-expired native labourers* as passengers by the vessel, such employer should obtain the necessary permit and send it aboard with the natives concerned, and the master of the vessel should see that he has the permit before taking the natives. The permit is required to be kept with the natives during their removal and *produced for inspection* on demand to any Government Medical Officer, Magistrate, or labour inspector. (N.L.O., Reg. 43.)

157.—In the case of the native crew of the vessel, the master is responsible for obtaining his own permit. The Medical Department

may require the usual printed form "Notice of Intention to Remove Natives,"—see form in Part I., Chapter 6 on "Health of the Native," but in many cases a note sent with the crew to the Medical Officer is accepted as sufficient. The permit may be issued either unconditionally or subject to any particular instruction or precautions to be observed. (N.L.O., Reg. 41; N.L.O., Reg. 42.)

158.—When a vessel is carrying native labourers from Port Moresby to any other part of the Territory necessitating *passing Samarai on the way*, the master is required to report his vessel to the Government Medical Officer at Samarai to permit of medical examination of the natives on board and the issue of any reasonable instructions. (N.L.O., Reg. 44.)

The same regulations apply as to medical permission to land, and the isolation and maintenance of natives, as apply in the case of epidemics set out below. Natives are liable to six months' imprisonment for neglect or refusal to obey a medical officer's instructions, during detention, or for refusing to proceed to any place set aside, or deserting before discharge.

159.—When an epidemic breaks out, any place may be gazetted as a "centre of epidemic," and special regulations then immediately come into force. (N.L.O., Reg. 31.)

160.—All time-expired and other native labourers returning home or proceeding to any other part of the Territory from a *centre of epidemic* must be first taken to Port Moresby or Samarai, whichever is the nearer port in the direction of the native's destination. The vessel must proceed direct to either one or other of these ports without loading, or taking on board any native. If both Port Moresby and Samarai lie between the centre of epidemic and the final destination of the natives the vessel must *call at both ports* in turn, and must not take on board or land any native without a Government Medical Officer's consent. On arrival at the port the master must at once report his arrival to the Government Medical Officer, and *no native must be allowed to land* until permission is obtained. (N.L.O., Reg. 32; N.L.O., Reg. 33 (2).)

161.—All reasonable directions received from the medical officer for cleaning and disinfecting the vessel must be followed, and if so directed the natives on board must be taken to some place set aside for the purpose where they must await discharge by the medical officer. The natives must be provided with rations in the event of such detention, or payment lodged at the prescribed rates for maintenance. (N.L.O., Reg. 34.)

162.—The above regulations relating to epidemics also apply to any vessel on which are native labourers *when a case of dysentery occurs.*

163.—If a native is taken sick *within 10 miles of a hospital* in a centre of epidemic he must be sent without delay to such hospital. (N.L.O., Sec. 38.)

## PART IV.

### THE NATIVE LABOUR ORDINANCE FOR TRADERS AND STOREKEEPERS.

164.—Every effort is made by the Government to adequately protect the native in his relations with traders and storekeepers and in the free disposal of his money.

165.—*Touting for native trade* by natives assistants or native agents has been created a forbidden act under the Native Regulation Ordinance, punishable in the Court for Native Matters. Any native who, for gain or reward, or in the course of any employment, persuades or tries to persuade another native to spend his wages with any particular person is liable on conviction to imprisonment up to 14 days. (Regulations for Native Matters, No. 117.)

166.—In the principal townships the Native Labour Official before whom natives are being paid off at the expiry of their contract of service will take special steps to protect the interests of the more unsophisticated classes of labourer, by giving them an order on local stores up to the amount of wages to their credit (or so much of it as they wish to spend), and upon the purchases being subsequently produced accompanied with invoices payment is duly made on the native's behalf.

166a.—In a general way, where the natives being paid off are considered sufficiently experienced to handle their own cash, they receive their money and are informed they are free to go to any store they please to purchase goods, or that they may lodge their wages, or any portion of it, at interest in the Post Office Savings Bank, or with the local Magistrate to be forwarded on to the District Magistrate of their own villages for safe custody, until their return home. On native labourers purchasing trade goods the Government undertakes the care of their purchases until the day of departure of the vessel that is to take them home.

166b.—Power is given under the Ordinance to the Magistrate or other official before whom a native is paid off, to take the wages into his custody if he thinks it necessary for the protection of the native. The Commissioner is then advised of such action being taken. (N.L.O., Sec. 54A.)

With regard to native trade stores and trading generally with natives, very careful legislation has been passed to safeguard natives against being taken advantage of in their business dealings, and at the same time to discourage unwritten contracts generally, in the interests of both parties. The "*Transactions with Natives Ordinance*," has been specially brought into force, and carefully amended from time to time, for this purpose, and the following points are worthy of note:—

167.—(1) *Credit given to a native for goods purchased* is entirely at the storekeeper's risk, for payment cannot be enforced in the Courts. This also applies to credit or part credit for the sale of any description of property to a native. (T.N. Ord., Sec. V. (3).)

168.—(2) The same applies to *loans to a native* by any person. (T.N. Ord., Sec. V. (3).)

169.—(3) There is no redress in the Courts where anything goes wrong under an arrangement whereby a native undertakes the *sale of any goods on commission* or for reward, when such goods or any of them are in the possession or control of the native. (T.N. Ord., Sec. V. (3).)

170.—(4) An arrangement for the *future delivery* of any goods in any form by a native either directly or indirectly, is without any protection from the Courts, as also arrangement for the purchase in advance from a native, either directly or indirectly, of *crops of coconuts* or crops of any agricultural product. (T.N. Ord. Sec. V. (3).)

171.—Any such business arrangements as the above with natives, to be valid in the eyes of the law, must be drawn up in writing and *approved by an inspector* specially appointed under "The Transactions with Natives" Ordinance. (T.N. Ord., Sec. V.)

It should be remembered that if this is not done (and there is no redress accordingly against the native) the native still has redress against the other party to the arrangement, and may take his side of the case to Court. The Court then has power to give such verdict for the native as it considers equitable on the merit of the case, regardless of the terms of the arrangement between the parties. The native is therefore protected, but the other party is not. (T.N. Ord., Sec. VI.)

There are various other classes of business arrangements or contracts with natives which are all similarly declared unlawful and *void as against the native* unless in writing and approved by an inspector, viz:—

- 172.—(1) Contract for the sale or purchase of vessels or boats, except native canoes. (T.N. Ord., Sec. V.)
- 173.—(2) Job contracts for the performance of a piece of work by a native where the work place is more than 25 miles from the native's usual residence. (T.N. Ord., Sec. V.)
- 174.—(3) Job contract that will extend to 12 months or over. (T.N. Ord., Sec. V.)
- 175.—(4) Job contracts for a remuneration of over £5. (T.N. Ord., Sec. V.)
- 176.—(5) Contracts for the hire or charter of any vessel or boat except native canoes, or for repairs to same. (T.N. Ord., Sec. V. (3).)

177.—All these "contracts" or "arrangements" or "understandings" with natives, to be valid at law and enforceable in the Courts, must be in writing and approved by an inspector, otherwise there is no redress against even the deliberate fraud of an incorrigible and confirmed native "bilker." It is probably to discourage the opportunities for this undesirable type of native to flourish that the legislation largely aims, and unwritten contracts or arrangements of any kind with natives, not approved by an inspector, are declared entirely at the risk of the other party.

178.—It is also important to note that the Native Labour Ordinance provides against employers exploiting their own native employees by the following provision:—

"No action shall be brought upon any contract, express or implied, made by a native while under contract of service; but all contracts so made as aforesaid shall be absolutely void." (N.L.O., Sec. 90.)

179.—*Trading sites.* Under the Land Ordinance provision is made for obtaining trading sites in any part of the Territory. An annual license is obtainable from a resident Magistrate at a fee of £1 and entitles the holder to occupy not more than 3 acres of land as specified, and to fence and build on it, and otherwise make use of it for the purpose of trading. (Land Ord., Sec. 37.)

Trading sites are not usually granted unless the piece of land applied for is at least a quarter of a mile from the nearest native village. (Order-in-Council.)

179a.—*Arms, liquor and opium.* No right of action is given in any Court in the Territory for the recovery from a native of any debt, or the enforcement of any agreement or obligation contracted or entered into with a native in respect of any firearm, ammunition, explosive, intoxicating liquor or opium supplied to such native.



## PART V.

### THE NATIVE LABOUR ORDINANCE FOR PLANTERS.

The general native labour law of interest to planters is embodied in the various chapters of Part I., "The Native Labour Ordinance for Employers," but it has been thought that a special chapter devoted to briefly summarising the particular matters which a Native Labour Inspector is required to inquire into on an *official inspection of a plantation*, may serve as a handy reference for plantation managers and overseers if supplemented by quoting the particular sections of the Native Labour Ordinance to be referred to.

180.—Every plantation employing natives to the number of 10 or more must have a copy of the Native Labour Ordinance and Regulations at the house of the manager or employer where the natives are employed, and same must be produced when demanded by the prescribed officials. (N.L.O., Sec. 97.)

181.—*Matters which a Native Labour Inspector will inquire into on an official inspection of a plantation:—*

182.—*Labour force.* The inspector will check over the labour force with the original contracts of service and with the plantation register and obtain explanation of any discrepancies. The plantation register must be kept in the form laid down in Regulations No. 2 of 3rd Feby., 1915. Maximum penalty £50, or in default 6 months' imprisonment with hard labour.

Each native contract of service must be kept at the place where the native is actually employed, *vide* Sec. 25 N.L.O. 1911-20. Maximum penalty, £50, or in default six months' imprisonment with or without hard labour.

*Casual labour.* No native to be employed for a longer period than 3 months except under written contract of service. (Sec. 22, N.L.O. 1911-20.)

Among other reasons for an inspector checking natives by their contracts and by the register, the following may be cited:—

- (a) To see that native labourers whose term of service has expired are returned to their homes without unnecessary delay. (*Vide*, sec. 27, N.L.O. 1911-20.)
- (b) To check absentees by the register and see that deaths and desertions are properly reported. (*Vide* Sec. 31, N.L.O. 1911-20.)

- (c) To see that natives are not worked at duties other than their contracts prescribe, or at places other than their contracts provide for.
- (d) To see that each native employed on the plantation is accounted for, either by contract of service or as a casual of not more than 3 months' continuous working.
- (e) To see that no native is required to perform any work for which he is physically unfit. (*Vide* Sec. 82c, N.L.O., 1911-20.)
- (f) To enable such official endorsements or variations of contracts to be made forthwith as may become necessary as a result of the visit of inspection.

183.—*Parade for inspection.* When paraded for inspection, native labourers are usually required to fall in with their blankets, as a check that the provisions of Regulation 15, N.L.O. 1911-20 are complied with. Maximum penalty for non-compliance with the Regulation, £25, or in default 3 months' imprisonment with hard labour.

In inspecting blankets, an inspector would be likely to bear in mind Regulation 57 N.L.O., 1911-20, prescribing regular disinfection of blankets if there appeared any reason to give special attention to the matter.

The native labourers are usually asked at parade (through competent interpreters for each tribe) whether they have anything to complain of, either against boss-boys, cook-boys, other native labourers or their masters, and whether they are satisfied with the conditions under which they are working generally. Not infrequently, however, natives will either not speak at all or will say they have nothing to complain of, but will come singly or in groups to the inspector when he is leaving the plantation or at any other time they can gain access to him privately.

184.—*Food.* The minimum scale of rations appears in Regulation 24 N.L.O., 1911-20, and the rations as specified must be issued, to comply with Regulation 23. Maximum penalty, £25, or in default 3 month's imprisonment with hard labour.

The plantation ration-issue book (if any) is inspected, and if it appears to shew that the Regulation is fully complied with confirmation is then only required from the labour force at inspection parade when discrepancies, if any, between the ration book and the statement of the labourers can be at once inquired into.

Where there are complaints, cook-boys are sometimes found to be at fault, or there may be an unreliable system of rationing in force, either among groups or the labour force generally.

185.—*Sickness.* At parade the labourers (and their wives and children if any) are inspected to see that they appear in good health, and that any sores and minor sicknesses are receiving adequate treatment. (Sec. 47, N.L.O., 1911-20.) Labourers with ulcers on their legs are usually expected to be given rest from any work involving walking or standing, in order to allow of healing within a reasonable time. Beriberi disease is considered by the Chief Medical Officer to be sufficient ground for cancelling a contract. Dysentery must be at once reported to the nearest Magistrate, *vide* Regulation 54 N.L.O., 1911-20. If within 10 miles of a hospital the patient must be removed to the hospital. If the hospital is within 50 miles, the native may be either removed to the hospital or isolated on the plantation in accordance with the directions in Regulation 55. Maximum penalty, £50, or in default 6 months' imprisonment with hard labour.

Regulation 8 requires a daily inspection of native quarters by an European to ensure that sick natives are not overlooked. Penalty for neglect, as above.

186.—*Hours of work.* Native labourers can only be compelled to work on a Sunday at certain definite duties and in certain definite emergencies, as detailed in Regulation 2 N.L.O., 1911-12. Inspectors expect to be satisfied that this is observed. The maximum number of working hours permitted in any one week (except in cases of emergency) is 50 hours, exclusive of meal times, and the maximum for any single day, 10 hours. (*Vide* Regulation 3.) Inspectors expect to be satisfied that this is observed. Maximum penalty in above matters, £50, or in default six months' imprisonment with hard labour.

187.—*Stock of drugs, &c.* These must be kept as per Regulation 22. Maximum penalty, £25, or in default 3 months' imprisonment with hard labour.

188.—*Plantation hospital.* Where more than 50 natives are employed, a building must be set apart for reception of those requiring medical treatment, and the building must be certified as sufficient by the prescribed official. (*Vide* Regulation 10). Maximum penalty, £25, or in default 3 months' imprisonment with hard labour.

189.—*Inspection of native quarters.* An inspector may condemn a dwelling as unfit for habitation, or may disapprove of more than a certain number of natives being assigned to it. Regulation 13 prescribes certain special conditions in regard to housing accommodation. Maximum penalty, £25, or in default 3 months' imprisonment with hard labour.

Dwellings must be kept clean, and a daily inspection by a European is prescribed to ensure this. (*Vide* Regulation 8.) Penalty as above.

190.—*Blankets, bedding, &c.* Regulation 57 prescribes regular boiling and cleansing of all clothing, blankets, curtains and bedding. An inspection of dwelling houses may reveal conditions that would result in a prosecution under this regulation. Maximum penalty £50, or in default 6 months' imprisonment with hard labour. Particular attention to this is likely to be given by an inspector in the event of contagious or infectious disease existing or having existed on the plantation, or for other reasons that may arise.

191.—*Latrines.* The number of latrines to be provided varies according to the number of natives employed. (*Vide* Regulation 9.) The latrines must be "suitable" and be kept in a proper sanitary condition. Maximum penalty £25, or in default 3 months' imprisonment with hard labour.

192.—*Machinery and boilers.* All boilers and machinery, the breakdown of which might cause injury or loss of life, must be certified once a year as in good order by the proper official. (*Vide* Sec. 96 N.L.O., 1911-20.) Maximum penalty £50, or in default 6 months' imprisonment with or without hard labour.

193.—*Machinery assistants.* An employer who allows a native who is employed in feeding machinery to wear a shirt or long-sleeved singlet, or any protection to the hand except a glove, is liable to a maximum penalty of £50, or in default 6 months' imprisonment with or without hard labour. (*Vide* Sec. 95, N.L.O., 1910-20.)

194.—*Ordinance and regulations.* When ten or more natives are employed, a copy of the Native Labour Ordinance and all amending ordinances, and all Native Labour Regulations thereunder, must be kept at the Manager's headquarters on the plantation, and must be produced when required. (*Vide* Sec. 97, N.L.O., 1911-20.) Maximum penalty £50, or in default six months' imprisonment with or without hard labour.

195.—*General obligations.* In all matters not specially prescribed by Regulation, the obligations of the employer towards the native are as stated in Section 47, N.L.O., 1911-20, viz.:—

"From the time when the native was taken away until he is returned to the place from whence he was taken, to supply him with good and sufficient water, food, medicine, shelter, sleeping quarters, clothing, and bedding, and (if necessary) the means of preparing food."

185.—*Sickness.* At parade the labourers (and their wives and children if any) are inspected to see that they appear in good health, and that any sores and minor sicknesses are receiving adequate treatment. (Sec. 47, N.L.O., 1911-20.) Labourers with ulcers on their legs are usually expected to be given rest from any work involving walking or standing, in order to allow of healing within a reasonable time. Beriberi disease is considered by the Chief Medical Officer to be sufficient ground for cancelling a contract. Dysentery must be at once reported to the nearest Magistrate, *vide* Regulation 54 N.L.O., 1911-20. If within 10 miles of a hospital the patient must be removed to the hospital. If the hospital is within 50 miles, the native may be either removed to the hospital or isolated on the plantation in accordance with the directions in Regulation 55. Maximum penalty, £50, or in default 6 months' imprisonment with hard labour.

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192.—*Machinery and boilers.* All boilers and machinery, the breakdown of which might cause injury or loss of life, must be certified once a year as in good order by the proper official. (*Vide* Sec. 96 N.L.O., 1911-20.) Maximum penalty £50, or in default 6 months' imprisonment with or without hard labour.

193.—*Machinery assistants.* An employer who allows a native who is employed in feeding machinery to wear a shirt or long-sleeved singlet, or any protection to the hand except a glove, is liable to a maximum penalty of £50, or in default 6 months' imprisonment with or without hard labour. (*Vide* Sec. 95, N.L.O., 1910-20.)

194.—*Ordinance and regulations.* When ten or more natives are employed, a copy of the Native Labour Ordinance and all amending ordinances, and all Native Labour Regulations thereunder, must be kept at the Manager's headquarters on the plantation, and must be produced when required. (*Vide* Sec. 97, N.L.O., 1911-20.) Maximum penalty £50, or in default six months' imprisonment with or without hard labour.

195.—*General obligations.* In all matters not specially prescribed by Regulation, the obligations of the employer towards the native are as stated in Section 47, N.L.O., 1911-20, viz.:—

"From the time when the native was taken away until he is returned to the place from whence he was taken, to supply him with good and sufficient water, food, medicine, shelter, sleeping quarters, clothing, and bedding, and (if necessary) the means of preparing food."

Maximum penalty £50, or in default 6 months' imprisonment with or without hard labour.

196.—*Plantation register.* A specimen of the plantation register prescribed by the Regulations will be found given in Part I., Chapter 7, on "Working the Native."

PART VI.

THE NATIVE LABOUR ORDINANCE FOR GUARANTORS.

Guarantees or sureties are required for various purposes in connection with native labourers engaged under contract of service and business firms frequently arrange to sign guarantees on behalf of their clients, on such conditions as may be mutually arranged.

197.—*Guarantee on engaging a native.* The official may refuse to sanction the engagement of a native unless upon the guarantee of at least one sufficient surety, in such sum as he may consider reasonable, that the employer will carry out the terms of the contract of service and will comply with the provisions of the Ordinance. The amount of the surety in this case is usually that of the total wages that will become payable under the contract guaranteed, plus a sufficient sum—perhaps £1 to £3 to cover the cost of returning the native to his village. (N.L.O., Sec. 29.) The form of guarantee is as follows:—

SCHEDULE G.

FORM 1.

GUARANTEE.

Under Section 29 of the Native Labour Ordinance, 1911-20.

WHEREAS on the            day of            19    , a Contract of Service was [or *Contracts of Service were*] entered into between            of            and a certain native [or *certain natives*] named therein, being Contract of Service No.            or *Contracts of Service Nos:*            to            both inclusive]: THEREFORE we, the said            and            of            hereby bind ourselves jointly and severally to the Crown in the sum of            as security for the due observance by the said            and his representatives of the conditions of such Contract [or *Contracts*] and of the provisions of the Native Labour Ordinance 1911-20, insofar as such provisions govern the relations between the said            and the said            . AND we declare that the non-observance by the said            or any of his representatives of any of the aforesaid matters shall be deemed to be a breach by us of this guarantee.

Dated at            this            day of            19    .  
Signed by the said            }  
and the said            }  
in the presence of            }

This guarantee is signed by the intending employer and the guarantor.

198.—The fee payable is 1/- for every 10 natives, or less, named in the guarantee. (N.L.O., Sched. M.)

199.—*Guarantee for removal of natives beyond the Territory.* This refers to the permit to remove natives under contract of service



beyond the boundaries of the Territory for the special purposes mentioned in Part I., Chapter 7, "Working the Native," and Part III., "Masters of Vessels," respectively. No special schedule has been laid down in the Ordinance for a form of guarantee for this purpose, but a guarantee form typed and handed in to the Commissioner or any Magistrate on the following lines would meet the case. Frequently the printed form of guarantee for contracts of service is altered to meet the needs of this guarantee. (N.L.O., Sec. 38.)

#### TERRITORY OF PAPUA,

WHEREAS of is desirous of removing natives beyond the boundaries of the Territory whilst under Contract of Service, for the purpose of [*proceeding as a seaman for a single voyage to a port or ports in Australia as the case may be*] and WHEREAS it is necessary that the said should give security that they will not transfer any native who may be permitted to be so removed to any other person or allow him to be employed on any other vessel save that mentioned in the Permit and that he will bring him back to the Territory and will observe every other condition expressed in the Permit.

NOW THEREFORE we the said and hereby bind ourselves jointly and severally to the Crown in the sum of that the conditions above referred to will be observed. AND we declare that the non-observance by the said or his representatives of any of the aforesaid matters shall be and be deemed to be a breach by us of this guarantee.

Dated at this day of 19 .

Signed by the said  
and the said  
in the presence of

}

200.—This guarantee is signed by the employer and the guarantor. The fee payable is 1/- for every 10 natives, or less, named in the guarantee. On the issue of the permit there is a further fee of 1/- for each native named in the permit. (N.L.O., Sched. M.)

201.—*Guarantee for signing-on natives not yet recruited.* When an employer, or his European overseer, wishes to recruit natives who, when recruited, may have to be signed-on at some Government station where it is not possible to obtain a guarantor, or when such employer gives an order to a licensed recruiter to recruit and sign-on natives under the same circumstances, then a provisional guarantee in the following form should be first arranged. (N.L.O., Sec. 29.) :—

#### FORM 2.

#### GUARANTEE.

Under Section 29 of the "Native Labour Ordinance," 1911-20.

Office of Lodgment.....  
Distinguishing No.....

WHEREAS [*intended recruiter*] intends to recruit natives for [*intended employer's name*] of [*employer's address*] herein called the employer :  
Now, therefore, we, the said employer and [*guarantor's name*] of hereby bind ourselves jointly and severally to the Crown in the sum of in respect of each of such natives who may be so recruited as security for the due observance by the said employer and his representatives of the conditions

of the Contract of Service which may hereafter be entered into by each of such natives with the said employer under the above-mentioned Ordinances, and of the provisions of the said Ordinance insofar as the said provisions govern the relation between the said employer and such natives respectively. AND we declare that the non-observance by the said employer or any of his representatives of any of the aforesaid matters shall be deemed to be a breach by us of this guarantee. AND we further declare that the Contracts of Service which shall hereafter be entered into between the employer and any natives which shall have reference made therein to the above-mentioned office of lodgment and distinguishing number, and that the natives named in such contracts respectively, shall be and be deemed to be for all purposes of this guarantee, the Contracts of Service for the due performance of which, and the natives in respect of whom, this guarantee is given.

Dated at this day of 19

Signed by the said employer  
and by the said  
in the presence of

.....  
Resident Magistrate [or] Assistant Resident Magistrate.

202.—On the above guarantee being signed, a certificate will be issued, called a "Certificate of Lodgment of Guarantee," and this certificate, on presentation to a signing-on official in any part of the Territory, is sufficient warrant for the engagement of the natives recruited, so long as the certificate remains in force. The details as to how long this certificate remains in force, and how it should be used and finally disposed of, will be found in the chapter on Recruiters, (Part II.)

203.—The fee payable on the guarantee is 1/- for every 10 natives, or less, mentioned in the guarantee. There is no fee payable on issue of the certificate of lodgment. (N.L.O., Sched. M.)

204.—The amount of surety required for the above guarantee is on the following scale:—

£100 each native.  
£250 for 10 natives or less.  
£500 „ 20 „  
£750 „ 30 „  
£1000 for over 30 natives. (N.L.O., Sec. 41.)

205.—*Guarantee for removal of a native to Australia for educational purposes or as a personal attendant.* This refers to the permit mentioned in Part I., Chapter 7 "Working the Native." No special form of guarantee has been scheduled, but a guarantee typed out and lodged in duplicate in the following form will meet the case. (N.L.O., Secs. 43-4.):—

TERRITORY OF PAPUA.

Guarantee under Section 44, N.L.O., 1911-20.

WHEREAS of has applied for a Permit to remove a native named of in the said Territory who is under Contract of

Service to the said being Contract of Service No. entered into at on the 19, as a personal attendant [or for educational purposes] to the Commonwealth of Australia: AND WHEREAS the said is a bona fide resident of the said Territory.

NOW THEREFORE in consideration of such Permit being granted, we the said and of hereby bind ourselves jointly and severally to the Crown in the sum of as security that the said will only take the said to the place or places as are authorised by the said Permit and will return the said to in the said Territory on or before the time stated in the said Permit and that the said will duly perform and carry out the conditions named in the said Permit and the provisions of the Native Labour Ordinance 1911-20 insofar as such provisions govern the relations between the said and the said. AND we, [or I], the said further covenant and agree to pay the wages accruing to the said native until his return to in accordance with the provisions of the said Permit. AND we [or I], the said further agree and declare that the non-performance or non-observance by the, said of any of the aforesaid matters shall be deemed by us [or me] to be a breach of this guarantee.

Dated at this day of 19 .

Signed by the said  
and the said  
in the presence of

}

206.—The security required under the above guarantee is not less than £100 for each native removed under the permit.

207.—The fees are:—

Guarantee—1/- for every 10 natives, or less, named therein.

Permit—10/- for each native named therein. (N.L.O., Sched.

M.)

Having given specimens of the forms of security which guarantors will be called upon to sign, it is now necessary to consider the *special liabilities of guarantors*, and the protection they are afforded at law.

At one time it was possible for an employer of labour to engage a number of native labourers under protection of the guarantee of a business firm, proceed to get hopelessly into debt without paying any of the wages due to the native labour, and then, if he felt so disposed, *snap his fingers at the guarantors* and deliberately continue to work his natives for his own benefit right through to the end of their contracts without any intention of paying their wages, knowing that the guarantors must pay if he does not.

208.—*Guarantors are now protected* to the extent that they can take steps to cut short their loss immediately there is any danger. Upon application to a Magistrate, the guarantor may be released by the order of the Magistrate from his liability under the guarantee upon such conditions as may be prescribed, and the employer is then required to file a fresh guarantee in such sum as the Magistrate may consider reasonable to cover the unfulfilled terms of the contracts. Failure of the employer to find a fresh guarantor is sufficient ground for *immediate cancellation of the contracts* of the natives concerned. (N.L.O., Sec. 29A.)

The procedure to be adopted in obtaining release from a guarantee is as follows:—

The guarantor will cause to be served upon the employer of the natives a notice that on a certain date he intends to apply to a Magistrate to be relieved from his liability under the guarantee. The employer is entitled to not less than 4 weeks' notice of the application, and the notice must state the grounds upon which it is to be made. The following are good grounds for releasing the guarantor:—

- (a) that the employer is unable to pay his debts as they fall due.
- (b) that the employer is about to leave the Territory.
- (c) that the employer is not carrying out the provisions of the Ordinances and Regulations relating to native labour. (N.L.O., Stat. Rules, No. 11 of 1921.)

It is in the discretion of the Magistrate to grant or refuse the application of the guarantor for release, and if the application be granted it may be made subject to all or any of the following conditions:—

- (a) that the contracts of service be cancelled.
- (b) that wages due to the natives be paid in full.
- (c) that the natives be returned home.
- (d) that the costs of carrying out these conditions be borne by the guarantor.

Another matter in which the guarantor was left in a dangerous position formerly was that of being immediately answerable under legal proceedings for recovery of the amount of security entered into for an employer, in the event of a breach by such employer, with probably *no satisfactory recourse against the defaulter* for recovery.

209.—The guarantor is now protected to the extent that any moneys he is compelled to pay under his guarantee becomes a *preferential charge on the property of the employer*, and rank over and above all mortgages, encumbrances, charges and liens, and over any debts, however secured, with the single exception of native wages which rank first of all. (N.L.O., Sec. 55B.)

210.—A guarantor for the engagement of a native under contract of service remains liable only while the original employer remains a party to the contract. If the native is transferred to another employer *all liability of the guarantor thereupon ceases*, though a Magistrate will not sanction such a transfer unless a fresh guarantee is arranged. (N.L.O., Sec. 32 (3).)

211.—Any person who, with intent to evade any of the provisions of the Native Labour Ordinance, makes a *fictitious sale or hire*

of a vessel, or a *fictitious sale or lease* of any premises to any person, is guilty of an offence against the ordinance. (N.L.O., Sec. 64.)

212.—*A breach of guarantee is deemed to be a breach of duty within the meaning of the Justices Act, and proceedings may be taken against the defaulting guarantor at any time within three years of the default. A principal and his sureties may be proceeded against either jointly or separately, and no release or compromise with the principal releases any of his sureties.* (N.L.O., Sec. 88.)

## PART VII.

### THE NATIVE LABOUR ORDINANCE FOR OFFICIALS.

213. The Native Labour Ordinance confers certain specific powers and authority on particular officials in regard to native labour matters, and it may be of interest to the general reader to summarise these for convenient reference.

“Inspectors,” and “Qualified Officers,” under the Ordinance are appointed by the Lieut.-Governor, and in all cases must be salaried officers of the Government. (N.L.O., Secs. 6, 7, 8.)

A “Magistrate,” for the purposes of the Ordinance means a Resident Magistrate or an Assistant Resident Magistrate. (N.L.O., Sec. 3.)

The “Lieut.-Governor” for the purposes of the Ordinance means the Lieut.-Governor with the advice of the Executive Council. (N.L.O., Sec. 3.)

### SPECIAL POWERS.

214.—*The Lieut.-Governor (only) may:—*

Appoint Native Labour Inspectors and qualified officers. (N.L.O., Sec. 6.)

Proclaim any portion of the Territory to be a settled labour district, or extend the boundaries of settled labour districts. (N.L.O. Sec. 9.)

Order any particular native, or the male natives of any particular village, to be free from the restrictions relating to removing natives beyond a certain distance from their homes. (N.L.O., Sec. 10.)

Authorise certain persons to issue recruiter's licenses and ships' licenses. (N.L.O., Sec. 14.)

Revoke any recruiter's license or ship's license after inquiry. (N.L.O., Sec. 17.)

Authorise certain persons to seize and detain unlicensed ships being used in recruiting. (N.L.O., Sec. 18.)

Proclaim certain places closed for recruiting labour, or certain places closed for working natives. (N.L.O., Sec. 21.)

Order that the restriction of 18 months' maximum service for natives engaged for mining and carrying be extended. (N.L.O., Sec. 26.)

Proclaim a shorter maximum period than the general provisions of the Ordinance allow for any class of engagement. (N.L.O., Sec. 26.)

Forbid by proclamation the re-engagement of natives for work in any specified district, or of natives recruited in or belonging to any specified district. (N.L.O., Sec. 30 (2).)

Proclaim that natives of certain districts must not be transferred from one employer to another. (N.L.O., Sec. 32 (2).)

Proclaim any island or islands in the Western Pacific as a place or places to which natives may be removed under contract of service as seamen for a single voyage and return. (N.L.O., Sec. 38 (3).)

Proclaim certain additional, cancelled, varied or reduced places to which natives may be removed from the Territory under a permit. (N.L.O., Sec. 38 (3).)

Approve and gazette any additional town in which consent may be given for employers to trade with their native employees during or within six weeks after expiration of contract of service. (N.L.O., Sec. 54 (2).)

Appoint special officers with power to enter premises on which natives are employed, or which are or have recently been occupied by natives. (N.L.O., Sec. 59.)

Authorise special officers with power to board and inspect a vessel carrying or recruiting natives. (N.L.O., Sec. 60.)

Appoint special officers with power to inspect and question any native engaged or any person in charge of an engaged native. (N.L.O., Sec. 61.)

Proclaim the suspension of contracts of service during epidemics. (N.L.O., Sec. 65.)

Suspend by proclamation any of the provisions of the Ordinance relating to natives being made use of in recruiting labour. (N.L.O., Sec. 82 (5).)

Approve certain persons and fix certain fees for inspecting and certifying to boilers and machinery the breakdown of which might cause injury or loss of life. (N.L.O., Sec. 96.)

Order an inquiry on any matter affecting or relating to the recruiting, engagement, contract of service, or welfare of a native under contract of service, and order exemption of the Government, in his discretion, from liability to recompense employer for expenses of such inquiry. (N.L.O., Sec. 97 (c).)

Add by gazette notice the name of any additional locality to become subject to the regulations controlling removal of natives from the Port Moresby area. (N.L.O., Reg. 45.)

Suspend by gazette notice the operation of any of the Native Labour Regulations. (N.L.O., Reg. 61.)

Declare by proclamation that recruits of any specified district must be taken for engagement before an officer of the same division. (N.L.O., Sec. 19.)

Make general or special regulations on matters affecting the interests of the native, or necessary or convenient for giving effect to the provisions of the Ordinance. (N.L.O., Sec. 98.)

Approve by gazette notice any kind of beans considered suitable for native rations. (N.L.O., Reg. 24.)

Extend, by proclamation, to any other specified town or place, the regulations relating to natives employed in the town of Port Moresby. (N.L.O., Reg. 30.)

Declare, by gazette notice, any place in the Territory to be a centre of epidemic. (N.L.O., Reg. 31.)

*215.—The Commissioner for Native Affairs and Control (only) may:—*

Exempt natives from the obligation to be employed under a written contract of service. (N.L.O., Sec. 22.)

Give consent to the engagement of a native for two periods of three years without being returned to his village and without spending the prescribed full year free of indenture. (N.L.O., Sec. 26.)

Decide on the form and particulars to be adopted for death or desertion notices. (N.L.O., Sec. 31.)

Vary a contract of service in respect to the places stipulated for payment of wages and the obligation to return a native to his home. (N.L.O., Sec. 33 (3).)

Enforce at law preferential charges relating to native wages, costs of recovery, and interest accruing. (N.L.O., Sec. 55A (4).)

Allow certain vegetable equivalents for prescribed daily ration issues to natives under contract of service. (N.L.O., Reg. 24.)

Give consent to the engagement or re-engagement of a native under successive contract of service for a longer aggregate period than four years computed from the time the native was last in his village free of indenture. (N.L.O., Sec. 26.)

*216.—The Commissioner or a Magistrate (only) may:—*

Grant a permit for removal beyond the Territory of a native under contract of service. (N.L.O., Sec. 38.)

Take charge of natives, maintain them, and return them home, and recover expenses by legal action against defaulting employer or other person liable. (N.L.O., Sec. 50.)

Certify copies of contracts of service to be correct for the purpose of exhibits in Court proceedings. (N.L.O., Sec. 93A.)

Direct curtains or other protection to be provided against mosquitoes when necessary for natives under contract of service. (N.L.O., Reg. 15.)



217.—*The Commissioner, a Magistrate, or an Inspector, (only), may:—*

Condemn a building as unfit for habitation by natives. (N.L.O., Reg. 12.)

Decide the number of natives that may be assigned to any dwelling or apartment. (N.L.O., Reg. 12.)

218.—*The Commissioner, a Magistrate, Inspector, or qualified officer (only), may:—*

Demand production at all reasonable times of books, contracts of service, registers and licenses, which are required to be kept, or are issued, under the Native Labour Ordinance or Regulations. (N.L.O., Sec. 93c.)

219.—*The Commissioner, an Inspector, or a qualified officer, (only), may:—*

Proceed for and recover in the name of a native any wages due to such native. (N.L.O., Sec. 55.)

220.—*The Commissioner, Chief Inspector of Native Affairs, or a specified public officer (only), may:—*

By notice in writing require an employer or person in charge of any native to procure the attendance of the native at any inquiry ordered by the Lieut.-Governor, or to deliver the native into the custody of any person named in the notice. (N.L.O., Sec. 97c.)

221.—*The Commissioner, an officer of his department, or an officer appointed under the Ordinance (only), may:—*

Demand at all reasonable times the production of the prescribed plantation register and duplicate as laid down in the Regulations. (N.L.O., Regulations, No. 2 of 3/2/15.)

222.—*The Commissioner, Government Secretary, Magistrate, or Inspector (only), may:—*

Demand production of an up-to-date copy of the Native Labour Ordinance and Regulations at all reasonable times at the headquarters of an employer or manager where natives to the number of 10 or more are employed. (N.L.O., Sec. 97.)

223.—*An officer of the Department of Native Affairs, or a Magistrate (only), may:—*

Certify as to whether a building is sufficient for the reception of natives who may require medical aid or treatment, when the native labour employed exceeds fifty. (N.L.O., Reg. 10.)

224.—*An officer of the Department of Native Affairs, a Magistrate or an Inspector (only), may :—*

Authorise the admission of a native to any native hospital, subject to the examination by the medical officer. (N.L.O., Reg. 16.)

Order an employer to immediately remove a native to a native hospital for medical examination and treatment, provided such hospital is within ten miles of the native. (N.L.O., Reg. 17.)

225.—*A Magistrate, Officer of Customs, European member of the police force, or a specially authorised person (only), may :—*

Seize and detain an unlicensed ship being used in recruiting. (N.L.O., Sec. 18.)

226.—*A Magistrate of a division (only), may :—*

Issue a permit allowing a recruiter to take recruits before some other Magistrate, Inspector or qualified officer for engagement. (N.L.O., Sec. 19.)

227.—*A Magistrate (only), may :—*

Sanction in writing the transfer of a native by one licensed recruiter to another. (N.L.O., Sec. 32 (1).)

Sanction in writing the transfer or hire of a native under contract of service from one employer to another. (N.L.O., Sec. 32 (2).)

Release an original employer of a hired native, and his guarantor as regards payment of wages and returning the native home (N.L.O., Sec. 32 (4).)

Cancel a contract of service after an inquiry of which due notice has been given to the parties ; or upon and after the dismissal of any complaint made by an employer against his native employee for an offence under the Native Labour Ordinance or Regulations ; or upon and after conviction of an employer or his European employee on complaint of a native employee for an offence under the Ordinance or Regulations ; or upon and after conviction of the employer or his European employee for assault upon a native employee. (N.L.O., Sec. 33 (1).)

Vary a contract of service, with consent of the parties, except with respect to place of payment and returning the native home. (N.L.O., Sec. 33 (2).)

Cancel a contract of service or vary its terms on Court proceedings arising out of complaint of any of the parties to the contract. (N.L.O., Sec. 34.)

Give written consent for a vessel to carry a native girl or woman as a *bona fide* passenger. (N.L.O., Sec. 37.)

Give a certificate in writing absolving any person from an obligation imposed upon him by the Native Labour Ordinance. (N.L.O., Sec. 49.)

Give written consent to an employer or late employer of a native to sell goods to such native, or exchange, barter, or deal in goods with such native up to and within the prescribed six weeks' limit after expiry of contract. (N.L.O., Sec. 54 (2).)

Notify a person in charge of a vessel that the vessel is considered unfit to carry natives, the carrying of natives then becoming an offence until withdrawal of the notice. (N.L.O., Sec. 58.)

Burn or otherwise destroy any building which is or has been occupied by natives, or in which natives are or have been employed, if in his opinion (after inquiry upon due notice) the building or any part of it is in such a filthy or unwholesome condition that the health of any native labourer is likely to be endangered by working or residing in it. (N.L.O., Sec. 62.)

Proclaim any piece of ground an infected area, if he has reasonable grounds for supposing (after inquiry upon due notice) that it would be prejudicial to the health of natives to work or reside within it. (N.L.O., Sec. 62 (2).)

Relieve a surety from his liability under a guarantee. (N.L.O., Sec. 29A.)

Cancel a contract of service on failure of an employer to give a fresh guarantee after an original surety has been released. (N.L.O., Sec. 29A (4).)

Confirm, cancel or vary an employer's order regarding plantation native labourers visiting an infected centre. (N.L.O., Reg. 46.)

• 228.—*A Magistrate or Inspector (only) may:—*

Cause a native and his trade goods to be returned home, if the person responsible fails or neglects to do so; and may recover reasonable expenses of so doing from such person. (N.L.O., Sec. 48.)

Give written consent for a native employee (other than a domestic servant, who does not require permission) to remain or be within the town limits of Port Moresby after the hour of 7 p.m. (N.L.O., Reg. 29.)

229.—*A Magistrate, Inspector or qualified officer (only) may:—*

Absolve, by writing, a recruiter or employer from all further responsibility after recruiting a native. (N.L.O., Sec. 20 (3).)

Refuse to sanction the engagement of any native brought before him for the purpose of entering into a contract of service, on stating the grounds of refusal to the intending employer. (N.L.O., Sec. 23.)

Require from a European overseer the production of a written authority signed by his employer authorising him to recruit for the

employer, when such overseer signs a recruiter's statement on his employer's account. (N.L.O., Sec. 24 (4).)

Insert in a contract of service made before him a provision as to the place or places at which wages are to be paid, and direct that payment of the whole be made at a particular place, or that certain proportions be paid at certain places. (N.L.O., Sec. 28.)

Grant a permit for the wife and children of a native under contract of service to accompany him; or to allow a native and his wife and children to be removed from their homes to any place in the Territory for the purpose of education or the advancement of religious teaching. (N.L.O., Sec. 36.)

Permit wages to be paid to a native in the notes of a recognised bank in the Territory (in addition to notes already, by law, legal tender) provided no exchange is likely to be charged. (N.L.O., Sec. 54.)

Demand and receive, and take legal proceedings to recover wages due or property belonging to a deceased native. (N.L.O., Sec. 56.)

Take a native's wages into his custody when being paid under the contract of service, if he thinks it necessary for the protection of the native. (N.L.O., Sec. 54A.)

**230.—***A Magistrate, Inspector, or officer specially appointed (only), may:—*

Enter at all reasonable hours any premises in which any native is employed, or which are or have recently been occupied by natives, whether under contract of service or otherwise. (N.L.O., Sec. 59.)

At all reasonable hours inspect any native in the service of any person, and question such native and such person or any person who has charge of the native, in regard to any matter which in the opinion of the officer affects the welfare of the native. (N.L.O., Sec. 61.)

Prosecute any person who hinders or obstructs him while acting within his powers, or who without lawful excuse refuses to produce, or withholds any document relating to the carrying, recruiting or employment of natives, or who declines to give or withholds any information lawfully required. (N.L.O., Sec. 63.)

**231.—***A Magistrate, Inspector or person specially authorised in writing (only), may:—*

Board and inspect any vessel carrying or recruiting natives, and may require the production of any document that relates to the carrying, recruiting or employment of natives, whether such natives be at the time on board or not, and may examine any person on board as to any fact the knowledge of which is material to the due execution of the duty of such Magistrate, Inspector or authorised person. (N.L.O., Sec. 60.)

Prosecute any person who hinders or obstructs him while acting within his powers, or who without lawful excuse refuses to produce, or withholds, any document relating to the carrying, recruiting or employment of natives; or who declines to give, or withholds, any information lawfully required. (N.L.O., Sec. 63.)

232.—*Any European Officer of the Government (only), may:—*

Institute legal proceedings for the recovery of moneys and expenses incurred by the Crown in maintaining or returning home any native. (N.L.O., Sec. 50.)

Institute legal proceedings on a breach of guarantee. (N.L.O., Sec. 88.)

233.—*A Government Medical Officer, Magistrate or Labour Inspector (only), may:—*

Demand the production for inspection of the prescribed medical permit for removal of natives from Port Moresby, at any time during the course of such removal. (N.L.O., Reg. 43.)

234.—*A Government Medical Officer (only), may:—*

Withhold consent for a master of a vessel to land between Port Moresby and Samarai any native being returned home from a centre of epidemic. (N.L.O., Reg. 33 (2).)

Withhold permission to land any native at a port from a centre of epidemic. (N.L.O., Reg. 34.)

Give any reasonable directions to a master of a vessel bringing natives from a centre of epidemic, for cleaning and disinfecting the vessel. (N.L.O., Reg. 34.)

Direct the master of a vessel bringing natives from a centre of epidemic to take such natives to some place set aside for the purpose until discharged under his order. (N.L.O., Reg. 35.)

Withhold permission for an employer to remove or to permit the removal of any time-expired or other native labourer from Port Moresby to any place outside a radius of 15 miles from the town; and may require any employer desirous of so removing a native to fill in and sign the prescribed schedule. (N.L.O., Reg. 40.)

Grant written permission to remove natives from Port Moresby as above, either unconditionally or subject to any reasonable instructions and precautions he may think fit to give. (N.L.O., Reg. 42.)

Direct an employer of time-expired and other native labourers who are leaving an "infected centre," to take them to some place set aside for the purpose until discharged on the order of a Government Medical Officer. (N.L.O., Reg. 51.)

Withhold consent for a native labourer or time expired native labourer, who has had dysentery, to be taken or sent to any other part of the Territory where dysentery is non-existent, before the expiration of two months from the date of his recovery. (N.L.O., Reg. 53.)

235.—*A Superintendent of an epidemic area (only), may:—*

Control all labourers within the area, and exercise authority over all Government officers employed in connection with the labourers except the Government Medical Officer and his medical staff. (N.L.O., Sec. 67.)

Specify any place or places from time to time to which labourers within the area must proceed. (N.L.O., Sec. 68.)

Fix the rate of wages for labourers who are put to any special work within an epidemic area, other than work connected with the construction of buildings, roads and latrines, digging of trenches, carrying of stores and building and other material, the cleansing of labourers' quarters, attendance at hospital, and other matters which may appear desirable for the welfare of the labourers in the epidemic area. (N.L.O., Sec. 68.)

Permit a labourer in an epidemic area to return to his employer (subject to the consent of the medical officer if present) to complete his contract of service subject to any conditions imposed. (N.L.O., Sec. 69.)

Withhold consent to cancellation of a contract of service in an epidemic area during any period of suspension of labourers' contracts. (N.L.O., Sec. 69.)

## PART VIII.

### THE TRANSACTIONS WITH NATIVES ORDINANCE.

236.—This is an Ordinance for regulating certain transactions which affect natives, and *the term "native," has here a much wider meaning than in the Native Labour Ordinance.*

In the Native Labour Ordinance the word "Native" simply means an aboriginal native of the Territory of Papua, and that Ordinance applies only to such natives.

Here we have an Ordinance which applies both to aboriginal natives of the Territory of Papua, *and, in addition, to half-castes and various alien native races* resident in Papua, as follows:—

- (a) Aboriginal natives of New Guinea or adjacent islands.
- (b) Aboriginal natives of Australia.
- (c) Aboriginal natives of Pacific Ocean, East Indian Islands; and Malaysia, who live after the manner of aboriginal natives of Papua.
- (d) Natives wholly or partly descended from any of the above, or from aboriginal natives of Papua, who live after the manner of aboriginal natives of Papua. (The Ordinance Interpretation Ordinance of 1911, Sec. 22.)

Nothing in this Ordinance affects lawful contracts or agreements coming within the scope of the Native Labour Ordinance or the "Pearl, Pearl-shell and Beche-de-mer Fishery Ordinance." (T.N. Ord., Sec. 2.)

237.—It is unlawful to make any contract with a native, the carrying out of which would necessarily involve the breach by a native of any of the *Regulations of the Native Regulation Board*: that is, the general native regulations (as distinct from Native Labour Regulations) in force governing the domestic, social and political life of the native population of the Territory. The definition of a "native" for this purpose is the same as that given above. (N.L.O., Sec. 4.)

Certain classes of contracts are specified as unlawful and void as against a native unless certain requirements are fulfilled; but *this does not affect the right of the native against the other party to the contract*, and should the native bring an action the Court may ignore the terms of the contract and give such verdict as it considers equitable in the circumstances. (T.N. Ord., Sec. 6.)

238.—To make the contracts in question legally enforceable against a native it is necessary that they be in writing and contain the names and residences of every party thereto, and what is to be done under the contracts by each of the parties; and the contracts must be approved by an Inspector appointed for the purpose: usually the local Magistrate. (N.L.O., Sec. 5.)

*To obtain approval of a contract*, three copies are prepared and delivered to the Inspector and signed by the parties who are not natives (or by their agents) in the Inspector's presence. The contracts are endorsed "approved" or "disapproved," as the case may require, and are signed by the Inspector. (N.L.O., Sec. 7.)

239.—The various classes of contracts requiring approval before they become legally enforceable against a native are as under:—

- (1) Contracts for the sale or purchase of vessels or boats, except native canoes.
- (2) Job contracts for the performance of a piece of work by a native;
  - (a) Where the work is to be performed at a place distant more than twenty-five miles in a straight line from the usual place of residence of such native, or
  - (b) Where the performance of the contract must necessarily extend to a period of twelve months or over, or
  - (c) Where the consideration or remuneration to be paid under the contract to any individual native is of the value of over five pounds.
- (3) (a) Contracts for the sale of any description of property to a native on credit or partly on credit.
- (b) Contracts for the loan of money to a native.
- (c) Contracts whereby a native undertakes the sale of any goods on commission or for reward when such goods or any of them are in the possession or control of such natives.
- (d) Contracts for the hire or charter of, or for repairs to, any vessel or boat except native canoes.
- (e) Contracts for the future delivery of any goods in any form by a native either directly or indirectly.
- (f) Contracts for the purchase in advance of crops of coconuts or crops of any agricultural product from a native, either directly or indirectly. (N.L.O., Sec. 5), (Gazette No. 3 of 6th March, 1918.)

240.—Power is reserved to proclaim from time to time any other contracts as unlawful and void as against a native unless complying with the provisions of the Ordinance. (T.N. Ord., Sec. V.)



241.—Of the above list, it will be seen that classes 3 (a) and 3 (f) specially aim to prevent a native indiscriminately running up accounts in a store for goods supplied on credit, or mortgaging his crops to a trader or storekeeper in advance for goods supplied, or other consideration. By the denying to the trader or storekeeper of any redress at law in these matters the business necessity arises to exercise the greatest caution and discrimination in dealings with natives.

Before endorsing approval of any of the above classes of contracts the Inspector would satisfy himself that the proposed arrangements are reasonable and equitable, and capable of being performed by all the parties to it.

242.—The important point in regard to all the above classes of contracts is, that the European loses his right of redress against the native if the contract in question has not been properly approved by an Inspector, though he still remains liable to an action against him by the native if the native feels aggrieved in any way concerning it. In other words, the contract has no legal backing for the European, yet he cannot repudiate it as against the native. (T.N. Ord., Sec. 6.)

## PART IX.

### THE PEARL, PEARL SHELL AND BECHE-DE-MER ORDINANCE.

This is an Ordinance having considerable bearing on native labour in Papua, and its special provisions, in so far as they are likely to affect natives employed in the pearling and beche-de-mer fishing, are here dealt with.

243.—The term "*Pearl-shell and beche-de-mer fishery*" is defined to be the business of diving for, collecting, preparing, curing, storing or carrying from any place within the Territory to any other place within the Territory, pearl oysters or pearl oyster shells, trochus shell, or the sea-slug commonly called "*beche-de-mer*," or any other fish or shell or marine product which the Lieut.-Governor in Council may by proclamation in the Gazette include within the scope of the Ordinance. (P.P. & B. Ord., Sec. 4.)

244.—A "*ship*," is defined as every description of vessel used in navigation or in the fishery, not being a "*boat*" as defined hereunder. (P.P. & B. Ord., Sec. 4.)

A "*boat*," is any vessel not exceeding two tons burden which is usually hoisted to a ship's davits or carried on board of a ship, and includes a boat or punt used at a fishing station and not attached to or used in connection with a ship, and also a canoe used or employed by a person that is not a native. (P.P. & B., Ord., Sec. 4.)

A "*master or employer*," is any person other than a pilot who is for the time being in command or in charge of any ship or boat, or who is in charge of any fishery. (P.P. & B. Ord., Sec. 4.)

245.—It is unlawful to use or employ any ship or boat in the pearl shell and beche-de-mer fishery within the Territory, or 3 miles seaward without a license, and a license will not be granted for any ship or boat unless it is owned wholly by "*qualified persons*," i.e. :—

- (a) Natural born British subject.
- (b) Naturalised British subject.
- (c) Persons made denizens of the Territory or of the Commonwealth of Australia by letters of denization.
- (d) Bodies corporate established under British law. (P.P. & B. Ord., Secs. 6, 7.)

An exception is made for renewal of license in the case of any person who has already continuously held a license from 1904 onwards to the date of the present Ordinance (1911).

If any unqualified person acquires any interest in any ship or boat engaged in the fishery, the license forthwith becomes null and void. (P.P. & B., Ord., Sec. (7) (3).)

Every person in charge of a ship engaged in the pearl shell and beche-de-mer fishery, and every person employed in the fishery as a diver and using a diving apparatus, *must hold a license* permitting him to be so employed. Any owner, or agent or manager for an owner, who employs, authorises or permits an unlicensed person to so take charge of a ship or use diving apparatus, is *liable for an offence* against the Ordinance. (P.P. & B. Ord., Sec. 25.)

246.—It is unlawful to employ any *aboriginal native of Papua* in the pearl shell and beche-de-mer fishery for a longer period at any one time than *one month*, except under a written contract of service under the Native Labour Ordinance. Such native, however, is not deemed to be employed in the fishery if he simply contracts to work in the vicinity of his home for wages, or for payment by results, so that whilst working he is able to live in his home. (P.P. & B. Ord., Sec. 31.)

247.—Every diving dress and air-pump, and all air-tubes and gear used in the fishery in connection with diving must be submitted to a Magistrate or Inspector for *examination once at least in every period of six months*. To use or permit the use of same without inspection having taken place within the previous six months is an offence against the Ordinance. (P.P. & B. Ord., Sec. 43.)

An Inspector may *condemn any gear or tackle* against further use. (P.P. & B. Ord., Sec. 44.)

248.—It is unlawful to buy pearls without a license, except from the holder of a *pearl-buyer's license*. This section aims at preventing the purchase of pearls from natives without first obtaining a license to do so. *No native can hold a pearl-buyer's license*. (P.P. & B. Ord., Sec. 48.)

248a.—When an offence against the Ordinance is committed by a person employed in or in connection with a ship or boat, the master or person for the time being in charge of such ship or boat is *also deemed guilty* of the offence unless he proves that he issued proper orders for the observance of the Ordinance, and used all reasonable means to enforce such observance, and that the offence

in question was actually committed by some other person without his connivance. (P.P. & B. Ord., Sec. 52A.A., P.P. & B. Ord., Sec. 60.)

243b.—The *definition of a native* for the purposes of this Ordinance is :—

- (a) An aboriginal native of New Guinea or adjacent islands.
- (b) An aboriginal native of any part of Papua.
- (c) An aboriginal native of Australia or adjacent islands.
- (d) An aboriginal native of Pacific Islands, East Indian Islands or Malaysia.
- (e) Descendents of any of the above classes, half-caste or otherwise. (Ordinance Interpretation Ordinance, Sec. 22.)

The designation of " native " only applies, however, so long as they live after the manner of aboriginal natives of New Guinea.

## PART X.

### THE ARMS, LIQUOR AND OPIUM PROHIBITION ORDINANCE.

This is an Ordinance to control the supplying to natives of firearms, ammunition, explosives, intoxicating liquor or opium, and it is necessary for employers of natives to be familiar with the particular restrictions that may have to be borne in mind as applicable to their employees.

249.—A “native,” for the purposes of this Ordinance, means every person in the Territory not wholly of European descent. (A.L. & O. Ord., Sec. 3.)

250.—It is important to note that no right of action is given in any Court in the Territory for the recovery from a native of any debt or the enforcement of any agreement or obligation contracted or entered into, with a native in respect of any firearm, ammunition, explosive, intoxicating liquor or opium supplied to such native. (A.L. & O. Ord., Sec. 5.)

#### FIREARMS AND AMMUNITION.

251.—“Firearm,” means every kind of gun or pistol used or intended for the discharge of projectiles of any kind, and also any part of such gun or pistol. (A.L. & O. Ord., Sec. 3.)

“Ammunition,” includes all varieties of gunpowder and any other explosive agent used or that could be used with firearms, and all shot or other projectable and any other articles ordinarily used with firearms, as well as all materials that could be used in the preparation of ammunition. (A.L. & O. Ord., Sec. 3.)

252.—It is illegal to supply, to any native without a permit, by sale or gift, or in any other way, either directly or indirectly, or to furnish or entrust any native with any firearm or ammunition. The penalty is a fine from £20 up to £200 with or without imprisonment from one month up to two years. (A.L. & O. Ord., Sec. 4.)

*Exceptions*—Firearms or ammunition may be entrusted to a native for the purpose of immediate transport only. (A.L. & O. Ord., Sec. 11.)

A special arms permit may be issued to any native authorising him to have in his possession and to use firearms for any period specified up to one year. (A.L. & O. Ord., Sec. 12.)

*A general arms permit* may be issued to any European to allow a native in his service to use firearms subject to being under the direct control of a European to be named on the permit. (A.L. & O. Ord., Sec. 13.)

The fee for each of the above permits is 2/6. The issue is purely discretionary on the part of the official (usually a Magistrate) authorised to issue permits under the Ordinance, and permits may be revoked after issue. (A.L. & O. Ord., Sec. 16.)

The special arms permit allows *firearms in the uncontrolled use of a native*, and is therefore issued only in exceptional cases. The general arms permit is principally to meet the needs of employers who use a "*shooting boy*," for obtaining game for domestic purposes, the gun and ammunition being under a *specified European's direct control*.

252a.—Every permit for firearms includes ammunition. (A.L. & O. Ord., Sec. 14.)

Any native having firearms or ammunition in his possession without a permit is liable to severe penalty, and the articles may be seized. (A.L. & O. Ord., Sec. 7 ; A.L. & O. Ord., Sec. 6.)

#### EXPLOSIVES.

253.—The term "explosive," includes all varieties of gunpowder blasting powder, nitro-glycerine, dynamite, and all compound and modifications of these ; also any other articles that can be exploded with such violence as to cause danger to human life ; also all materials that could be used in preparing such an explosive. (A.L. & O. Ord., Sec. 3.)

254.—It is illegal to supply to any native without a permit, by sale, gift or in any other way, either directly or indirectly, or to furnish or entrust any native, with explosives. The penalty is a fine from £20 to £200, with or without imprisonment from one month up to two years. (A.L. & O. Ord., Sec. 4.)

*Exception.* Explosives may be entrusted to a native for the purpose of immediate transport only. (A.L. & O. Ord., Sec. 11.)

*An explosives permit* may be issued to any European, authorising the use of explosives by any of his native employees specified, subject to their being under the direct control and immediate personal supervision of a European whilst so using the explosive. The permit fee is 5/-. (A.L. & O. Ord., Sec. 13A.)

A native is subject to the same penalties for having explosives in his possession without a permit as for firearms and ammunition. (A.L. & O. Ord., Sec. 7.)

The dynamiting of fish in the waters of the Territory for food, and the use of explosives for various works where natives are employed, necessitates provision in the legislation for the handling of explosives by natives, under supervision, but the conditions under which permits may be issued are necessarily stringent as a safeguard against accident. Even Europeans accustomed to the use of explosives have in the past suffered maiming and injury through the careless handling of dynamite.

### INTOXICATING LIQUOR.

255.—The term “intoxicating liquor” includes all spirituous compound and all fermented liquors, and any mixture of which part is spirituous or which contains fermented liquors, and any mixture or preparation containing any drug capable of producing intoxication. (A.L. & O. Ord., Sec. 3.)

256.—*It is illegal to supply to any native without a permit by sale, gift or in any other way, either directly or indirectly, or to furnish or entrust any native with intoxicating liquor.* (A.L. & O. Ord., Sec. 4.)

*Exceptions.* (a) Liquor may be entrusted to a native for the purpose of immediate transport only. (A.L. & O. Ord., Sec. 11.)

(b) In case of urgent cause or necessity, without recompense or compensation, intoxicating liquor may be given solely and purely for medical purposes. But to avoid penalty under the Ordinance the person responsible must be able to prove clearly and conclusively the existence of urgent necessity. (A.L. & O. Ord., Sec. 9.)

Intoxicating liquor may be seized and the native punished in the same way as for having firearms in his possession without a permit. (A.L. & O. Ord., Secs. 6, 7.)

257.—*A liquor permit may be issued, under discretion, to permit the drinking of intoxicating liquor, but only to such persons as do not come under the following classes:—*

- (a) Aboriginal natives of New Guinea or Papua or adjacent islands.
- (b) Aboriginal natives of Australia.
- (c) Aboriginal natives of Pacific Ocean, East Indies, or Malaysia.
- (d) Any person wholly or partly descended from the above classes. (A.L. & O. Ord., Sec. 15.)

Provided any member of the above four classes of persons lives after the manner of the aboriginal natives of New Guinea or adjacent islands, he cannot obtain a liquor permit. Provision is thus made to remove the liquor restrictions by issuing a permit in the cases of aliens or aboriginal or half-caste natives who are above the class that still lives after the manner of aboriginal natives. The permit, however, is necessary; permission to use intoxicating liquor does not exist as of right to any but persons wholly of European descent.

The fee for a liquor permit is 2/6.

#### OPIUM.

258.—“Opium,” includes every preparation of opium and every article containing any of the active ingredients of opium. (A.L. & O. Ord., Sec. 3)

259.—*It is illegal to supply to any native without a permit by sale, gift, or in any other way, either directly or indirectly, or to furnish or entrust any native with opium, and the penalty is the same as that prescribed for the illegal supplying of firearms. The native also, is punishable for having opium in his possession, as in the case of firearms. (A.L. & O. Ord., Sec. 4.)*

*Exception.* Opium may be given to a native for medical purposes provided it is in medical form, and in quantities not excessive. (A.L. & O. Ord., Sec. 10.)

260.—There is no provision made under the Ordinance at present for the issue of a permit to supply opium to a native. It is therefore forbidden to supply a native with opium under any circumstances other than to meet a medical emergency as above mentioned.

The permission to supply arms, ammunition, explosives and intoxicating liquor to natives without a permit for the purpose of immediate transport, does not extend to opium.



## PART XI.

### THE NATIVE CROWN SERVANTS ORDINANCE.

261.—This is a short Ordinance to regulate the duties of a native in Government employ, and contains provisions as in the Native Labour Ordinance in regard to:—

- (a) Neglect to enter service after signing agreement.
- (b) Deserting.
- (c) Neglect of work.
- (d) Forfeiture of wages for period lost from service through a conviction for an offence.
- (e) Knowingly inducing or assisting a native to desert.
- (f) Contracts made with a native already under agreement.  
(N.C.S. Ord., Secs. 1, 4, 5, 5A.)

The offences (a), (b), and (c) above are subject under this Ordinance to severer penalty (*i.e.*, imprisonment up to six months) than imposed for the same offences under the Native Labour Ordinance. (N.C.S. Ord., Sec. 1.)

One Justice of the Peace, sitting alone, is empowered to adjudicate on offences under this Ordinance. (N.C.S. Ord., Sec. 6.)

261a.—The definition of a native for the purpose of this Ordinance is as follows:—

- (a) An aboriginal native of New Guinea or adjacent islands.
- (b) An aboriginal native of Papua.
- (c) An aboriginal native of Australia or adjacent islands.
- (d) An aboriginal native of Pacific Islands, East Indian Islands or Malaysia.
- (e) Descendants of any of the above classes. (Ordinance Interpretation Ordinance, Sec. 22.)

The designation of "native," only applies, however, to those of the above classes who live after the manner of aboriginal natives of New Guinea.

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