

**THE
SOUTH AFRICAN
COMMONWEALTH**

THE SOUTH AFRICAN COMMONWEALTH

BY

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CONSTITUTION — PROBLEMS — SOCIAL
CONDITIONS.

Tandem fit surculus arbor.

JOHANNESBURG AND CAPE TOWN :
THE SPECIALTY PRESS OF SOUTH AFRICA LTD.

1919

ERRATA.

page 45, line 16, for "or" read "of".

page 60, line 24, for "firse" read "first."

page 192, at end, add footnote reference to Theal's Records, 1803,
page 178.

page 211, line 15, for "have" read "had".

page 272, line 8, for "no rent is charged for the first year, while 2 per
cent." read "at a rental of not less than 4 per cent. per annum".

page 368, line 1, for "large"; read "larger".

page 410 line 27, for "Wast" read "West".

page 445 line 3, for "Bay" read "Boy".

page 454 line 39, for "Impotrant" read "important".

page 463 line 9, for "spiritual" read "scriptural".

page 470 line 19, for "pubic" read "public."

PREFACE.

NEARLY TEN YEARS have elapsed since the inauguration of the Union of South Africa—a period sufficient to enable one to form an opinion with regard to the principles and conditions under which the young Commonwealth is governed, and some of the chief problems which await solution by its people in the future. In this work I have proposed to myself, in the first place, the task of describing, in plain language, the system of government of the Union, in its various divisions. Among useful published treatises which deal with the subject may be mentioned those of the Hon. R. H. Brand, Mr. W. Basil Worsfold, Mr. C. P. Poley, Mr. Frank R. Cana, and Dr. A. B. Keith. All of their works, however, deal with the subject somewhat briefly and concisely, and, although they give correct summaries of the constitution, they are, in the main, of a theoretical nature, as at the date of their publication no experience had been gained of the actual working of the South Africa Act. Nor are any of these writers South Africans by birth. Between the 31st May, 1910, and the present time two Governors-General have held the highest office under the Crown, and there have been many ministerial changes. Two general elections for the Union Parliament, and three general elections for the Provincial Councils have taken place. These persons and bodies have been engaged for almost a decade in legislating and in influencing public opinion, which has also had many opportunities of manifesting itself in other ways during the period in question, wherein South Africa has experienced a war and a rebellion; two great strikes, besides lesser industrial disturbances among both the European and the native population; changes in the judicial system and (what is perhaps more important in the life of the people) the educational system; and has suffered the ravages of a terrible epidemic of influenza. Three new Universities have come into being. The language question has been much debated. In the industrial centres, there has been much socialistic propaganda, and there have

been attempts to introduce Bolshevism. The country, as a whole, has made great strides in manufacturing industry, commerce and agriculture. The future of the mining industry, the supply of labour, skilled and unskilled, and the relations between Europeans and natives, are much-debated problems. Of several of these, as well as of existing social conditions and intellectual movements, I have endeavoured to give a brief account, with such reflections and suggestions as appear to be relevant to the matter under consideration. In short, I have attempted to present a general view of the constitution, political and general problems, and social conditions of the Union, which now ranks as one of the great self-governing Dominions or Commonwealths of the British Empire. While I do not claim any special qualifications for the task, I venture to refer to the fact that during the past forty years I have been enabled to acquire a fairly accurate knowledge, on the spot, of most of the leading institutions, political and social, in South Africa, as well as an acquaintance, in some cases of an intimate kind, with the majority of the men who have figured prominently in the history and public work of the country during that period. While it may be true that "lookers-on see most of the game," a treatise on the Union and the life of its inhabitants, by one who was born and has lived a lifetime within its borders, and has the requisite local knowledge, may be of advantage to the student of politics and institutions, as well as to the general reader. It has been my endeavour, throughout, to deal with the subjects under discussion from a thoroughly impartial standpoint, except where such a mode of treatment would involve a sacrifice of principle, or would result in a presentation of facts so devoid of light or colour as to produce no impression at all. If I succeed in conveying a tolerably accurate delineation of affairs within the Union, in their leading features, which may serve both for information and suggestion, my object will have been achieved.

In dealing with the Constitution and its working out-growths, I have avoided resort, as far as possible, to commentaries and text-books, preferring to deal with the actual phraseology and application of the South Africa Act, in its natural significance, in accordance with the maxim—*melius*

est petere fontes. Wherever possible, technical language has been eschewed. Here and there, suggestions have been made with regard to points of weakness which have manifested themselves, and to the desirability, as well as the possibility, of future changes. While, on the one hand, the main outlines of the Constitution are stated, I have tried to avoid copious details, which would merely overburden the work and distract attention from the main points under consideration. The same principle has been followed in the discussion of political and social conditions. The main factors have been stated, so as to aid the reader to form his own conclusions—the object being to provide suggestions, rather than to bias the judgment, or to indulge one's own prepossessions or preconceived ideas. For this reason, also, while endeavouring to be accurate, and to present the facts truthfully, I have refrained from seeking outside assistance as far as may be, preferring to bear *in propria persona* whatever blame or demerit must attach to this work.

In special chapters, and throughout the work, reference has been made to the position which the Union occupies in relation to Great Britain and the British Empire at large, intimately connected, as it is, with the form of the constitution and various political problems of importance. There has, however, been no attempt to express dogmatic opinions, or to venture upon forecasts with regard to a future which is hidden from us. For the same reason, I have refrained from discussing in detail the position of South Africa as a member of the League of Nations, because both the materials for judgment are wanting at the present day, and there has not been time for opinions to form or to crystallise. All that can be said is that South Africa is prepared, along with her sister nations, to take upon herself her due share of the burden and the heat of the day, and to face whatever fate may befall with undaunted courage and an assured hope. The ancestry and the history of the people who form the Union give assurance that they will, in the main, hold true to those ideals of liberty and civilisation and honour which animate the best and the greatest among the nations.

Johannesburg,
July, 1919.

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PART I.

THE CONSTITUTION OF THE UNION.

PART I.

THE CONSTITUTION OF THE UNION.

CHAPTER I.

GENERAL FEATURES OF THE CONSTITUTION.

THE CONSTITUTION OF THE UNION OF SOUTH AFRICA is contained in a statute of the Imperial Parliament of Great Britain and Ireland, entitled the South Africa Act (9 Edw. VII, c.9). The Bill which embodied the draft of this Act was framed by the South African National Convention, which consisted of thirty-three delegates representing the four constituent Colonies and Rhodesia, in the proportion of twelve from the Cape of Good Hope, five from Natal, eight from the Transvaal, five from the Orange River Colony, and three from Rhodesia. The delegates of the four Colonies were elected by their respective Parliaments. For the appointment of such a Convention these Parliaments had received no direct mandate from the people. The question of South African confederation had been discussed from time to time during the preceding fifty years, and various plans of union had been elaborated, none of which came to fruition. In 1906, however, it had become apparent that the existing economic relations between the four Colonies were likely to be impaired on the expiry of the existing Customs Convention, which was to take place in 1908. There were various other matters which might become causes of friction. Accordingly, in November, 1906, the Cape Ministry (under Dr. Jameson) addressed a request to Lord Selborne, the Governor of the Transvaal and High Commissioner for South Africa, that he should review the existing state of affairs, so that the people might be enabled to form a judgment on the proposal for closer union. This request was endorsed by the Natal Ministry, and in response to it Lord Selborne, on the 7th January, 1907, published an exhaustive "Review of the present Mutual Relations of the British South African Colonies." On the 23rd July, 1907, the Cape House of Assembly passed a resolution asking the Government of that Colony to approach the

Governments of the other self-governing Colonies in British South Africa, in order to consider the advisability of taking preliminary steps to promote the union of British South Africa. In May, 1908, an inter-colonial conference, representative of the Colonies, met at Pretoria to consider the customs tariff and railway rates. No settlement was arrived at in regard to these questions, but the conference carried resolutions in favour of an early union of the several self-governing Colonies, under the British Crown; contemplating the future admission of Rhodesia to the Union; agreeing to submit the proposal to the respective colonial legislatures; and suggesting that necessary steps should be taken to obtain the consent of such legislatures to the appointment of delegates to a National South African Convention. These resolutions were adopted by the Parliaments of the four Colonies. The Convention met at Durban on the 12th October, 1908, and, after deliberating there for a month, adjourned to Cape Town, where it met again early in January, 1909, concluding its discussions on the 2nd February. As the result of its labours a draft South Africa Act was published, which was submitted to the respective legislatures. It was approved in its entirety by the Parliaments of the Transvaal and the Orange River Colony. Some slight amendments were made by the Natal legislature. The most serious opposition arose in the Cape Parliament, notably in regard to the proposed principle of "one vote one value," election by proportional representation, and three-membered constituencies. The difficulty was solved at a further meeting of the Convention at Bloemfontein in May, 1909, by the elimination of proportional representation for elections and the adoption of single-member constituencies. On the 11th May, 1909, the final draft was signed by the members of the Convention, which was then dissolved. The draft Act was then again submitted to the Parliaments of the Cape, the Transvaal, and the Orange River Colony, and approved by them. In Natal it was submitted to a referendum of the electorate, by means of a simple "yes" and "no" vote, and was accepted by a large majority (11,121 for, 3,701 against). The four Parliaments then adopted a common form of address to the Crown, praying for the enactment of the draft constitution in the form of

an Imperial Act of Parliament. A delegation representing the four Colonies proceeded to England. The draft was recast in the form of an Imperial bill, and submitted to the British Parliament. It was passed with an amendment relating to the control of Asiatics, and received the Royal Assent on the 20th September, 1909.

In form, therefore, the constitution is an Act of the Imperial Parliament, in the same way as the statutes creating the Dominion of Canada and the Commonwealth of Australia. In strictness, this means that it is a "subordinate" constitution, the supreme one being that of Great Britain, whose Parliament has authority over all inferior legislatures within the British dominions. Nevertheless, the English constitutional practice is that jurisdiction to legislate for colonies having a separate legislature is usually exercised only when legislation outside the powers of the local legislature is required.¹ Within the limits of the Union, the South African Parliament has plenary authority to legislate; and the Imperial Parliament will not interfere in matters of purely domestic concern. It may, however, and does legislate in respect of matters which affect the Union equally with the rest of the Empire, such as the general validity of colonial laws, fugitive offenders, extradition, removal of colonial prisoners, evidence before foreign tribunals, the taking of evidence on commission; Colonial Courts of Admiralty, naval defence, prize, colonial probates, marriages, and solicitors. Again, Acts have been passed by the Imperial Parliament, containing provisions extending to the colonies, but primarily concerning the United Kingdom, such as those relating to copyright, bankruptcy, naturalisation, foreign enlistment, territorial waters, the military forces, merchant shipping, medical practitioners and dentists, and the like.² As to South African internal affairs generally, however, it may be said that the Imperial Parliament, by granting a self-governing constitution to the Union, has for practical purposes renounced the right of future legislation. The South Africa Act provides for its amendment by the South African Parliament, unlike the Canada Act, which, save in regard to certain matters specially enumerated therein, must be amended by the Imperial Parliament. Nevertheless, the

(1) See Halsbury's *Laws of England* (vol. 10, sec. 988, p. 570).

(2) *L.c.*, pp. 570-2.

Imperial Parliament does not formally renounce its complete jurisdiction over any part of the British Empire; nor does any Imperial Parliament bind its successors as to legislation. It is conceivable, though not probable, that a future Imperial Parliament may repeal or amend the South Africa Act, or that it may override or amend an Act passed by the South African Parliament.¹

In respect of its form, again, the constitution, contained as it is in an Act of Parliament, is a written constitution, not an unwritten one, such as is that of Great Britain. The terms "written" and "unwritten" are inexact. For although a "written" constitution is contained in a single document, which is capable of interpretation, nevertheless, as Viscount Bryce points out,² "in all written constitutions there is and must be an element of unwritten usage, while in the so-called unwritten ones the tendency to treat the written record of custom or precedent as practically binding is strong, and makes that record almost equivalent to a formally enacted law, not to add that unwritten constitutions, though they began in custom, always include some statutes." Thus, on the one hand, the written constitution of the Union makes no provision for the means whereby it is to be interpreted. This has to be supplied by usage. Again, it does not state that the Ministers of the Union are to be representative of a majority in the Parliament. But it is inconceivable that they should remain in office and not be representative of, or at least supported by, a majority of the members. Here, again, usage steps in. On the other hand, the British Constitution, though contained in no one formal document, and consisting to a large extent of unwritten usages, is to be collected also from a great number of written instruments, such as Acts of Parliament, like the Habeas Corpus Act, national compacts, like Magna Charta, national declarations, like the Petition of Right and the Declaration of Right, not to speak of other resolutions of Parliament and written judgments of the Courts relating to constitutional affairs.

The modern practice is to divide constitutional documents into Flexible and Rigid. Flexible constitutions are those

(1) See, however, Chapter III. of this Part.

(2) *Lectures in History and Jurisprudence* (vol. 1, p. 148).

which "proceed from the same authorities which make the ordinary laws; and they are promulgated or repealed in the same way as ordinary laws." They are termed Flexible "because they have elasticity, because they can be bent and altered in form while retaining their main features."¹ In the case of Rigid constitutions, on the other hand, "the instrument (or instruments) in which such a constitution is embodied proceeds from a source different from that whence spring the other laws, is repealable in a different way, exerts a superior force. It is enacted, not by the ordinary legislative authority, but by some higher or specially empowered person or body. If it is susceptible of change, it can be changed only by that authority or by that special person or body. When any of its provisions conflict with a provision of the ordinary law, it prevails, and the ordinary law must give way." Again, the Rigid constitutions are not readily susceptible to alteration, because their lines are hard and fixed."² The South African constitution belongs completely to neither the one nor the other of these classes. In certain respects it partakes of the features of a Rigid, in others of those of a Flexible constitution. It was enacted by the Imperial Parliament, which is not the ordinary legislature of the Union. It may be changed by the legislature (i.e. the South African Parliament), but certain changes may only be made after a defined period, while they and some other alterations may only be accomplished by means of a special procedure, that is, a joint sitting of both Houses of Parliament, and not in the usual manner in which Acts are passed by the Legislature. Again, certain legislation may only be enacted in the manner enjoined by the constitution. Thus far it approximates to the Rigid type. On the other hand, with the special exceptions enumerated in the Act, the Parliament created by the constitution has general power to effect changes in the constitution itself; and it has, in fact, availed itself of this power on more than one occasion. If it follows the procedure laid down in the Act,³ it may change the mode according to which the Act itself is to be altered. The Act nowhere contemplates the abrogation of the Union, for reasons which will be seen presently, but the powers of amend-

(1) Bryce, *l.c.* (pp. 150, 154).(2) Bryce, *l.c.* (pp. 151, 154).

(3) Sec. 152.

ment vested in the legislature are so large that it is conceivable that in the course of time the whole scope and working of the constitution may be fundamentally changed. In these respects it belongs to the Flexible type of constitution; and as they may be vital in their effects, we may say that the constitution approximates more closely to the Flexible than to the Rigid type. On the other hand, the permanence of the constitution appears to be assured by the fact that no power has been left to the original constituent Colonies (now Provinces) whereby they can resume their original status. They have no legislative or governmental machinery whereby they may secede from the Union. As a Province is constituted under the Act, it is not a separate entity capable of secession. If an act of secession were to take place, it might be denominated as the act of a Province, in the geographical sense, but it would be valueless from a constitutional point of view. Indeed, it is more than doubtful whether the Union legislature can redivide the Union into separate independent communities. It may enlarge the Union by the incorporation of Rhodesia and the native territories, subject to certain conditions.¹ It may also alter the boundaries of Provinces, divide Provinces into new Provinces, or form a new Province out of existing Provinces; but this may only be done on petition of the Provincial Council of every Province whose boundaries are affected.² This provision would appear to ensure the continued existence of the Provincial Councils. Any new Provinces so constituted by Parliament would still form part of the Union. The Parliament has "full power to make laws for the peace, order, and good government of the Union." It cannot, any more than any other colonial legislature, make laws for what is not the Union, or for any place outside the Union. It can only legislate within the limits of the constitution.³ The only power which can constitutionally abrogate the Union is the Imperial Parliament.⁴

The constitution approximates more nearly to a "unitary" than to a federal form of government. In a federal system there is, as a general rule, a dual form of government, to one

(1) S.A. Act, secs. 150, 151.

(2) S.A. Act, sec. 149.

(3) *Id.*, sec. 59.

(4) See, generally, Keith, *Responsible Government in the Dominions* (vol. 1, pp. 367-9).

(5) But see Chapter III. of this Part.

part of which the federal powers are entrusted, while the other is concerned with those powers which reside in each of the constituent members of the federation. Writing of the Australian Commonwealth, Viscount Bryce says that its essential feature "consists in the existence above every individual citizen of two authorities, that of the State, or Canton (as in Switzerland) or Province (as in Canada), to which he belongs, and that of the Nation, which includes all the States, and operates with equal force upon all their citizens alike. Thus each citizen has an allegiance which is double, being due both to his own particular State and to the Nation. He lives under two sets of laws, the laws of his State and the laws of the Nation. He obeys two sets of officials, those of his State and those of the Nation, and pays two sets of taxes, besides whatever local taxes or rates his city or county may impose."¹ Of the three British Dominion constitutions, one, that of Australia, approximates to the federal system of the United States, in which the powers of the central or federal government are clearly defined, whilst the residue of undefined powers remains with the constituent States. In Canada, again, the powers of the constituent Provinces are clearly defined, and the residue of undefined powers belongs to the central authority. The case of South Africa presents a parallel to neither of these. All powers reside in the central authority, acting through the central legislature, which has "full power" to make laws.² This it may do not only directly, by passing statutes, but it may legislate in respect of matters concerning which the Provincial Councils are empowered to legislate, while a Provincial ordinance is ineffectual so far as it conflicts with an Act of Parliament; and the Governor-General-in-Council (which in practice means the Governor-General advised by the Ministry, which is responsible to the central Parliament) may disallow any ordinance passed by a Provincial Council.³ In other words, supreme authority resides in the central government, and the Provincial Councils have no legislative independence; although, as will be seen, they are neither subordinates nor delegates of the Union Parliament.⁴ Thus

(1) Bryce, *Loc. cit.* (vol. 1, p. 490).
(4) See Chap. XVII.

(2) S.A. Act, sec. 59.

(3) *Id.*, secs. 95, 86, 89.

the system is not so much federal, as unitary. Not only is there a strict delegation of powers to the Provincial legislatures, but these legislatures are liable to be overridden in any matter by the legislature of the unified government. And not only are the Administrators of the Provinces appointed by the Governor-General-in-Council, but other officers of the Provinces are subject to the conditions of any Act passed by Parliament regulating the appointment, tenure of office, retirement and superannuation of public officers.¹

This unitary system results from the fact that South Africa is a "legislative union." Prominence is given to this in the preamble to the constitution, which declares that "it is desirable for the welfare and future progress of South Africa that the several British colonies therein should be united under one Government in a legislative union under the Crown of Great Britain and Ireland." It is then enacted that the four Colonies "shall be united in a Legislative Union under one Government under the name of the Union of South Africa." In this respect an approach is made to the system of government prevailing in Great Britain and Ireland, where Parliament has complete powers of legislation. But the South African constitution falls short of the complete legislative union of Great Britain in this respect, that certain powers have been entrusted to the Provincial Councils, subject to their being overridden by the supreme authority of Parliament. This compromise was adopted in order to avoid what has so often been complained of as an evil in the English system—the clogging of the legislative machinery by reason of the fact that there is only one law-making body. The precedent set in South Africa will have to be followed sooner or later, with or without modification, by Great Britain.

In one respect the constitution contains traces of a federal system. The Senate consists of forty members, eight nominated by the Governor-General-in-Council, while each of the constituent Provinces elects eight members. Thus each Province possesses an equality of representation in the Senate, and its own representatives elect its eight senators. But this equality is balanced, to some extent, by the presence of the nominated element. And there is no guarantee for its continuance, for

(1) S.A. Act, secs. 68, 83.

after ten years from the first appointment of senators Parliament is free to provide another constitution for the Senate.¹

The federal element is also visible in that the South Africa Act provides for the retention by each Province, until Parliament otherwise determines, of its electoral franchise; and, until the passing of the Parliamentary Elections Act, 1918, each Province retained its existing laws with regard to the registration of voters and the conduct of elections.²

The federal element may be neutralised by the provision which is made for the event of a legislative deadlock, in which event the question at issue is to be determined by a majority of the two Houses sitting together.³ At the present time the House of Assembly consists of 130 members, 51 representing the Cape, 45 the Transvaal, 17 Natal, and 17 the Orange Free State. If all the members of the two Houses were present, 86 would have to constitute a majority. But this majority might consist of the members representing the Cape and the Transvaal, who would thus completely "swamp" the smaller Provinces. If only three members, representing the Transvaal and either Natal or the Free State were absent from such a joint sitting, then the Cape together with either the Free State or Natal would number 84, and would have a majority of the 167 members present; and this majority might be constituted in part by the ten nominated members of the Senate, who represent no particular Province.

Something remains to be said of the language in which the constitution is framed. Following the style prevailing in most modern constitutions, it consists of short clauses, each sentence containing a definite and independent statement. This is not to say that some of them are not capable of disputed interpretation, in the same way as clauses occurring in other statutes. But it may be remarked that, whether or not it responds to the aspirations of the people for whom it was made, the constitution is a balanced document, containing very little that is superfluous, or irrelevant to the matters with which it is concerned.

(1) S.A. Act, secs. 24, 25.

(2) *Id.*, secs. 35, 37.

(3) S.A. Act, sec. 63.

CHAPTER II.

THE CROWN AND THE UNION.

HAVING REGARD to the actual language of the constitution, the part which the Crown plays in the government of the Union is restricted. Nevertheless, the constitution cannot be conceived of as dissevered from the Crown. In the first place, the King is an integral part of the British constitution, which in the last resort is supreme over all the King's dominions, whatever may be the precise degree of self-government granted or conceded to any one dominion. The Imperial Parliament may legislate for any dominion, or for the dominions as a whole, and the Imperial Parliament consists of King, Lords, and Commons. Apart from legislation, the Royal prerogative extends to the dominions. And, in fact, as well as in theory, each dominion is the territory of the Crown, not in the sense that it is the private, personal property of the King, but because it is subject to his sway. According to the practice of responsible government, the Crown does not legislate in respect of a self-governing dominion by Order in Council, except in so far as there is a reservation in the grant of self-government,¹ or except in so far as such legislation may be necessary for the good government and security of the Empire as a whole. Thus, in time of war, the King legislates by means of Orders in Council, which are effective for the dominions, in respect of enemy trade, contraband of war, the establishment of Colonial Prize Courts, and similar matters.

Within the Union itself, the King is an integral part of the government, in all its spheres, executive, legislative, and judiciary. In the executive government, the Governor-General derives his authority from and is appointed by a commission under the Royal sign-manual;² and the King authorises the Governor-General to use the great seal of the Union.³ The

(1) *Halsbury's Laws of England* (vol. x., sec. 988, p. 569).

(2) S.A. Act, sec. 9; Royal Commission, Letters Patent, and Instructions (Union Statutes, 1910-11, pp. 90-108).

(3) See Royal Warrant, Dec. 30, 1910 (Union Statutes, 1910-11, p. 110).

heads of the administrative departments are the King's ministers of State for the Union.¹ The King is invested with the command-in-chief of the naval and military forces within the Union, or in the Governor-General as his representative.² A constitutional writer of weight points out that this command-in-chief is merely honorific, and "of course it carries with it no actual power of any kind."³ As to this it can only be said that it is of precisely the same degree as the supreme command over the Royal Forces within Great Britain and Ireland, where the King, "as supreme military commander, has the sole power of raising, regulating, and disbanding armies and fleets."⁴ This power is, of course, regulated by Acts of Parliament; but every officer in the Army and Navy holds his commission by virtue of the Royal authority. The provision as to the command-in-chief over the naval forces is not found in the constitutions of the other self-governing dominions; but, read in its ordinary sense, it applies to naval forces which may be created in South African waters.

Perhaps the most definite indication of the extent to which the Crown forms part of the Government of the Union is to be found in the provision that "the Executive Government of the Union is vested in the King, and shall be administered by His Majesty in person or by a Governor-General as his representative."⁵ This implies the possibility, albeit a remote possibility, of the King being present in person within the Union to administer its government. Such an eventuality is only speculative, and the occasions for its exercise would be so rare and so brief that the situation would present no practical difficulty in administration. A somewhat fanciful objection has been raised that in such an event the Executive Council, which in terms of the South Africa Act exists to advise the Governor-General, has no power to advise the King in person, and that this is "a curious omission of doubtful signification."⁶ But as, in such a case, the King, though personally present and governing within the Union, would still be King in Great Britain and Ireland, he would still fulfil his ordinary constitutional position, and continue to be advised, in respect of acts done by him within the Union, by his ordinary consti-

(1) S.A. Act, sec. 14.

(2) *Ib.*, sec. 17.

(3) Keith (vol. 2, p. 956).

(4) Taswell-Langmead (*Const. Hist.*, p. 572).

(5) S.A. Act, sec. 8.

(6) Keith (vol. 2, p. 951).

tutional advisers, the British ministers of State. Nor is there anything to prevent the King from nominating persons to advise him individually within the Union, just as, in England, there is no limitation on his power to nominate Privy Counsellors, or even Secretaries of State, the only practical check on the latter being their payment by Parliament.

In the legislative sphere, the King is an integral part of the Parliament of the Union. In practice, as will be seen, he is represented by the Governor-General, who assents to bills passed by the two Houses of Parliament, or withholds assent, or reserves them for the signification of the King's pleasure. But in all cases the Governor-General acts subject to the Royal instructions; and all bills are assented to in the King's name. Furthermore, even if a bill has been assented to by the Governor-General, it may be disallowed by the King. And bills reserved for the King's pleasure are assented to or disallowed by the King.¹ Nor does it make any difference that, as a matter of practice, the Royal assent to or disallowance of any bill is signified ordinarily through the Secretary of State for the Colonies, for the Secretary of State himself holds his office at the hands of the Crown, and is, in the last resort, subject to the King's approval or disapproval of his acts.

Every Act of the Union Parliament is enacted "by the King's Most Excellent Majesty, the Senate, and the House of Assembly of the Union of South Africa." An Act which purported to be enacted in the name of the Governor-General and the two Houses, or in the name of the two Houses alone, would be no Act of Parliament, at all. Not only would it be mere waste paper, as not conforming to the provisions of the constitution of the Union, but it would not be an Act of the Union, because the legislative power of the Union resides as much in the King, as an integral portion of the legislature, as it does in the two other branches of the legislature, namely, the Senate and the House of Assembly. For the King to cease to exist as a part of the legislature, and therefore of the Union, seeing that it is a legislative union, the Union itself must cease to exist.

With respect to the judiciary, the constitution is silent as to the authority of the Crown, in the literal sense. The only reference to the Crown is to the jurisdiction exercised by the

(1) S.A. Act, secs. 64-67.

Supreme Appellate tribunal of the Empire, namely, the King-in-Council, in other words, the Judicial Committee of the Privy Council. Judicial appointments are made by the Governor-General, but in fact the Governor-General acts on behalf of the King. Judges of the supreme Courts existing at the time of union continued to hold their offices, and such offices were originally constituted in the King's name. The administration of justice is carried on in the King's name, whether in civil or in criminal cases, and certainly derives its authority from no other source than the Crown.

Legislation in respect of native territories belonging to or under the protection of the King is, upon transfer of such territories to the Union, to be enacted by the Governor-General-in-Council, subject to repeal by proclamation at the request of both Houses of Parliament. But the King may disallow any law relating to native territories, and any proposed amendment of this mode of legislation must be reserved for the signification of His Majesty's pleasure.¹

It will thus be seen that the King, although his authority may be, and ordinarily is, exercised by deputy, occupies no merely nominal position in relation to the Union. His authority, or its sanction, must and does pervade every executive, legislative, and judicial act, and is, indeed, essential and fundamental. This is to speak only of the written constitution, under which the Governor-General cannot exercise authority except under the King, Parliament cannot legislate without the King's consent, and the judiciary cannot administer the laws except under commission of the King. But there is a vast body of unwritten law, in the shape of constitutional usage, which is also applicable, and without which the constitution cannot work. Every person within the Union owes obedience to the King, and every subject therein owes allegiance to him. If the King is at war with any other Power, none of the King's subjects within the Union can be at peace with that Power. And every subject within the Union is bound to observe treaties made by the King, and to respect the exercise of the Royal prerogative, in the same way as if he were a subject resident within the United Kingdom.

(1) Schedule to S.A. Act, secs. 1, 20, 25.

CHAPTER III.

THE IMPERIAL PARLIAMENT AND THE UNION.

It is a settled principle of constitutional law that within the limits assigned to it the Parliament of a self-governing dominion is supreme, and has plenary powers of legislation.¹ In this sense, it is not the agent or delegate of the Imperial Parliament, which has originally conferred the constitution, but it has the same legislative authority within the dominion as the Imperial Parliament itself possesses. So that, within the limits of the Union, the Parliament of the Union has unrestricted legislative powers.

This must, however, be taken subject to the condition that an Act passed by the Parliament of the Union does not conflict with an Act passed by the Imperial Parliament whose provisions extend to the Union. This principle has been made the subject of express legislation by the Imperial Parliament, which in 1865 passed the Colonial Laws Validity Act, which enacts that any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate, or repugnant to an order or regulation made under authority of such Act of Parliament, shall be read subject to such Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative. This applies only in respect of repugnancy to an Act of the Imperial Parliament, and not to a variance between the general law of England and the law of the Union.² It is, of course, obvious that in South Africa, where the common law is the Roman-Dutch law, local provisions cannot be regarded as inoperative because they conflict with the English common law. It is only in respect of Imperial legislation which extends or is expressly made to apply to the Union, that the law

(1) See the case of *Powell v. Apollo Candle Co., Ltd.*, (10 A.C. 232).

(2) See Act 28 and 29 Vict. c. 63, secs. 2, 3; Keith (vol. 1, pp. 408-11).

of the Union must, in case of conflict, give way. Instances have been previously given of Acts of the Imperial Parliament which extend to the Union (see chap. I).

In theory, the power of the Imperial Parliament, as the supreme legislature of the Empire, is such that it may repeal the constitution of any self-governing dominion. But according to constitutional practice this is almost impossible of accomplishment; and, as a matter of policy, it may be said with certainty that it is never likely to be attempted. Anything in the nature of interference with the fabric of a colonial constitution would rather tend in the direction of enlargement than of curtailment of the powers possessed by the dominion legislature. Whether this is desirable is not the question. It is the actual state of constitutional theory on the matter with which we are now concerned.

No difficulty, such as has arisen in some of the Australian colonies, can be caused by any controversy as to the right of the dominion legislature to repeal Acts of the English Parliament which formed part of the law originally introduced into the dominion. Thus, by an English Act, it was declared that the law of England should apply to New South Wales; and disputes subsequently arose as to whether the colonial legislature could repeal any Acts forming part of the English law so imported into the colony. But in South Africa the Roman-Dutch law is the common law, and was such at the inauguration of the Union. Consequently, no English Act formed part of the South African common law, and there can be no question as to the repeal of such an Act. The only disputes which may occur are as to repugnancy between South African laws and Imperial Acts which are put in force by legislation for South Africa, either specially or as a part of the whole Empire.

The terms of the legislative authority conferred on the Union Parliament clearly show, apart from the general constitutional law and practice, that the Imperial Parliament still retains legislative power in respect of the Union. The South Africa Act gives the local Parliament "full power" to make laws for the Union. But no "exclusive" or "sole" power is given.

Some difficulty may arise with regard to Acts of the Union Parliament which deal with the same subjects as those with which similar Acts of the Imperial Parliament are concerned. Thus, before 1911, there were provisions of the English Copyright Act of 1842 which applied to the British dominions as a whole; and in Canada it was, indeed, laid down by the Courts that that Act, in its entirety, applied to Canada. Each of the South African Provinces had a copyright statute, and interesting questions might have arisen in the event of a conflict. Where the provisions of the Imperial Act clearly applied, they would have prevailed, in case of repugnancy, by virtue of the Colonial Laws Validity Act. In questions of copyright, however, it seems that no such difficulty can now arise, in view of the terms of the English Copyright Act of 1911, which provides for the recognition of dominion Acts conferring reciprocal rights to those granted by the English Act. Such reciprocal rights have been conferred by the Union Copyright Act of 1916.

CHAPTER IV.

THE UNION AND THE PROVINCES.

THE RELATIVE position of the Union, regarded as a single entity, and the Provinces may best be ascertained by a comparison with that created by the constitution of the United States. Under the American constitution "the State authority (in the American sense of 'State') and the Union or Federal authority go on side by side working in separate spheres, each subject to constitutional restrictions, but each in its own sphere supreme. Thus the State authority is powerless to make peace or war or to impose customs duties, for those are Federal matters. But the Union authority is equally powerless, wherever a State authority has been constituted, to impose an income tax, or to punish ordinary crime, to promote education, or to regulate factories. In particular, by the constitution as it stood until after the Civil War, the Union authority was able to prohibit the importation of slaves from abroad after the end of 1807, but had no power to abolish slavery itself in any of the States (*i.e.* before the Civil War). Further, Congress had to be constituted in such a manner as to be agreeable to the smaller States which did not wish to enter into a union in which their influence would be swamped by their more populous neighbours. Their interest was secured by providing that in the Senate each State should have two members and no more, while in the House of Representatives the people of the whole Union are represented according to population."¹

Now in South Africa the Union and the Provincial Governments do not work side by side in separate spheres. The Union may be described as a large sphere enclosing a set of smaller spheres, which are the Provinces. Not only is the Union supreme in its own sphere, but the government of the Provinces is strictly subordinate to that of the Union. It is true that certain functions of government are entrusted to the

(1) Lord Charnwood, *Abraham Lincoln* (2nd ed., p. 24).

Provinces, but with these the central legislature may interfere, either with reference to Provincial powers in general, or with regard to any one Province considered by itself. This is but another way of stating that the central legislature, and its executive instrument, the central government, is omnipotent. The only constitutional restrictions on the central legislature are that it may not transcend the territorial limits of the Union, as originally defined or as ultimately contemplated in the constitution; and that it may not change the form of government as fixed by the constitution so that it would cease to be a legislative union under the British Crown. But it may alter the form of the Provinces so as to render their original shape unrecognisable.¹ And it may deprive the Provinces of any or all of their local powers of government, subject to such limitations of time as the constitution has imposed.² This means that the powers conferred on the separate Provinces are not fixed and immutable, and that a Province cannot in any sense be said to be supreme even in the special sphere marked out for it. It is true that, in a theoretical sense, equal power is given to the separate Provinces by the equality of representation which they possess in the Senate. But this safeguard is largely illusory, owing to the ease with which the constitution of the Senate itself may be changed, and owing to the elasticity and flexibility of the constitution as a whole. There is nothing to prevent a departure from the principle of equality of representation in the Senate. Regarded as a whole, the constitution in effect embodies a surrender of the pre-existing independent rights of the former colonies, which become constituent Provinces of the Union and their merger in one central legislative machine, which actuates all the component parts.

When we say that the Union consists of a sphere enclosing a smaller set of spheres, we must not be taken to mean that the smaller spheres vary from one another in composition. Having regard to the powers conferred upon them by the terms of the constitution in its original, unamended form, the composition of these spheres is identical. They are distinguished from each other only in the geographical sense; and they have no boundaries at all, when it is a question of the action upon

(1) S.A. Act, sec. 149.

(2) *Ib.*, secs. 85, 152.

them of the large, enclosing sphere. In the sense that the Provinces are component and indistinguishable portions of the Union, they may, perhaps, be more fitly compared to four segments of a circle, of varying size, but all actuated from the centre.

The dependence of the Provinces upon the legislative and executive government of the Union is seen in the limited law-making powers which are entrusted to the Provincial Councils; in the circumstance that the Provincial Executive, though its members other than the Administrator are elected by the Provincial Council, is independent of the Provincial Council and not responsible to it; and in the fact that Ordinances passed by the Provincial Council are subject to the assent, not of the Administrator of the Province, but of the Governor-General-in-Council. It must be noticed, however, that the power of disallowance of Provincial Ordinances resides in the Governor-General-in-Council, and not in the Governor-General. In other words, as a well known writer points out, they are not subject to Imperial disallowance.¹ Once, therefore, a Provincial Ordinance has been assented to according to the provisions of the constitution,² it cannot be vetoed or revoked by the Imperial Government. Whether Imperial interests or wishes will be regarded by the Union Government or the Provincial authorities, in reference to Provincial legislation, is a pure matter of policy, not of the provisions of the constitution.

So far are the legislative powers of the Provincial Councils from being exclusive, that it is perfectly competent for the Union Parliament to legislate on the same subjects as those which have been confided to the Provincial legislatures. This results from the "full power" which Parliament has to make laws for the peace, order, and good government of the Union, which means that Parliament is the judge of the necessity for such laws. Legislation passed by the Provincial Councils must give way, in case of repugnancy, to Acts of Parliament, which is, therefore, paramount.⁴ In this way there can, or need, be no conflict between Provincial legislation and Union legislation. If a Provincial Ordinance is repugnant to a Union Act, it must give way, that is, it is void to the extent of the

(1) Keith (vol. II., p. 974).

(2) S.A. Act, sec. 90.

(3) S.A. Act, sec. 59.

(4) *Ib.*, sec. 86.

repugnancy. If the Ordinance is distasteful to the Union Executive, the latter may veto it. If it has been assented to, and remains distasteful to the Parliament, it may be overridden by a Union Act.

Lastly, the Provinces are entirely dependent upon the Union Government in regard to financial affairs. Not only are financial Ordinances, like other Provincial Ordinances, subject to the assent of the Governor-General-in-Council, but no appropriation Ordinance may be passed save on the recommendation of the Administrator, who is a Union officer, appointed by the Governor-General-in-Council, and paid by Parliament; nor may any money be issued from the Provincial revenue fund except under warrant signed by the Administrator.¹ So powerless has a Provincial Council proved to be in respect of financial affairs that where, as in the Transvaal, a Council has refused to appropriate money for the expenditure of the Province, the Administrator has expended money for such purposes out of Union funds, and this has been ratified by the Union Parliament.

(1) S.A. Act, secs. 89, 68, 69.

CHAPTER V.

THE GOVERNOR-GENERAL.

THE CONSTITUTION provides that the executive government of the Union shall, when the King is not administering it in person, be administered by the Governor-General as the King's representative.¹ On the face of it, this is an exceedingly simple statement of the position. In reality, several very complex problems arise out of it. Does the Governor-General act as the instrument of the Crown, or of the Union Ministry? When he acts as the representative of the Ministry, has he any discretion of his own to exercise, or must he simply enforce their decrees? What happens in the event of conflict between the Governor-General and the Ministry?

During the first session of the first Parliament of the Union, the Interpretation Act (No. 5, 1910) was passed, which enacted that the expression "Governor-General" shall mean "the officer for the time being administering the government of the Union acting by and with the advice of the Executive Council thereof." But this was subject to the proviso "unless the context otherwise requires or unless in the case of any law it is otherwise provided therein."² This Act was passed to secure uniformity in the interpretation of statute laws, but it could obviously not have any effect upon the meaning of the South Africa Act. It was not an amendment of the South Africa Act, but was passed for the interpretation of other existing or future laws which should contain references to the Governor-General. Unless such references clearly expressed a contrary intention, they would denote the Governor-General acting with the advice of the Executive Council, in other words, "the Governor-General-in-Council," which in practice means the Governor-General acting on the advice of the Ministers of the Union. Now, by the terms of the South Africa Act, as well as of his appointment, there are

(1) S.A. Act, sec. 8. (2) Sec. 3.

certain functions which the Governor-General is entitled to, and sometimes must discharge on his own responsibility, and without invoking the advice or assistance of the Ministers.

In the first place, the Governor-General is the representative of and appointed by the Crown, and must carry out the powers and functions which the King is pleased to assign to him.¹ Constitutional authorities are agreed that the Governor-General is not a Viceroy. He simply has a delegation of a portion of the Royal authority. He derives his powers from three instruments: the Letters Patent under the Great Seal of the United Kingdom, defining his office; the Instructions under the Royal sign-manual or signet, more particularly designating his duties; and the Commission which appoints him to act according to the two previous instruments. He also receives instructions from the Secretary of State for the Colonies on behalf of the Crown.

An examination of the three instruments which have been named will indicate what functions the Governor-General discharges on his own responsibility, or only as the representative of the Crown, without the advice of the Ministers. According to the Letters Patent, he may on the King's behalf exercise all the King's powers under the constitution in respect of summoning, proroguing, or dissolving Parliament.² The South Africa Act provides that he shall appoint such times for holding the sessions of Parliament as he thinks fit.³ Ordinarily, the Governor-General consults the Ministry, and follows their advice, in regard to summoning Parliament. But it is clear that he is entitled to summon Parliament himself, without seeking advice on the subject, as in times of great emergency. The power of summoning Parliament is entrusted to the "Governor-General", and not to the "Governor-General-in-Council", which latter phrase, under the South Africa Act, means "the Governor-General acting with the advice of the Executive Council."⁴ Thus, although as a general rule the Governor-General would take the advice of his Ministers on this matter, his power to act on his own account, or to disregard their advice, is apparent. On the subject of consulting the Ministers it may here be said, generally, that with reference to matters on which, in terms

(1) S.A. Act, sec. 9.

(2) Clause III.

(3) Sec. 20.

(4) Sec. 13.

of the South Africa Act, the Governor-General is bound to consult them, he cannot do any positive act without their advice. But he may refuse to accept their advice, and decline to carry out something which they recommend. In other words, it is not an executive act, but a refusal to carry out an executive act.¹

The same considerations apply to the prorogation of Parliament. It is in regard to the dissolution of the legislature that the most important and delicate problems arise. We must first notice what are the powers in regard to dissolution that are conferred upon the Governor-General. He may dissolve the Senate and the House of Assembly simultaneously, or the House of Assembly alone. But the Senate may not be dissolved within a period of ten years after the establishment of the Union. And the dissolution of the Senate (that is, after it becomes capable of dissolution) is not to affect any senators nominated by the Governor-General-in-Council.² The power of simultaneous dissolution of the Senate and the House of Assembly is taken from that which existed under the former constitution of the Cape Colony, of dissolving simultaneously the Legislative Council and the House of Assembly. A like power does not exist under the Australian and Canadian constitutions.

It must be noticed, with regard to both the summoning and the dissolution of Parliament, that there is this limitation on the power of the Governor-General, whether he acts individually or on the advice of his Ministers, that there must be an annual session of Parliament, so that twelve months may not elapse between one session and the next.³

Now, with regard to the dissolution, there may be cases under the working of the South Africa Act, and there have been cases in colonial history, of refusal by the Governor-General to dissolve Parliament on the advice of Ministers. "The constitutional discretion of the Governor should be invoked in respect to every case where a dissolution may be advised or requested by his ministers, and his judgment ought not to be fettered or his discretion disputed by inferences drawn from previous precedents, when he decides that a pro-

(1) See Poley, *Federal Systems* (p. 201).

(2) S.A. Act, sec. 20.

(3) S.A. Act, sec. 22.

posed dissolution is unnecessary or undesirable.”¹ On the other hand, cases may arise where the Governor-General decides to perform the positive act of dissolution without waiting for or acting upon the advice of the Ministers. They may object to a dissolution, and, although “constitutional practice renders their advice equally necessary in the cases where legally he must act in Council and in those where he can act without ministerial advice,”² he may nevertheless decide to dissolve Parliament. It is conceivable that a Ministry may desire to enact measures which are disapproved of by the Governor-General. In such a case he has three alternatives. He may dissolve the Parliament, and summon a new one; he may dismiss the Ministers; or he may wait until the proposed measure has been passed by Parliament, and then withhold his assent, or reserve the measure for the signification of the King’s pleasure. It may, and often will, be most convenient to test the opinion of the people on the proposed measure, and this will most conveniently be done by dissolving the legislature, or one House thereof.

With regard to the dismissal of Ministers, it is obvious that in many cases it may be undesirable for the Governor-General to accept the advice of the Ministers as to who shall be their successors. And if the Ministry refuses to resign, he will have no alternative but to dismiss them. In one historic instance since the inauguration of the Union, the presence of one Minister in the Ministry was distasteful to his colleagues. Without dismissing the Ministry, the Governor-General, on the advice of the majority of them, accepted the resignation of the Ministry as a whole, and then proceeded to re-appoint them without the colleague whose co-operation they did not desire.

Mr. Keith makes the somewhat remarkable suggestion that, “strictly speaking, there is no need even for the ministers to do more if they desire to hold office permanently than to secure for themselves seats in Parliament, and they can be up to the number of eight nominee members of the Upper House. The Governor-General’s instructions make no mention of the convention by which he chooses ministers who possess the confidence of Parliament, and he will do so merely in accordance

(1) *Poley* (p. 201).

(2) *Keith* (vol. 2, p. 953).

with the established practice.”¹ This statement ignores the provision in the South Africa Act that the Ministers “shall hold office during the pleasure of the Governor-General.”² In another portion of his work on *Responsible Government* Mr. Keith himself says that “the Executive Council remains in the last resort in the Governor-General’s control: for in the first place he can always dismiss the existing members, and he can in the second place fill it up for the moment in any way he pleases.”³ In theory, of course, the Executive Council may consist of persons other than the Ministers. But in practice it is equivalent to the Ministry.

Another power which, in terms of the Letters Patent, resides in the Governor-General in his individual capacity, is that of appointing a deputy in the event of his temporary absence for a short period from the seat of government or from the Union; and he may give instructions for the guidance of such a deputy.⁴ When the Governor-General is temporarily absent from the Union in any South African territory or in a neighbouring colony or State, in his capacity as High Commissioner for South Africa, for any period not exceeding one month, he may directly exercise his powers as Governor-General notwithstanding his absence.⁵ In the event of longer absence, or of the death or incapacity of the Governor-General, the Letters Patent make direct provision for the exercise of his functions by a Lieutenant-Governor or other person specially appointed to administer the government of the Union; and, failing such appointments, the government is to be administered temporarily by the Chief Justice, whom failing, by the Senior Judge of the Supreme Court of the Union.⁶

The Instructions which are issued to the Governor-General are far from being as detailed as those issued to the Governor of a colony where responsible government does not exist, for in the Union most of the work of executive government is done by the Ministry, the Governor-General merely lending his name to their acts, and rarely, if ever, refusing to follow their advice; whereas in a colony not enjoying self-government all, or nearly all, acts of government are performed on the personal responsibility of the Governor. So far as the Governor-

(1) Vol. 2, p. 356.
(5) *Ib.*, clause V.

(2) Sec. 14.
(6) *Ib.*, clause IV.

(3) Vol. 2, p. 554.

(4) Clause VI.

General of the Union is concerned, his Instructions deal only with the procedure to be followed in assenting to laws, and with the exercise of the Royal prerogative of pardon in case of offences, which is confided to him, subject to conditions hereafter mentioned. In all other cases he must administer the laws of the Union with the advice of the Ministers, that is, in his capacity as Governor-General-in-Council. In matters affecting the Royal prerogative as to which the Instructions are silent, the Governor-General has no delegation of, and cannot exercise, the Royal prerogative—as in the coinage of money, or the grant of charters of incorporation, or the conferring of titles of honour, or the investiture of a person with an order granted by the Crown without special permission from the Crown. In the exercise of the prerogative of pardon, although the Governor-General may, and does, in the last resort, act personally, by granting or withholding a pardon, it is the practice for him to seek the advice of the Ministers. But the assent or refusal of assent to laws can only be given by him in the King's name, and in the exercise of his personal responsibility as Governor-General. When a bill, passed by both Houses of Parliament, is presented to him for his assent, he may do one of three things: (1) he may assent in the King's name; (2) he may withhold, that is, refuse, assent; (3) he may reserve the bill for the signification of His Majesty's pleasure thereon. In any of these cases he declares his course of action, in terms of the South Africa Act, "according to his discretion."¹ This discretion is, in fact, fettered to some extent by the Royal Instructions, in terms of which the Governor-General may not assent in the King's name (1) to any bill which the King, through a Secretary of State, has instructed him to reserve; (2) to any bill which in terms of the South Africa Act he is required to reserve, such as a law limiting the matters in respect of which special leave to appeal to the Judicial Committee of the Privy Council may be asked;² or (3) to a bill which disqualifies a person in the Cape of Good Hope, who under existing laws is or may become capable of registration as a voter, from being so registered in that Province by reason of his race or colour only.³

(1) Sec. 64.

(2) S.A. Act, sec. 106.

(3) Instructions, Clause VII.

The Governor-General has the further right of returning to the House in which it originated any bill which he thinks desirable, recommending them to Parliament for its acceptance.¹ In this way he may avoid the unpleasant course of refusing assent to a bill, or the delay consequent on reserving it for the Royal pleasure. But if Parliament refuses to agree to his recommendations, he still has the right to withhold his assent to the measure. Once the Governor-General has refused his assent, Parliament has no remedy under the machinery provided by the constitution, such as exists in the case of a deadlock between the two Houses.² All it can do is to wait patiently and, if it is of the same mind, pass the bill again in a subsequent session, and present it again to the Governor-General, trusting that he may see fit to change his opinion. If this fails, there remains nothing but to abandon the measure, or to await the advent of another Governor-General, who may be more complaisant. No direct machinery is provided by the constitution whereby, if the Governor-General refuses assent, Parliament may go over his head, and approach the King directly; but, according to constitutional theory, there is nothing to prevent a direct approach to the Crown, in which event the Crown may either sustain the action of the Governor-General, or may direct him to assent to the bill, or, in the event of his refusal to comply, may remove him.

The constitution, however, gives clear recognition to the right of the King to disallow any law even where it has been assented to by the Governor-General.³ In the last resort it is the King who legislates as an integral part of the Union Parliament, even although he may have a local representative in the person of the Governor-General; and his right to legislate would be a nullity if the King did not have the ultimate voice in assenting to a bill. Where the Crown disallows a law in these circumstances, the disallowance takes effect from the date when it is made known, whether by Governor-General's speech or message to Parliament, or by proclamation. Where the Governor-General reserves a bill for the King's pleasure,

(1) S.A. Act, sec. 64.

(2) See S.A. Act, sec. 63.

(3) Sec. 65.

it only takes effect if the Royal assent is signified by speech or message to Parliament; and such signification must take place within a week from the date when the measure was presented to the Governor-General for the King's assent, otherwise the measure falls to the ground. The notification of the King's allowance or assent must be made to both Houses; otherwise proclamation suffices.

In the general government of the Union, that is, in carrying out the laws, the Governor-General, as we have seen, acts on the advice of the Executive Council, in other words, of the Ministers. By the Royal Instructions, he is enjoined, in exercising the prerogative of pardon in the case of offences which are not capital, to receive the advice of one, at least, of his Ministers—in practice, the Minister of Justice. Where an offender has been sentenced to death, the Governor-General must consult the Executive Council, to whom he must submit the report of the Judge who tried the case. After receiving the advice of the Executive Council, the Governor-General may pardon or reprieve the offender, if it appears expedient to do so. In any case, he must act "according to his own deliberate judgment." He may disregard the advice of the majority of the Council with reference to a pardon or a reprieve, but in that case he must enter "at length," on the minutes of the Council, his reasons for his action.²

In other respects the Governor-General is, in effect, the executive mouthpiece of the Ministers. Nominally, he governs with their advice. In reality, "the Ministers govern while he looks on."³ Nevertheless, he is not deprived of all power, and it would be wrong to describe him as a mere cipher. The Governor-General, though not a party politician, is entitled to manifest an interest in political measures which the Ministers propose to him, by advising upon their expediency, suggesting alterations, and pointing out objections. The measures are those of the Ministers, but the Governor-General, though not appearing as the responsible person, may nevertheless exert an influence on the course of government, "but always at the price of remaining behind the scenes." Apart from legislation, which must ultimately be submitted to him, it is incon-

(1) *Ib.*, sec. 66. (2) Royal Instructions. Clause IX. (3) Keith (vol. 1, p. 147).

ceivable that in important matters of executive government, for instance, the proclamation of martial law, he should not have the right to express an opinion, at the least, if not to suggest the course to be followed, or modifications in a course that has been suggested to him. In the last resort, of course, the responsibility resides with the Ministers, and the Governor-General occupies the constitutional position of the Crown, whose representative he is. In other than political and executive matters the Governor-General also exerts influence on the life of the community—on ceremonial occasions, in leading and stimulating thought on intellectual matters, social movements, and all that tends to the mental, moral, and physical advancement of the people whose destinies are committed to his care.

In his capacity as the executive head of the Union, the Governor-General is charged with the administration of all laws which confer executive powers upon him. As we have seen, references to him in statutes denote the Governor-General-in-Council, and he cannot act, in these matters, without the advice of his Council. This is not to say that he is bound in all cases to follow that advice, for it may be wrong, and contrary to law; and for acts done contrary to law the Governor-General may be personally responsible, not only to a private person for disregard of the law, but in conceivable cases to the Imperial Government for a breach of his duty as its officer. As far as private complainants are concerned, the law allows actions to be brought against even the Governors of self-governing colonies for wrongs done in their official capacity.¹ Such cases are not very likely to arise. But a familiar illustration is that of the proclamation by the Governor of martial law, followed by the putting to death of persons under that law. If no Act of Indemnity were passed by the Union Parliament, the Governor-General would remain responsible; and the only way in which he might then secure protection would be to obtain an Indemnity Act from the Imperial Parliament.

Although, having regard to his constitutional position within the Union, the Governor-General must, as a rule, adopt and carry into effect the advice of his Ministers, he must in

(1) *Macgregor v. Pasko* (5 A.C. 102).

the case of every executive act, have regard to the positive directions of Parliament, as contained in the statute law, which is to be regarded as the authoritative expression of the will of the people of the Union. In such matters he has no discretion; and to follow the advice of Ministers contrary to the express terms of a statute would be to countenance, if not to give effect to, an illegality. Thus, the Governor-General may not authorise the payment of moneys out of the Treasury except in accordance with the terms of the Exchequer and Audit Act, 1911, or any Act for the specific appropriation of moneys to public purposes.

Under the constitution, the Governor-General-in-Council is charged, apart from the administration of all laws, with the establishment of the various departments of State; the appointment and removal of all officers of the public service, unless where delegated to others; the discharge of executive powers previously vested in the Governor or Governor-in-Council of any of the constituent colonies of the Union, save where vested by law in any other authority; the nomination of nominee senators; the regulation of the election of senators; the appointment of polling days for Assembly elections; the nomination of judges to delimit electoral divisions; the appointment of commissions for the re-distribution of seats; the proclamation of electoral divisions; the appointment of Provincial Administrators; the determination of allowances of provincial councillors; the approval of remuneration of members of provincial committees; the assignment of officers to the Provinces; the delegation of duties to the Administrators; assent to Provincial Ordinances; consent to the borrowing of money by Provinces; payment to the Provinces of subsidies from the Union Treasury; the appointment and removal of provincial auditors; the assignment of judges to the Appellate Division of the Supreme Court; the appointment of judges; the approval of rules of the Supreme Court; and the appointment of officers of the Appellate Division. All revenues vest in the Governor-General-in-Council, as well as Crown lands and public works, and property of the constituent colonies, rights to mines and minerals, and ports, harbours, and railways. The Governor-General-in-Council appoints the

Railways and Harbour Board, and gives effect to the provisions of the constitution relating to the working of the railways. Other duties imposed on the Governor-General-in-Council are the appointment of the Controller and Auditor-General; the regulation of proportional voting for election of senators and provincial committees; the appointment of provincial Attorneys-General; the assignment of provincial officers; the appointment of the public service commission; and the control and administration of native affairs, and of matters specially or differentially affecting Asiatics.

The constitution also charges the Governor-General-in-Council with legislative functions, in the event of the transfer from the Crown to the Union of the Government of any native territories, that is, of territories wholly or partly inhabited by natives which did not form part of the Union at the date of its establishment, such as Swaziland, Basutoland, and Bechuanaland. The territories administered by the British South Africa Company are not included in this provision. After such transfer, laws for any such territory are to be made by the Governor-General-in-Council, subject to their being laid before Parliament for its approval, within seven days after proclamation or, if Parliament be not then sitting, within seven days after its next session. Such laws are to have effect unless, during the same session, both Houses by resolution request their repeal, in which case they are to be repealed by proclamation. The Prime Minister, advised by a commission of three members with a secretary, appointed by the Governor-General-in-Council, is to administer any territory so transferred. It is unnecessary in this place to enter into detail as to the Prime Minister's powers, except to state that, if a difference arises between him and this commission, the decision of the Governor-General-in-Council will be final. The King may disallow laws made for any transferred territory, within one year from proclamation of the law, such disallowance taking effect from the date when it is proclaimed.¹

The South Africa Act further imposes certain personal duties on the Governor-General, acting individually, though in certain cases it is open to him to receive the advice of his Council. These are: the appointment of Ministers; the com-

(1) Schedule to S.A. Act.

mand-in-chief of the naval and military forces (as to which it may be remarked that although this is nominal, it may turn out not to be so, just as the American President is in chief command of the forces of the United States, and such command was actually exercised on more than one occasion during the American Civil War by Abraham Lincoln, though not in the field); the summoning, proroguing, and dissolution of Parliament; the receipt of the resignation of senators or of members of the Assembly, and of the President of the Senate or of the Speaker; the recommendation to the legislature of measures for the appropriation of public revenue; the convening of joint sessions of the Senate and the Assembly; the assenting to, veto of, or reservation of bills passed by Parliament; the notification of the disallowance of laws, or of the King's assent; and the signature of laws.

Although the constitution makes no specific reference to the matter, the Governor-General opens the sessions of Parliament in person, or, where he is unable to be present, by a deputy whom he appoints. Following the procedure which prevails in Great Britain, the Governor-General reads a speech, known as "the Governor-General's Speech," in analogy to the King's Speech at the opening of a session of the Imperial Parliament. The speech, like the King's Speech, is really the declaration of the Ministry with regard to its policy.

Among the functions which are ordinarily exercised by the Governor-General is that of promulgating regulations and bye-laws by virtue of statutory powers conferred upon him. It frequently becomes of importance to ascertain whether the Governor-General has acted within his powers in framing and issuing such regulations or bye-laws, for they may deal with public or private rights, and they often impose penalties for their breach. They are, ordinarily, issued by the various ministerial departments, but they require the nominal sanction of the Governor-General, notified by proclamation, before they can be regarded as having any effect. Whether such a bye-law or regulation in any given case has legal effect must be a matter for the Court to decide, and this is the ordinary procedure. That is to say, the Courts enquire whether the Gov-

ernor-General, in issuing the particular proclamation or the regulation which is the subject of dispute, was acting within the powers conferred upon him by Parliament. For this purpose, regard is had to the meaning of the enabling statute, and the powers which it grants, and the scope and meaning of the proclamation or bye-law are compared with it, in order to ascertain whether the statutory powers have been exceeded or not. The question becomes one of legal interpretation. This power of interpretation the Courts have always regarded as residing in them, and there have been many cases in which they have declared that a proclamation or bye-law was issued by a Governor or Governor-General in excess of his powers, or, in legal phraseology, was *ultra vires*.¹ In other words, the mode of exercise of his powers under a statute by the Governor-General is a matter of interpretation, which may be judged of by a Court in case of necessity.² It is an accepted doctrine of the Courts that no person who has a delegation of Royal or Parliamentary authority will be regarded as having power to delegate that authority to another, unless such a power is clearly conferred by law, the rule being "a delegate cannot delegate"; and this principle applies to a Governor-General, who has only a delegation of the Royal authority. Any infringement of the rule will be corrected by the Courts, to the extent that they will refuse to give effect to an act purporting to have been done in consequence of it. Thus, the Courts have held that the Governor-General cannot delegate the power to make regulations which an Act of Parliament confers on him to a Minister, and that a notice issued by a Minister, purporting to make a regulation under the statute, is *ultra vires*.³

Such questions are comparatively easy of solution, for they are determinable by the Courts as matters of law, and all that is necessary to decide is whether the Governor-General has observed the terms of the statute which conferred powers upon him. But far more difficult problems may arise where the Governor-General, acting in his capacity as the Imperial representative, finds himself in conflict with demands made or duties imposed upon him as the head of the local govern-

(1) See *Union Government v. Montielon* ([1914] A.D. 42).

(2) *Schroder v. Colonial Government* (13 S.C. 227).

(3) *Union Government v. Hill* ([1914] A.D. 195).

ment. He is at all times in a dual position, and although his respective capacities do not necessarily come into conflict, and as a rule need not, occasions may conceivably arise when, in response to the wishes of the Imperial Government, or in accordance with duties imposed on him by it, he regards himself as bound to run counter to the opinions of the Parliament, the Ministry, or the people of the Union. Except in cases properly cognisable by the Courts, such conflicts will, as a rule, only be settled by executive or legislative action. It must not be forgotten that, as a rule, the Governor-General also combines in his own person the office of High Commissioner for the territories in South Africa which are outside the Union. In this he is also an Imperial officer, acting under separate Letters Patent and Instructions. It is possible that cases may arise in which, as High Commissioner, he has duties to discharge which are in direct conflict with the policy of the Union Government, at the head of which he is placed. In many cases such difficulties may be overcome by diplomatic action on the part of the Governor-General and High Commissioner. In others, the only course will be negotiation between the Imperial Government and the Union Government. The position may be complicated by the fact that not only does the High Commissioner control the protectorates of Bechuanaland and Swaziland, as well as Basutoland, but that he is also charged with the conduct of relations between the Union and foreign possessions in South Africa.

The wisest solution of any conflict, it has been suggested, is to say that the Governor-General, "in his twofold capacity as head of the colonial executive and representative of the Crown, and as an officer appointed by the Imperial Government, serves as a link between the Imperial and the Colonial Governments, and it is impossible to treat him as serving solely in either capacity."¹ Or, as it has also been expressed, he stands as the representative of the Imperial element. "He is a real link of Empire: the sign of the union with the Mother Country."² Regarded in this light, the Governor-General is no partisan of either side, but a mediator and interpreter between the two.

(1) Keith (vol. 1, p. 172).

(2) Poley (p. 202).

The salary of the Governor-General constitutes a charge upon the Consolidated Revenue Fund. It is fixed at £10,000 per annum. Since the Governor-General is appointed by the King, the salary is nominally payable to the King (*i.e.* the Crown), who then pays the Governor-General. This salary may not be altered during the continuance in office of the Governor-General. This does not mean that no alteration is possible, but that the salary of any particular Governor-General may not be increased or diminished.¹

(1) B.A. Act, sec. 10.

CHAPTER VI.

THE PARLIAMENT OF THE UNION.

THE LEGISLATIVE system of the Union is bicameral. There are two Houses of Parliament, the Senate, or upper House, and the House of Assembly, or lower House. In this respect the legislature is founded on the model of the Imperial Parliament, as well as of the Parliaments of the former South African colonies, and of the other self-governing Dominions. The existence of a legislature is essential to the constitution, which is based on "one government in a legislative union under the Crown of Great Britain and Ireland." This statement of the constitutional position is emphasised not merely in that portion of the South Africa Act which relates to the special constitution of the Parliament, but also in the preamble to the Act, as well as in that portion of the constitution which deals with the establishment and proclamation of the Union.¹ From this point of view, the presence of a legislature is fundamental; and the legislature, consisting of the King and the two Houses, is supreme. This does not, however, mean that the constitution of the legislature is fixed and unalterable for all time. Within the limits of the South Africa Act, the composition of the two Houses may be changed; but they cannot be abolished, any more than the King may be eliminated as a constituent part of the Union, for that would mean the abolition of the Union, and consequently of the constitution, itself. It follows that, under the existing constitution, a law cannot be passed by the Union Parliament for the extinction of either House, so as to make the legislature unicameral, for the South Africa Act vests the legislative power in the three "estates" previously mentioned, which "shall consist" of the King, a Senate, and a House of Assembly.² The Act, however, provides for an increase in the number of members of the House of Assembly, and for an altera-

(1) S.A. Act, sec. 4.

(2) S.A. Act, sec. 19.

tion in the number and boundaries of constituencies, subject to the proviso that, under the existing constitution, the number of members for the original constituent Provinces may not exceed one hundred and fifty, although it will be competent to alter this number by future legislation. For ten years from the inauguration of the Union, the Senate is to continue in the form originally provided, but after that period it is competent to alter its constitution. Such an alteration is in contemplation, and during the session of 1918 the Senate appointed a select committee to consider the advisability of revising those portions of the South Africa Act which deal with the composition and organisation of the upper House. The position may thus be summarised by stating that the existence of the two Houses is essential to the constitution, but that their internal organisation may be changed. It must, however, be observed that the possibility of change is greater in the upper than in the lower House. The latter must consist of members directly chosen by the voters; the Senate, under any future legislation, may be elective or nominated, and, in the case of elective members, the election may be directly by the voters, or mediately through the Provincial Council or some other body or persons.

The constitution provides that the Parliament shall have full power to make laws for the peace, order, and good government of the Union.¹ The legislative power receives separate treatment, but it may here be remarked that this legislative power, like that of the other Dominions, is plenary only within the boundaries of the Union, and, whether within or without it, is subject to the overriding authority of the Imperial Parliament. Authorities on constitutional practice, in the main, are agreed that in the exercise of its full power of legislation within the Union the local legislature is not an agent or delegate of the Imperial Parliament. Within the area and limits of the Union, the Union Parliament is supreme, and has the same authority as the Imperial Parliament, except that its enactments must, in case of conflict, give way to an Imperial Act.² It is entirely within its discretion as to what subjects it may legislate upon, and it may delegate

(1) S.A. Act, sec. 59.

(2) See the case of *Hodge v. The Queen* (9 A.C. 117).

powers to other bodies or persons. The power of delegation is expressly recognised in the South Africa Act, which confers the right of delegating legislative authority from Parliament to the Provincial Councils.¹ It seems clear, however, that the Union Parliament has no power to interfere with the exercise of, or in any way to take upon itself the exercise of, matters embraced within the Royal prerogative. Thus, it could not pardon a convicted criminal, for that is a portion of the Royal prerogative, which, as we have seen, has been delegated to the Governor-General. An effective check upon such legislation, however, exists in the fact that the Governor-General must himself assent to any bill, and a bill for such a purpose would not be sanctioned by him. On the other hand, the Parliament has the power to pass an Act indemnifying the Governor-General or other public officers in respect of the strained exercise of powers which, but for an Act of indemnity, would be illegal—as in the case of the operation of martial law. Again, it would appear that the legislature cannot abolish the office of Governor-General, as the executive representative of the Crown, any more than it can terminate its own existence; although it has been suggested that it would be competent to it, with the assent of the Crown, to provide that the office of Governor-General should be elective. On the other hand, it appears to be clear that the Union Parliament could not pass legislation to alter the relations between itself and the Governor-General. Such a measure is competent only to the Imperial Parliament.²

The question has been raised whether it is within the competency of a dominion legislature to remain neutral in any international conflict between Great Britain and a foreign Power.³ This problem has presented itself more than once in South Africa. It was suggested by certain Cape politicians, during the Boer War, that the Cape Colony was entitled to remain neutral; and the same claim has been advanced more than once, with regard to the position of the Union, both before and during the war between Great Britain and Germany.

(1) Sec. 85. (2) Keith (vol. 1, pp. 362, 368).

(3) For an account of the controversy in South Africa on this subject during 1911, see *Annual Register* (1911, p. 435). The real point was well stated to be "whether, even if Germany agreed to recognise her neutrality, the South African Union could adopt such a course and remain a Dominion of the British Empire."—General Botha correctly stated that there was no such thing as optional neutrality.

Mr. Keith expresses a somewhat indefinite opinion on the subject, saying that "It (the Colonial legislature) might indeed allow enemy subjects to trade with Colonial British subjects, and the permission would be valid within the territory, assuming of course that the Crown sanctioned any Act for this purpose, since such trading is illegal at common law. It could resolve to remain neutral in war to the extent that it would not assist the Mother Country; it is then for the Mother Country to say whether it will acquiesce in that decision; if it does not it can of course apply force to compel participation: but no amount of declarations will create neutrality in international law if the other power concerned does not care to accept such neutrality."¹ This statement, as far as it relates to trading with the enemy, may be correct; although this can only have reference to the fact that such trade is actually allowed, not to its being lawful. But, as far as the question of neutrality is concerned, the position, from a constitutional and international point of view, is simply that South Africa is a portion of the British Dominions, which in international law are regarded as one nationality, incapable of being dealt with as separate parts. For them to declare their neutrality would be to assume the status of sovereign, independent states. Nor does it lie within the competence of the other belligerent to decide whether another nation is to be regarded as neutral or not. It may, indeed, adopt a certain course of action in accordance with its opinion whether that nation observes neutrality or not. But the status of neutrality is a matter of international law, which is fixed by the common consent of those civilised nations which settle what does and what does not constitute international law.

It is of some importance to determine what are the respective spheres of authority of the Union Parliament and of the Provincial Councils. An authoritative exposition of those portions of the constitution which deal with this subject has been made by the Appellate Division of the Supreme Court of South Africa.² From this it appears that Parliament is a supreme legislature, while each Provincial Council is a subordinate legislature. At the same time, both are created by

(1) Vol. 1, p. 365.

(2) See the case of *Middelburg Municipality v. Gertzen* ([1914] A.D. p. 544).

the constitution, the result being that, since both bodies derive their powers from the same enactment, while the authority of a Provincial Council may be restricted, it is, nevertheless, "an original authority drawn from the South Africa Act, and not delegated by the Union legislature." That is to say, the Parliament did not create or confer delegated authority on the Provincial Councils. At the same time, their authority is liable to be overridden by the Parliament; while, on the other hand, Parliament may delegate to a Provincial Council the power of passing statutes on any specified subject.¹ The result is that "a Provincial Council is a deliberative legislative body, and that its ordinances duly passed and assented to must be classed under the category of statutes, and not of mere bye-laws or regulations." On the other hand, "Parliament has not parted with its powers; its authority over the whole domain of legislation remains unimpaired. It may repeal, directly or by implication, any ordinance passed by the Council, and it may by statute deal with any matter falling within the restricted authority of that body." But in any event the authority of the Provincial Councils to make ordinances "is in reality always derived from the South Africa Act, even where it is the result of machinery which, though created by the statute, has been extraneously set in motion."² One learned judge stated the position as follows: "The South Africa Act established the Provincial Council as a legislative body subordinate to the Union Parliament for the purpose of dealing more especially with matters affecting the Province. The Act then assigned to the Provincial Council certain matters and gave it full power to legislate with regard to these matters. So long as the provisions in an ordinance are confined to the matters entrusted to it *ab initio* or delegated to it subsequently, and so long as it has received the consent of the Governor-in-Council (*sic*) it has the force of law, but as soon as it deals, either directly or indirectly, with a matter outside of the subject matters enumerated in section 85 [of the South Africa Act], or delegated to it, then it no longer speaks with authority upon that particular point."³ This is an accurate statement of the position. However, the learned judge

(1) S.A. Act, sec. 85 (13).
 (3) Wessels, J. (at p. 563).

(2) Per Chief Justice Innes (case above cited, p. 550).

went on to say: "When one legislative body is entirely under the control of another, then if the subordinate legislature acts either by virtue of an original power or by virtue of a delegated power, it seems to me that the connection between them can be most conveniently expressed by saying that they stand towards one another in a relationship analogous to that of principal (the authoriser and controller) and agent (the authorised and controlled). It is probably because the South Africa Act conceived some such legal relationship that the word 'delegated' was used in section 85 (13)." This analogy, it is submitted, must not be pushed too far. It is true that a Provincial Council is a subordinate legislature; but it is subordinate in the same way as the Union Parliament itself is subordinate. Its functions fall into two classes: (1) those originally entrusted to it by the South Africa Act, and (2) those delegated to it by the Union Parliament. The supreme legislature may even deprive a Provincial Council of some of its original functions. But as long as a Provincial Council acts by virtue of its original powers, it cannot be said to exercise them as the agent or representative of the Union Parliament. It is then acting, as long as it acts within its proper sphere, as the delegate of the power which gave force to the South Africa Act, that is, of the Imperial Parliament as representing either the people of Great Britain or the people of the Union, or both. Even in respect of powers delegated to it by the Union Parliament, a Provincial Council, once those powers have been delegated, acts as "a deliberative, legislative body." Its ordinances, when passed, are assented to, not by the Union Parliament, but by the Governor-General-in-Council; and, once such ordinances have been assented to, they have full legal effect, and can only be overridden or repealed by a statute specially passed by Parliament or by the Provincial Council itself. It is, therefore, straining somewhat the construction of the South Africa Act to say that a Provincial Council acts as the "agent" of the Union Parliament. The position would seem rather to be analogous to that of two States, one of which is suzerain and the other subordinate, the suzerain having the power to override legislation distasteful to it which has been enacted by the subordinate State.

Matters which are peculiar to either House of the Union Parliament are dealt with separately. Those which affect them jointly are (1) the sessions of the legislature, (2) its place of meeting, (3) the disqualifications of members, (4) mode of vacating seats, (5) payment of members, (6) privileges of Parliament, (7) the mode of legislation and assent thereto.

In accordance with the practice prevailing throughout the British Dominions, there must be annual sessions of Parliament. That is to say, the legislature must meet once at least in every year. The result is that there cannot be an interval of twelve months between one sitting of Parliament and the next.¹ In fact, there may, as occasion warrants, be more than one session in any one year. The power to summon Parliament for such special or extraordinary sessions is secured by the provision which authorises the Governor-General to appoint such times for the holding of sessions as he thinks fit.² In the same way, as we have seen, the Governor-General may prorogue Parliament. This he may do by proclamation "or otherwise," which means by message to Parliament or by appearing there in person and proroguing it. The usual mode is by way of proclamation. The Governor-General has also the power of dissolution. He may dissolve both Houses simultaneously, or the House of Assembly alone; but no power is given to him to dissolve the Senate alone. The Senate may not be dissolved within ten years of the establishment of the Union; and its dissolution is only to affect its elective members, not those nominated by the Governor-General-in-Council. The power of joint dissolution of the Houses does not exist in Great Britain or the other Dominions, although a precedent existed for it in the case of the former Cape Parliament.

The seat of the legislature is at Capetown.³

The qualifications of members of the two Houses are dealt with separately. As to disqualifications, which are the same in regard to both Houses, we have to notice, in the first place, that a member of one House cannot be chosen or sit as a member of the other House. This provision is common also to Great Britain, Canada, and Australia. On the other hand, it is enacted by the South Africa Act that every Minister of State who is a member of either House of Parliament has the

(1) S.A. Act, sec. 22.

(2) *Ib.*, sec. 20.

(3) *Ib.*, sec. 23.

right to sit and speak in both the Senate and the House of Assembly, although he may vote only in the House of which he is a member.¹ This provision existed in the constitutions of the former South African Colonies, but is not to be found in those of Great Britain or Canada or Australia. Its advantage lies in the fact that a Minister is able to explain the policy of the Government, or the details of a measure, at first hand. On the other hand, a considerable objection to it has appeared in actual practice. Those who have carefully observed the working of the constitution since 1910 cannot doubt that the importance of the Senate has been relatively much less than that of the Assembly, and this has been admitted in the course of the debates during 1918 with a view to the appointment of a select committee to revise the constitution of the Senate. This relative unimportance of the Senate has been due, in large measure, to the circumstance that Ministers have been almost entirely selected from the Assembly, and that they sit almost exclusively in that body, making only occasional appearances in the Senate, when a measure has to be explained or a question answered. Where, in one instance, a Senator has been a member of the Ministry, he has preferred to sit in the Assembly, only appearing in the Senate on special occasions. With this one exception, the Ministry has thus far consisted entirely of members of the Assembly. It is thus easy to see why the Senate has shrunk into relative unimportance. On the other hand, it must be admitted that in England, at any rate ever since the Reform Act of 1832, the importance of the House of Lords has been relatively less than that of the House of Commons, notwithstanding the presence in various cabinets of a considerable number of peers, and the House of Lords has tended to become a mere revising chamber; although it has, even since the passing of the Parliament Act of 1911, surprised its detractors by its occasional manifestations of vitality; and so has the Senate, during 1919.

We must now consider the circumstances which disqualify persons from being chosen or sitting as members of either House, "sitting" including, of course, the case of nominated members of the Senate. These circumstances, if they occur at or before the time of election, and continue, disqualify a

(1) Sec. 52.

member from taking or holding his seat; and if they arise after his election, they disqualify him from the date when they arise. The first disqualifying circumstance is conviction for any crime or offence in respect of which the person in question has been sentenced to imprisonment for not less than twelve months without the option of a fine, unless he has received an amnesty or a free pardon, or unless the imprisonment has expired at least five years before the date of his election.¹ Nothing is said about nominated senators, and on the strict construction of the South Africa Act the disqualifications would appear not to apply to them until after they have been nominated. It is not, however, probable that any Government would nominate a convicted person as a senator, for then it might equally nominate persons who suffer from the other disqualifications imposed by the Act. In any event, once a person is a senator, whether nominated or not, he becomes subject to the disqualifications, and must vacate his seat,² so that the result is the same. The only difference is that a Government could go through the form of nominating as a senator a person who had been convicted within the meaning of the Act; but that person could never take his seat. The two next circumstances of disqualification, being an unrehabilitated insolvent, and being declared to be of unsound mind by a competent Court, do not require elucidation. The last disqualification is that no member of either House may hold an office of profit under the Crown within the Union. There are certain statutory exceptions to this provision, whereby the following persons are not disqualified from membership of either House as holding offices of profit under the Crown: (1) Union Ministers of State; (2) persons in receipt of pensions from the Crown; (3) officers or members of the King's naval or military forces on retired or half pay, or members of the naval or military forces of the Union whose services are not wholly employed by the Union.³ Persons holding offices of profit under the Crown outside the Union are not thereby disqualified; but such instances are not likely to arise.

(1) S.A. Act, sec. 53.

(2) S.A. Act, sec. 54.

(3) *Ib.*, sec. 53. By Act 10, 1915, sec. 1, it was declared that no member of either House or of a Provincial Council should be deemed to hold an office of profit under the Crown by reason of his holding rank in any of the forces taking part in the war of 1914-1918 against the King's enemies.

There is another circumstance which the constitution declares to be a qualification for membership of both the Senate and the House of Assembly. It is enacted that a member of either House must be a British subject "of European descent."¹ This must be regarded negatively rather than positively, as in reality imposing a disqualification. That is to say, a person not of European descent may not be a member of either House of the legislature. The phrase, "of European descent," has received judicial interpretation, in a case where a white man, married to a coloured woman, brought an action in the Cape Province to compel a school committee to receive his coloured children. The judge refused the application, and his decision was confirmed by the Appellate Division of the Supreme Court, which held that when once it is established that a near ancestor, male or female, is of other than European race, a descendant is regarded as being or "non-European" descent.²

The constitution makes a distinction between the vacating and the resignation of his seat by a member of the legislature. Vacating a seat takes place by reason of want of qualification, or of neglect of duty in a member's legislative capacity. It is provided that a member shall vacate his seat if (1) he becomes subject to any of the disqualifications previously mentioned, (2) he ceases to hold any of the qualifications required for membership of either House, or (3) he fails for a whole ordinary session to attend without having obtained special leave of absence from the House of which he is a member.³ If a member, who is by law incapacitated from sitting in either House, sits or votes therein, while knowing or having reasonable grounds for knowing of his disqualification, he is liable to a penalty of £100 for each day on which he so sits or votes. The penalty is recoverable on behalf of the Treasury of the Union by action in any superior Court, that is, in any division of the Supreme Court of the Union.⁴ This means that the penalty for wrongfully sitting or voting cannot be recovered by a "common informer," as in England, but is only recoverable for and payable to the Treasury.

(1) S.A. Act, secs. 26 (d), 44 (c).

(2) *Moller v. Krimore School Committee* ([1911] A.D. p. 635).

(3) S.A. Act, sec. 54.

(4) S.A. Act, sec. 55.

Members of either House may resign their seats. In either case the resignation must be in writing. The resignation of a senator must be addressed to the Governor-General, that of a member of the Assembly to the Speaker, unless there be no Speaker, or the Speaker is absent from the Union, when it must be addressed to the Governor-General. If a senator resigns his seat the Governor-General must, as soon as practicable, take steps to have the vacancy filled. If a member of the House of Assembly resigns, his seat becomes vacant, and there will either be a bye-election or, if the House has been dissolved, the vacancy will be filled at the next general election.¹

The remuneration of members of the two Houses is the same as that paid to members of the House of Commons in England, £400 a year. This allowance is recoverable under rules framed by the Parliament, which form part of the standing orders. The payment of a member is reckoned from the date on which he takes his seat. It is subject to a deduction of £3 for every day of the session on which he is absent, days of the session being defined as those on which the House or any committee of which he is a member meets.² By Act 21, 1916, parliamentary allowances are payable in monthly instalments. A member is entitled to be absent for fifteen days during an ordinary session without deduction of his allowance.

The constitution prescribes the form of the oath or affirmation of allegiance, which every member of either House is bound to make and subscribe before he takes his seat. The oath must be taken before the Governor-General or some person authorised by him. In practice, senators make this oath in the Senate before the President, and members of the Assembly make it in the Assembly in the presence of the Speaker. The oath is a simple form of allegiance to the King.³ Hitherto its taking has presented no difficulties to any members of either House, including such as have openly declared themselves to be "neutral" or "anti-British," nor has its meaning or spirit invariably been observed.

Pending the enactment of rules with regard to the powers, privileges and immunities of the two Houses, the constitution declared that they should be the same as those of the Cape

(1) *Id.*, secs. 29, 48.

(2) S.A. Act, sec. 56.

(3) *Id.*, sec. 51.

House of Assembly and its members and committees at the establishment of the Union.¹ During the second portion of the first session of the first Parliament, however, an Act (No. 19, 1911) was passed to define and declare the powers and privileges of the Parliament.² The provisions of this Act embody, in the main, the same powers and privileges as are possessed by the Parliaments of Great Britain and the other Dominions. The Act provides for freedom of speech and debate or proceedings in Parliament, such freedom not being liable to impeachment or question in any Court or place out of Parliament. There is no provision of a like nature in the constitution itself, because Parliament had and has full power to make an enactment on the subject. Each House has, under the Act of 1911, full power to judge of and punish contraventions of its privileges or orders, and each House is a Court of record. Civil and criminal proceedings in any Court of law, in respect of any matter of parliamentary privilege, are to be immediately stayed and finally ended on production of a certificate by the President or the Speaker, or, in his absence or incapacity, by the clerk of either House, stating that the question is one concerning the privilege of Parliament. A member of one House may not obey a request to attend before the other House without the consent or order of the House of which he is a member, or, during its adjournment, of the President or Speaker of his House, as the case may be. No member or officer of Parliament is liable to serve on a jury, or, while attending Parliament, to appear as a witness in any civil proceeding in any Court, unless such Court sits at the seat of Parliament (Cape Town). Civil proceedings in which a member or officer is defendant may, while he attends Parliament, only be brought to trial at a Court in Cape Town. A member's or officer's attendance in Parliament is sufficiently proved by the certificate of the President or of the Speaker. No member is liable to any proceedings, civil or criminal, in respect of anything said or brought by him before Parliament; nor is any person liable in damages or otherwise for any act done under authority of Parliament, and within its legal powers or any warrant issued

(1) S.A. Act. sec. 37.

(2) Union Statutes (1910-11, p. 584).

under those powers. Of course, a person exceeding his powers may be held liable. Parliament may punish members or other persons for contempt of Parliament, by fines or, failing their immediate payment, by committal to gaol or the custody of an officer of the House in such place as the House directs, until payment be made or for a period not later than the last day of the existing session. The following acts constitute contempt of Parliament: disobedience to any order for attendance or for production of books, papers, or documents made by Parliament or any committee (unless the House excuses refusal to answer questions or to produce books or papers on the ground that the same are private and do not affect the subject of enquiry); refusal to be examined or to answer lawful and relevant questions (unless excused as stated above); wilful failure or refusal to obey any rule, order or resolution of Parliament; offering to or acceptance by any member or officer of a bribe, or of any fee or reward for promoting or opposing any matter or thing submitted or to be submitted to Parliament or any committee; assaulting, obstructing or threatening any member, or endeavouring in any way to compel him to declare his views as to any matter depending or expected to be brought before Parliament; assault on, interference with, or resistance to any officer of Parliament while executing his duty; sending a threatening letter to or challenging a member to fight on account of his conduct in Parliament; creating or joining in any disturbance in Parliament or its vicinity whereby its proceedings are or may be interrupted; tampering with, threatening, or unduly influencing any witness in regard to evidence to be given by him before Parliament or any committee; presenting to Parliament or a committee any false or fabricated evidence or document, with intent to deceive; prevarication or other misconduct as a witness; publication of a false or scandalous libel on any member touching his conduct as a member; or any contempt declared to be such in any standing order. A member may not take part or vote in any matter in Parliament or any committee in which he has a direct pecuniary interest, and, if he does so, may be adjudged guilty of contempt and punished. This does not apply to discussions

relating to the payment of members, or to matters in which the member has an interest with the public generally, or with any class or section of the public. In order to punish a person for contempt, the President or the Speaker or, in case of a joint sitting, the Speaker, may issue his warrant for the arrest and imprisonment of any person who fails to pay any fine or fees which he has been condemned to pay. Persons creating a disturbance in Parliament during its actual sitting may be arrested by verbal order of the President or Speaker, without warrant. All sheriffs and police officers are bound to assist in executing any such verbal order, or any warrant, and doors may be broken open, or premises searched, during the day time, in execution of any order of arrest. Any person may be ordered to attend as a witness before Parliament or any committee. Such attendance is notified by a summons signed by the Clerk of the House, stating the time and place of attendance, and the particular documents to be produced. Witness fees are allowed to persons residing more than six miles from the Houses of Parliament. Witnesses may be examined on oath, and false answers are punishable as perjury. The same privileges attach to evidence as in Courts of law. If a witness answers questions fully and faithfully, he is entitled to a certificate to that effect, after receiving which no legal proceedings, except for perjury, are competent against him in respect of anything done by him before giving his evidence and revealed by his evidence. No member, officer, or shorthand writer may, without special leave of the House, give evidence elsewhere regarding any evidence or documents laid before Parliament or any committee, or in respect of any proceedings or examination at the Bar or before any committee of Parliament. Neither a member, nor his partner or servant who is an attorney, law agent, or parliamentary agent, may accept, directly or indirectly, any fee or reward in relation to the promotion of or opposition to any matter or proposal before or intended to be brought before Parliament or any committee, subject to a fine not exceeding £1000 and repayment of the amount or value of the fee or reward. A copy of proceedings of Parliament, printed by its order, is receivable as evidence in Courts of law. Persons who print or

tender as evidence unauthorised copies of parliamentary proceedings are punishable by not more than three years' imprisonment. Publications made by order of Parliament are protected from all civil or criminal proceedings, subject to production of the President's or Speaker's certificate that the publication is authorised. No person is liable for publishing extracts from parliamentary proceedings in good faith and without malice. Where no express provision is made in the Act, the privileges and powers of the Houses and their members are the same as at the date of promulgation of the South Africa Act were held and enjoyed by the House of Commons in England, subject to any future Union legislation, which, however, is not to grant powers or privileges in excess of those enjoyed by the House of Commons. All parliamentary privileges form part of the general law of the Union, and need not be pleaded in any Court, judicial notice being taken of them. The Act further makes lawful copies of journals of the English House of Commons receivable in evidence in South Africa without further proof.

Each House may make its own standing orders. Until new standing orders were framed, those of the former Cape Parliament were to apply, *mutatis mutandis*.¹ Standing orders have since been framed, which may be described as a combination of those of the House of Commons and of those prevailing in the former South African Parliaments. On any matter as to which the standing orders are silent, the practice and procedure prevailing in the English Parliament are applied. A beneficial regulation was introduced in 1916, whereby legislation no longer drops with a session of Parliament, but may be resumed during the next session of the same Parliament at the stage which it reached during the previous session.

(1) S.A. Act, sec. 58.

CHAPTER VII.

THE MINISTRY.

IN THEORY, that is, according to the literal wording of the constitution, the Ministry is not, or at any rate need not be, the same body as the Governor-General's Executive Council. In practice, they are one and the same. The intention of the framers of the South Africa Act was, apparently, to assign different functions to these two bodies, although they might consist of the same persons. The Executive Council is an advisory body, created for the purpose of advising the Governor-General, as the head of the executive government. Its members are chosen and summoned by the Governor-General. They are sworn "as executive councillors." And they hold office during the Governor-General's pleasure.¹ The Ministers hold office also during his pleasure;² but unless they are dismissed by him, which is very exceptional, they in fact hold office, according to the practice of responsible government, as long as they command sufficient support in the legislature. Nevertheless, Ministers cannot take office without the approval and acceptance of the Governor-General. In their capacity as members of the Executive Council, they are removable; and this equally holds of them as Ministers. although, being responsible Ministers, they are subject to an adverse vote of Parliament, which may, although it need not necessarily, entail their resignation; while it is one of the unwritten conventions of the constitution that they must resign if called upon by the Governor-General to do so.

The Governor-General appoints the Ministers.³ In practice this means that he appoints them according to the choice of the electorate, as being those most likely to command the support of the majority of its representatives in Parliament. But he is not bound to do so. It is at least conceivable that a Ministry may be in power which has a minority of followers

(1) S.A. Act, sec. 12.

(2) Sec. 14.

(3) S.A. Act, sec. 14.

in Parliament, and that it may retain office as long as the Governor-General reposes confidence in it. But in the long run such a ministry must be dependent upon the good-will of the legislature if it is to carry out any financial proposals or any legislation. At the establishment of the Union it was not contemplated that the ministry should necessarily have the support of the legislature. The ministry, indeed, came into being with the Union, whereas the legislature was only elected and constituted some four months afterwards. But with regard to future ministers the constitution provided that, after the first general election of members of the Assembly, no minister should hold office for a longer period than three months unless he were or became a member of either House of Parliament.¹ The object of this provision was that Ministers should not only have seats in Parliament, but should also be responsible to Parliament. Thus, while the power of appointment and dismissal of Ministers rests, as an executive affair, with the Governor-General, it is in effect the legislature, or, in the case of an appeal by Ministers to the country, the electorate, which must decide whether the Ministers are to retain office or not. In other words, the Governor-General is virtually limited in his choice of Ministers to members of the legislature. Of course, this does not fetter the Governor-General's right to dismiss an obnoxious ministry, but if the electorate or the Parliament signifies its desire that the ministry shall retain office, the Governor-General will, in all probability, have no option but to give way.

The result, then, is that while the Executive Council may be "chosen and summoned" by the Governor-General, since, in actual practice, this body consists of the Ministers, his choice is limited to those persons whom the legislature or the electorate has approved as Ministers. He may, of course, reject any or all of them, but in the ultimate issue the Executive Council he chooses consists of the ministry which approves itself to the country. Since, however, there is no limitation on the number of members of the Executive Council, it is at the least conceivable that it may include members other than the Ministers who must be of its number. Thus, in cases of the very gravest emergency, or where the advice of

(1) S.A. Act, sec. 14.

experts in a matter of extreme difficulty is needed, the Governor-General might summon other members to attend it. But in ordinary practice it would be a matter of extreme inconvenience, if not impossibility, for the Executive Council to contain members other than Ministers; for the latter, according to the practice of cabinets, are bound to secrecy, and when advising the Governor-General it is impossible to say that they are not acting in their capacity as Ministers. And as the constitution limits the number of Ministers,¹ the result, for all practical purposes, is that the Executive also consists of that number.

While the body which is called "executive" is created to discharge advisory functions, the Ministers are, by the constitution, appointed to administer the various departments of State. The power to establish these departments vests in the Governor-General-in-Council, that is, in effect, in the ministry advising the Governor-General. It is a permissive power, and save in three cases, there is no obligation to establish any such departments at all. But, once they have been established, it is a matter of extreme difficulty to dis-establish them, for this would mean a disorganisation of administrative work. While the number of Ministers is limited to ten, there is no such limitation on the number of departments of State which may be established, so that, if there be more than ten such departments, some of the Ministers must administer more than one department. At the inauguration of the Union, in fact, thirteen departments were created, not including that of the Prime Minister, which in practice constituted a separate department. These, not mentioned in order of their relative importance, were the departments of Agriculture, the Interior, Mines, Defence, Railways, Justice, Education, Finance, Lands, Native Affairs, Commerce and Industries, Public Works, and Posts and Telegraphs. The constitution, however, does not designate any departments, except those of the Minister of Justice and the Minister of Railways and Harbours, and they may be increased in number, or any of them may be abolished. The Prime Minister, however, is specially referred to, and this would imply that

(1) S.A. Act, sec. 14.

there must be a department for him to administer. Under the schedule to the constitution, the Prime Minister is charged with the administration of any native territory transferred to the Union.¹ This in effect also means that he ought to hold the portfolio of native affairs, although in the past other Ministers than the Prime Minister have at times administered the department of native affairs.

Since the Ministers are to administer the departments of State, the constitution has been interpreted as admitting of the appointment of Ministers who do not administer any departments, or honorary Ministers, commonly termed "Ministers without portfolio," and on more than one occasion since the establishment of the Union such a Minister has been appointed. Though administering no department, he is a member of the cabinet, or collective body of ministers, and takes part in its deliberations. He is also a member of the Executive Council. The result has been that while there have been only ten Ministers to administer the departments of State, the collective ministry has numbered more than ten members. Whether this amounts to an infringement of the spirit of the constitution is a moot point. On the one hand, it may be argued that the intention was to limit the expenditure on Ministers' salaries, and that the State suffers no harm by the appointment of a Minister without portfolio, while the Government enjoys the advantage of an additional honorary adviser; while against this view it may be urged that the appointment may be made to placate some supporter or perhaps critic of the Government, and that Parliament can have no control over him or check on his advisory powers, as he draws no allowance which is subject to parliamentary control.

The officers who administer the departments of State, as above described, are designated as "the King's Ministers of State for the Union." This designation is identical with that of the ministers of the Australian Commonwealth. The Canadian constitution, on the other hand, contains no reference to ministers, but enacts that there shall be a council to "aid and advise" in the government, styled the King's Privy Council for Canada.

The power given to the Ministers to "administer" the departments of State of the Union is a power of superior administration, that is, they have the superintendence and control of their departments, but the administration is not, and cannot for the effectual working of government be limited to them. The officers who discharge departmental functions under them are also administrative; and the definition of the duty of ministers to administer must be taken in a wide and general sense, as implying supervision and superintendence rather than a necessity of minute concern with the multifarious duties and details of administration. In other words, a Minister is responsible for his department, and what is done in its administration: he is not called upon to perform all its administrative functions in person.

It is to Parliament that a Minister is responsible. He must not only be a member of one or the other of the two Houses, but they may call him to account, they may impeach him, and the House of Assembly may show its want of confidence in him by refusing to vote his salary. So that he may account to both Houses for his proceedings, as well as influence them to adopt measures which he proposes, he may sit and speak in both Houses, though he may vote only in that of which he is a member.¹ There is nothing in the constitution to prevent all the Ministers from being members of either one of the two houses, although, in accordance with the usual practice in the Dominions, the great majority of them always belong to the lower house, and only on infrequent occasions have Ministers belonged to the Senate. This is a partial, though far from a complete explanation, of the relative unimportance which the Senate has thus far assumed in legislative government as compared with the House of Assembly.

A Minister may not receive an allowance as a member of Parliament in addition to the salary which he receives as a Minister.²

In three exceptional cases, to which reference has been made, the constitution provides for special Ministers. It provides that the administration of justice throughout the Union shall

(1) S.A. Act, sec. 52.

(2) S.A. Act, sec. 56.

be under the control of a Minister of State.¹ His official designation, according to the practice which has prevailed since the inauguration of the Union, is that of Minister of Justice. In him are vested all the powers, authorities, and functions which at the establishment of the Union were vested in the Attorney-General of the constituent Colonies (now Provinces). In other words, he has the general superintendence of the administration of justice by all Courts, superior and inferior, as well as of the police, and prisons and reformatories. An exception is, however, made in regard to powers, authorities, and functions relating to the prosecution of crimes and offences. These, in each Province, are vested in an Attorney-General, who is a member of the public service of the Union, and is appointed by the Governor-General-in-Council. The Attorney-General of each Province must also discharge such other duties as are assigned to him by the Governor-General-in-Council. Thus his position does not correspond to that of an Attorney-General of one of the former Colonies, who was a cabinet minister, and generally responsible for the administration of justice. The place of such a former Attorney-General is now taken by the Minister of Justice, under whose direction the Attorneys-General of the Provinces are; and even in regard to the conduct of prosecutions, though this is their specific function, they are subject to the superior superintendence of the Minister of Justice. Nevertheless, the responsibility of deciding whether to prosecute or not to prosecute in any particular case rests with the Attorney-General of the Province. In the Eastern Districts of the Cape of Good Hope, the Solicitor-General, and in Griqualand West the Crown Prosecutor, are charged with similar functions in regard to criminal matters—in other words, they are the directors of public prosecutions, appearing also, at their discretion, on behalf of the Crown in the Courts, and ordinarily representing the Government as counsel in civil suits. The Attorney-General also acts as the legal adviser of the Provincial Administration, and may also be called upon to advise the Union Government. The administration of justice, as a whole, is in the hands of the Law Department, whose per-

(1) S.A. Act, sec. 139. By Act 14 of 1914, sec. 2, the Attorney-General in each Province is substituted for the Minister of Justice as *curator ad litem* to lunatics.

manent head is the Secretary for Justice. Each of the other departments of State is also in charge of a permanent head.

The Minister of Railways and Harbours, again, is charged with the control of railways and harbours, and is chairman of the board of Railway and Harbour Commissioners.¹

(1) S.A. Act, sec. 126.

CHAPTER VIII.

THE SENATE.

THE PROVISIONS in the constitution relating to the Senate and the Provincial Councils are, at least in part, an attempt to compromise between the unitary and the federal systems. Under the South Africa Act, the Senate consists of forty members, eight represented by each of the four constituent Provinces of the Union, and eight nominated by the Governor-General-in-Council.¹ Thus, so far as the elected senators are concerned, there is equal representation of the Provinces. But the presence of the nominated senators constitutes a departure from the principle of uniform representation. The situation thus created is unique, for in no similar legislative chamber, whether in the United States or the other self-governing British Dominions, is there a combination of the elected and nominated systems. The result of this compromise is to confer unusual power upon the Ministry, for as the Governor-General ordinarily acts upon the advice of his Executive Council, it means that, as a rule, the Ministers decide who are to be the nominated members. And the Governor-General will ordinarily act upon the advice of Ministers with regard to a dissolution of the Senate, which may take place simultaneously with a dissolution of the Assembly.²

There is, to some extent, a check upon the appointment of the eight nominated senators, in that one-half of their number must be selected on the ground mainly of their thorough acquaintance, by reason of their official experience or otherwise, with the reasonable wants and wishes of the coloured races in South Africa. But such a selection must be arbitrary. What standard of experience "or otherwise" is to be applied? And what are the "reasonable" wants and wishes of the coloured races? Thus far, some senators have been selected because they were administrators in native territories; others,

(1) S.A. Act, sec. 34.

(2) *Id.*, sec. 20.

again, because they were well-known "negrophilists." As Mr. Keith points out, "the requirement that the half of the nominated members should be selected on account of their knowledge of native wishes, so far as they are reasonable, will not of course be capable of legal enforcement."¹ The solution of the problem by the Governor-General-in-Council can, at best, be but a rough-and-ready one, though, no doubt, care will be taken to obtain representation, as far as possible, of native views and opinions, as interpreted by white men; for natives themselves are not qualified to sit in the Senate.

The first elective senators were chosen by the two Houses of legislature of each constituent Colony, sitting together in special session, with the Speaker presiding in each case. The joint bodies so sitting then elected eight senators for each Province. The same principle applies to future senatorial elections. Unless other provision is made by Parliament, eight senators, after the expiration of ten years, are to be chosen for each Province by a joint sitting of members of its Provincial Council and members of the House of Assembly elected for that Province; and the same procedure is to be followed on any casual vacancy in the seat of an elected senator. This, however, does not apply to vacancies in the first Senate, which are filled by election on the part of the Provincial Council alone, without the Assembly members. The system of voting in such elections is to be by proportional representation with the single transferable vote; and in other respects the elections are conducted according to regulations framed by the Governor-General-in-Council.²

Both nominated and elected senators sit for ten years, subject, however, in the case of elected senators, to a dissolution of the Senate before the end of that period, in which event there must be a fresh election. If a senator is elected on a casual vacancy, he sits until the completion of the period for which the person in whose stead he is elected would have held his seat.³ But where there is a vacancy in the seat of a nominated senator, his place is filled by a fresh nomination made by the Governor-General-in-Council, and the new nominee is entitled to sit for a full period of ten years.⁴ The tenure of a seat represents a compromise between the Australian and

(1) Vol. 2, p. 958.

(2) S.A. Act, secs. 24, 25, 134.

(3) S.A. Act, sec. 25.

(4) *Ib.*, secs. 24, 25.

American period, which is six years, and that of Canada, which is for life.

No senator, however, may be either nominated or elected unless he possesses the requisite qualifications. These relate to age, voting power, residence, birth, and, in the case of elected senators, to property. A senator must not be under thirty years old. He must be qualified for registration as a voter for election of members of the House of Assembly in one of the Provinces (not necessarily that which, if elected, he is chosen to represent). He must have resided for five years within the limits of the Union as existing at the time of his election or nomination. He must be a British subject of European descent. Lastly, in the case of an elected, but not necessarily in that of a nominated senator, he must be the registered owner, that is, must be the owner of the title deeds, of immovable (*i.e.* real) property within the Union, valued at not less than £500, exclusive of the amount of special mortgages thereon.¹ The disqualifications of senators have been previously mentioned (chap. 6).

The office of President in the Senate corresponds to that of Speaker in the House of Assembly. The President must himself be a senator, ceasing to hold office if he ceases to be a senator, and is elected to his office by the Senate. The election of this office was the first business of the Senate at its original meeting, and, if the office of President falls vacant, the election of a successor must be the first business of the existing or any future Senate. A vote of the Senate may remove the President, or he may send a written resignation of office to the Governor-General. The function of the President is to preside at all meetings of the Senate. If he be absent, the Senate chooses another senator to perform his duties during his absence.²

A quorum of twelve senators is necessary for the transaction of competent business at a meeting of the Senate.³ All questions arising in the Senate are determined by a majority of votes of the senators present, excluding the President or presiding senator. It is only in the event of an equality of votes that the President or senator occupying the chair has a casting vote. He has no deliberative vote.⁴

(1) S.A. Act, sec. 26.
(4) *Ib.*, sec. 31.

(2) S.A. Act, secs. 27, 28.

(3) *Ib.*, sec. 30.

CHAPTER IX.

THE HOUSE OF ASSEMBLY.

IN CONTRADISTINCTION to the Senate, the House of Assembly consists of members directly chosen by popular vote of the parliamentary electors of the Union. Elaborate regulations are laid down in the constitution with regard to the number and choice of members of the Assembly, and it will be convenient to consider them in their bearing on the following questions: How is the number of members determined? How are the electoral areas fixed? What provision is there for redistribution of seats? What are the rights of the electors?

The provisions relating to the number of members must not be confused with those governing the distribution and delimitation of electoral areas, that is, of parliamentary constituencies. A member represents a constituency, but the basis for ascertaining the number of members is not the same as that for fixing the limits or boundaries of a constituency.

As laid down in the constitution, at the inauguration of the Union the number of members of the Assembly was fixed at fifty-one for the Cape of Good Hope, seventeen for Natal, thirty-six for the Transvaal, and seventeen for the Orange Free State.¹ A redistribution of seats has since taken place, with the result that the Transvaal has obtained nine new members (forty-five in all), while no change has taken place in the representation of the other Provinces. As will be seen, the determination of the number of members is based, not on the total population, nor on the number of voters, but on the number of male adults as ascertained at the census of 1904. Taking the quota of the Union, as hereafter mentioned, the true representation of the four Provinces, in a House of 121 members (the original number; it is now 150) would have been 57 to the Cape, 12 to Natal, 14 to the Orange Free State, and 38 to the Transvaal. In order, however, to give the smaller

(1) S.A. Act, sec. 83.

Provinces the most favourable treatment, a compromise was made, whereby the Cape and the Transvaal surrendered certain of the number of members to which they were entitled on a strict mathematical basis, and each of the two smaller Provinces received seventeen members.¹

After 1910, the constitution provided that any increase in the number of members was to take place according to the following rules: (1) the quota of the Union was to be obtained by dividing the total number of European male adults in the Union, as ascertained at the census of 1904, by the total number of members of the Assembly as constituted at the establishment of the Union (*i.e.* 121 members). The white male adult population in 1904 was: Cape, 167,546; Natal, 37,784; Transvaal, 106,493; Orange Free State, 41,014. This amounted to a total of 352,837 white male adults, which, divided by 121 (the total number of original members), gave a quota of 2916, or, in round numbers, 3000. (2) In 1911, and every five years thereafter, a census of the European population was to be taken for the purposes of the constitution, *i.e.* to fix the future number of members. Owing to war, no such census was taken during 1916, the end of the second quinquennial period; but a census was taken in 1918. (3) After any such census (*i.e.* in 1911 and thereafter), the number of European male adults in each Province is to be compared with the corresponding number (*i.e.* of European male adults) as ascertained at the census of 1904. In the case of any Province where an increase is shown, as compared with the census of 1904, equal to the quota of the Union or any multiple thereof, the number of members previously allotted to such Province shall be increased by an additional member or additional members equal to such multiple, as the case may be. This means that where, in any Province, there are, at any census, found to be 2916 European male adults over the number of such adults at the census of 1904, the Province becomes entitled to an additional member; and for every additional multiple of 2916 European male adults, there is to be a further member. All this is, however, subject to the proviso that no additional member is to be allotted to any

(1) The result, on a basis of 120 members, in proportion to the adult male white population, was actually worked out as: Cape, 55½; Transvaal, 39½; Orange Free State, 13½; Natal, 11½ (see Walton, *Inner Hist. of National Convention*, p. 177).

Province until the total number of European male adults in such Province exceeds the quota of the Union multiplied by the number of members allotted to such Province for the time being, and thereupon additional members are to be allotted to such Province in respect only of such excess. Thus, to take the case of Natal: the quota of the Union (2916) multiplied by the number of Natal members (17) is $2916 \times 17 = 49,572$. Natal is not entitled to an additional member until its European male adults exceed 49,572, and then it is only the excess above 49,572 that counts towards entitling that Province to have a new member, *i.e.* the European male adults must number 2916 above 49,572 for one new member, twice 2916 or 5832 for two new members, and so on. (4) Subject to the original allocation of members to the respective Provinces, the distribution of members among the Provinces is to be such that the proportion between the number of members to be elected at any time in each Province and the number of European male adults in such Province, as ascertained at the last preceding census, is to be as far as possible identical throughout the Union. (5) For the purposes of computation, "male adults" is to be taken to mean males of 21 years or upwards, not being members of the King's forces on full pay. By the King's forces is here meant the Royal forces (Imperial) *i.e.* not South Africans enrolled under the Union Defence Act.¹

The number of members of the House of Assembly is not, however, capable of indefinite increase, under the constitution as originally framed. When the number reaches one hundred and fifty, it is to become stationary, unless and until Parliament makes other provision, *i.e.* until special legislation, which is in the competence of Parliament, provides for an increase. On the other hand, the number of members originally allotted to any original Province is not to be diminished until the total number of the Assembly reaches one hundred and fifty, or until ten years have elapsed since the establishment of the Union, whichever is the longer period. If either event happens, it is competent to Parliament to diminish the number, just as it may increase it². The broad effect is that the whole matter is open to fresh legislation after the number of members reaches one hundred and fifty. Whether there

(1) S.A. Act, sec. 34.

(2) *Id.*, secn. 33, 34.

should then be an increase or a decrease will be a matter of policy. If nothing is done, the number will remain at one hundred and fifty; and it is possible that Parliament may regard this as a sufficient number, in view of the density or sparsity of population in the Union as a whole.

Whereas the basis for determining the total number of members of the Assembly is the quota of the Union, ascertained by the method previously described, the basis to determine the total number of electoral divisions (*i.e.* constituencies) is the quota of the Province, because there is, as we have seen, a varying allocation of constituencies to the Provinces, based upon the number of members of the Assembly originally assigned to each of them. The electoral divisions or constituencies are single-member constituencies, each returning one member;¹ so that each of the constituencies must have a more or less equal number of voters. In this way the constituencies in any one Province are on a roughly uniform basis. But the number of voters in any constituency in one Province will not, and does not as a matter of fact, approximate to the number of voters in any constituency in another Province.

In order to remove the delimitation of electoral divisions from the arena of party controversy, the duty of determining the respective constituencies was entrusted, under the constitution, to a judicial joint Commission. The original Commission, which divided the Provinces into electoral divisions, consisted of four judges, one nominated by the Governor-in-Council of each constituent Colony. After every quinquennial census, the Governor-General-in-Council was and is to appoint a like Commission, consisting, however, only of three Judges of the Supreme Court, to carry out any necessary re-division which may have become necessary as between the different electoral divisions in each Province, and to provide for the allocation of the number of members to which such Province may have become entitled under the constitution.²

The first Commission was convened by the High Commissioner, because when it met there was no other joint authority for the four constituent Colonies. But it seems that any subsequent redistribution Commission may be convened by the Governor-General-in-Council. The Commission is to elect its

(1) S.A. Act, sec. 39.

(2) S.A. Act, secs. 38, 41.

own chairman from among its number. It may appoint persons in any Province to assist them or to act as assessors to the Commission or with individual members thereof, to inquire into matters connected with the duties of the Commission. The Commission may regulate its own procedure, and may act by a majority of its number. Although it is distinctly non-party in its composition, there is nothing to prevent the Commission from giving a hearing to representations made by various persons or by political parties; and as a matter of fact such a hearing has been accorded in the past by Commissions acting under these provisions. The expenses of the Commission are defrayed by the Governor-General-in-Council, *i.e.* voted by Parliament.¹

The duty of the judicial Commission is to divide each Province into electoral divisions. To do this, the quota of each Province is obtained, by dividing the total number of voters (*i.e.* not male British subjects, as in obtaining the Union quota) in the Province, as ascertained at the last registration of voters, by the number of members of the House of Assembly to be elected therein. Each Province is then divided into electoral divisions, each division containing a number of voters, as nearly as may be, equal to the quota of the Province. The division is not to be mathematically rigid, however, and the commissioners are to give due consideration to (a) community or diversity of interests (*e.g.* as between different sections of the population, such as urban and rural, and the like); (b) means of communication (under which would fall considerations as to roads, distances of polling stations, railways, etc.); (c) physical features; (d) existing electoral boundaries (which, as a general rule, would be disturbed as little as possible); and (e) sparsity or density of population. The result of the discretion confided to the Commission in respect of these matters is that, while it is to take the quota of voters as a basis of division, it is at liberty, whenever deemed necessary, to depart therefrom to the extent of a margin of fifteen per cent. on either side; that is, it may, in the case of any division, and paying due regard to the foregoing considerations, allow such division to consist of any number of voters up to fifteen per cent. more than the quota

(1) S.A. Act, sec. 38.

of the Province, or any number down to fifteen per cent. less than the quota, but in no case exceeding fifteen per cent.¹

When a Commission has completed the division of the Provinces, it must submit its report to the Governor-General-in-Council, showing (1) a list of electoral divisions, with the names given to them by the Commission, and a description of the divisional boundaries; (2) a map or maps showing the constituencies into which the Provinces have been divided; (3) any further particulars. The Governor-General-in-Council may refer to the Commission any matter referring to the list, or arising out of the powers and duties of the Commission. When the divisions are finally settled and certified by the Commission or a majority of its members, they are proclaimed by the Governor-General-in-Council, with mention of their names and boundaries, and then constitute the electoral divisions of the Union in the Provinces until there is a re-division. If any discrepancy arises between the description and the map or maps of a division, the description prevails.²

Alterations in the number of members of the Assembly, and any re-division of the Province into electoral divisions, come into operation at the general election following completion of the re-division or any allocation consequent upon such alteration, and not earlier.³ That is to say, a redistribution of seats or an increase of members has no territorial or political effects until the following general election. But since, as will be seen, the same constituencies serve for both the House of Assembly and the Provincial Council, so far as the Cape and the Transvaal Provinces are concerned, a general election for the Provincial Council in either of these Provinces, following upon a redistribution, will take place in accordance with such redistribution, even if no general election for the Assembly under the scheme of re-distribution has yet taken place. In Natal and the Orange Free State there are more seats for the Provincial Council than for the House of Assembly, but the same principle applies to general elections following a re-distribution of seats.

The qualifications of a member of the House of Assembly are (1) electoral, (2) residential, (3) national. He must, in

(1) S.A. Act, secs. 39, 40.

(2) S.A. Act, sec. 42.

(3) *Id.*, sec. 43.

the first place, be himself qualified for registration as a voter at elections of the House of Assembly. This qualification he may hold in any one of the Provinces, so that he need not be qualified for registration in the constituency where he seeks to be elected, as long as he is qualified in some constituency within the Union. Nor, as long as he is qualified, need he hold his qualification within the Province where the constituency which he seeks to represent is situate. In the next place, he must have resided for five years within the limits of the Union as existing at the time of his election. The period of residence need not have been continuous, nor need it immediately precede the date of election. Lastly, he must be a British subject of European descent.¹ The disqualifications for membership have been stated in the chapter on the Senate.

Every House of Assembly continues, that is, is elected, for five years from its first meeting, and no longer.² It is, however, subject to earlier dissolution by the Governor-General, in which event there must be a fresh general election. Casual vacancies, by death or resignation, are filled by a bye-election in the particular constituency concerned.

The Speaker presides over the deliberations of the House of Assembly. He is chosen by the members at their first meeting, before they transact any other business; and when his office falls vacant, a new Speaker is chosen. The Speaker retains office only as long as he remains a member of the Assembly. He may be removed from office by vote of the House, or he may resign either his office as Speaker or his seat. Resignation of his seat carries with it *ipso facto* resignation of the office of Speaker. Such resignation must be in writing, addressed to the Governor-General.³ During the absence or any vacancy in the office of the Speaker, the House chooses a member to act as Speaker.⁴ The Speaker occupies the same position in relation to the House of Assembly as the Speaker in England does to the House of Commons, and, where the standing orders of the Assembly are silent on any matter, he is guided in the discharge of his functions in relation to the House by the same principles and precedents as is the Speaker of the House of Commons.

(1) B.A. Act, sec. 44.

(2) *Id.*, sec. 45.(3) *Id.*, sec. 46.(4) *Id.*, sec. 47.

Thirty members of the Assembly must be present to constitute a quorum for the transaction of business.¹ All questions in the House are determined by a majority of votes of the members present, not counting the Speaker or presiding member, who, however, has and exercises a casting vote in case there is an equality of votes.²

Under the constitution, as will be seen, provision is made for a joint sitting of the Senate and the House of Assembly, in certain contingencies. At such joint sittings the Speaker presides, and the rules of the House of Assembly are to be applied, as far as practicable.³ During the parliamentary session of 1918 such a joint sitting was held, and the question arose whether the Speaker was only to exercise his casting vote, or whether he was entitled also to a deliberative vote, like that of an ordinary member. On the one hand, it was contended that the constitution laid down what the Speaker was to do in the House of Assembly in case of an equality of votes, namely, to exercise his casting vote; that he was expressly deprived of a deliberative vote; and that as the rules of the Assembly were to apply to a joint sitting of the Houses, he could have no deliberative vote in such a joint sitting. On the other hand, it was argued that since there was no express provision with regard to the Speaker's vote at a joint sitting, either in the constitution or in the rules of the House of Assembly, it was open to either the Speaker or the House of Assembly to decide what should be done in the matter. The Speaker (Mr. Krige) stated that he would assert the right to exercise a deliberative vote, and, if the necessity arose, his casting vote as well.

The constitution expressly confers power upon the Parliament to frame a uniform franchise law for the Union, that is, to prescribe the qualifications for voters at the election of members of the House of Assembly and the Provincial Councils.⁴ This power, even if not expressly mentioned, is in any event implied from the general legislative authority possessed by Parliament. Until any such law is passed, however, the franchise qualifications existing in the respective Provinces

(1) S.A. Act, sec. 49.

(2) *Ib.*, sec. 50.

(3) *Ib.*, sec. 58.

(4) S.A. Act, sec. 35 (1).

of the Union for Assembly elections are to continue. This was subject to the proviso that no member of the King's regular forces on full pay should be entitled to registration as a voter.¹ This proviso was, however, amended during the parliamentary session of 1918, since its continuance would have meant the disenfranchisement of thousands of South African citizens, who had voluntarily enlisted in the British armies during the war against the Germanic Empires, and had thus, although only temporarily, become "members of His Majesty's regular forces on full pay." A redistribution of seats was due, and the exclusion of members of the King's regular forces, which was compulsory under the constitution as it stood, would have been a great injustice to such of them as were already enfranchised citizens of the Union. In order to enable the judicial commission for the re-division of constituencies to include them among the voters in the various divisions, the amendment of the South Africa Act became necessary. The amending Act was expressly declared to be a temporary measure, and its preamble stated that "large numbers of European male adults who are still domiciled in the Union have, in the extraordinary circumstances arising out of the present war, become in law temporarily members of His Majesty's regular forces on full pay." It was then provided that the judicial commission should, in making any comparison between the electoral census of 1918 and any previous census, take into consideration the number of such European male adults domiciled in the Union as, being absent therefrom for the reasons described, have in accordance with the Electoral Census Act of 1918 been included in the census taken thereunder, notwithstanding that such European male adults may happen to be members of His Majesty's regular forces on full pay. The original provision in the South Africa Act was altered accordingly, but only in respect of the next redivision of electoral divisions and allocation of members.² The question whether members of the King's forces on full pay, who returned to the Union but were not discharged from active military service, would be entitled to vote at a future election, was

(1) S.A. Act, sec. 86.

(2) Electoral Divisions Redelimitation Amendment Act, 1918 (sec. 1). It must be noted that the section of the S.A. Act which was actually amended was No. 34 (vi), relating to the non-inclusion of members of the King's forces in any electoral re-division, while section 86 declaring that such persons were not entitled to registration as voters, was not specially amended.

thus in reality left open, as the amendment only went to their inclusion in parliamentary constituencies for purposes of re-division.

The following is a brief summary of the franchise qualifications existing in the original Provinces of the Union, which still continue in each of those Provinces respectively. In the *Cape of Good Hope*, no distinction is made as to whether a voter is of European or non-European descent, white, coloured, or black. The franchise extends to all male persons of full age, being British subjects, natural-born or naturalised, who are able to sign their names and write their address and occupation. A voter must, however, possess one of the following property or earning qualifications: (1) he must have been the occupier for twelve months of landed property worth £75 within the electoral division for which he seeks registration; or (2) he must have been in receipt of salary or wages at the rate of not less than £50 per annum for twelve months. In either case the person claiming to vote must have resided within the last three months within the electoral division for which he claims registration.¹ No persons may vote whose only qualification by possession of property is a share in tribal occupancy.² Lunatics; persons convicted and sentenced to treason or murder who have not received a free pardon, and persons convicted of certain other specified offences where five years have not elapsed from expiration of the sentence, are disqualified from registration as voters.³

In *Natal*, every male British subject above twenty-one years of age is entitled to vote who (1) owns immovable property worth £50 within the constituency, or (2) rents immovable property worth £10 per annum within the constituency, or (3) has resided for three years in the Province, and has an income of £8 per month, or £96 per annum.⁴ The following are disqualified: aliens; persons convicted of any treason, felony, or infamous offence who have not received a free pardon; persons placed by special legislation under the jurisdiction of special Courts (*i.e.* natives), or subject to special laws and tribunals, unless exempted by letters of exemption granted by the Gov-

(1) Const. Ord., 1853; Franchise and Ballot Act, 1892; Act No. 2, 1883; Act No. 5, 1899.

(2) Registration Act, 1887.

(3) Const. Ord., sec. 10; Act 9, 1892, sec. 35.

(4) Charter of 1856, sec. 11; law 2, 1883, sec. 3.

(5) Charter, sec. 12; law 2, 1883, sec. 6.

ernor-General. Whereas, in the Cape, a native aboriginal or coloured person may vote if he possesses the requisite qualifications, in Natal the reverse is the case, and a native or coloured person may not vote unless (1) he has resided for twelve years in the Province, and (2) has been exempted from the operation of native law for seven years, and (3) has been recommended by three duly qualified European electors, and (4) has received a certificate at the discretion of the Governor-General-in-Council entitling him to registration. Persons (e.g. Asiatics) who are natives or descendants in the male line of natives of countries which have not possessed representative elective institutions founded on the parliamentary franchise are also disqualified from voting, unless exempted by the Governor-General-in-Council.¹

In the *Transvaal*, a voter must be a white person of full age, and a British subject, natural-born or naturalised. Only a residential qualification is required, i.e. either residence for six months preceding registration, or a total residence for six months in the three years preceding registration; and, in either case, residence at the date of registration in the division in which the claim for registration is made. No property or occupation qualification is necessary, so that manhood suffrage exists. The following are disqualified from voting: (1) soldiers on full pay from the Imperial Parliament; (2) persons who have received relief from public funds otherwise than by way of repatriation under the terms of peace of May 31, 1902, or in a public or semi-public hospital; (3) persons convicted of crime and sentenced to imprisonment without the option of a fine, save for treason previous to June 1, 1902.²

In the *Orange Free State*, the qualifications and disqualifications are the same as in the *Transvaal*.³

It will thus be seen that in the Cape there is nothing which specially disqualifies an aboriginal native or a coloured person (including an Asiatic) from the franchise, provided that he possesses the general qualifications requisite in any voter. In Natal, such persons are disqualified, unless they receive a special grant of the franchise from the Governor-General, subject to the conditions previously mentioned. In the *Transvaal*

(1) Law 11, 1865: Franchise Act, 1896.
(3) Letters Patent, 1907.

(2) Letters Patent, 1906.

and the Free State, on the other hand, no such persons are entitled to vote.

In view of these radical differences existing as to the qualification for the franchise in the four Provinces, it is obvious that when, if ever, a bill is introduced into Parliament to make the franchise law uniform throughout the Union, the question of the native or "coloured" vote will present considerable difficulty. This difficulty has been foreseen in the South Africa Act. It is provided that no future law may disqualify any person from registration in the Cape Province on the ground of his race or colour only, where such person is or may become capable of registration as a voter, unless such law is (1) passed by both Houses of Parliament sitting together, and (2) agreed to, at the third reading, by not less than two-thirds of the total number of members of both Houses. And, in any event, a person who, when such a law is passed, is registered as a voter in any Province, may not be removed from the register by means only of any disqualification based on race or colour.¹

It is evident that any future uniform franchise law will have to operate in one of two directions. It will extend the native or "coloured" franchise to all persons in the four Provinces; or it will restrict that franchise to persons who are actually registered as voters in the Cape Province, and will admit no more to the register. In the existing social condition and state of opinion in South Africa, it is hardly conceivable that such a uniform law will not deal with the native franchise, unless it is intended merely to provide for the extension of manhood suffrage to all white males in the Union.

It must further be noticed that, in any event, the Governor-General must reserve, for the signification of the King's pleasure, any bill repealing or amending any provision with regard to franchise qualifications; and no such bill may take effect until, within a year from the date of its presentation to the Governor-General for his assent, he notifies that it has received the Royal assent.²

With regard to voters' qualification on the ground of nationality, it is provided by the South Africa Act that all per-

(1) S.A. Act, sec. 35.

(2) S.A. Act, secs. 64, 66.

sons who have been naturalised in any of the constituent Colonies are deemed to be naturalised throughout the Union.¹ The Union Naturalization of Aliens Act, 1910, provides a uniform naturalisation. The qualification prescribed is that the applicant (1) shall be twenty-one years of age, (2) shall intend, when naturalised, to reside in the Union or serve under the Crown in the Union, (3) shall have, within five years immediately preceding the date of application, (a) resided for at least two years within the Union or its territories, or (b) been in the service of the Crown. Naturalisation in the United Kingdom is recognised within the Union.

The constitution provided that the law governing the mode of registration of voters, and of holding elections, which existed in the respective constituent Colonies at the inauguration of the Union, should continue until altered by Parliament, subject to the condition that, at any general election of members of the House of Assembly, all polls should be taken on one and the same day (such day being appointed by the Governor-General-in-Council) in all the electoral divisions throughout the Union.¹ In 1918 an Act was passed to create uniformity in the mode of holding elections and the registration of voters.

(1) S.A. Act, sec. 138.

(2) S.A. Act, sec. 37.

CHAPTER X.

LEGISLATION.

WITHIN THE UNION, there is no limit on the legislative power of Parliament, and it has the same authority to make laws within its sphere as the Imperial Parliament has with regard to Great Britain and the Empire at large. There are, of course, certain checks upon the legislative authority, in that bills, when they have passed through both Houses, must be assented to by the Governor-General, and may be reserved by him for the signification of the King's pleasure. And in certain cases bills must be so reserved. In other cases, again, bills may only be passed according to certain forms, whether by the two Houses sitting together, or by a certain majority of the members present. But, provided that the prescribed procedure is followed when certain specified matters are dealt with, there is no limitation whatsoever upon the subject-matter of legislation. Once an Act has been duly passed by the Houses of Parliament and assented to in the King's name, it may be, and is, capable of interpretation by the Courts, but it may not be challenged on the ground that it transcends the limits of legislation, for there are no such limits. This is to be understood with the proviso that it must deal with the affairs of the Union. Of course, as we have seen, it is not competent to Parliament to deal with persons or matters outside its sphere of action, that is, outside the territorial and jurisdictional limits of the Union, nor may it pass Acts which conflict with Imperial legislation. It cannot legislate so as to infringe upon the Royal prerogative. In certain respects Parliament may apparently encroach upon the prerogative, as when it passes an Act for the amnesty of offenders. But inasmuch as such an Act must receive the Royal assent, there is in reality no breach of prerogative, since the Act cannot take effect until it is assented to,

and the giving of the Royal assent is to all intents and purposes an exercise of the prerogative of pardon. Subject to these limitations, the Parliament may make any laws for the "peace, order, and good government" of the Union.¹ These words are merely descriptive, and are not employed in the constitution for the purpose of exact definition, or in order to mark legislative limits. A law will be within the legislative competence of Parliament, although it is not capable of classification as tending to either peace, order, or good government. No doubt, in theory, these are the three objects which ought to be aimed at in legislation. But though an Act may be positively bad, or may tend towards none of these objects, it will nevertheless fall within the law-making competence of Parliament.

The general rule is that a bill, as the first stage towards the enactment of a complete Act of Parliament, may originate, that is, be introduced, in either House of the legislature. This is subject to the condition that it be carried through all its stages, that is, through the three readings which are enjoined by parliamentary procedure, in the House wherein it originates, before it is introduced into the other House for a like procedure to be gone through. It makes no difference whether a bill originates in the Senate or the House of Assembly. To this, however, there is an exception, in the case of bills appropriating public revenue or moneys to any purpose, or which impose taxation. These may originate only in the House of Assembly. The mere fact, however, that a bill contains provisions for the imposition or appropriation of fines or other pecuniary penalties, does not make it a measure which must originate in the Assembly. In other words, a bill may be first introduced in the Senate, even if it provides for fines and penalties, so long as it is not a measure of appropriation or taxation. Apart from the rule that appropriation and taxation bills must originate in the Assembly, it is provided that the Senate may not amend any bills, in so far as they impose taxation or appropriate revenue or moneys for Government services. Nor may the Senate amend any bill so as to increase any proposed charges or burden on the people.² These provisions are designed to establish the principle which is

(1) S.A. Act, sec. 59.

(2) S.A. Act, sec. 60 (1).

established in the other British legislatures, that taxation and appropriation of moneys must originate in the popular House. There has, in fact, been conflict between the Senate and the House of Assembly as to the meaning of these provisions, but their plain meaning appears to be that the Senate may in no way, whether by increasing or diminishing, alter the financial measures which have been agreed to by the Assembly. All that the Senate may do is to adopt or to reject such a measure in its entirety. Another rule, designed to prevent "tacking,"¹ is that any bill which appropriates revenues or moneys for the ordinary annual services of the Government must deal only with such appropriation.²

It must, further, be noticed that although an appropriation or taxation measure must originate in the Assembly, it may not even originate there unless it has first been recommended by message from the Governor-General, and such message must be communicated during the session in which the measure is proposed. This safeguard has been made comprehensive, so as to embrace any "vote, resolution, address or bill," which has in view either the appropriation of money or the imposition of taxation.³ The stages, then, of such a measure are: (1) it must be recommended by message from the Governor-General; (2) during the same session, it must be introduced in the Assembly; (3) after passing through the Assembly, it may be introduced in the Senate, which may adopt or reject, but may not amend it.

In the event of a deadlock, that is, where the two Houses do not agree upon a proposed measure, a joint sitting may be resorted to. Such a sitting is, of course, not compulsory, for the Government may decide to abandon the measure. If, however, it is desired to carry it, the Governor-General is empowered to convene a joint sitting. It is not every deadlock, however, which may be disposed of in this manner. The bill must have been passed by the Assembly, and the Senate must either (1) have rejected it, or (2) have failed to pass it, or (3) have passed it with amendments to which the Assembly

(1) "A favourite weapon with popular Houses in conflict with Second Chambers." This is a device whereby, to a financial measure, are added proposals not directly concerned with finance, so as to prevent amendment of the proposals by the Second Chamber (in South Africa, the Senate).

(2) S.A. Act, sec. 61.

(3) *Ib.*, sec. 62.

will not agree. The House of Assembly must then, in the *next Session*, again have passed the bill, with or without any amendments which have been made or agreed to by the Senate, and the Senate must then have rejected it, or failed to pass it, or passed it with amendments to which the Assembly will not agree. The joint sitting may then be convened during the same session, that is, the session following that in which the bill was first introduced. At such joint sitting the members present (*i.e.* of both Houses) may deliberate and must vote together upon the bill *as last proposed* by the House of Assembly and upon amendments, if any, which have been made therein by one House of Parliament and not agreed to by the other. Any such amendments which are affirmed by a majority (*i.e.* a bare majority) of the total number of members of the Senate and Assembly present at such joint sitting, are then taken to have been carried; and if the bill with the amendments, if any, is affirmed by a majority of the members of the two Houses present at such joint sitting, it is taken to have been duly passed by both Houses. In other words, it need not be again submitted to the Houses separately. This is the procedure with regard to ordinary bills, not being appropriation measures. To prevent disorganisation of the finances, however, where there is a deadlock in regard to an appropriation bill, that is, if the Senate rejects or fails to pass any bill dealing with the appropriation of revenue or moneys for the public service, the joint sitting to overcome the deadlock may be convened during the *same* session in which the Senate has rejected or failed to pass the appropriation bill.¹ These deadlock provisions are an adaptation of similar provisions in the Australian Constitution, and while, on the one hand, they constitute an advance upon the position in England before the passing of the Parliament Act of 1911, they avoid, on the other hand, the possibility, created by that Act, of the lower House riding roughshod over the wishes of the upper House.

There are certain other cases in which a joint sitting of the Senate and the House of Assembly is compulsory, that is, certain measures cannot be passed except in such a joint sitting. These are: (1) bills disqualifying persons as parliamentary

(1) S.A. Act, sec. 63.

voters on the ground of race or colour; (2) any repeal or alteration of the provision relating to amendment of the constitution; (3) any repeal or alteration of the provisions relating to the number of members of the Assembly or the mode of increasing that number; (4) any repeal or alteration of the language provisions of the constitution.¹

Acts passed in a joint sitting of the two Houses are said to be "enacted by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa (both such Houses sitting together in accordance with section one hundred and fifty-two of the South Africa Act, 1909)."

We have seen in what circumstances the Governor-General exercises his power to assent to, reject, or reserve a bill. The constitution further requires him to reserve for the signification of the King's pleasure (1) bills repealing or amending the constitutional provisions relating to the Royal assent to bills; (2) bills repealing or amending any provisions relating to the House of Assembly; (3) bills abolishing Provincial Councils or abridging (otherwise than as already allowed by the South Africa Act) the powers conferred on Provincial Councils.²

An Act which has been finally assented to in the King's name is "evidenced," that is, made available for public purposes, by being enrolled of record in the office of the Registrar of the Appellate Division of the Supreme Court. For this purpose, two fair copies of the Act are forwarded by the Clerk of the House of Assembly. One copy must be in English, and the other in Dutch;³ and one of the two must be signed by the Governor-General. There is the somewhat curious provision that in the event of conflict between the two copies thus deposited, that signed by the Governor-General is to prevail.³ Theoretically, this is in furtherance of the equality of the two languages. A case of conflict, if the translation from one language to the other be accurate, is not very likely to arise. In any event, the fact that the particular copy of an Act signed by the Governor-General is in one language or the other can only be a matter of accident.

(1) S.A. Act, secs. 85, 152.

(2) S.A. Act, sec. 64.

(3) *Ib.*, ser. 67.

CHAPTER XI.

RELATIONS OF THE TWO HOUSES.

THERE IS NOTHING in the actual terms of the constitution to indicate which house is intended to exert the more powerful influence, whether in controlling legislation or determining the tenure of office by Ministers. Theoretically, each has equal power over legislation, save that, as we have seen, certain legislation must originate in the House of Assembly, and that the Senate may only reject or approve money bills, but cannot amend them, in so far as they impose taxation or appropriate revenue or moneys for public services, or so as to increase any proposed charges or burdens upon the people.¹ On the other hand, while there may be no "tacking" by the lower House, in accordance with the provision that no bill appropriating the revenues or moneys for the annual services of the Government shall deal with any other matter, there is no clause in the South Africa Act similar to that of the Australian Constitution which forbids the mixing up of other matters in taxing bills, and requires that customs and excise taxation shall each be dealt with in separate bills, while other taxation bills must be confined each to a single subject.² On the other hand, much conflict even with regard to financial measures may be avoided by the provision for a joint sitting in the event of a deadlock, although there has been at least one instance of an attempt by the Senate to resist financial proposals of the Assembly.

As far as the power over Ministers is concerned, this may ordinarily be exercised by the rejection of Ministerial proposals, or by the passing of a direct vote of no-confidence in a Ministry. There is nothing to prevent all the Ministers from belonging to one or other of the two Houses. In practice, however, they belong almost entirely to the House of Assembly, which, under the original constitution, is the popu-

(1) S.A. Act, sec. 60.

(2) Keith, vol. 2, p. 641.

lar House, elected by direct vote of the people. In this way the Ministers reflect the choice of the people, and are more directly responsible to the electorate at large. It does not, however, follow that a Ministry will always realise this responsibility, for in recent times the same phenomenon has been witnessed in South Africa as in England, that a Ministry tends more and more to become independent of the legislature. So far, however, as a Ministry must rely on Parliament, it will look rather to the Assembly than to the Senate, for, owing to the financial provisions of the constitution, it is in the Assembly that "the power of the purse" resides, though it must not be forgotten that the Senate may withhold supplies. It must be added that in the last resort a Ministry, however strong and independent, must come to rely upon the support of the legislature, for otherwise it may be threatened with the cutting-off of supplies necessary to carry on the work of administration. It is, on the other hand, by no means inconceivable that a strong Ministry may find a subservient legislature, ready to work its will. But a Ministry can never be entirely independent of Parliament, as long as its members are bound to belong to one or other of the two Houses.

The relative size of the two Houses is not necessarily a test of their relative strength. The tendency in the United States and in Australia hitherto has been for the Senate to exercise a comparatively greater influence than the lower House. This may be due in part to the *personnel* of the Senate, and in part to its longer tenure of membership, which is virtually synonymous with greater independence, coupled as it is with the fact that its members are not so easily removable (*i.e.* at the will of the electorate) as those of the lower House. It is too early to venture a forecast as to whether the same state of affairs will arise in South Africa. Thus far, the tendency has been for the House of Assembly to offer the more tempting field for ambition, possessing, as it does, the greater possibility of control over Ministries and their *personnel*.

It must be remembered, also, that in the original scheme of the constitution, the Senate is to some extent dependent upon the Ministry. Eight of its members are nominated by the Governor-General-in-Council, and although four of them are sup-

posed to be appointed as experts in native affairs, there is no precise test or standard by which to ascertain this qualification. To a slight extent, also, the composition of the elective portion of the Senate will be determined by the party composing the majority in any Province which carries out the particular election, consisting of members of the Assembly and the Provincial Council combined. This is, however, counterbalanced by the fact that the election of senators, in the event of a contest, takes place by proportional representation.¹ Should the constitution be altered so as to admit of the direct choice of senators by the electorate, a Ministry may or may not have an influence over the Senate according to the mood of the electors at the time of election. Under the existing system, the Ministry which nominates the majority of the senators will probably have their support during its term of office; and such a majority will form a bulwark against a succeeding Ministry of a composition hostile to its predecessor.

Whilst each House is independent in its internal management, and in the control of its members, both follow the same procedure with regard to legislation, which passes through the same stages, no matter where it originates. Nor is there anything to prevent the two Houses from acting conjointly, with regard to certain matters. In certain cases they sit together. There may also be a joint select committee of the two Houses.

The usual mode of communication between the Senate and the Assembly, with regard to bills and other matters which concern the Houses jointly, is by message. The opening of Parliament by the Governor-General takes place in the Senate, which the Speaker and members of the Assembly are summoned to attend. The Royal assent to bills is communicated to the Senate by message from the Governor-General, the Speaker and the Assembly being summoned in like manner.

(1) B.A. Act, sec. 124.

CHAPTER XII.

CONSTITUTIONAL CHECKS AND BALANCES.

THE SOUTH AFRICA ACT is based upon the familiar triple division of powers (*trias politica*) into executive, legislative, and judicial. There is, however, no such well-marked distinction as in the case of the United States, because, according to the theory of responsible government in the British Dominions, following the precedent of Great Britain itself, the executive power, consisting, as it does, of a Governor-General advised by a responsible Ministry, is dependent upon the legislature. In certain respects, as we have seen, the Governor-General, as the instrument of the Imperial Government, is independent of the Union Ministry and the Union Parliament. And, by virtue of the power which he has to veto legislation, he may check the action of the Parliament, whether directly, or by referring proposed legislation to the Imperial Parliament. He may also veto any proposed administrative action of the Ministry, by refusing to sign any administrative proclamation or to carry into effect any executive act. Should he decline to adopt any course of action urged upon him by his Ministers, the only remedy is the circuitous one of appealing to the Imperial Government or the Imperial Parliament. And, although the Governor-General may be liable to civil proceedings for acts done by him in his official position,¹ the Courts cannot by *mandamus* compel him to perform any executive acts which he refuses to do.² The only mode in which the enforcement of a ministerial act enjoined by statute may be obtained is by a *mandamus* of the Courts directed against the Minister who is the head of the particular department concerned. With regard to the Governor-General, the functions of the Courts are negative rather than positive. If he does a thing which is contrary to a statute, as by issuing a proclamation which is outside of statutory powers, or by refusing a remedy or applica-

(1) *Muggrave v. Pulido* (5 A.C. 102).

(2) *Keith* (vol. 1, pp. 138-141).

tion to which some person is entitled as of right, a Court may declare that his action is *ultra vires*, that is, beyond the scope of his powers.¹ But it cannot compel him to do a thing which he has not done; and any remedy for an *ultra vires* act must be sought against the Minister who has charge of the matter. Provision has been made, by statute, for holding the Crown liable on contracts entered into on its behalf, or for damages sustained by any person who has suffered through the wrongful act of any servant of the Crown acting within the scope of his authority as a servant. In such a case, proceedings must be taken against the Minister who is head of the department concerned.²

The principal check, then, upon legislation which has been passed by the Parliament is the veto of the Governor-General, which is the direct mode of refusal, or the reservation of a bill by him for the signification of the King's pleasure, which may result in either assent or disallowance. The exercise of the power of reservation, even if the bill is ultimately assented to, in any event imposes a check upon hasty legislation. And there is a check on the Governor-General himself, for even if he assents to a law, the King (acting through the Secretary of State) may within one year after such assent, disallow it, and the Act thus assented to by the Governor-General then becomes inoperative from the date of the King's disallowance.³

Even when an Act has been finally assented to, it may not, as we have seen, be repugnant to any Imperial Act relating to or operative within the Union, that is, all Union legislation is subject to the Colonial Laws Validity Act. But the operation of this principle is really indirect, for the Act passed by the Union legislative remains on the statute-book, and it is only when its provisions are challenged, whether in the Courts or otherwise, that the extent of its invalidity can be tested.

The most important power of control which Parliament has over the Ministry is that of refusing supplies, thereby making it impossible to carry on the work of government. After all, the Ministry is responsible to Parliament, and cannot long hold office in opposition to the wishes of Parliament. It is possible to conceive of a Ministry electing to carry out ad-

(1) *Keen v. Commissioner of Police* ([1914] T.P.D. 898).

(2) *Crown Liabilities Act, 1910.*

(3) *S.A. Act, sec. 65.*

ministrative and executive functions without reference to the legislature. But it cannot avoid the annual meeting of Parliament; and, once it meets, the legislative omnipotence of Parliament would make it impossible for a recalcitrant Ministry to hold office. A state of affairs such as that now under discussion is hardly conceivable. It is suggested in order to arrive at a conception of the relative positions of the Ministry and the Parliament.

Turning now to the legislature itself, we find that the action of the one House balances and checks that of the other. The only effective action of Parliament is by legislation. A resolution of one House has no effect in action, unless it has been contemplated by the terms of some statute, and then it is virtually a statute. But direct legislation, that is, the passing of statutes, can only be accomplished by the joint action of the two Houses. A bill must pass through both Houses before it can be deemed to have received the approval of Parliament, which consists of the Senate *and* the House of Assembly. If it passes through one House alone, it has no effect whatever. And both Houses must assent to the bill in precisely the same terms. If alterations are made in either House to a bill which has passed through the other House, the bill must go back to the other House so that the alterations may be considered and approved by it. The two Houses must agree to exactly the same thing, and then only is the bill ripe for presentation to the Governor-General. Thus one House checks the action of the other by its power of amending the proposed measure when laid before it for its consideration. It has also the power of veto, by refusing to accept the bill. The only remedy, then, by which a deadlock is overcome is the joint sitting. But a joint sitting is not always practicable or desirable, and if the deadlock is not terminated in this manner nothing will remain but to abandon the proposed measure.

It must not be forgotten that the Senate has only limited powers in regard to money bills. Having regard to this, and to the number of its members, it is in reality a revising chamber. This does not prevent it from holding its own with the popular chamber, although, until its members are elected by direct vote, or the Provinces attain to greater power under the

constitution, its power will be comparatively less than that of the House of Assembly. The mere fact that the members of the Assembly have a certain share in the election of the Senate may render the latter subordinate, to some extent. The position is different in the United States and Australia, where the federal States enjoy the large *residuum* of constitutional powers, and, apart from the expressly-defined functions of the federal executive and legislature, have virtual independence in their internal affairs.

The Courts have no check on the legislation of Parliament, except that they may refuse to give effect to it under the provisions of the Colonial Laws Validity Act. In other respects, Parliament is the sole judge of what may be for "the peace, order, and good government" of the Union, and no Court has power to determine this.¹ All that a Court can do is to construe an Act of Parliament as passed, and to ascertain its meaning by reference to its terms. But it cannot decline to accord it recognition on the ground that it has no statutory effect, unless it finds that it has not in fact been promulgated as an Act of Parliament, *i.e.* where requirements as to publication have not been observed.

Over Provincial legislation, as will be seen, there are several checks. A Provincial ordinance must receive the assent of the Governor-General-in-Council. If it receives such assent, it cannot be directly vetoed by Parliament, but Parliament may repeal it, or may pass overriding legislation.

(1) *Riel v. The Queen* (10 A.C. 675).

CHAPTER XIII.

THE PROVINCES.

IN TERMS of the South Africa Act, the four constituent Colonies, the Cape of Good Hope, Natal, the Transvaal, and the Orange River Colony, became the original Provinces of the Union, under the respective names of the Cape of Good Hope, Natal, Transvaal, and the Orange Free State, with the same limits as each of the original Colonies possessed at the establishment of the Union.¹ The Imperial Colonial Boundaries Act, 1895, and similar legislation ceased to apply to the constituent Colonies. By that Act the boundaries of the respective Colonies were fixed as at the date of their receiving responsible government. Instead of this, the Colonial Boundaries Act was made applicable to the Union as a whole, and it became competent, under the constitution, for Parliament to alter the boundaries of any Province, to sub-divide a Province, or to form a new Province out of existing Provinces. Such alterations can, however, only be made on the petition of the Provincial Council of every Province whose boundaries are affected by the change.² The result is that the Provincial boundaries, so long as the Union itself remains intact, are liable to change, and there is nothing to prevent their boundaries from disappearing. The only contingency for which the constitution does not provide is the amalgamation into one of two existing constituent Provinces, although the boundaries of any of them may be so enlarged as to necessitate the disappearance of one of the others.

The Provinces are to be regarded in two aspects—first, as forming indissoluble and indistinguishable portions of the Union as one whole geographical and self-governing unit; and, secondly, as separate areas concerned with administration and legislation in regard to such matters of local self-government as are confided to them by the constitution. In the first

(1) S.A. Act, sec. 6.

(2) *Ib.*, secs. 7, 149.

aspect, each Province is a constituent portion of the government of the Union as a whole. It does not stand apart as a unit in a federal State. It contributes its share to the membership of the general legislature, and the members whom it sends to Parliament become merged in the general body of the legislature. The Parliament legislates for the Union as a whole, and its limits of legislation are not defined. It may legislate with regard to the internal affairs of any Province, even against the will of that Province, or of a Provincial Council; and it may legislate with regard to the same matters as are expressly confided to a Provincial Council.

The internal government of each Province, considered as a separate unit for the purpose of carrying out the functions entrusted to it by the constitution, is confided to the Administrator of the Province, the Provincial Council, and the Executive Committee of the Province. The Administrator and the Executive Committee perform executive and administrative functions, while the Provincial Council is the local legislature for internal affairs. The functions and powers of each of these will be considered in order.

The broad feature of government in the Provinces is that the Provincial Executive and the Provincial Council are strictly limited to those special matters which are definitely entrusted to them by the South Africa Act. The whole tendency of government is unitary. There is no separate Provincial judiciary; no separate police force; no separate civil service (except that certain civil servants of the Union are specially charged with Provincial affairs, and except that the Provincial governments may employ persons to carry out Provincial administration); no separate departments of general government. The South Africa Act entrusts higher education exclusively to the Union Government; and although the foundation of three separate Universities which receive State support may tend to give university education a Provincial rather than a national tendency, the actual administration of higher education still remains a Union affair. For purposes of efficiency, and to secure a measure of decentralisation, there are seats of judicature in each Province, all of its members, however, being judges of the Supreme Court of South

Africa. In the same way, there is a Master of the Supreme Court in each Province, who is, however, not a Provincial official, but is charged to carry out the duties entrusted to him by Union legislation so far as persons residing or estates situated within that Province are concerned. So each Province has a deputy-commissioner of police; a registrar of deeds and titles; a registrar of companies; a department of mines; a department of public works; a collector of customs; and the like. And, although some of them, like the department of public works, for economical reasons, are called upon to aid the Provincial departments in carrying out works of a nature common to the Union and the Provinces, they remain departments of the Union, and are subject to the control of the Provincial administration only so far as this is sanctioned by the Union Parliament or the Union Government. The separate Provincial officers for carrying out local Provincial administration are appointed by the Executive Committee of the Province, subject to the provisions contained in the Union Acts relating to the public service which govern the appointment, tenure of office, retirement, and superannuation of public officers. In certain cases, as we have indicated, these local duties are discharged by officers of the public service of the Union, who are assigned to the Province by the Governor-General-in-Council.¹ So that Provincial administration is carried out by (1) Provincial civil servants, and (2) Union civil servants specially assigned to the Province. In addition, each Province, charged as it is with public education (except higher education), employs a large body of teachers, who, however, are not members of the public service in the ordinary sense of the term.

(1) S.A. Act, sec. 83.

CHAPTER XIV.

THE ADMINISTRATORS OF THE PROVINCES.

THE HEAD of the Provincial administration in each Province is the Administrator, who is its "chief executive officer." He is appointed by the Governor-General-in-Council, and holds office for a term of five years, being eligible for re-appointment for a term or terms of equal duration. The salary of the Administrator is fixed and provided by Parliament, and may not be reduced during his term of office. Its amount has been fixed, in the case of the Administrators of the Cape and the Transvaal, at £2500, and in those of Natal and the Free State, at £2000 per annum. There are no restrictions on the appointment of an Administrator, except that, as far as practicable, the Governor-General-in-Council must give preference to persons resident in the particular Province for which he is chosen. Once appointed, the Administrator cannot be removed during his term except for cause assigned. He may then be removed by the Governor-General-in-Council, who must communicate such cause by message to both Houses of Parliament within one week after the removal, if Parliament be then sitting, or otherwise within one week after the next ensuing session of Parliament. If an Administrator is unable to perform his duties on account of absence, illness, or other inability, the Governor-General-in-Council may from time to time appoint a deputy-Administrator.¹ The usual practice in such cases has been to appoint the Provincial Secretary as deputy-Administrator.

Together with the Executive Committee, in the circumstances described in the next chapter, the Administrator carries on the administration of Provincial affairs.² Apart from this, he is charged with the duty of representing the Governor-General-in-Council in all matters in which he may be required so to act, in respect of which no powers are reserved or dele-

(1) S.A. Act, secs. 68, 69.

(2) S.A. Act, sec. 80.

gated to the Provincial Council. In such matters, *i.e.* those which fall outside the scope of the Provincial Council, and in which he is required to act for the Union Government, the Administrator is empowered to act without reference to the other members of the Provincial Executive Committee.¹ Thus the Administrator is at once the head of the Provincial administration and, when required so to act, the representative in specified matters of the Union Government, which may invoke his assistance for the purpose of preserving law and order, administering Acts of Parliament, representing it on ceremonial occasions, and similar matters.

Nevertheless, the Administrator is not a civil servant. Nor does he occupy the position of a Lieutenant-Governor, although it may be said that it approximates more nearly to the office of a Lieutenant-Governor than anything else. The Administrator is not a politician; but he will usually be the nominee of a political party, nor is he debarred, in the same way as is an officer of the public service, from giving expression to political views when occasion demands. His office resembles that of a Lieutenant-Governor in that he is chief executive officer of the Province; promulgates ordinances passed by the Provincial legislature, that is, the Provincial Council;² summons sessions of the Provincial Council, and prorogues that body;³ directs by proclamation the holding of general elections or bye-elections of members of the Provincial Council;⁴ in that no money ordinances may be passed by the Council unless first recommended by the Administrator; and in that no money may be issued from the Provincial revenue fund except under warrant signed by him, while he has temporary power to expend moneys for Provincial services (*i.e.* until one month after the first meeting of the Provincial Council).⁵ On the other hand, the Administrator's powers in several respects are unlike those of a Lieutenant-Governor. He has no veto on Provincial legislation. He is not merely advised in administrative matters by the Executive Committee, but must have their consent to administrative acts. In the Executive Committee he has a vote like an ordinary member of that body, but has a casting vote in case of an equality of

(1) S.A. Act. sec. 84.
(4) *Ib.*, sec. 71.

(2) S.A. Act. sec. 91.
(5) *Ib.*, sec. 89.

(3) *Ib.*, sec. 74.

votes.¹ Thus, unlike a Lieutenant-Governor in a self-governing Dominion, the Administrator forms an integral portion of the Executive Committee, which from the deliberative point of view must be regarded as a Ministry, although it has neither the status nor the parliamentary responsibility of a Ministry. The Administrator has also the right to sit and take part in debates in the Provincial Council (though without a vote), and here also he differs from a Lieutenant-Governor.² Nor has he any power to dismiss the members of the Executive Committee, who in Provincial affairs are his colleagues as well as his advisers.

In a sense, the right of the Administrator to take part in the proceedings of the Provincial Council gives him more real power than is enjoyed by a Lieutenant-Governor. The Council may, and sometimes does, disregard the proposals of the Administrator. On the other hand, he has the advantage of explaining and advocating his proposals at first hand, and thereby exercises a direct influence on the members of the Provincial Council. They are also enabled to obtain from him accurate information with regard to the acts of the executive, because the procedure of the Council, framed as it is on parliamentary models, enables its members to address questions to the Administrator in the same way as members of Parliament direct them to a Minister. And the presence in the Council of the Administrator enables him to check hasty or ill-considered resolutions on the part of its members; since he may give them direct information on matters relating to Provincial affairs in a way which is not open to a Lieutenant-Governor remaining outside and not participating in the debates of the Council.

In carrying out the Provincial administration, the Administrator is virtually in the position of a Minister for the Province, except that he performs no executive acts without the assent of the Executive Committee. All the details of administration fall on his shoulders; with or without the Executive Committee, he receives deputations on matters affecting Provincial government; he exercises a general superintendence over all Provincial departments, that is to say, mainly in regard to finance, elementary and secondary education, and local

(1) B.A. Act, sec. 82.

(2) *Id.*, sec. 79.

government; he conducts the correspondence and is the medium of communication between the Union Government and the Provincial administration; and he is the visible head of government within the Province. His position is thus far removed from being merely functional. He is not merely the instrument of legislation and executive power. By virtue of his voice in the Executive Committee, and the general superintendence which he exercises, he has a certain degree of discretion, as well as of responsibility. But his responsibility, in the last resort, is to the Union Government, whose officer he is, although his main function is to harmonize the relations between the people and the Provincial authorities, on the one hand, and those between the Province and the Union, on the other.

CHAPTER XV.

THE PROVINCIAL EXECUTIVE COMMITTEES.

THE EXECUTIVE COMMITTEE of the Province consists of the Administrator and four members elected by the Provincial Council. The ordinary members are elected at the first meeting of the Provincial Council after a general election. They are usually, but they need not be, themselves members of the Provincial Council; and if they are not members of the Council, they are entitled, in the same way as the Administrator, to take part in the proceedings of the Council, without having the right to vote therein. They hold office until their successors are appointed after the next general election, but casual vacancies are filled by the Provincial Council if it is then in session. If it be not in session, such vacancies are filled by co-option of a member by the Executive Committee, the person co-opted to hold office temporarily pending election by the Council. The remuneration of the ordinary members of the Executive Committee is fixed by the Provincial Council, with the approval of the Governor-General-in-Council.¹

The intention of the framers of the South Africa Act was that both the Provincial Council and its offshoot, the Executive Committee, should be non-political bodies. In view of actual experience, it is interesting to find Mr. Keith writing at the time: "The Provinces are not in any way to be set up as rivals to the Union, and therefore the system of government must not be a replica, in however faint a form, of the central government: the party system is to be continued in the ordinary central government, but it is not to be allowed to remain in force in the Provinces. Therefore the legislature of the Provinces is in no sense to be a Parliament and the executive is not to be an Executive Council, but an Executive Committee. . . . The Committee itself will not be a political or party body; the mode of choice by proportional representation with

(1) S.A. Act, secs. 78, 79.

the single transferable vote will probably secure that the members are not representative of any one party at all: it is hoped that they will simply be a body of men chosen as the most suited for administrative work."¹ In order to secure these objects, the Provincial Councils were to be at liberty to choose men outside their own ranks to serve on the Executive Committee, so as to obtain the greatest available ability; and the party system was to be eliminated by the provision that the members of the Executive Committee were to be elected by proportional representation.² Never have predictions or hopes been more strikingly falsified! This result was due to the fact that the first general election for the Provincial Councils was held simultaneously with that for the House of Assembly. The contest was naturally conducted on party lines, and the unavoidable consequence was that the party system has ever since prevailed in the Provincial Councils, both in their elections and in their conduct of business. It followed that they elected members of the Executive Committee according to party ties, and not on the pious general principles which the framers of the constitution had in view. On the one occasion on which a member of an Executive Committee was elected from outside the ranks of a Provincial Council, he was chosen because he was the nominee of a party, which desired to have an addition to its debating strength within the walls of the Council. At the Transvaal general election of 1917, each of four parties (the South African Party, the Nationalists, the Unionists, and the Labour Party), being fairly evenly balanced, was enabled, by the system of proportional representation, to elect one nominee to serve as a member of the Executive Committee. It might have been expected that thereby the ideal of the framers of the constitution would have been attained—that the Executive, consisting of four members representing four parties, would have become a non-party body. In fact, a partial deadlock arose, as each member of the Executive considered himself in honour bound to support and advocate the views of the body that had elected him, although his continued tenure of office was not dependent on that party. It must not be forgotten that a member of the Executive Committee, sitting in the Provincial Council, natur-

(1) Keith (vol. 2, pp. 967, 969).

(2) S.A. Act, sec. 134.

ally assumes the leadership of the party which has elected him, and will advocate its views in the Executive Committee as well as in the Council. And although he is not in the position of a Minister, his political and party ties will be of the same nature as those which fetter a Minister. The position thus created is an anomalous one. Members of the Executive Committee are not directly responsible to the Council, though chosen by it. In actual practice, they are guided by the views of the Council, though not bound to follow them. If the members of the Executive belong to different parties, they must act as a composite body, although they will naturally tend to act in the interests of the parties they respectively represent. And the consequence is not so much a compromise as a deadlock. Sometimes there is an escape from this if the Administrator has a powerful personality, able to force through his proposals. But that is hardly an ideal solution. In any case, it is plain that the existing system has failed. Probably a satisfactory solution may be found in making the Executive Committee a body responsible to the members who elect it, in the same way as a cabinet ministry.

Although the Executive Committee is not, in the ministerial sense, responsible to the Provincial Council, its chief duty is nevertheless that of carrying on the administration of Provincial affairs "on behalf of the Provincial Council," which is thus the chief authority in the Province, although it can only act by passing ordinances, which must be carried into effect by the Executive Committee. But all executive acts are to be done in the name of the Administrator.²

Express jurisdiction is conferred on the Executive Committee to discharge all powers, authorities, and functions which at the establishment of the Union were vested in or exercised by the Governor, or the Governor-in-Council, or any Minister of the constituent Colony, so far as such powers, authorities, and functions relate to matters in respect of which the Provincial Council is competent to make ordinances. For example: the Provincial Council is entrusted with the power of making laws relating to education; these powers were formerly exercised, in the Cape and in the Transvaal, by a Minister styled the Colonial Secretary; and they are now exercised by

(1) S.A. Act, sec. 80.

(2) *Ib.*, sec. 68.

the Executive Committee. Inasmuch as the discharge of such functions formerly imposed on a Minister the necessity of appearing in Court, for the purpose of bringing or defending proceedings at law in relation to his department, the Courts have held that a Provincial Executive Committee is entitled to institute or defend legal proceedings relating to matters within their jurisdiction.¹ It is obvious that in many cases an Executive Committee cannot adequately carry out its powers unless it is able to invoke the assistance of the Courts. And if it may take legal proceedings it may equally have legal proceedings taken against it.

The Executive Committee of each Province is authorised to frame rules for the conduct of its proceedings, subject to the approval of the Governor-General-in-Council.² It may fix its own quorum for attendances, and if there are not enough members of the Committee to form a quorum under the rules, the Administrator must, as soon as practicable, convene a meeting of the Provincial Council to elect members to fill the vacancies. Pending such election, the Administrator is empowered to carry on the administration of Provincial affairs by himself.³ At meetings of the Executive Committee, all questions must be determined by a majority of votes of the members present, provided that there is a quorum. If there is an equality of votes, then, as we have seen, the Administrator has an additional or casting vote.⁴

(1) *Humansdorp School Board v. Cape Executive Committee* ([1915] C.P.D. 793).

(2) S.A. Act, sec. 82.

(3) *Id.*, sec. 80.

(4) *Id.*, sec. 82.

CHAPTER XVI.

THE PROVINCIAL COUNCILS.

IN EACH PROVINCE of the Union there is a Provincial Council, consisting, except where there are fewer than twenty-five members of the House of Assembly, of the same number of members as the Province has members of the House of Assembly. But the minimum number of members of a Provincial Council is twenty-five, so that in Natal and the Orange Free State, which have each of them fewer than twenty-five representatives in the Assembly, the Provincial Council consists of twenty-five members. The qualification for membership of a Provincial Council is that a person must be qualified to vote at Provincial Council elections. Since the qualification to vote at such elections is the same as that required for elections of the House of Assembly, it follows that every person qualified to exercise the parliamentary franchise is both qualified to vote for Provincial Council elections and to become a member of the Provincial Council. The only restriction is that a member of the Provincial Council must reside in the Province in which his constituency is situate. This is secured by the provisions that "any person qualified to vote for the election of members of the Provincial Council shall be qualified to be a member of such Council," and "the members of the Provincial Council shall be elected by the persons qualified to vote for the election of members of the House of Assembly in the Province."

The mode of electing Provincial Councillors is the same as that prescribed for Assembly elections in that particular Province. The electoral divisions or constituencies for the Provincial Council correspond to those of the House of Assembly, except that there are different constituencies in the two Provinces which have fewer than twenty-five members of the Assembly. The delimitation of constituencies is made by the

(1) S.A. Act, no. 70, 71.

same judicial commission which performs this duty in regard to electoral divisions for the House of Assembly, and a re-division comes into operation at the following general election of the Provincial Council, in the same way as it does for a general election of the Assembly. The holding of elections is directed by the Administrator, by proclamation.¹

The same disqualifications for election to the Provincial Council apply as in the case of a member of Parliament. A member of the Provincial Council vacates his seat in the same way, and is subject to the same penalty for sitting when disqualified as a member of Parliament is subject to. A member of the Provincial Council who becomes a member of either House of Parliament ceases to be a member of the Provincial Council.²

Each Provincial Council continues for three years from the date of its first meeting. It is not subject to dissolution save by effluxion of time. Consequently, it is not subject to the control of the Executive, which cannot dissolve it. The only power the Administrator possesses is to prorogue the Council. This he may do at any time. But he is bound to summon a session of the Council once at least in every year, so that an interval of twelve months may not elapse between the last sitting in one session and the first sitting in the next.³ On the other hand, all ordinances passed by the Provincial Council are subject to disallowance by the Governor-General-in-Council, as also are the rules for the conduct of the Council's proceedings, and the same authority fixes the allowances of members of the Council.⁴

The Council is presided over by a chairman, elected from among its members. The chairman is not given a special casting vote under the constitution, and votes in divisions in the same way as an ordinary member. Consequently, if there is an equality of votes on a division, no casting vote can be exercised, and the question before the Council must be determined in the negative, and falls to the ground.⁵

In the same way as Parliament, the Provincial Council enjoys freedom of speech in its proceedings, and no member is

(1) S.A. Act, sec. 71.

(2) *Ib.*, sec. 72.

(3) S.A. Act, secs. 73, 74.

(4) *Ib.*, secs. 75, 76, 90.

(5) *Ib.*, sec. 75.

liable to any action or proceeding in any Court by reason of his speech or vote in the Council.¹

The Provincial Council is a legislative body for the Province. Its enactments are known as ordinances, which may only be passed in relation to the special matters with which, under the constitution, the Council is competent to deal. Those matters are dealt with in detail in the following chapter. Notwithstanding the limitations of its powers, however, the Provincial Council is a genuine legislative body; and it is incorrect to describe it, as some writers have done, as having its real analogue in a municipal council, not a Parliament,² or to say that "none of its powers exceed those that might be granted to a County Council in England."³ The answer to this is that neither a municipal council nor a County Council possesses the power, which a Provincial Council does, to erect and constitute bodies for purposes of local government such as municipalities and County Councils themselves are; that a municipality cannot delegate to another body the power of making local bye-laws, as a Provincial Council may do. To this we may add that a Provincial Council may create statutory offences, and impose punishments for their contravention; that it has an original, and not merely delegated, power of direct taxation within the Province; and that its ordinances, once duly assented to, have the full force of law in regard to matters within its legislative competence. In the words of Chief Justice Innes, there is "no doubt that a Provincial Council is a deliberative legislative body, and that its ordinances duly passed and assented to must be classed under the category of statutes, and not of mere bye-laws or regulations."⁴ And Mr. Justice Gregorowski said, on another occasion, that "the Provincial Council, though a subordinate legislature for the Province, cannot be fitly compared to a municipality, which is an administrative body charged with purely local concerns and issuing bye-laws of a very restricted application."⁵ The distinction between legislative and administrative powers at once marks the difference between a Provincial Council and such a local body as a municipality.

(1) *Id.*, sec. 77. (2) Keith (vol. 2, p. 970). (3) Foley (p. 409).

(4) *Middleburg Municipality v. Gertsen* (1914) A.D. at p. 550.

(5) *Rea v. Swarts* (1914) T.F.D. at p. 630.

In the conduct of its business, *e.g.* in the different stages for the passing of an ordinance, meetings of select committees, and similar matters, the Provincial Councils follow much the same procedure as the House of Assembly; and Parliament has provided that in the case of private bills, the same procedure before select committees is to be followed in the case of a Provincial Council as prevails in Parliament, until any Provincial Council enacts different rules on the subject.¹ The Provincial Councils have all adopted standing orders governing private bill legislation, framed on the same lines as those which prevail in the Union Parliament.

When an Ordinance has been passed by a Provincial Council, the Administrator presents it for assent to the Governor-General-in-Council, whose assent or other dealing with the measure must be declared within one month. The Governor-General-in-Council may either assent to the measure, or may withhold, *i.e.* refuse, assent, or may reserve the Ordinance for further consideration. An Ordinance which has been reserved shall not have any force unless and until, within one year from the day on which it was presented for assent, the Governor-General-in-Council proclaims his assent.² It will thus be seen that the Union Ministry, which is the Governor-General-in-Council in effect, possesses an absolute right of veto over Provincial legislation. And a Provincial Council does not possess the advantage, which Parliament enjoys, of having its views in regard to a proposed measure made known to the Governor-General. Where the Parliament has passed a bill, the Ministers have the opportunity of acquainting the Governor-General with the intentions and objects of the legislature. But in the case of a Provincial measure there is no ministerial mouthpiece.

When a Provincial Ordinance is promulgated by the Administrator as having been assented to, it is enrolled of record (in both official languages) in the Appellate Division of the Supreme Court.³

(1) Act 19, 1911 (sec. 25).

(2) S.A. Act, sec. 90.

(3) *Id.*, sec. 91.

CHAPTER XVII.

LEGISLATIVE POWERS OF THE PROVINCIAL COUNCILS.

THE PROVINCIAL COUNCIL, as we have seen, is a subsidiary legislature, created for the purpose of dealing with provincial affairs. Its activities are confined to the Province, and it has no dealings with the other Provinces as such. It has financial relations with the Union Treasury, subject to the constitution and to statutes passed by the Parliament; and its ordinances are subject to the assent or veto of the Governor-General-in-Council. But it may not travel beyond provincial limits, nor is it capable of enacting legislation outside the scope and meaning of the powers stated in the South Africa Act. It has, however, a general power of recommendation with regard to matters not coming within its precise sphere of legislation. By a clause in the constitution, a Provincial Council is empowered to recommend to Parliament the passing of any law relating to any matter in respect of which the Council is not competent to make ordinances.¹ Such recommendations have been made from time to time; but they have no legal effect; and their acceptance by Parliament is dependent upon the exigencies of the moment, the pressure or the laxity of party ties, and the leisure which Parliament has to turn aside from its own more immediate pre-occupations and the inclination it has to bestow attention upon the recommendations of a Provincial Council. It cannot be said that hitherto such recommendations have been very seriously considered, or that they have been followed by much practical result.

The legislative powers of a Provincial Council are limited in two ways. In the first place, an ordinance passed by it has effect in and for the Province as long as and as far only as it is not repugnant to any Act of Parliament.² That is to say, Acts of the Union Parliament relating to the same subject-

(1) S.A. Act, sec. 87.

(2) S.A. Act, sec. 87.

matter (*in pari materia*) have the same controlling power over ordinances of a Provincial Council as Imperial Acts have over those of the Union Parliament by virtue of the Colonial Laws Validity Act. An ordinance of a Provincial Council may be repugnant to a Union Act, and therefore inoperative to the extent of the repugnancy, if it exempts persons from burdens which are definitely laid upon them by the Union Act. On the other hand, it may be repugnant by exposing them to greater burdens or obligations than the Act of Parliament requires. Thus, where a Union Act creates an offence in certain circumstances, and a Provincial ordinance dealing with the same subject imposes a new duty upon the party complaining that an offence has been committed, the Courts have held that the performance of the duty under the ordinance is not a condition precedent to the conviction of an offender under the Act—in other words, it cannot be a defence on a charge of contravening a Union Act that a Provincial ordinance requires something else to be done in order to make an accused person liable. “The person who contravenes a section of the Union Act cannot say that he is entitled to transgress that Act, because something required by the Provincial Council was not in existence [or was not done] at the time when he transgressed the Act.”¹

The next limitation on the statute-making powers of a Provincial Council is by the definition of those powers, as set out in the constitution. The South Africa Act does not define by a process of exclusion, that is, by stating what powers a Provincial Council does *not* possess. It is content with a positive definition of the powers which the Council *does* possess; but, by well-known rules of construction, and in consequence of the fact that the constitution creates the Provincial Councils and states in respect of what matters it may make ordinances, it follows that outside of those matters a Provincial Council has no competency to act. It is created for certain definite purposes and none other. Within its defined powers, however, it has full legislative competency, that is to say, it is an independent legislative body in and for the Province. The position has been thus defined by Mr. Justice Bristowe: “The status of Provincial Councils under the South Africa Act is

(1) *Rea v. Wentworth* ([1913] T.P.D. 14).

analogous to that of the Canadian Provincial Legislatures under the British North America Act, 1867 (30 Vict. c. 3). There are no doubt differences between them, of which the most important is that in Canada the provincial legislative powers are throughout exclusive, while here they are not. But these differences are of degree rather than of kind. The fact that, under the South Africa Act, Provincial statutes may be overridden by a Union statute does not make the Provincial Councils subordinate legislatures to the Union Parliament. Within the scope of their authority their powers are as plenary as those of the Dominion Provincial Legislatures. They do not exercise a delegated authority,¹ and they are only subordinate legislatures in the same sense in which the Union Parliament itself is a subordinate legislature."²

Before dealing in detail with the powers granted to Provincial Council under the constitution, it will be desirable to ascertain how those powers are to be tested. In practice the most convenient mode is by resorting to the Courts of law. It is true that the Governor-General-in-Council may refuse to assent to an ordinance as and when passed by a Provincial Council. But if it has been assented to, it may be undesirable to wait until the Parliament chooses to exercise its power of repealing the ordinance. Persons affected by its provisions have then two courses open to them, if they consider that the ordinance goes beyond the legislative powers of the Provincial Council, or, to use the phraseology of lawyers, is *ultra vires*. They may ignore the provisions of the ordinance, and wait until they are prosecuted for contravening its provisions, or other pressure is brought to bear on them to compel them to observe it, and they may then appeal to the Courts. Or they may go direct to the Court, and ask it to declare that the ordinance is invalid, on the ground that it is *ultra vires*. The South Africa Act expressly gives jurisdiction to the Provincial and Local divisions of the Supreme Court in all matters in which the validity of any Provincial ordinance shall come into question.³ This jurisdiction of the Courts to enquire into the validity of an ordinance also exists independently of the South Africa Act. The Courts have always claimed and exercised

(1) I.e., an authority delegated by the Union Parliament.

(2) *Williams and Alexander v. Johannesburg Municipality* ([1915] T.P.D. 106).

(3) S.A. Act, sec. 98.

the right of determining whether a statute is within the powers of the law-making body. Thus it has been said: "The Provincial Divisions are the successors and inherit the powers of the Supreme Courts of the several Colonies as they existed before the Union. Each of these Courts possessed within its own territorial limits powers analogous to those of the Court of King's Bench in England, powers derived ultimately from His Majesty and originally forming part of the royal prerogative. These powers, including as they do the power to decide in any case what is law and what is not law, involve of necessity, in the case of a Colony the legislature of which is a subordinate and not a sovereign legislature, the power of determining whether a particular statute is within the capacity of the legislative body which has purported to enact it. That under the British constitution this function belongs to a colonial Supreme Court has been decided in many cases and cannot, I think, be now questioned; it is an inherent jurisdiction arising from the mere constitution of the Court as the Supreme Court."¹ In slightly different language, the Appellate Division of the Supreme Court has laid down that a Court has "every right to enquire whether any statute has transgressed the limits of the subjects in regard to which the legislature of that country is empowered to legislate; but it has no right to enquire whether in dealing with subjects within its competence the legislature has acted wisely or unwisely for the benefit of the public or for the benefit of private individuals."² In other words, the function of the Courts, in ascertaining whether a statute is law or not, is to enquire whether it was within the competence of the legislature; but it will not trouble itself as to the policy of the legislature in passing the law, that is, as to the wisdom or unwisdom of the measure.

In determining whether legislation was or was not within the competency of a Provincial Council, the Courts ordinarily regard the state of the law at the time of the passing of the South Africa Act in relation to the subject-matter dealt with by the ordinance whose validity is impeached.³ If the ordi-

(1) *Rea v. Thomson* ([1914] T.P.D. p. 426, *per* Bristowe, J.).

(2) *Rea v. McChlery* ([1912] A.D. 199).

(3) *Prætorius v. Barkly East Divisional Council* ([1914] A.D. at p. 414, *per* Lord de Villiers, C. J.).

nance is valid, a Court interpreting its meaning will apply to it the same canons of construction as are applicable in the case of other statutes. The validity of an ordinance will always be assumed by a Court where it is not patently invalid, and its invalidity is not in issue, that is, is not specifically raised before the Court.¹

The terms of the South Africa Act, specially giving the Provincial and Local Divisions jurisdiction in matters in which the validity "of any Provincial ordinance" comes into question, have been construed to mean that a superior Court in a Province may enquire if an ordinance is valid or not, no matter whether the ordinance has been passed in that Province (i.e. the one where the Court sits) or in some other Province of the Union.²

The power of Courts to determine the validity of Provincial ordinances was formerly assumed to extend to inferior tribunals (magistrates' Courts) as well as to the superior Courts. In 1917, however, an Act of the Union Parliament declared that "no magistrate's Court shall be competent to pronounce upon the validity of a Provincial Ordinance or of a statutory proclamation of the Governor-General, and every such Court shall assume that every such Ordinance or proclamation is valid."³

A Provincial Council, subject to the conditions imposed by the South Africa Act and to the assent of the Governor-General-in-Council, is empowered to pass ordinances relating to matters coming within the following classes of subjects: (1) Direct taxation within the Province in order to raise a revenue for Provincial purposes. (2) The borrowing of money on the sole credit of the Province, with the consent of the Governor-General, and in accordance with regulations to be framed by Parliament. (3) Education, other than higher education, for a period of five years and thereafter until Parliament otherwise provides. (4) Agriculture, to the extent and subject to the conditions to be defined by Parliament. (5) The establishment, maintenance, and management of hospitals and charitable institutions. (6) Municipal institutions, divi-

(1) *Johannesburg Municipality v. Hagerwits* ([1914] T.P.D. 439).

(2) *Ismail v. Stradling* ([1911] T.P.D. 432).

(3) Act No. 32, 1917 (sec. 104).

sional councils, and other local institutions of a similar nature. (7) Local works and undertakings within the Province, other than railways and harbours, and other than such works as extend beyond the borders of the Province, and subject to the power of Parliament to declare any work a national work and to provide for its construction by arrangement with the Provincial Council or otherwise. (8) Roads, outspans, ponds, and bridges, other than bridges connecting two Provinces. (9) Markets and pounds. (10) Fish and game preservation. (11) The imposition of punishment by fine, penalty, or imprisonment for enforcing any law or any ordinance of the Province made in relation to any matter coming within any of the classes of subjects enumerated. (12) Generally, all matters which, in the opinion of the Governor-General-in-Council, are of a merely local or private nature in the Province. (13) All other subjects in respect of which Parliament shall by any law delegate the power of making ordinances to the Provincial Council.¹

Before considering these powers in detail, we may advert to certain principles which govern their interpretation generally. These are as follows: (1) The legislative authority committed to a Provincial Council must (in the absence of manifest intent to the contrary) be taken to include *all powers properly required to effect the purpose* for which it was conferred. In other words, "where a Provincial legislature has the right to legislate on a named subject, it must by necessary implication be held that all powers are given fully to carry out the object of the enactment although subjects such as civil rights and procedure, civil or criminal, may be apparently interfered with." But "no powers would be implied which were not properly or reasonably ancillary to those expressly conferred."² (2) In deciding upon the validity of a Provincial ordinance, *regard must be had to the terms* in which the grant of jurisdiction over the relative subject-matter has been expressed.³ (3) When legislative jurisdiction is conferred upon a Provincial Council in respect of some special subject-matter it follows, in the absence of any indication to the contrary, that it is intended to empower the Council to deal fully with that

(1) S.A. Act, sec. 85. (2) *Middelburg Municipality v. Certeen* ([1914] A.D. at p. 552).

(3) *Ib.* (p. 551).

matter, in accordance with the conditions and requirements prevailing at the time of legislation.¹ (4) Where, however, power has been given to regulate a certain thing, this will imply the absence of a power totally to prohibit or to suppress or terminate that thing.² Thus, where power had (by Act 10 of 1913) been conferred by Parliament upon a Provincial Council to regulate horse-racing and betting and to license totalisators, it was held by the Courts that it was *ultra vires* for a Provincial Council to make betting except by means of a totalisator a criminal offence, or to prohibit the business of a bookmaker.³

We proceed to deal with the powers of the Provincial Councils in the order in which they are stated in the South Africa Act.

I. "Direct taxation within the Province in order to raise a revenue for Provincial purposes."

No definition of direct taxation is attempted, and the ordinary or popular meaning will be assigned to the term, *i.e.* as it is usually employed in public finance or fiscal matters, or by authorities on political economy.

It must be noticed that such direct taxation may duly be imposed for revenue-raising purposes, for the benefit of the Province. Taxation for other purposes than revenue would be outside of the powers of a Provincial Council.

The power of a Provincial Council has been to all intents and purposes taken away by an Act of Parliament (the Financial Relations Act, 1913) passed subsequent to the establishment of the Union, in respect of the following matters, namely, the right to receive revenue or the power to make ordinances in respect of licences (a) to carry on the calling of a commercial traveller, or of an agent representing in the Union any business undertaking; (b) to carry on business as a joint-stock company as such, or as a banker or banking company or association, or as an insurance company or association, or as a building, friendly, or provident society; (c) prescribed under the customs or excise laws of the Union; (d) for newspapers; (e) to deal in unwrought gold; (f) to deal in or carry on the business of broker or cutter of precious stones; (g) for

(1) *Middelburg Municipality v. Gertzen* ([1914] A.D. at p. 551).

(2) *Municipal Corporation of Toronto v. Virgo* ([1899] A.C. 93); *Res v. Williams* ([1914] A.D. 460).

(3) *Res v. Williams* (above).

prospecting or mining for precious or base metals, precious stones, or any minerals; (h) in respect of the manufacture of cigarettes; (i) to import, export, manufacture, deal in or be in possession of arms or ammunition; (j) relating to the manufacture, storage, importation, exportation, transport or use of, or dealing in, explosives; (k) in connection with the engaging or recruiting or supply of natives for employment, or to exercise the calling of a compound manager; (l) in respect of the ownership, possession, or use of boilers.¹ All these sources of licensing taxation, which, as will be observed, partake largely of the nature of direct taxation, fall within the domain of the Union treasury.

Apart from the matters specially excluded by the Financial Relations Acts, the power of direct taxation conferred upon Provincial Councils is in no way curtailed. This matter has recently been the subject of debate before the Transvaal Provincial Division of the Supreme Court.² In 1918 the Provincial Council passed an Ordinance imposing taxation on the profits of gold mines. Payment of this tax was resisted on the grounds (1) that the taxing powers of the Province were limited to the subjects detailed in the Financial Relations Act, and (2) that the Ordinance was *ultra vires*, as section 123 of the South Africa Act vested in the Governor-General-in-Council (i.e. in the Union Government) "all rights in and to mines and minerals, and all rights in connection with the searching for, working for, or disposing of, minerals or precious stones, which at the establishment of the Union are vested in any of the Colonies." The Court decided that the tax was payable by the mining companies, as powers of direct taxation were not restricted to the subjects named in the Financial Relations Acts, and the rights to mines and minerals vested in the Union Government did not include the right to tax such mines or minerals. The decision was affirmed by the Appellate Court.

But for the terms of the South Africa Act, it has been suggested, the Provincial Council, since it may incorporate municipalities and other local bodies, might have been able to confer upon such bodies the power of imposing direct taxation. This, however, is precluded by the provision that "all revenues

(1) Act No. 10, 1913 (sec. 15).

(2) *Transvaal Administration v. New Modderfontein Gold Mines* (April, 1919).

raised by or accruing to the Provincial Council " must be paid into the Provincial Revenue Fund.¹ Obviously this provision could not apply to local bodies, which have no connection with that Fund. It follows that a Provincial Council cannot by virtue of its power to impose direct taxation transfer that source of revenue, whether wholly or in part, to a municipality or local body, though it may be able to appropriate specific amounts of money in the ordinary way (*e.g.* by loan or grant) for municipal purposes.²

II. "The borrowing of money on the sole credit of the Province, with the consent of the Governor-General-in-Council, and in accordance with regulations to be framed by Parliament."

There is nothing in these words, as they stand, to prevent a Provincial Council from going outside the Union and borrowing money on the credit of the Province, provided that the loan has been assented to by the Governor-General-in-Council, and has been raised in accordance with regulations framed by Parliament. It has, however, been deemed advisable to limit this borrowing power to loans raised from the Union treasury. The Union Government may borrow money in the markets of the world; but in order to secure financial uniformity, and to prevent the credit of any Province being impaired and thereby, as a possible consequence, affecting the credit of the Union itself, restrictions have been imposed by the Financial Relations Act, 1913. This Act provides that moneys which a Province may from time to time require to meet any capital or non-recurrent expenditure shall be advanced to that Province upon loan as required, in such amounts as Parliament by annual appropriation may authorise. Capital or non-recurrent expenditure is defined to include expenditure upon the erection, construction, acquisition, extension, or improvement of any building, bridge, pont (pontoon) or upon any permanent work or undertaking in relation to a matter entrusted to a Province, but not expenditure (1) on buildings not exceeding £500, (2) on bridges, ponts or other works not exceeding £1,500, (3) on roads, unless in the case of road-construction specially authorised by the treasury. Such advances are to be made by the Union treasury to the Province. They are to bear

(1) S.A. Act, sec. 80.

(2) *Muserowits v. Johannesburg Town Council* ([1914] W.L.D. at p. 144).

interest at a rate not exceeding 5 per cent. per annum, and are to be repaid in equal half-yearly instalments, in such manner that the whole advance with interest thereon will be repaid within not less than 15 years and not more than 40 years from the 1st July or the 1st January next succeeding the issue of the loan. The moneys so lent to a Province must be paid into the Provincial Revenue Fund.¹

III. "Education, other than higher education, for a period of five years and thereafter until Parliament otherwise provides."

The extent of this power depends upon the meaning of the term "higher education," because all that is not higher education falls within the sphere of the Provincial Councils. Higher education in its usual and ordinary acceptation denotes university education, and this has been taken to be the intention of the South Africa Act. With university education the Provincial Councils have no concern, and it is placed directly under the supervision of the Minister of Education, and consequently under the Union Parliament. At the same time, the Minister of Education, as his office implies, exercises a general superintendence over such other educational affairs as may come within the cognisance of Parliament. It must also be remembered that museums, public libraries, research institutions, and similar organisations which come within the purview of Parliament are connected with education in its wider sense. To the Provincial Councils are entrusted the superintendence of elementary (primary) and secondary education, the latter comprising what are known as "high" schools, trade schools, commercial schools (ranked as secondary schools), continuation classes, and the like. The training colleges for teachers, although in a sense they impart higher education, are also dealt with administratively by the Provincial authorities. Although the constitution indicates that all these matters may be withdrawn from the sphere of Provincial administration after the lapse of five years, and Parliament is always entitled to undertake, through the Minister of Education, the direct control of all branches of education, no attempt has thus far been made to interfere with the Provincial jurisdiction over this subject, and primary and second-

(1) Act No. 10, 1913 (secs. 9, 6).

ary education, in fact, constitutes one of the most important departments of Provincial activity, so far as the number of persons engaged in the work, both of administration and teaching, and the total amount of expenditure are concerned. It is needless to add that the object and utility of this branch of Provincial Administration are of the greatest importance, from the national point of view. Thus far each Province has had its educational destinies in its own hands, and has been free to follow its own lines of intellectual development in the most important formative stages of the average pupil's career. Each Province has its own Superintendent or Director of Education, who is, however, an official of the Union public service, and ultimately responsible to the Minister. But in Provincial affairs the Superintendent or Director acts under the Administrator and Executive Committee.

Hitherto the most important subject which has engaged the attention of the Provincial legislatures is the question of the two official languages, English and Dutch, which under the South Africa Act must be treated on a footing of equality, and possess and enjoy equal freedom, rights, and privileges.¹ Such a provision was inevitable in a bilingual country. In the past there has been much controversy as to the method by which this provision was to be carried out, from an educational point of view. Different parties contended that the two languages were not being treated in the schools on a footing of perfect equality. The subject engaged much of the attention of the Union Parliament during its first session, and as the result of debates a select committee was appointed, with power to examine the educational systems of the four Provinces, with a view to attaining uniformity and the equality of languages stipulated for in the constitution. The select committee recommended that article 137 of the constitution, giving equality to the two languages, be acted upon as follows: that the mother tongue of the pupil should be the medium of instruction up to the fourth standard, the parent to choose the medium where a child was equally conversant with Dutch and English; after the fourth standard the medium was to be at the option of the parent in all cases, but the parents might also choose a second language, both

(1) S.A. Act, sec. 137.

as a medium for and a subject of instruction. There was a minority report, recommending that both languages should be compulsory up to the fourth standard, with a second language thereafter at the option of the parent. The majority report was made the policy of the Union Government, and subsequently legislation framed in accordance with this compromise was adopted by the Provincial Councils.¹ The most important consequence, from administrative and financial points of view, has been the inauguration of separate "Dutch medium" and "English medium" schools in several instances, and the formation of parallel classes, of the same grade, in one and the same institution.

The mode in which the cost of public education is defrayed varies in the different Provinces. In the Cape, for instance, the cost is partly borne by means of local education rates; while in the Transvaal no special education rate is levied, although school boards in terms of the Education Acts may be given power to raise such rates, and the charges for Provincial education have thus far been met directly out of the general Provincial revenue. In the Transvaal, both primary and secondary education are wholly free. This is not the case in the other Provinces.

IV. "Agriculture, to the extent and subject to the conditions to be defined by Parliament."

All that it is necessary to remark on this subject is that hitherto the Union Parliament has not parted with its control over agricultural affairs. These remain under the superintendence of the Minister of Agriculture, and include such matters as irrigation, water rights, forestry, stock diseases, dipping tanks, agricultural pests, the land and agricultural bank, and agricultural colleges, which are all regulated by special Acts.

V. "The establishment, maintenance, and management of hospitals and charitable institutions."

The management of hospitals is, as a general rule, entrusted to hospital boards, sometimes nominated by the Provincial executive, sometimes partly nominated and partly elective. The procedure and functions of these boards are defined by regulations. In their conduct of business, the same principles

(1) Annual Register (1910, p. 416; 1911, p. 430).

are held to be applicable as obtain with regard to the law-making power of the Provincial Council, or, as will be seen, in the case of municipalities and divisional councils, namely, that all incidental powers necessary to carry out the work of a board are implied.

Hospital boards obtain their revenue partly by direct grant from the Province, voted by the Provincial Council, and partly by means of fees charged to patients.

Except for purposes of a temporary character, there are no organised State charities in South Africa. The tendency has always been to discourage anything that might appear to countenance pauperism. Whether this is a policy that can always be pursued with success is a debatable question, having regard to disquieting revelations which have been made by government commissions and other sources as to the existence of a large submerged class within the Union, among which are included the "poor whites." Hitherto, the Provincial Councils have confined themselves to the voting of grants for pauper relief, which are given to associations which, though enjoying government patronage, are largely voluntary in their nature. There is a strong feeling, however, that this system of charitable doles tends to foster rather than to eliminate pauperism. In any event, there is a powerful sentiment against the establishment of anything like the British workhouse system. The Provincial Councils also vote annual grants to orphanages, almshouses, and similar institutions, but do not interfere with their internal management, although such institutions are subject to inspection by the Provincial officials. The Union Parliament has also made grants for poor relief, and endeavours have been made to establish farm colonies for indigent persons. Grants have also been made to sufferers from drought and floods.¹ The general policy of both Union and Provincial Governments, however, is to discourage any persons from turning to the State for relief, as it is thought that only by self-reliance can an independent and healthy community be reared.

VI. "Municipal institutions, divisional councils, and other local institutions of a similar nature."

The distinction between "municipal institutions" and "divisional councils" is, broadly, that between bodies which

(1) These amounted to £58,000 in January, 1918.

are created for government of urban areas and those which exist for the management of the rural districts. The former include municipalities or town councils and, in units of smaller dimensions, village management boards and health boards. Divisional councils are an institution of long standing in the Cape Province, and are charged with functions of a like nature to those which in England are performed by county councils (as far as their rural powers go), rural district councils, and similar bodies.

All these bodies are creations of statute, whether statutes passed before or after the inauguration of the Union. In either case, the Provincial Councils possess powers to legislate with regard to them, whether by alteration of existing powers, or by the creation of entirely new bodies charged with local government. A Provincial Council may entirely alter the constitution of an existing municipality, or may terminate its existence and create a new body in its stead. It would appear, however, in accordance with what has been previously stated, that a Provincial Council has no power totally to suppress institutions for local government.¹ It may re-create them in a new form, but it cannot extinguish them altogether.

In determining the power which a Provincial Council has to legislate with reference to municipalities and divisional councils, regard must be had to the general scope of the ordinance in question, in order to ascertain whether it is within the legislative competence of the Provincial Council. In other words, where any doubt arises, the question will be whether the powers which the Provincial legislature has granted or conferred are powers necessary for the conduct of local government. Such a question can only be answered by considering the general nature of such powers, and whether the particular powers which have been granted conform to such general standards. Thus it has been said: "A Provincial Council may endow municipal corporations with all such powers as may enable them to deal fully and effectively with reasonable municipal requirements, in accordance with the social and economic conditions of the present time. To ascertain whether any particular power comes within this principle, it is necessary to examine the subject-matter, and the

¹ *Attorney-General v. University of Toronto* (above).

course of legislation dealing with it in South Africa, and in other countries whose municipal institutions South Africa has copied.”¹

The application of this principle leads to some curious results. The standard applied is what is usual in the case of municipalities; that is, if a given power is one which may reasonably be deemed to fall within the scope of municipal government, it will be valid, even if it may not fall within the scope of Provincial government. Thus, in a case where, at the time, the Provincial Council had no power to deal directly with traffic, *e.g.* motor car legislation, within the Province, it was nevertheless held that it could give a municipality powers to deal with the traffic.² On the other hand, again, even if a Provincial Council has power to deal with certain matters, it cannot delegate that power to a municipality unless those matters fall within the ordinary sphere of municipal government. Still less may it delegate a power relating to a subject in respect of which it cannot directly legislate, and which is clearly not included within the sphere of municipal or local government. Thus, where, at the time, the Transvaal Provincial Council had no power to regulate trade, and the Local Government Ordinance of 1912 purported to empower town councils to make bye-laws for regulating and licensing cycle dealers, manufacturers, and repairers, it was held by the Courts that this was not either a necessary or incidental function of municipal government, and that to grant this power was beyond the legislative competence of the Provincial Council.³ Mr. Justice Mason said: “A power to control local trade, commerce or industries (apart from questions of public health or certain other objects) is not a necessary or incidental function of municipal government.” Of course, a municipality would have power to control a business or trade within the municipal limits in so far as it constituted a menace or interference with public health or convenience. But the mere regulation of a trade or business as such is not neces-

(1) *Groenewoud and Colyn v. Innesdale Municipality* ([1915] T.P.D. p. 413); *Head & Co. v. Johannesburg Municipality* ([1914] T.P.D. 521).

(2) *Wilkins v. Johannesburg Municipality* ([1915] T.P.D. 362; following *Middelburg Municipality v. Gertzen*, [1914] A.D. 544).

(3) *Masrowitz v. Johannesburg Town Council* ([1914] W.L.D. 139; following *Attorney-General of Ontario v. Attorney-General for the Dominion*, [1896] A.C. 348; and see *Brewer and Millers' Association of Ontario v. Attorney-General of Ontario*, [1897] A.C. 231).

sarily municipal—although it may be incidentally so, as in mediaeval times, when all matters of trade were things of municipal concern. It may be doubted, however, whether the decision did not go too far. If it be admitted that trade is incidentally a matter of municipal concern, then it may come within the sphere of municipal control, with all its incidents, such as the grant of trading licences. The general tendency, however, has been to hold that such legislative powers must be expressly granted to Provincial Councils, and that they cannot be delegated unless there is clear authority for doing so. In any case, the decision in question was limited in its scope. In the Cape Province and in Natal, at the time, municipalities were entrusted with the issue and control of general dealers' licences; and, under the Financial Relations Act of 1913, power has been given to the Provincial Councils to regulate and control such licences.

The principles relating to local government legislation may be summed up as follows: (1) The power of the Provincial Council to legislate in the matter depends on whether the particular subject legislated upon comes within the sphere of what is ordinarily understood by local government, or as necessary or incidental thereto; and in case of doubt resort may be had to legislation *in pari materiâ*, and judicial decisions thereon, in countries possessing similar institutions. (2) A Provincial Council, even if it does not itself possess the capacity to exercise them, may delegate powers to a local body, as long as they are powers necessary or incidental to local government.¹ (3) The powers of a local body must be determined according to the statute under which it acts, and in the interpretation of the statute all necessary powers, *i.e.* those without which the provisions of the statute would become inoperative, must be implied.

VII. "Local works and undertakings within the Province, other than railways and harbours, and other than such works as extend beyond the borders of the Province, and subject to the power of Parliament to declare any work a national work and to provide for its construction by arrangement with the Provincial Council or otherwise."

(1) A power to regulate and prohibit the erection in certain localities of advertisement hoardings has been held by the Courts to be such as may lawfully be delegated to a town council (*Head & Co. v. Johannesburg Municipality*, above).

The expression "local works," as here used, means local works undertaken by the government of the Province, with the sanction of the Provincial Council. It obviously does not mean local works undertaken by local authorities, such as municipalities and divisional councils, although such works, where a certain amount of expenditure is involved, may require the sanction of the Administrator. In other words, the term "local works," as here used, is equivalent to Provincial works. It does not include anything relating to or connected with railways and harbours, which come under the Union ministerial department of Railways and Harbours. The exception of "such works as extend beyond the borders of the Province" is somewhat difficult to determine, for, as will be seen, a Provincial Council has no power to legislate or provide for bridges connecting two Provinces. It would, however, appear to include such works as inter-Provincial canals and irrigation works, and the like. These are placed beyond the sphere of Provincial jurisdiction, and must be dealt with by Parliament. And Parliament may declare any work, even if it be locally situate within a particular Province, to be a national undertaking, and may legislate in respect of it as for a national concern. Instances of the kind may easily be imagined, such as national monuments, parks, or reserves.

VIII. "Roads, outspans,¹ ponds,² and bridges, other than bridges connecting two Provinces."

These are largely matters concerned with local government, and there is nothing to prevent a Provincial Council from providing for their control and management by a local body. In the Cape Province, the management of roads, so far as particular districts are concerned, is vested in the divisional councils (by the Divisional Councils Ordinance, 1917), while main roads, i.e., such as connect two or more districts, are managed partly by the Provincial Administration and partly by the divisional councils which are particularly concerned. In the Transvaal, main roads are under the direct control of the Administrator, while the management of district roads is vested in district road boards, consisting of the magistrate or some other person appointed by the Administrator, and the field

(1) Eng., places where horses and cattle are unharnessed or unyoked, for purposes of rest and feeding.

(2) Eng., ponds.

cornets of the several wards of the district. Thus, in the Transvaal, all roads are under the direct control of the Provincial administration; and in that Province all the charges connected with roads are borne by the Provincial government, while in the Cape the divisional councils have power to levy road rates. The policy so far pursued in the Transvaal has been one of centralisation, while that of the Cape is decentralisation. In all the Provinces streets in urban areas, considered as roads, are in the charge of the municipal authorities. Broadly, the same distinctions in respect of local bridges and outspans exist in the administrative systems of the Cape and the Transvaal.

IX. "Markets and pounds."

The control of markets in the four Provinces is vested in the municipal authorities. Pounds are distinguished as they are urban or rural. An urban or municipal pound is controlled, and the revenue therefrom drawn, by the municipal authority. In the Cape, divisional (rural district) pounds are controlled by the divisional councils, and in the Transvaal by the Provincial administration. With regard to these matters, as well as to roads, bridges, etc., the Provincial Council has complete powers of legislation, and may reserve to the Provincial administration all management and control, or may delegate the whole or part thereof to local authorities.

X. "Fish and game preservation."

This power, like all the others, comprises that of passing appropriate legislation on these subjects. The term "preservation," embracing, as it does, all that is necessary or ancillary thereto, must be taken to include the regulation, as to mode, seasons, and places, of fishing of all kinds (including fishing on the coast of any Province¹), and the killing of game, whether by firearms or otherwise. So a Provincial administration may, and does, proclaim and delimit game reserves, and fix the dates of open and close seasons for hunting.

XI. "The imposition of punishment by fine, penalty, or imprisonment for enforcing any law or any ordinance of the Province made in relation to any matter coming within any of the classes of subjects enumerated in this section."²

(1) The territory of a Province would include the sea within a nautical league—three marine miles—of its coast (*the Queen v. Keyn*, 2 Ex. D. 68).

(2) *I.e.*, S.A. Act (sec. 85).

This is a necessary power, because, failing authority to impose penalties for contravention of any ordinances which it enacts, a Provincial Council would be unable to secure the observance of such legislation, in other words, obedience to its precepts. The reference to "any law" indicates that where a law has been passed before a Provincial Council came into existence, and such law contains no penalty for any future contravention of its provisions, the Provincial Council may enact an appropriate penalty.

Punishments or penalties, however, may only be imposed and enforced in accordance with the general criminal law of the Union. It is not within the competence of a Provincial Council to alter the existing mode of criminal procedure, and to institute new methods of trial, or innovations in criminal practice. Thus, where the Transvaal Provincial Council passed an ordinance relating to municipal government, and thereby empowered magistrates on a prosecution by a municipality to state, at the request of either the prosecutor or the defendant, any question of law arising therein for the decision of the Supreme Court, and magistrates at the time possessed no such power of stating cases under the general law, it was held by the Supreme Court that such a provision was *ultra vires* of the Provincial Council. Judge-President de Villiers observed: "The administration of justice in the magistrates' Courts is a field of legislation which is at all events not directly covered by the powers in section 85 (VI and XI) of the South Africa Act. No doubt all powers that are reasonably necessary and incidental to the working of municipal institutions must be included, according to the rule *Quando lex aliquid concedit, conceditur et id sine quo res ipsa esse non potest*. But it is not apparent that municipal institutions will be less effectively administered if the ordinary procedure be followed instead of the procedure proposed to be adopted by section 114 of the Provincial ordinance. If the Provincial ordinance is competent to regulate these matters as provided in section 114, it can regulate and even abolish the right of appeal, or provide an appeal on the part of the municipality where the accused has been discharged. Powers of such far-reaching effect must be given either expressly or by clear im-

plication." Mr. Justice Curlewis said: "Though a Provincial Council has power to impose a penalty for a contravention of a bye-law or regulation, that penalty can only be enforced according to the procedure and within the jurisdiction of the Courts as established. It was urged on behalf of the prosecuting municipality that the power which a Provincial Council has to legislate generally with regard to municipal institutions must imply the power to legislate for extra jurisdiction for the Courts, for the purpose of giving effect to any municipal legislation. No such power appears to me to be necessary. The legislation of a Provincial Council, whereby offences are created and penalties imposed, can, and must only, be given effect to by means of the machinery and according to the procedure as they exist for the prosecution of criminal offences. Any alteration therein would be a matter affecting the administration of justice, and would fall within the province of Parliament."¹

We may observe that no limits are placed upon the amounts of fines or the duration of imprisonment which a Provincial Council may fix as the penalties for contravening any ordinances. The passing of an ordinance providing for the imposition of capital punishment is not within the competence of a Provincial Council, for by law the only capital crimes are murder, treason, and rape.²

XII. "Generally, all matters which, in the opinion of the Governor-General-in-Council, are of a merely local or private nature in the Province."

The actual meaning of the words "local" and "private" is clear. The word "local" may have reference to anything arising within the Province at large, as distinguished from the other Provinces, or to a matter affecting some particular locality within the Province. "Private" matters are such as wholly affect private, as distinguished from public or general interests. The real difficulty lies in the occasion for the enactment of ordinances relating to matters of a merely local or private nature. How, or when, is the opinion of the Governor-General-in-Council to be signified? Is such signification to be made before or after the Provincial Council deals with

(1) *Germiston Municipality v. Angehrn & Piel* ([1913] T.P.D. p. 135).

(2) Act 31, 1917 (sec. 338).

a matter of a merely local or private nature? In their ordinary sense, matters of a private nature would include such subjects as may appropriately be dealt with by means of private bill legislation, as distinguished from public bills. In practice, the Provincial Councils have assumed the right to deal with private bills, that is, draft ordinances affecting matters of a private nature, and their standing orders contain elaborate provisions as to the procedure to be followed in connection with the promotion and passing of private bills, without any reference to the necessity of obtaining the opinion of the Governor-General-in-Council as to whether the proposed ordinance relates to matters of a private nature. For instance, the standing rules of the Transvaal Provincial Council provide that "every draft ordinance for the particular interest or benefit of any person or persons as distinguished from a measure of public policy shall be treated by this Council as a private draft ordinance, whether it be for the interest of an individual, a public company, a corporation, a local authority, municipality, or other locality." This definition certainly embraces "matters of a merely local or private nature in the Province." According to the practice to which we have referred, the opinion of the Governor-General-in-Council is not sought, at the time of the introduction of a private ordinance, as to whether it deals with matters of a merely local or private nature. It seems, however, that as the South Africa Act makes no provision for the time when such opinion is to be sought, the assent of the Governor-General-in-Council to the private ordinance when passed by the Provincial Council is a sufficient indication of the opinion of the Governor-General-in-Council that the subject-matter of the ordinance is of a local or private nature. There would, however, be nothing to prevent the Governor-General-in-Council, apart from assenting to particular ordinances, from issuing a general proclamation to the effect that matters of a specified nature are to be regarded as merely local or private in a Province or Provinces.

The South Africa Act further empowers the Parliament to refer to a Provincial Council any matter requiring to be dealt with by a private Act of Parliament, where such matter relates to the Province in which that Council sits. Under such

a reference, the Council, by means of a select committee or otherwise, may take evidence for and against the passing of such a private Act. The Council then transmits a report upon its investigation, together with the evidence on which it is founded, to Parliament, which may then pass the private Act without taking further evidence in support thereof.¹ In practice this provision has been interpreted to mean that either House of Parliament which is enquiring into a private bill may refer the matter to the Provincial Council of the Province concerned, and that a joint reference from both Houses is not required.² The Provincial Councils follow the same procedure with regard to the taking of evidence on such private bills referred by Parliament as they observe in connection with private bills depending before the Councils themselves.

XIII. "All other subjects in respect of which Parliament shall by any law delegate the power of making ordinances to the Provincial Council."

This is one of the most important provisions of the constitution with regard to Provincial Councils, as it contemplates the transference to a Provincial Council of any legislative power which Parliament may choose to assign to it. Such transference, in any particular case, can only take place by means of an Act of Parliament. But the provision for it is complete under the constitution, so that no further change in the constitution is necessary to render a Provincial Council competent to deal with a matter which has once been assigned to it by Parliament. There is no restriction as to the matters which may be assigned, so that the field of future legislation by Provincial Councils is indefinite in its extent, subject to the implied limitation that Parliament cannot assign to any one Provincial Council matters of legislation which affect the Union as a whole.

By virtue of this provision, the Union Parliament has passed measures (the Financial Relations Acts of 1913 and 1917) whereby, subject to the observance of certain formalities, certain subjects of legislation are transferred to the Provincial Councils. These Acts are declared to be temporary in their nature (the earlier operating until the 1st April, 1917, and

(1) S.A. Act, sec. 88.

(2) See Act 19, 1911 (sec. 25).

the later one until the 31st March, 1920), but it is doubtful whether this temporary operation applies only to their financial provisions, or also to the legislative subjects assigned by them. It would appear that once a legislative power has been assigned it cannot be recalled. The Acts enumerate the matters which may be assigned. Whether a Provincial Council is to be entrusted with any or all of such matters is to be determined by the Governor-General, with the concurrence of the Executive Committee of the Province. The Governor-General must then issue a proclamation in the *Gazette*, specifying the date from which all functions and powers relating to the matter in question are to be vested in the Executive Committee of the Province, and the Provincial Council then becomes competent to legislate in respect of that matter.¹ A Provincial Council may not legislate upon any assigned matter before the date specified in the Governor-General's proclamation²; nor does the Governor-General possess any power to validate *ex post facto* an ordinance not passed in terms of the Financial Relations Acts.³ The matters in respect of which the Governor-General, as above stated, may transfer legislative power to the Provinces are: (1) The destruction of noxious weeds and vermin and the registration and control of dogs, outside the area of jurisdiction of any municipal or local authority which has powers by law or bye-law in respect of such destruction, registration or control. (2) The experimental cultivation of sugar, tea, and vines, save in so far as it concerns the administration of laws or regulations relating to plant diseases. (3) The provision of grants in respect of agricultural and kindred societies, other than societies registered under any law. (4) The administration of libraries, museums, art galleries, herbaria and botanic gardens, except the South African Library, Museum, and Art Gallery, Cape Town, and the Government Library and Transvaal Museum, Pretoria. (5) The control and management of such places upon Crown land as the Governor-General may reserve as being places of public resort, of public recreation, or of historical or scientific interest. (6) The administration of cemeteries and casualty wards. (7) The distribution of poor re-

(1) Act 10, 1918 (sec. 12).

(2) *R. v. Whitehead* ([1914] E.D.L. 173).

(3) *R. v. Williams* ([1914] C.P.D. 277); and see *R. v. Fox* ([1912] E.D.L. 510), and *R. v. Sher* ([1914] T.F.D. 270).

lief. (8) The regulation of the hours of opening and closing of shops and the restriction of hours of work of shop assistants. (9) The administration of the Labour Colonies Act, 1909 (Cape of Good Hope) in so far as it relates to industrial institutions. (10) The establishment and administration of townships. (11) The licensing and control of vehicles and of any other conveyances or means of transport whatsoever using those roads and bridges which under paragraph viii of section 85 of the South Africa Act, 1909, are matters as to which a Provincial Council may make ordinances, and of the drivers of any such vehicles or means of conveyance or transport. (12) The regulation of horse racing and betting within the Province, and the licensing of any instrument, machine or contrivance commonly known as a "totalisator," and the imposition of duty, in respect of the takings thereof, upon the licensees. (13) The licensing, regulation and control of places of amusement and recreation within the Province, and the imposition of a duty upon the licensee in respect of the takings thereat, or of a charge based upon the payments for admission thereto.

The transfer of any further legislative power to a Provincial Council must, in each case, be authorised by an Act of Parliament.¹

We may here add that where power is conferred on a Provincial Council to raise revenue from any particular source and to legislate thereon, by the issue of licences to trade, such power is not confined to the regulation and management of revenue derived from the licences, but includes authority to pass legislation regulating the trades themselves.²

(1) Act 10, 1913 (sec. 12).

(2) *R. v. Adam* ([1914] C.P.D. 802; and see *R. v. Maroon*, [1914] E.D.L. 483).

CHAPTER XVIII.

RELATIONS BETWEEN THE UNION AND THE PROVINCES.

THE RELATIONSHIP which exists between the Union and the Provinces may best be ascertained by considering the nature of Provincial government. A Province cannot be regarded as a separate entity for administrative or legislative purposes, so far as all its internal affairs are concerned. Except with regard to the powers of legislation delegated to the Provincial Councils, and those of administration confided to the Provincial Executive, all of which are severely restricted, and are capable of being reduced to a minimum by the immense powers of veto possessed by the Governor-General-in-Council, a Province has no political barriers, although, for certain administrative and judicial purposes, it has geographical boundaries. But these geographical boundaries are not necessarily permanent, since Parliament has power to change them, and to sub-divide Provinces or form new Provinces.¹ Nor are the Provincial Councils necessarily permanent, for their existence may be terminated by an Act of Parliament, provided only that a bill with that object or for the purpose of curtailing any of the powers enjoyed by Provincial Councils, must be reserved for the signification of the King's pleasure.² But, as Mr. Keith points out,³ "in view of the relatively unimportant position of the Provinces under the constitution, it is hard to believe that any very substantial doubt could ever exist as to the acceptance of a bill relative to the Provinces by the Imperial Government. The Union Parliament under any normal circumstances must be deemed the best judge of what legislative authority should be exercised by the Provinces. It is quite possible that in fact it may allow the Provinces great powers; it is more probable that it will exercise the greater part of the legislative functions of the country

(1) S.A. Act, sec 149.

(2) *Ib.*, sec. 64.

(3) Vol. 2, p. 978.

itself." This statement, unfortunately, is true. It is in the nature of man to retain power, and to strive for its increase; and this holds good of the Union Parliament as of all the rest of humanity. This is not to suggest that in legislating for the abolition of Provincial Councils or the curtailment of their powers, the Union Parliament will not be guided by what it deems the highest considerations of the public weal. But a Commission which has been appointed to consider the matter has already reported in favour of restriction, if not abolition, and it is not unnatural to suppose that the Parliament will be guided largely by its report. At the same time, in accordance with a tendency which is manifesting itself all over the world, strong views are held in many influential quarters that it is desirable to entrust peoples with as large a measure of local government as possible, and that a central administration and a central legislature are more legitimately concerned only with the broader and more general purposes of government, and with the maintenance of the State as a whole.

The result of the existing system is that for general purposes of administration and legislation there exist no Provincial boundaries. It is true that the Provinces have equal representation in the Senate, and that, nominally, the members of the House of Assembly are elected on a Provincial basis, each Province having a quota to determine the extent of its representation. But the senators for a particular Province, by the existing constitution of the Senate, cannot exert any special pressure so far as that Province is concerned. And, in view of the existing separation of parties, the House of Assembly will never divide on Provincial lines. This may be an excellent thing from certain points of view, but it certainly accentuates the tendency to obliterate Provincial boundaries, in the political sense. Again, it is only for purposes of convenience that provincial and local divisions of the Supreme Court are in existence; and the same consideration applies to the various sub-divisions of the administrative departments. The area of the Union, and the consequent distance of towns from the central seat of government, are matters of importance.

Thus the risk that Union powers and Provincial powers may overlap is reduced to a minimum. So far as the risk exists, it may always be avoided by the right of Parliament to intervene; and the jurisdiction of the Courts is an additional safeguard to prevent a Provincial legislature from overstepping its boundaries.

But the most important security against any undue extension of Provincial powers is the almost entire dependence of the Provinces upon the Union Government with regard to financial affairs. A Provincial Council has certain powers of taxation; but these, like all other matters of legislation, are subject to the veto of the Union Government. And as the bulk of all revenues goes to the Union treasury, a Province is, in existing circumstances, dependent on subventions from the Union Government in order effectively to defray even its comparatively limited expenditure. This dependence was foreseen in the constitution, which provided for the appointment of a Commission to inquire into the financial relations which should exist between the Union and the Provinces. Pending the report of this Commission, each Province was to receive from the Consolidated Revenue Fund of the Union an amount equal to that provided in the estimates of the Colony now replaced by such Province, for the financial year 1908-1909, in respect of education other than higher education, and such further sums as the Governor-General-in-Council might consider necessary for the services of the Province. No expenditure was to be incurred by the executive committee of any Province which was not contained in estimates prepared by it and approved by the Governor-General-in-Council.¹ The report of the Financial Relations Commission was followed by the passing of the Financial Relations Act, to which reference has been made. By virtue of this statute, the funds for normal or recurrent expenditure of a Province are derived from the following sources: (1) moneys appropriated by Parliament to the Province by way of subsidy or additional subsidy (in the case of an excess over normal expenditure for the previous financial year); (2) the sources of revenue transferred and the revenues assigned to the Province under the Act; (3) such other revenues as may be raised by the Province under the

(1) S.A. Act, sec. 118.

authority of law, *i.e.* by virtue of its taxing powers under the constitution.¹ Normal or recurrent expenditure is defined as: (1) the cost of general administration in the Province; (2) the cost of carrying out the matters entrusted to the Province, where such cost does not fall to be treated as capital or non-recurrent expenditure;² (3) the interest and sinking fund payments for which the Province is liable in respect of advances made to it to meet capital or non-recurrent expenditures; (4) the cost of construction and maintenance of roads, subject to the proviso that, in special cases authorised by the treasury, the cost of construction of any particular road, but not of its maintenance, may be regarded as capital expenditure.³ The amount to which a Province is entitled by way of subsidy is one-half of the normal or recurrent expenditure actually and lawfully expended by it, except that where such expenditure exceeded that of the previous year by more than seven and a half per cent., the subsidy in respect of such excess should be one-third only, in lieu of one-half, during the next financial year. Expenditure by divisional councils, school boards, and native councils is to be regarded as part of the normal expenditure of the Province. An additional subsidy of £100,000 was to be granted to Natal and the Orange Free State respectively.⁴

The Financial Relations Acts, 1913 and 1917, transferred the following sources of revenue to the Provinces, together with the power to legislate in respect thereof: (1) hospital fees, and fees received in respect of such education as is within the jurisdiction of a Provincial Council; (2) duties on the takings of totalisators; (3) auction dues; (4) dog licences outside urban areas; licences to take, catch, or kill game, fish, or other animals; licences to pick or sell wild flowers; (5) all other payments for trading or professional licences, save such as are excepted by the Acts; and (6) miscellaneous receipts connected with matters entrusted to a Province. The matters in respect of which the Provinces cannot impose taxation have been mentioned previously.⁵ The operation of the Acts is stated to be temporary, so that after the 31st March,

(1) Act 10, 1913 (sec. 4).

(2) The definition of "capital or non-recurrent expenditure" under the Financial Relations Act has been referred to in chapter XVII., sec. II., of this work.

(3) Act 10, 1913 (sec. 6).

(4) *Id.*, sec. 5.

(5) See chapter XVII. of this work.

1920, it will be competent for the Union Parliament to enact fresh legislation, and either to withdraw the existing taxing powers of the Provinces, or to substitute others, or to add others, or wholly to change the structure of Provincial government. What is clear is that the existing arrangement is not permanent in its nature; and while this state of affairs continues there must always be an element of uncertainty. No financial arrangements can be made so as to endure for any considerable period. On the one hand, there is in existence, and there will continue to be, a movement seeking for an extension of Provincial powers with regard to finance and legislation; on the other, there are those who will seek to centralise everything in the Union legislature and executive. Until this state of uncertainty ceases to exist, there will always be a certain degree of instability in the Provincial governments; and this will only disappear when the problem is finally resolved, no matter which way the decision may tend.

Nevertheless, disputes regarding the financial relations between the Union and the Provinces can only be matters of infrequent occurrence. These relations are determined by law, and that law, in case of any difference of opinion, is open to interpretation by the Courts; while Parliament always retains unimpaired its power of legislation. Cases of serious conflict cannot arise, for the Provincial government must always give way, and it is only a defined right granted by statute which it can insist upon enforcing, through the medium of judicial interpretation. Where a legal decision is given in favour of a Province, it will always be observed by the Union Government. But if we may imagine the extreme case of the Union Government refusing to carry out such a decision, there would be no Provincial machinery to enforce it. The only alternative would be a conflict leading either to disruption of the Union, or to the discomfiture of the Province. In practice, however, there can be no serious conflict, apart from natural dissatisfaction felt by Provincial authorities with what they may regard as undue restriction of their powers. For most purposes of administration and legislation the Union and the Provinces are one and indistinguishable. The only variations between the Provinces are those arising from matters with

which the Provincial administrations are specially charged such as education, or from the survival of laws enacted by the legislatures of the former Colonies, which have not yet been harmonised or consolidated for the whole of the Union by its Parliament. Many of these differences, however, have already disappeared, and the only possible subject for regret is that in time to come there may be too little variety.

Lastly, it must be remembered that a Province is, strictly considered, only a legal entity as far as its own internal affairs are concerned. It is difficult to conceive of one Province having relations with another Province; although, in a subordinate sense, it has relations with the Union, through the government of the Union. In this connection, it is significant that while the constitution provides for "the executive government of the Union,"¹ it only makes provision for an Administrator of a Province "*in each Province . . . in whose name all executive acts relating to provincial affairs shall be done,*"² while there is to be a Provincial Council "*in each Province,*"³ and an executive committee "*for the Province.*"⁴ Of course, this distinction must not be carried too far, for there are other places in which reference is made to "the executive committee of a Province."⁵ But the intention of the framers of the constitution undoubtedly appears to have been to emphasize the entirely subordinate position of the executive and legislative powers of the Provinces as compared with those of the Union.

(1) S.A. Act, sec. 8; and see secs. 12, 14, 15, 18. (2) *Ib.*, sec. 68.
(3) *Ib.*, sec. 70. (4) *Ib.*, sec. 78. (5) *Ib.*, secs. 79, 81.

CHAPTER XIX.

UNION FINANCE.

THE CONSTITUTION contains provisions for the management of Union revenue and expenditure, the responsibility for the public debt both of the Union and its constituent Colonies, and the treatment of public property regarded as a State asset.

It is important to notice, at the outset, that in the Union, where the railways and harbours are State-owned, but must obviously, from their nature, be managed on principles differing from those applicable to other sources of public revenue, a separate management and system of control has been instituted with regard to railways and harbours. They are placed under the charge of a separate department, that of the Minister of Railways and Harbours, and, from a financial as well as from a business point of view, are managed independently, although they are in all respects subject to Parliamentary control, and appropriations on account of railway and harbours expenditure have to be made in the same way as all the appropriations of public moneys to uses of State. And annual budgets of railway and harbour revenue and expenditure must be presented to Parliament in the same way as the ordinary budget. But whereas Ministers of other departments who present estimates to Parliament do so merely as custodians of funds allocated by the treasury, the source of railway and harbour estimates is independent, and stands by itself.

Thus, while under the constitution all revenues, from any source whatever, vest in the Governor-General-in-Council, there are two public Funds, or financial departments: (1) the Consolidated Revenue Fund, into which are paid all revenues raised or received by the Governor-General-in-Council from sources other than railways and harbours; and (2) the Railway and Harbour Fund, into which are paid all revenues raised or received by the Governor-General-in-Council from

the administration of the railways, posts, and harbours. The first of these Funds is appropriated by Parliament for Union purposes in the manner prescribed by the constitution and the various finance Acts; while the Railway and Harbour Fund is appropriated by Parliament to the purposes of the railways, posts, and harbours, subject to the constitution and the railway appropriation Acts.¹ No money may be withdrawn from either of these Funds except under appropriation by law, *i.e.* Act of Parliament. At the inauguration of the Union, however, it was provided that the Governor-General-in-Council might draw and expend moneys necessary for the public service, and for railway and harbour administration, until the expiration of two months after the first meeting of the first Parliament.² The constitution makes certain provisions for meeting railway and harbour expenditure on interest and other charges, which will be examined in the following chapter.

With regard to the liability for public debts owed by the constituent Colonies, provisions were made for the assumption thereof, as well as for the conversion or consolidation of such debts.³ The general powers of legislation conferred upon the Colonies existing on the 31st May, 1910, and made itself subject to the conditions imposed by any law under which such debts were raised or incurred, and without prejudice to any rights of security or priority in respect of the payment of principal, interest, sinking fund, and other charges, for which such rights or security or priority were conferred on the creditors of any of the Colonies. In other words, the Union became liable for such debts, in their entirety, in the same way as the former Colonies were liable for them. The constitution, however, gave the Government of the Union, subject to the conditions under which these debts were incurred and to the rights of creditors, the power to convert, renew, or consolidate such debts.⁴ The general powers of legislation conferred upon the Union Parliament implied and included that of incurring debt on loan or otherwise for Union purposes, and such debts have in fact been incurred since the inauguration of the Union. The first Parliament passed an Act regulating the mode in which future loans were to be raised. This might be done by the

(1) S.A. Act, sec. 117.
(3) S.A. Act, sec. 124.

(2) *Id.*, sec. 120.

issue of stock within the Union (known as local stock), or by stock issued in the United Kingdom (consolidated stock), or partly by local stock and partly by consolidated stock. Any such loan was to be sanctioned by an Act of Parliament. All local stock was to be issued by public tender, interest thereon being payable half-yearly. Consolidated stock was to be issued by the High Commissioner for the Union in London or agents approved by the Governor-General, and the Governor-General was empowered to enter into agreements with such agents for the creation of consolidated stock, its issue and inscription, the payment of interest, the issue of bearer certificates, and the general conduct of business in relation to such stock. Treasury bills might be issued in the Union or in the United Kingdom in sums of £100 or multiples thereof for borrowings authorised by Parliament, and the renewals of such bills were to be deemed authorised borrowings. All loans and interest thereon were to be chargeable on and payable out of the revenues and assets of the Union.¹ The constitution provides that the annual interest of the public debts of the original Colonies and any sinking funds constituted by law at the establishment of the Union shall form a first charge on the Consolidated Revenue Fund.² As the Union itself had contracted no debt at the date of its establishment, except to assume the liabilities of the pre-existing Colonies, the result was to create priority on Union funds and assets for claims in respect of the interest on the public debts of those Colonies and sinking funds constituted as at 31st May, 1910, and thereafter came charges for interest on Union debts. For purposes of treasury administration the public debt of the Union has been divided into funded debt and floating debt, the former consisting of pre-existing Colonial loans, and Union loans; and the latter of treasury bills, temporary loans, short-term debentures, renewals of treasury bills, and moneys raised for the redemption of floating debts of the former Colonies under the Public Works Loan and Floating Debt Consolidation Act.³ We may here briefly indicate the financial position by stating that at the end of the first financial year of the Union (31st March, 1911) the total funded debt was £106,291,534, of which

(1) General Loans Act (No. 17, 1911).

(2) S.A. Act, sec. 119.

(3) No. 29, 1911.

£46,195,590 represented the debt of the Cape Colony, £20,095,943 that of Natal, £35,000,000 the joint war debt of the Transvaal and the Orange River Colony, and £5,000,000 the debt of the Transvaal Colony. At the same date the total floating debt was £7,945,434, so that in all the Union owed £114,236,968. Subsequent additions brought up this figure to £116,502,000. On the 31st March, 1912, the total debt was £118,000,000, of which £92,000,000 was for railways. On the 31st March, 1913, the respective amounts of funded and floating debt were £105,856,000, and £11,972,000, while on the 31st March, 1914, the amounts were £117,671,000 and £7,308,000. Since then, on account of war, rebellion, and industrial troubles, conditions have been entirely abnormal, and cannot be taken as a criterion. Large debts have been incurred to Great Britain in order to defray expenditure caused by the war (since 4th August, 1914), and the rebellion in South Africa. For the comparatively short period to the end of March, 1915, the war expenditure amounted to nearly £9,000,000.

By the constitution, the following provisions were made as to the property of the Union: (1) All stocks, cash, bankers' balances, and securities for money, belonging to each of the constituent Colonies, were to belong to the Union, but the balances of any funds for special purposes raised in such Colonies at the establishment of the Union were to be deemed to have been appropriated by Parliament for such special purposes; (2) Crown lands, public works, and all movable or immovable property, rights in and to mines and minerals, and all rights in connection with the searching for, working, and disposal of minerals or precious stones, and all ports, harbours, and railways belonging to the several Colonies, were to vest in the Governor-General-in-Council, subject, in the case of lands, works, or property, to any debt or liability specifically charged thereon.¹ The provision with regard to mines and minerals was one of great importance. By the common law, rights in regard to minerals belonged to the owner of the soil. But by the various Gold Laws of the Transvaal, the greatest gold producing centre, the right to dispose of mines and minerals had been vested in the State, which could either grant leases of mining areas, or establish its own mines, instead of allowing prospec-

(1) S.A. Act, secs. 121, 122, 123, 125.

tors to "peg out" or locate mining claims. These rights, still belonging to the State, were regarded as of great value, and subsequently became important matters of legislation. The same principle had been enacted with regard to diamond-mining in the Transvaal and Orange Free State, and the Union Government was entitled to heavy royalties on the produce of such mines. It is, therefore, not surprising that there should have been constitutional provision in respect of these matters—although, of course, the Parliament was left unfettered as to the future disposal of mining rights.

After the establishment of the Union, an Act of Parliament was passed whereby provision was made for the management and liquidation of the public debt. The Governor-General was to appoint a board of Public Debt Commissioners, consisting of the Minister of Finance (who was *ex officio* chairman), one of the commissioners of railways and harbours, and a third member to be nominated from time to time. Contributions to sinking funds for the redemption of existing loans were to be paid to a bank account in the name of the Commissioners, and the surplus revenues of any financial year were to be paid to them for loan redemption, as well as any further sums available for that purpose. The funds received by the Commissioners were to be devoted by them to the redemption or purchase of stock or debentures issued in respect of any loan, and they were to cancel all securities so redeemed or purchased. The Commissioners were empowered to make temporary investments of moneys under their control, if they should consider it advisable in the public interest to delay redemption or purchase of securities. All moneys received by the Union Government and available for investment were to be deposited with the Commissioners, who were to invest the same in the purchase of Union stock, or in treasury bills or debentures of the Union, or otherwise in government securities of the United Kingdom, India, or the British Colonies, or in approved banks in the Union or in London. All existing debt securities were to vest in the Commissioners. They were to have power to sell investments at their discretion. The accounts of their financial transactions were to be kept in the treasury, and annual accounts of their dealings were to be framed, and transmitted

to the Controller and Auditor-General. Profits on transactions were to be paid to the Consolidated Revenue Fund. Deposits made under any laws or regulations were to be applied only to the purposes for which they were made. All stocks and securities were to be deposited with the treasury or with the High Commissioner for the Union in London. The purchase and realisation of investments, and the collection of interest, were to be undertaken by the treasury on behalf of the Commissioners.¹ All these provisions are still in force.

The constitution directs the Governor-General-in-Council to appoint a Controller and Auditor-General of the public service of the Union. He occupies a privileged position, so that he shall be entirely independent in the discharge of his duties. Like a judge of the Supreme Court, he holds office during good behaviour, and is only removable by the Governor-General-in-Council on an address praying for such removal presented to the Governor-General by both Houses of Parliament. If, however, Parliament be not in session, the Governor-General-in-Council may suspend the Controller and Auditor-General on the ground of incompetence or misbehaviour, subject to a full statement of the circumstances of suspension being laid before both Houses within fourteen days after the commencement of the next session of Parliament. If an address is presented to the Governor-General at any time during the session by both Houses of Parliament resolve that it is in the public interest and Auditor-General, he must be restored accordingly; otherwise the Governor-General must confirm the suspension and the office will become vacant.² The position and duties of the Controller and Auditor-General are further defined by the Exchequer and Audit Act,³ which repeals and re-enacts these provisions of the constitution. An important innovation, which in effect amounts to an alteration of the constitutional enactment relating to the retention of office during good behaviour, is, however, made by the provision in the statute that the Controller and Auditor-General may retire when he attains sixty years of age, and that he shall retire at that age unless both Houses of Parliament resolve that it is in the public interest that his services be further retained, in which event he is to

(1) Public Debt Commissioners Act (No. 18, 1911).
(3) No. 21, 1911.

(2) S.A. Act, sec. 132.

remain in office up to an age prescribed by both Houses, but not exceeding sixty-five.

The Governor-General must further appoint an officer styled the Assistant Controller and Auditor-General. Like the Controller, he holds office during good behaviour, being subject to retirement in the same manner. Both are officers of the public service of the Union, being ineligible to hold any other office of profit under the Crown. Strictly, however, they are officers of Parliament, for they are created by special Act, and are not subject to the control of any Ministerial department. In fact, they stand outside the administrative departments of State, so that they may be entirely independent in the discharge of their functions. But the same restrictions apply to them as to other officers of the public service, *e.g.* as to observance of duties, leave, etc.

The Controller supervises the audit of all public accounts of the Union other than those subject to the Minister of Railways and Harbours, the audit of which is supervised by the Assistant Controller. They, in their respective spheres, examine, enquire into, and audit the accounts of all accounting officers and all persons entrusted with the receipt, custody, or issue of public moneys, stamps, securities or stores. It is their duty to satisfy themselves that all laws and regulations relating to public moneys are observed. They may summon public officers, call for books and records, and examine them. If there are deficiencies, or public moneys have been improperly paid or not duly vouched, or any public moneys or property is missing, they may surcharge the persons responsible.

The Exchequer and Audit Act makes further provision for the mode in which the public revenue accounts are to be kept. A banking account, known as the "Exchequer Account," is kept, and the principle is laid down that with a view to economising the public balances the treasury shall restrict the sums to be issued or transferred from time to time to the credit of the accounts of accounting officers to such total sums as the treasury may consider necessary for conducting the current payments for the public service entrusted to accounting officers. Each accounting officer must consider the sums so transferred

to his account as part of his general drawing balance, and all such sums must be carried in the books of the accounting officer to the credit of the services for which the same may be issued, as specified in treasury orders directed to the bank. No accounting officer may pay any money except as authorised by law. The departments of customs and excise, of inland revenue, and of the postmaster-general, must each, after deduction of the payments for drawbacks, repayments, or discounts, cause their gross revenues to be paid daily into the Exchequer Account. All other revenues must be paid into that account. Daily accounts of payments are rendered by the bank to the treasury and to the Controller. All authorised expenditure, *i.e.* under any Act of Parliament, is paid out by warrant to the treasury, signed by the Governor-General; and the same rule applies to unforeseen expenditure (which is not at any time to exceed £300,000) and money required to meet an excess on a parliamentary vote. In order to meet such warrants, the Controller grants credits to the treasury on the Exchequer Account, not exceeding the amount requisitioned by the treasury. He cannot grant any other credits on the Exchequer Account except such as are required for temporary investment of balances, or for the purpose of repaying sums erroneously paid into the Exchequer Account. All amounts issued from the Exchequer Account are paid into another account, that of the Paymaster-General, to which there are corresponding credits to the several accounting officers responsible for the votes or services affected.

All borrowings in excess of statutory authority are forbidden.¹

No appropriation Act is to be construed as authorising expenditure except within the year to which it relates, and any moneys appropriated which may be unexpended at the close of any financial year must be surrendered to the Exchequer Account.² In other words, if not applied to the services for which they were destined, they must be voted afresh.

The Exchequer and Audit Act makes further provision for the preparation of a plan of accounts, adapted for the requirements of each service, under the supervision of the treasury, after consultation with the controller. All accounts of de-

(1) Act 21, 1911 (sec. 33).

(2) *Ib.*, sec. 34.

partments are to be prepared after the close of each financial year, and transmitted to the Controller, as well as all appropriation accounts. The Controller must examine the accounts within seven months after the close of each financial year, and transmit them, together with his certificate and a report made by him, to the Minister of Finance, for presentation to both Houses of Parliament. In making his report, the Controller and Auditor-General must call attention to excess expenditure or expenditure for unauthorised purposes, surcharges which have been remitted (*i.e.* not enforced against the officers surcharged), and any special questions of audit arising out of the accounts. This power of reporting on the public accounts has been freely exercised, and in the past the Controller and Auditor-General has not hesitated to comment severely on unauthorised expenditure even by Ministers. It will thus be apparent that his office is one of great responsibility, and that complete independence and disregard of all personal considerations and susceptibilities are necessary to its adequate discharge.

A constitutional provision of considerable importance is that whereby it is enacted that there shall be free trade throughout the Union.¹ The difficulties arising out of fiscal and trade relations formed one of the main impulses towards Union, and they were thus satisfactorily settled. The result is that there are no customs barriers between the Provinces which replace the older Colonies, and consequently no artificial obstacle, in a fiscal sense, to entire freedom of commercial intercourse. But the Provinces will not stand on an equal commercial footing until they have the same privileges with regard to railway rates, for transit charges are as effective a barrier as those which are levied through the customs.

(1) S.A. Act, sec. 136.

CHAPTER XX.

RAILWAYS AND HARBOURS.

ONE OF THE causes which led to the meeting of the National Convention in 1908, and consequently to the formation of the Union, was the necessity of framing a uniform policy in regard to railway rates and railway administration generally, in other words, to the adjustment of the relations prevailing between the four constituent Colonies with reference to railway affairs. The matter was one of great importance. Practically all the railways were State-owned, and large contributors to the public revenue; while, on the other hand, the mode in which railway rates were levied and imposed was felt to be unequal and anomalous, so that in the interior portions of the country complaints were raised, not without justification, that the railways were being used as a machinery for taxation, instead of an instrument for the development of South Africa. It is thus not surprising that the framers of the constitution should have devoted much of their attention to railway affairs, and that these should bulk largely in the constitution in its final form. Intimately connected with the railways were the harbours, which in South Africa are few in number, and are of great importance for transportation purposes, forming, as they do, the terminals of the railway systems. In such a country as South Africa, which, fortunately or unfortunately, has for a long while depended and must for a long time to come depend upon oversea imports, the harbours must of necessity play an important part. Nevertheless, from an administrative point of view, it may be said that they are subsidiary to the railways, although they have been joined with the railways for purposes of convenience. The department controlling these matters is called the Department of Railways and Harbours, and its official head is the Minister of Railways and Harbours. Broadly, it is charged,

on the one hand, with the control of all affairs relating to the working, construction, and business management of the railways; and, on the other, with the management of the harbours, the construction and maintenance of lighthouses, and the control of all matters relating to the coast, from a nautical point of view, and coastwise navigation.

Formally, all ports, harbours, and railways are vested in the Governor-General-in-Council¹; but the supreme control and management, subject as all other departments are subject to the (nominal) authority of the Governor-General-in-Council, is entrusted to a Board of Railway and Harbour Commissioners (now known, under Act 17 of 1916, as the Railways and Harbours Board), consisting of the Minister and of not more than three members nominated by the Governor-General-in-Council, that is, by the Ministry. Each commissioner holds office for five years, being eligible for re-appointment.² He cannot be removed from office before expiration of his term, except by the Governor-General-in-Council for causes assigned, which must be communicated by message to both Houses of Parliament within one week after the removal, if there is a session, or otherwise within one week after commencement of the next session. The salaries of the Commissioners are fixed by Parliament and are not reducible during their term of office.³

The Commissioners have the nominal control of all affairs relating to their department. As they are not required to be technical experts, however, it will be obvious that the real control rests with the business and technical heads of the department. The permanent official head is the General Manager of Railways and Harbours, and with him, in effect, rests the decision as to all matters of detailed management. It would be clearly impossible to refer to the Commissioners such subjects of detail as are involved in ordinary traffic, or the supervision of a harbour, or similar things. The waste of time entailed would render the whole machine unworkable in a concern where it is essential for rapid decisions to be taken. Moreover, the absence of any requirement of technical knowledge on the part of the Commissioners (who have thus far been appointed from among ex-Ministers and ex-Administrators) is

(1) S.A. Act, sec. 125.

(2) A temporary modification, no longer applicable, was introduced by Act No. 13, 1915, sec. 1.

(3) S.A. Act, sec. 126.

another reason why detailed management must be left to the permanent official heads of the Department. The real function of the Commissioners is to decide questions of general policy, or, rather, to advise, for their decision is not necessarily binding.¹ Thus, it is laid down that every proposal for the construction of any port or harbour works or of any line of railway, before being submitted to Parliament, shall be considered by the Board, which shall report thereon, and shall advise whether the proposed works or line of railway should or should not be constructed.² But no railway for the conveyance of public traffic, and no port, harbour, or similar work, shall be constructed without the sanction of Parliament.³ If, however, any such works or line shall be constructed contrary to the advice of the Board (*i.e.* after Parliament has sanctioned such construction), and the Board is of opinion that the revenue derived from the operation of such works or line will be insufficient to meet the costs of working and maintenance, and of interest on the capital invested therein, it must frame an estimate of the annual loss which, in its opinion, will result from such operation. Such estimate must be examined by the Controller and Auditor-General, and when approved by him the amount of loss shall be paid over annually from the Consolidated Revenue Fund to the Railway and Harbour Fund; but in no year is the amount so paid over to exceed the actual loss. In calculating the loss, the Board must have regard to the value of any contributions of traffic to other parts of the South African harbour and railway system which may be due to the operation of such work or line.⁴ Furthermore, if the Board (*i.e.* the Department of Railways and Harbours) be required by the Governor-General-in-Council, any Act of Parliament, or a resolution of both Houses of Parliament, to provide any services or facilities either gratuitously or at a rate of charge which is insufficient to meet the costs involved in the

(1) Under Act 17 of 1910 the duties of the Board have been more particularly to advise the Minister of Railways and Harbours on (a) general policy, (b) substantial alterations in the tariff of rates, fares, and charges; (c) estimates of revenue and expenditure, including loan expenditure; (d) all bills affecting the department which the Minister proposes to submit to Parliament; (e) expenditure involving more than £5000 on any one work or service, if not expressly authorised by Parliament; (f) general policy regarding diminution of expenditure; (g) any substantial alteration in scales of salaries, wages or hours of employment; (h) substantial changes in departmental organisation; (i) investigation of schemes of railway construction and development; (j) administration of funds for uniformity of rates and credit balances.

(2) S.A. Act, sec. 130. As to details required in the report, see Act 17, 1916, sec. 3(2).

(3) *Ib.*, sec. 125.

(4) *Ib.*, sec. 130.

provision of such services or facilities (*e.g.* for the transportation of government officials), the Board must at the end of each financial year present to Parliament an account, approved by the Controller and Auditor-General, showing, as nearly as can be ascertained, the amount of loss incurred by the provision of such services, and that amount must be paid to the Railway Fund out of the Consolidated Revenue Fund.¹

The principal active function of the Board is to fix or alter railway rates. Here, again, it is dependent on the General Manager, and it may be said, with more or less accuracy, that the virtual management rests with the Minister and the General Manager, and, in the last resort, with the General Manager, on whom the Minister is mainly dependent for advice. In matters of a political nature, such as strikes among railwaymen, the Minister may act on his own responsibility, or he may refer the matter to the Cabinet; but, as a general rule, no step in administration will be taken without the concurrence of the General Manager, who remains, whilst Ministers come and go.

The constitution lays down a most important principle, which, however, is most elastic in its nature, and capable of many varying interpretations. This is that "the railways, ports, and harbours of the Union shall be administered on business principles." In elaboration of this, it is then laid down (1) that "due regard" shall be had to agricultural and industrial development within the Union and promotion, by means of cheap transport, of the settlement of an agricultural and industrial population in the inland portions of all provinces of the Union; and (2) so far as may be, the total earnings shall be not more than are sufficient to meet the necessary outlays for working, maintenance, betterment, depreciation, and the payment of interest due on capital not being capital contributed out of railway or harbour revenue, and not including any sums payable out of the Consolidated Revenue Fund for losses on new works or lines (as above stated). The amount of interest due on invested capital (*i.e.* capital from outside sources) must be paid out of the Railway and Harbour Fund to the Consolidated Revenue Fund.²

(1) S.A. Act, sec. 131.

(2) *Id.*, sec. 127.

(3) S.A. Act, sec. 127.

It is then enacted that these provisions as to administration "on business principles" must be given effect to by the Governor-General-in-Council as soon as and at such time as the necessary administrative and financial arrangements can be made; but in any case full effect must be given to them before the expiration of four years from the establishment of the Union. During such four years, if the revenues accruing to the Consolidated Fund were insufficient to provide for general Union services, and there was a surplus of railway and harbour earnings, Parliament was authorised to appropriate such surplus to general Union expenditure, the same being payable to the Consolidated Fund.¹ Notwithstanding any provisions to the contrary, however, relating to management "on business principles," the Board is empowered to establish a fund out of railway and harbour revenue to be used for maintaining, as far as may be, uniformity of rates notwithstanding fluctuations in traffic.²

In making these stipulations for the conduct of railway administration "on business principles," the framers of the constitution were apparently actuated by the hope that in this way a stimulus would be given to the settlement of population in many sparsely-peopled areas of the Union, which are capable of being turned into productive centres. In this they desired to follow the policy so successfully initiated by the controllers of railways in the United States and Canada, which is largely incomprehensible to those who are familiar with the difficulty experienced in obtaining the breaking-up and cheap distribution of land in older countries, such as Great Britain. To use the language of a recent writer on economics: "The English railway man would condemn the American railroad for being willing to haul the household and farm effects of an American settler to his new home on desert farm land at a freight rate considerably less than cost. But the American railway man appreciates the anticipated future value to him of this settler in his new location."³

It cannot be said, notwithstanding the lapse of considerably more than four years since the inauguration of the Union, that hitherto much has been done to give effect to the aspirations embodied in the constitution. Those responsible for railway

(1) S.A. Act, sec. 127.

(2) S.A. Act, sec. 128.

(3) John Calvin Brown (*The Cure for Poverty*, p. 287).

management seem to have been more largely concerned with their purely permissive power, that of equalising railway rates, than with promoting agricultural and industrial development and the settlement of population, which are stated to be their positive duties. It is true that agricultural produce is carried at very low rates. On the other hand, coal, the essential material to modern industry, which is found in large quantities in South Africa, is carried at very high rates; and the railway freights on machinery and heavy goods of a similar nature which are necessary to promote industrial development amount to many times more than the ocean freights for the same goods brought ten times the distance oversea. The true meaning of the constitution is that both people and goods should be carried free, or almost free, to sparsely-settled regions, in order to promote settlement and ultimate prosperity, and that the railways should not be allowed to make any profits beyond the cost of working and maintenance. On the other hand, it is argued that "business principles" mean the earning of profits, and that flourishing lines must pay for those whose traffic is unremunerative.

The principles of railway finance have been indicated previously. The constitution provides for a Railway and Harbour Fund, payments from which are made by means of appropriations in Acts of Parliament.¹ This Fund included all railway and harbour credit balances existing at the inauguration of the Union.² The supreme control of railway finances is under the Assistant Controller and Auditor-General, who performs the same functions in relation to the railway and harbour administration as does the Controller and Auditor-General with regard to the Union financial system at large.³ A special banking account is kept, known as the Railway and Harbour Account. Moneys are withdrawn from it by appropriation Act or warrant of the Governor-General. All unauthorised expenditure must be submitted to Parliament for its approval. Annual accounts are forwarded to the treasury, certified by the Assistant Controller, and are laid before Parliament by the Minister of Railways and Harbours. The Controller may obtain information and reports on the accounts from the Assistant Controller. Loans authorised to be contracted by the

(1) S.A. Act secs. 117, 120.

(2) *Id.*, sec. 129.

(3) Act 21, 1911, secs. 20, 21.

Railway and Harbour Administration are obtained by requisition upon the treasury, which decides in what instalments and at what dates the sums requisitioned shall be issued to the Administration. Surplus moneys in the Railway Account are to be invested temporarily by the treasury in the purchase of Union treasury bills or the placing of money at interest in any bank, at call or not more than twelve months' notice. The salaries of the Assistant Controller and his staff are defrayed out of the Railway and Harbour Fund.¹

The working of the railways, and the relation of the Railways and Harbours Department to the general public, so far as contracts for conveyance of passengers and goods, and the general liability of the Department are concerned, are governed by a special Act of Parliament and by regulations promulgated from time to time by the Governor-General-in-Council. As far as possible, the Department is managed as an independent concern, its legal position being that of a general or common carrier of passengers and goods, and much the same principles of management are observed as are applicable to a private business or company of the same nature. The railway and harbour staff are not regarded as ordinary civil servants, but rather as members of a large industrial and trading undertaking, except in the case of such members of the staff as, by the nature of their engagement, belong originally or by assignment to the Public Service of the Union. Thus, men on the engineering or operating staff are, generally, members of trades unions, in the same way as persons similarly employed in outside concerns would be; and a strike or other industrial movement in their particular trade will affect them in the same way as it would affect men outside the Railways and Harbours staff who are members of the same unions. The permanent staff are regulated, as to their pension rights, leave, and similar matters, by a special Act of Parliament.

(1) Act 21, 1911, secs. 42-57.

CHAPTER XXI.

ADMINISTRATIVE GOVERNMENT AND PUBLIC
SERVICE OF THE UNION.

THE CONSTITUTIONAL provisions with regard to the mode in which the administrative portion of government is to be carried on are slight in character. This follows from the placing of supreme control in the hands of Parliament, with a Ministry responsible to it. No rigid bounds were set as to the shape which the executive government should assume, as it was felt that Parliament, having financial as well as legislative control, would be able to check any tendency to undue extravagance in departmental establishments, while at the same time controlling the direction which departmental activities might take. It was thought, also, that while on the one hand traditional forms would be observed, the ultimate shape of departmental government would depend upon future circumstances and needs, and ought to be left to be moulded as occasion arose. The South Africa Act lays down that all pre-existing powers, authorities, and functions, which in the constituent Colonies were vested in the Governor or the Governor-in-Council, should, *mutatis mutandis*, be exercised by the Governor-General or the Governor-General-in-Council of the Union, that is, by the Governor-General in cases where he was authorised to act in person, or else by the Ministry with the Governor-General as its nominal head. But Parliament retained the right to transfer any such powers or functions to any specific authority whom it might choose.¹

After the establishment of the Union, the general principle was adopted by the Parliament that the administration of all laws and executive functions should, as far as possible, be discharged by the Ministry, as the body responsible to the legislature. Accordingly, it was enacted that, unless otherwise specially provided, the term "Governor-General" in any law

(1) Sec. 16.

should mean the officer for the time being administering the government of the Union "acting by and with the advice of the Executive Council thereof," the Executive Council meaning, in practice, the Ministry.¹

Each public department, as we have seen, is in charge of a Minister, who is at once its Parliamentary and its executive head. In the first capacity the Minister is responsible to Parliament, and this responsibility is capable of control in several ways. Of these the most effective is the financial check, "the power of the purse;" and the legislature may by a direct vote indicate its want of confidence in a Ministry or his policy, or it may resort to the extreme remedy of impeachment. As executive head of his department the Minister supervises its acts, resorting, in matters of larger policy, to his Ministerial colleagues, sitting collectively as a Cabinet, for their concurrence. Thus it is an unwritten rule that no legislative measure may be introduced into Parliament, although affecting one department alone, unless it has been laid before the Ministry as a whole. In less important cases, though such as fall outside the usual departmental routine, a Minister will seek the concurrence, or at least convey his proposals to, the Prime Minister, if not his other Ministerial colleagues. There have been occasions on which these principles have been disregarded, but they have invariably led to want of harmony, if not to acute dissension, and ultimate disruption.

Proclamations relating to administrative affairs are promulgated² under the signature of the Governor-General, and are countersigned by the Minister to whose department the particular proclamation relates, as an indication of his responsibility for the executive act. This rule applies even where the proclamation has been discussed and approved by the whole of the Ministry. As a matter of form, all proclamations, however unimportant their subject-matter, are laid before the Executive Council, that is, the Ministry presided over by the Governor-General; but in many cases their signature is merely a matter of form, and their contents are known only to the permanent heads or other officers of the departments concerned. The duties of the Governor-General as High Commis-

(1) Interpretation Act, No. 5, 1910 (sec. 3); and see chapter V., above.

(2) Promulgation takes place by publication in the *Union Gazette*.

sioner frequently take him away to one or other of the Native Protectorates, and this has often required the issue of Union proclamations during his absence from the Union, such proclamations being signed by him and countersigned either by a Minister in actual attendance on him, or by the Minister of the department concerned. Pressure of time may even lead to the necessity for telegraphic authority being given for the signature of the Governor-General, just as the Secretary of State for the Colonies has on various occasions signified the Royal assent to a reserved Bill by cable message.

Hitherto the Ministers have not been assisted in the discharge of their functions by Parliamentary under-Ministers or under-Secretaries; although it is conceivable that with the growth of Parliamentary work such assistance may become necessary. The system of dual capitals, one at Pretoria for executive government, the other at Capetown for the legislature, was adopted as a compromise, and its working has led to inconvenience. At the beginning of a Parliamentary session the Minister has been compelled to migrate, with his principal heads of departments, to Capetown. The presence of these heads is necessary to furnish the Minister with information which may be needed at any time for Parliamentary purposes; but their absence from the seat of general government (Pretoria) has unavoidably led to much delay with regard to administrative matters during the parliamentary session. It is true that the Ministers are in communication with their departments at Pretoria by telegraph and telephone; but it is obvious that such a system of administration is far from satisfactory.

The administrative work of the various departments of State is carried out by a body of civil servants, known officially as the Public Service of the Union. In addition to these there are several thousands of State employes who, though not officially graded as civil servants, are nevertheless engaged in the discharge of the work of government. Such are the police, and the lower grades of the postal and other services. The bulk of the members of the railway and harbour service, as we have seen, stand apart, for economic and business reasons. The public service, at the inauguration of the Union, consisted of

members transferred or "taken over" from the pre-existing colonial governments, all officers of their public services becoming public servants of the Union.¹ Provision was made for the appointment of a Public Service Commission, charged with the duty of reorganising and adjusting the various public departments, except the Railway and Harbour Department.² After the establishment of the Union there was to be a permanent Public Service Commission.³ This body has since been established, and its functions are defined by statute. It is entrusted with various duties relating to the appointment, discipline, retirement, and superannuation of members of the public service; and it ordinarily makes recommendations for the promotion of officials, based upon seniority and fitness, although, for reasons of expediency or otherwise, such recommendations are not invariably adopted. Broadly, it may be said that the functions of the Public Service Commission are much the same as those of the Civil Service Commissioners in England.

Acts of Parliament have been passed to regulate the duties and pension rights of members of the Public Service. The rights of members of civil services of the constituent Colonies were safeguarded by a provision in the South Africa Act that such of them as were not retained in the service of the Union or assigned to a Province should continue in all their rights with regard to pensions, gratuities, or other compensation for retirement.⁴ In the same way, an officer of any constituent Colony who was retained in the service of the Union or assigned to a Province was not to lose any similar rights possessed by him, and was to be entitled to retire at the age and subject to the conditions of retirement which would have taken effect had the Union not been established.⁵ The result of legislation on these principles has not always been entirely what was expected. Several civil servants have been "compulsorily retired" at the pensionable period of their contracts with the governments of the constituent Colonies, long before they had served for the pensionable period under the regulations of the Union Public Service. Provision was also made in the South Africa Act for compensation to officers of the Parliaments of

(1) S.A. Act, sec. 140.
(4) *Ib.*, sec. 143

(2) S.A. Act, sec. 141.
(5) *Ib.*, sec. 144.

(3) *Ib.*, sec. 142.

the constituent Colonies, who were not retained in the service of the Union.¹ And, in view of the constitutional provision as to the official equality of the English and Dutch languages, the rights of officers of the public service of the constituent Colonies were safeguarded by the enactment that their services should not be dispensed with after the establishment of the Union by reason of their want of knowledge of either language.²

Admission into the Public Service is comparatively easy. There is an entrance examination, but it cannot be said that its requirements are severe, or that a high standard of attainment is expected. Appointment to posts involving the discharge of magisterial or legal functions requires the passing of a civil service law examination, which is conducted by a joint board representative of the Universities of South Africa, Capetown, and Stellenbosch. The Public Service Commissioners have power to admit university graduates to the list of those eligible for civil service appointments. But in the junior ranks of the service no very severe standard of eligibility is required, and applicants are admitted with comparative ease. This state of affairs is due to the limited range of selection which the population affords. There are no large classes of candidates to draw upon, as in England and on the Continent of Europe, and it would be impossible to enforce standards such as those imposed by the Indian Civil Service examinations or even by those of the English Civil Service. One result of this is that comparatively few civil servants have a working knowledge of any of the native languages. This often leads to injustice, for in the Courts nearly everything said by native suitors, accused persons, or witnesses has to be translated by interpreters, and magistrates seldom directly apprehend what such natives are saying. Theoretically, every civil servant is required to know both English and Dutch. But in fact far more civil servants of Dutch birth have a complete knowledge of English than have British-born civil servants of Dutch. It cannot, however, be said, although the general standard of attainment is not high, that the civil service, as a whole, is less efficient than that of other countries. It is to be said in favour of the public servants of the Union that they

(1) Sec. 146.

(2) *Id.*, sec. 145.

are impartial and incorrupt, and, as a rule, courteous and obliging. Such defects as they possess are common to civil servants everywhere. A tendency to overwork is never a conspicuous characteristic; but there have been some notable exceptions, displaying devotion to duty and single-minded care for the higher interests of the State. And there have been some who, like W. C. Scully and Cullen Gouldsbury, in their lighter moments, have shown that they are capable of praiseworthy literary effort, thereby emulating the distinguished writers and critics in England who have emerged from the ranks of the civil service.

The members of the High Commissioner's department (that is, the staff of the Governor-General in his capacity as High Commissioner for the native territories and protectorates) stand on a separate footing. They are officers of the Imperial Service, owing no obedience to the local authorities, and subject to the direction of the Colonial Office in London. Membership of this staff has often been a stepping-stone to important appointments, as in the case of men like Sir Graham Bower, Sir C. H. Rodwell, and others.

CHAPTER XXII.

PROVINCIAL FINANCE.

THE CONSTITUTIONAL powers of the Provinces in regard to financial affairs are summed up in those provisions of the South Africa Act whereby authority is conferred upon the Provincial Councils to levy direct taxation within the Province in order to raise a revenue for Provincial purposes; and to legislate on any other matters in respect of which Parliament may delegate to the Councils the power to make ordinances.¹ This power of delegation, as we have seen, has been exercised under the Financial Relations Acts, 1913 and 1917, and authority has been given to levy Provincial taxation in respect of certain sources of revenue *transferred* to the Provinces. These are (1) hospital fees, and fees received in respect of education other than higher education; (2) totalisator duty; (3) auction dues (not applicable in the Cape Province); (4) licences required for dogs outside urban areas; licences to take, catch, or kill game, fish, or other animals; licences to pick or sell wild flowers; (5) miscellaneous receipts connected with matters entrusted to a Province, such as licence fees paid by promoters of entertainments; motor-car, motor-cycle, and drivers' licences; (6) licences required for the carrying on of any trade, business, calling, vocation, or profession other than liquor licences and those which have been specially excepted by the Act (as to which see chapter xvii, above). Liquor licences are collected by the Union Government, and subsequently paid over to the Provinces as portion of the *assigned* revenue now to be mentioned. The sources of revenue assigned to the Provinces consist of transfer duty, liquor licences, and fees payable by employers of native labour. In accordance with a decision of the Supreme Court, liquor licences include fines levied for contravention of the liquor laws. With respect to sources transferred to the Provinces, the Provincial Councils

(1) Sec. 85 (1) and (xiii).

have full power to legislate directly; while in respect of assigned revenues, the Parliament legislates, but the revenue is paid over to the Provincial treasury. In addition to these sources, the Provincial revenue is made up by means of subsidies from the Union treasury, granted by the Union Parliament. This subsidy amounts to one-half of the normal or recurrent revenue of the Province for the financial year, subject to the condition that such expenditure does not exceed that of the previous financial year by more than seven-and-one-half per cent.—otherwise the Union Government only contributes one-third of such excess. Capital or non-recurrent expenditure (as to which see, further, chapter xvii) is advanced to the Province by the Union treasury, acting under the sanction of Parliament, at a rate of interest not exceeding five per cent. per annum, being repayable in half-yearly instalments extending over a period of not less than fifteen, nor more than forty, years.

As a result of the varying history of the constituent Colonies before the establishment of the Union, widely differing problems have presented themselves for solution in the respective Provinces. In some Provinces matters have long been settled which are still fruitful sources of controversy in others. In the Cape Province, for example, expenditure on roads, bridges, and other works in rural areas has for many years been raised and defrayed by divisional councils, and little of this burden has fallen on the central Provincial treasury. In the Transvaal, on the other hand, no divisional councils exist, and all this expenditure is met from the Provincial revenue. Notwithstanding the comparatively easy solution of the matter thus presented to them, members of the Transvaal Provincial Council representing rural districts have hitherto refused either to establish divisional councils or to impose taxation for rural purposes which should fall directly on the rural districts. The result has been a prolonged conflict between members representing urban and rural interests respectively, those of the one side seeking either to throw all the burden of the taxation upon the other side, or to equalise the burden so that it may fall fairly upon all alike. Neither side has met with success, but the general result has been that each claims that it is unfairly

taxed. The problem has had the more or less definite result of ranging supporters of taxation proposals either with the "town" or "country" party. The solution most favoured by urban representatives is a tax on land, which is most strenuously opposed by the rural members. It cannot, however, be said that the problem of land taxation is capable of solution on such definite lines, and there are many other things to be taken into consideration before it can be finally settled. It must, however, be added that in the Cape Province the system of levying assessment rates on the rateable value of land, in much the same manner as prevails in municipalities, has for many years operated without friction; and there is nothing in the inherent nature of the problem to prevent this system from being applied to the conditions of the Transvaal. On the other hand, while the people of the Transvaal have not applied methods of taxation which elsewhere work without friction, they have not hesitated to embark upon expenditure which has not been indulged in in other Provinces. Thus, in the Transvaal, the cost of all education, both primary and secondary, is borne by the Province; while, in the Cape, fees are paid by parents for both primary and secondary education, and, in addition, an education rate is levied by local authorities.

The principal forms of direct taxation which have thus far been resorted to by the Provincial Councils are—licences to trade; a wheel tax (levied on the owners of vehicles in rural areas); a house tax (assessed, in the Transvaal, on the number of rooms); a tax on the receipts of public entertainers, from theatres, bioscopes, etc. (not levied in the Transvaal); a duty on receipts from totalisators on racecourses; (in the Transvaal) a tax on winning bets on races, for the payment of which bookmakers are responsible; a tax on bachelors; a tax on admission fees charged by owners of racecourses; and a tax on excess profits. In the Transvaal, the tax on excess profits was much resented, on the ground that a like tax was at the same time being levied by the Parliament; and for the same reason a Provincial income tax was successfully opposed. It was proposed to levy a poll-tax, but this was contested on the ground that its incidence was unequal, the poor

man paying as much as the rich man. The opponents of a poll-tax, however, managed to swallow their objections to a bachelors' tax, which is much the same in principle.

During 1918 a select committee of the Transvaal Provincial Council reported on existing or proposed sources of taxation. The following were stated to be sources of taxation not recommended for consideration: amusements tax; assistants tax (payable by employers in respect of the number of assistants employed by them); an increased farm tax; native pass fees in rural areas; possessions tax or general property tax; road tax (based upon acreage and the revenue therefrom earmarked for expenditure on road making); stock and produce taxes; poor relief rate; and tobacco tax (on retail sales, like the Union duty on cigarettes). The following sources were recommended for consideration: excess profits; income tax; native families on farms; poll tax; bachelor tax; stamp duty on bank deposit slips; assessment rate (on the value of all interests in real estate); house tax; racing taxation (on totalisator receipts, on fees for admission to race courses, and on winning bets); wheel tax; tax on reserved mineral rights; tax on raw gold and diamonds issued and recovered in the Province; and tax on professional occupations (by annual licences). The following were mentioned as charges imposed for registration purposes only: dog licences; fish and game licences; general dealers' licences; trade and vocation licences,—although there is a disposition to regard general dealers' licences as a legitimate source of revenue. The following were suggested as potential sources of fresh revenue: a tax on the consumption of Kaffir beer for natives on the mines; a provincial lottery; increased transfer and succession duties; and a tax on unearned increment (on the sale of real estate).

All expenditure, to be lawful, must be voted by the Provincial Council; and, theoretically, the Provincial Council controls the Executive Committee of the Province by virtue of its right to refuse to pass financial measures. During 1915, however, the majority of the Transvaal Provincial Council, composed of members hostile to the Executive, refused to pass financial legislation proposed by the Executive. To meet the threatened deficit, the Executive applied to the Union Govern-

ment for a loan, which was granted. The raising of this loan was unlawful, as no regulations for the granting of loans to the Provinces had then been sanctioned by Parliament. Thus the Council was in no way consulted with regard to this loan. The action of the Executive was subsequently validated by an Act of Parliament.¹ In any case, in 1915 the Provincial Council had no power to pass an ordinance authorising the borrowing; nor had it any power, after 1915, to render legal *ex post facto* a previous borrowing which was at the outset illegal.

Under the constitution, each Province has a Provincial Revenue Fund, into which are paid all revenues raised by or accruing to the Provincial Council, and all moneys paid over by the Governor-General-in-Council to the Provincial Council (e.g. revenues assigned by Parliament to the Province). Appropriations from this Fund are made by ordinances, and moneys are issued on such appropriations under warrant signed by the Administrator.²

In each Province there is a Provincial Auditor, appointed by the Governor-General-in-Council. He is removable only for cause assigned, to be communicated by message to Parliament within one week if it be in session, or else within one week after commencement of the next session. It is his duty to examine and audit Provincial accounts, and to countersign warrants signed by the Administrator.³

(1) Financial Adjustments Act (No. 42, 1917, sec. 2).
(2) *Ib.*, sec. 92.

(2) S.A. Act, sec. 89.

[Norm. In the Transvaal, a tax on unearned increments, levied on sales of land, was passed in the Provincial Council session of 1919].

CHAPTER XXIII.

THE WORKING OF PROVINCIAL GOVERNMENT.

THE MAIN FUNCTIONS of the Provincial government, as we have seen, are the control of primary and secondary education, and of hospitals and charitable institutions, the construction of public works within the Province, and the supervision of local government. General administrative functions are vested in the Provincial Executive, with the Administrator at its head. This Executive meets and deliberates in much the same way as a cabinet, though without ministerial responsibility. It cannot, however, carry out any legislative proposals or incur expenditure except with the consent of the Provincial Council, so that in effect it is dependent upon the legislature in the same way as a responsible cabinet. Much of its work, however, is of a routine character, the scope and principles of which have been defined by legislation, so that as long as the Executive acts within those limits it is practically free to exercise its own discretion. The intention of the framers of the constitution was that Provincial government should be conducted on non-political lines. To a considerable extent this intention has been fulfilled in the Cape, Natal, and the Orange Free State—in the two former Provinces because the matters to be dealt with have for many years been removed from the arena of partisan debate, and in the last-named Province because one party has been in power ever since the inauguration of the Union, and is likely to remain in control. In the Transvaal, on the other hand, there have been singular manifestations of party feeling in the conduct of Provincial affairs, which have at times seriously impeded the smooth working of government. At one time the majority in the Provincial Council has been hostile to the Executive; at another, the Council has consisted of four groups, nearly equally balanced, each having a representative in the Execu-

tive, so that a harmonious policy has been exceedingly difficult of attainment. To eradicate party feeling, in the existing condition of affairs in the Transvaal, appears to be a hopeless task. It certainly cannot be accomplished by legislation to that end. Fortunately, there are many things which may be done by the Provincial Executive without resort to the Council, or, at any rate, without the necessity of introducing considerations of party. Thus, the administrative work of education rests almost entirely with the Executive. All that the Council can do, in an extreme case, is to refuse supply, or to enact an ordinance laying down general lines of policy, such as that secondary education shall be free. The Executive Committee of each Province, on the recommendation of the Superintendent-General or Director of Education makes appointments of teachers and inspectors, founds new schools, and controls the teaching curriculum. One important subject, however, has been matter for fierce controversy in the past—the teaching of English and Dutch. The constitution provides that both languages shall be official, and be treated on a footing of equality, and possess and enjoy equal freedom, rights and privileges; and that all journals, proceedings, bills and Acts of Parliament, as well as government notices of general public importance or interest shall be published in both languages.¹ On the establishment of the Union, a movement was set on foot to extend this principle to educational matters; and, as we have seen, a *modus vivendi* was ultimately reached. So far, the compromise has worked with a fair measure of success; although, as in other bilingual or multilingual countries, its application has at times been attended by manifestations of sectional differences, more especially in rural districts.

Having regard, however, to modern political developments, it cannot be said that any specified matters connected with Provincial government are likely at all times to remain outside the sphere of party politics. Demands for increase of wages or salaries have come from teachers, from unskilled labourers, and other servants of the local administration; and these have been championed by one party and opposed by another. In the programme of certain parties, matters which ordinarily are regarded as non-controversial are made controversial; and

(1) S.A. Act, sec. 137.

it is impossible to predict how far this tendency will increase or diminish.

Problems connected with education and the raising of revenues have thus far engaged so much of the attention of the Provincial authorities that they have found little leisure to interfere with local bodies, such as municipalities and divisional councils. Beyond the enactment of ordinances regulating the general principles on which the affairs of such bodies should be conducted, Provincial Committees and Provincial Councils have made no attempt to interpose their direct authority on these matters. In each Province, the business of local bodies is subject to a formal audit by Provincial officers; but there has been little, if any, attempt to exercise such a minute superintendence as, for example, is carried out in England by the Local Government Board. Indications are not wanting, however, that more effective control of this kind will be called for in the future. Hitherto, the only effective check on the activities of local bodies has been the power possessed by the Executive of granting or withholding sanction to the raising of local corporate loans, and to the incurring of expenditure above a fixed amount.

Much of the possibility of conflict between Union and Provincial legislation is removed by the existence of the Provincial Attorneys-General, although they are members of the Union Public Service. They act as legal advisers to the Provincial administrations, and it is their duty to harmonise and, if possible, to avoid conflict between Acts of the Union Parliament on the one hand and ordinances of the Provincial Councils on the other. In financial affairs, control is exercised by the fact that all payments from the Union treasury to the Provincial treasury take place under the superintendence of the Controller and Auditor-General.

Efforts are also made to harmonise the general conduct of administrative affairs in the Provinces by occasional conferences between the four Administrators, who at the same time maintain a fairly close relationship with the Prime Minister and the Minister of Finance.

Viewing the subject broadly, it cannot be said that the Provincial system has been a failure. Here and there in-

equalities and obstacles are to be found, but these it is possible for the Union Parliament to correct or remove. Given adequate time and experience, there is reason to hope that the people will become accustomed to the Provincial system, reconciling themselves to it by "broadening slowly down from precedent to precedent."

CHAPTER XXIV.

THE COURTS OF THE UNION.

BEFORE THE INAUGURATION of the Union, the administration of justice in each Colony was confided to a Supreme Court, the powers and authorities whereof were defined by statute. Within the limits of the Colony, each Supreme Court had full jurisdiction, subject to appeal in the last resort to the Judicial Committee of the Privy Council in England. The appeal to the Privy Council was limited, according to the amount or value of the matter claimed in a suit, and this amount was not uniform in the four Colonies. The Cape Supreme Court had appellate jurisdiction over the High Court of Southern Rhodesia. Each of the Supreme Courts was possessed of original jurisdiction in civil suits, and criminal cases were tried by a judge and jury. In each Supreme Court, three judges heard appeals from the decisions of a single judge, and two or more judges heard appeals from the decisions of the inferior or magistrates' Courts.

In the Cape Colony, the Supreme Court sat at Cape Town, and consisted of a Chief Justice, with two judges permanently assigned to the Court, and other judges sitting in it from time to time as occasion might require. Three judges, consisting of a Judge President and two puisnes, sat at Grahamstown, constituting the Court of the Eastern Districts of the Cape Colony. Three, consisting of a Judge President and two puisnes, sat at Kimberley, and constituted the High Court of Griqualand. All were judges of the Supreme Court, entitled to sit and take part in proceedings of the Supreme Court at Cape Town. From the decisions of the Eastern Districts Court and the High Court respectively an appeal lay to the Supreme Court sitting at Cape Town. Within their respective territorial areas of jurisdiction, the Courts at Grahamstown and Kimberley had concurrent jurisdiction (*i.e.* both original, and in ap-

peals from magistrates) with the Supreme Court, whose jurisdiction extended over the whole Colony.

In the Transvaal, in addition to the Supreme Court sitting at Pretoria, there was a superior Court for the Witwatersrand, Boksburg and Krugersdorp districts, known as the Witwatersrand High Court, and sitting at Johannesburg. Ordinarily, civil cases in it were tried by a single judge, whose jurisdiction within the territorial limits of the Court was concurrent with that of the Supreme Court. The High Court, however, had no appellate jurisdiction, and no power of reviewing the proceedings of inferior Courts.

Each Colony was divided into circuit districts, and circuit Courts were held by a judge (sitting with a jury in criminal cases, and alone in civil cases) twice a year in each district. From the decision of the circuit Court an appeal lay to the Supreme Court of the Colony.

The magistrates' Courts had jurisdiction in the magisterial districts for which they were created. The jurisdiction was of a limited nature, both in civil and in criminal matters, and varied in the four Colonies, although it may be said generally to have been very restricted.

All the Courts were creations of statute, and there were no customary Courts, such as exist in England. Nevertheless, the superior Courts in South Africa have in the past claimed, and they still claim, the right to exercise "inherent jurisdiction" in regard to certain matters not precisely defined or embraced in the statutes creating these Courts.

The South Africa Act created one Supreme Court for the whole Union, consisting of the Chief Justice of South Africa, the ordinary judges of appeal (*i.e.* of the Appellate Division, as hereafter described), and the other judges of the various divisions of the Supreme Court of South Africa in the Provinces.¹ An appeal Court for the whole Union was created, known as the Appellate Division of the Supreme Court of South Africa. It consists of the Chief Justice, the two ordinary judges of appeal, and two additional judges of appeal. The additional judges of appeal are assigned to the Appellate Division by the Governor-General-in-Council, but when not attending in that division they continue to per-

(1) Sec. 95.

form their duties as judges of the divisions, provincial or local, of the Supreme Court to which they respectively belong.¹ The practice has been to appoint as such additional judges of appeal the senior Judge in the Cape Province and in the Transvaal, i.e. the Judge President of the Cape Provincial Division, and the Judge President of the Transvaal Provincial Division, each ranking according to the date of his appointment. There is, however, nothing to prevent the appointment, in case of vacancy, of any other judge as an additional judge of appeal. The ordinary judges of appeal, being permanent members of the Appellate Division, that is, sitting permanently as appellate judges, rank next in precedence to the Chief Justice. During the absence, illness, or other incapacity of the Chief Justice or any other appellate judge, any other judge of the Supreme Court may be appointed by the Governor-General-in-Council to act temporarily in the place of the appellate judge in question.² Such temporary appointments are frequently made, as there have been several cases in which the permanent additional judge of appeal (e.g. the Judge President of the Transvaal or the Cape Province) has taken part in the original hearing of a matter in his own Provincial division, being thus prevented from sitting on appeal in the same matter. It has even happened, in interlocutory matters, that an appeal has been taken from an additional judge of appeal, sitting alone as a judge of first instance, to the judges of his own Provincial division, and that from them another appeal has been brought to the Appellate Division. No judge may take part in the hearing of an appeal from a judgment in a case originally heard before him.³

At the establishment of the Union, the respective Supreme Courts of the constituent Colonies became Provincial Divisions of the Supreme Court of South Africa, each for its respective Province. The presiding judge in each such division was styled the Judge-President.⁴ The Chief Justice in each Province became the Judge-President thereof, retaining, however, the title of Chief Justice as long as he continued to hold that office.⁵

(1) Sec. 96.

(2) S.A. Act, sec. 97.

(3) *Ib.*, sec. 110.(4) *Ib.*, sec. 98.(5) *Ib.*, sec. 29.

The Eastern Districts Court, the High Court of Griqualand, the Witwatersrand High Court, and the various circuit Courts, all became local Divisions of the Supreme Court within their respective areas of jurisdiction.

In addition to any original jurisdiction exercised by the corresponding Courts of the constituent Colonies, the South Africa Act conferred upon the superior Courts of the Provinces, *i.e.*, the Provincial and Local Divisions, jurisdiction in all matters (1) in which the Union Government, or a person suing or being sued on its behalf, is a party; and (2) in which the validity of any Provincial Ordinance shall come into question.¹ In other words, all such Courts were given direct original jurisdiction in suits by or against the Government or the Crown, and they have the power to judge of the validity of ordinances passed by the Provincial Councils, that is to say, as to whether such ordinances are *intra* or *ultra vires*. With regard to suits against the Crown, it may be stated here that the English procedure known as "petition of right" does not exist in South Africa. Direct statutory authority is given to all subjects to institute claims at law against the Crown in the same way as if the Crown were a private party, whether the claim arises out of a contract lawfully entered into on behalf of the Crown, or out of any wrongs committed by a servant of the Crown acting in his capacity and within the scope of his authority as such servant. This right of action is subject to any protection, as to limitation of liability or otherwise, which is conferred by statute on the Crown, the Government, or any of its departments. In suits against the Crown or the Government, the nominal defendant is the Minister of the department concerned. No execution or attachment may be issued against any Crown property, but the Minister concerned may order the amount awarded to be paid out of the Consolidated Revenue Fund or the Railway and Harbour Fund, as the case may be.²

The constitution makes express provision for the retention, pending the enactment of legislation on the subject by Parliament, of the jurisdiction possessed by the superior Courts with regard to matters affecting the validity of elections of members of the House of Assembly and the Provincial Councils. This

(1) S. A. Act, sec. 98.

(2) Act 1, 1910.

jurisdiction corresponds to that possessed, before Union, by the courts of the constituent Colonies.¹ In effect, this means that until Parliament otherwise provides, the Superior Courts have jurisdiction to try election petitions. This jurisdiction is exercised by the Provincial Divisions, and from their decisions in such matters no appeal lies to the Appellate Division. The subject is now regulated by the Parliamentary Elections Act, 1918, but the former procedure has been retained.

By the South Africa Act, the appellate jurisdiction formerly possessed by the Supreme Courts of the constituent Colonies was, in a large measure, transferred direct to the Appellate Division of the Supreme Court, and comparatively small appellate powers were conferred upon the Provincial or local Divisions which replaced the older superior Courts. It was provided that all appeals in civil cases, whether the judgment were given by one judge or by more than one judge, should be made only (that is, directly) to the Appellate Division. In such cases, then, no matter in what superior Court the judgment be given (whether on circuit, or by one or more judges in a Provincial or Local Division) there is no intermediate appeal, but resort must be had only to the Appellate Division—from whose decision, however, an appeal may lie to the judicial Committee, in the circumstances to be explained presently.² The only limitation is that when the appeal is from a Court consisting of two or more judges, five judges of the Appellate Division must form the quorum for hearing the appeal; whereas, when the appeal is from a single judge, three Appellate judges form the quorum—though there is nothing to prevent all five Appellate judges from sitting even in an appeal from a single judge.³ It will be seen that no such result can follow as in England, where it is possible for three judges to reverse the decision of a more numerous lower tribunal.

This direct appeal to the Appellate Division is applicable in the case of judgments given during the hearing of actions, or what are known by lawyers as “trial cases.” In other matters, however, an intermediate appellate jurisdiction is con-

(1) S.A. Act, sec. 98.

(2) S.A. Act, sec. 108.

(3) *Id.*, sec. 110.

ferred upon the Provincial Division of the Province in which the judgment or order was given. These matters are: (1) orders or judgments given by a single judge, on (a) motions, (b) petitions, (c) summons for provisional sentence (*i.e.* summary judgments on bonds, bills, or similar documents), (d) discretionary judgments only affecting costs; (2) appeals in criminal cases from any superior Court; (3) special references by any superior criminal Court of points of law arising in criminal cases. From the decision of a Provincial Division in any such matter or special reference an appeal lies to the Appellate Division, but only if that Division has given special leave to appeal.¹ No such leave is necessary in case of applications to remove restrictions on the sale of land (see Act 2, 1916, sec. 4). Provision was also made for appeals pending at the establishment of the Union.²

The constitution makes no provision for cases where interlocutory matters are decided in the first instance by two or more judges of a Provincial or Local division; but in practice the same rule has been applied as in the case of orders of a single judge from which an appeal has been brought to a Provincial division, namely, that no further resort lies to the Appellate Division except by special leave of that Court.

In the case of judgments, civil or criminal, given by an inferior Court (*i.e.* that of a magistrate), an appeal lies in the first place to the Provincial or Local division within whose territorial area such Court sits, and thereafter to the Appellate Division only by special leave of that division.³ The Witwatersrand Local Division, however, possesses no jurisdiction to hear appeals from magistrates—an extraordinary and unjustifiable anomaly, in view of the fact that the Griqualand West Local Division, in which also a single judge sits, possesses such a jurisdiction. In the Cape Province, which has two local divisions besides the Provincial Division, a suitor within the limits of the local division has the choice of appealing either to that division or to the Provincial Division.

A subsequent statute has imposed a limitation on the right of appeal from orders by a single judge to a Provincial Division, or from a superior Court to the Appellate Division—that no judgment or order made by consent, or as to costs only

(1) S.A. Act, sec. 103.

(2) *Id.*, sec. 104.

(3) *Id.*, sec. 105.

which are left to the Court's discretion, and no interlocutory order, shall be subject to appeal except by leave of the Court making the order.¹

The same statute provides that appeals are not to be limited by the amount or value which is at stake in the suit or dispute.² It also confers jurisdiction on the Appellate Division in regard to cases decided by the Native High Court of Natal, and provides that in all other cases, civil or criminal, where the parties give a written consent, an appeal may be made to the Appellate Division directly, without resort to any intermediate Court which would otherwise have jurisdiction to hear the appeal in the first place.³

A useful provision in the same statute is that whereby, in the event of an appeal from a superior Court, the judge or judges appealed from must communicate their reasons in writing for the judgment given by them.⁴ Before this enactment, it was by no means an unknown thing in South African judicial history for a judge to refuse to give the reasons for his judgment. Even now a great power is conferred upon judges, of refusing to give leave to appeal in interlocutory matters. It may, however, be added that this power has been seldom, if ever, abused.

The constitution provides that the process of the Appellate Division shall run throughout the Union, its judgments or orders having the same force and effect as if they were original judgments or orders of the Provincial Division of the Province to which they relate.⁵ Such a provision is a necessary consequence of constituting one appeal tribunal for the whole of the Union. Indeed, one of the principal motives for the establishment of the Union was the necessity for uniformity and harmony in legal administration. Before that each Colony had its own independent Court, and not only were conflicting decisions given by the Courts, with no possibility of reconciling them except by a rare appeal to the Judicial Committee of the Privy Council, but each Colony was a separate territorial jurisdiction, whose Courts treated the decisions of the Courts in the adjoining Colonies in precisely the same way as if they were the decisions

(1) Act 1, 1911, sec. 4.
(5) S.A. Act, sec. 111.

(2) *Ib.*

(3) *Ib.*, secs. 1, 5.

(4) *Ib.*, sec. 2.

of wholly foreign tribunals. Now, every judge in the Union is a judge of the Supreme Court of South Africa, and competent to sit and take part in the proceedings of any division of that Court. Uniformity is further secured by a provision that a judgment or order given in a Provincial Division may be made enforceable within the territorial limits of another Provincial Division, on request to the registrar of the latter Court by the party in whose favour the judgment or order was given.¹ In the same way, suits may be transferred from one Provincial or local division to another, for reasons of convenience or otherwise.² And, by a later statute, it is proved that any person resident in the Union may be sued by process out of any Court.³ A bankruptcy (insolvency) order given by any Court is operative, also, on the property of the bankrupt (insolvent), wherever it may be situated within the Union.⁴

The constitutional provision with regard to appeals to the Judicial Committee of the Privy Council in England represents a compromise between a desire, on the one hand, to restrict, if not to reduce to a minimum, the right of further appeal from decisions of the Appellate Division, and, on the other, not to interfere with the prerogatives of the Judicial Committee, as the highest Court of appeal within the Empire. It is provided that there shall be no appeal from the Supreme Court of South Africa or from any division thereof to the King-in-Council; but nothing in the South Africa Act contained shall be construed to impair any right which the King-in-Council may be pleased to exercise to grant special leave to appeal from the Appellate Division to the King-in-Council.⁵ Literally construed, this would seem to preclude any appeal; but its meaning is that there is no appeal as of right to the Judicial Committee. A suitor who is dissatisfied with a decree of the Appellate Division is not entitled forthwith to enter a further appeal to the Privy Council. All he can do is to present a petition to the Judicial Committee of the Council praying for special leave to appeal from the judgment of the Appellate Division, and if such leave be granted he may then proceed with his appeal to the Judicial Committee. The ordinary right of appeal is, however, preserved in admiralty

(1) S.A. Act, sec. 112. (2) *Ib.*, sec. 113. (3) Administration of Justice Act, 1912.
(4) Act 22, 1916, secs. 2, 19. (5) S.A. Act, sec. 105.

cases, i.e. where a judgment has been given by the Appellate Division under or in virtue of the Colonial Courts of Admiralty Act, 1890.¹

The compromise illustrates the sources of weakness which lie in a constitution not framed by virtue of a direct mandate from the people. The general opinion of the legal profession in South Africa is adverse to any curtailment of the right of appeal to the Judicial Committee. The unfettered right of appeal to that tribunal constitutes one of the strongest links of Empire, just as that tribunal itself is one of the most important symbols of Imperial unity. Nor were the people of South Africa at large given an opportunity of expressing their views on this all-important subject, inasmuch as the constitution was not framed by representatives directly elected for the purpose. The effect of these provisions has been greatly to diminish the number of appeals from South Africa to the Judicial Committee. This is, perhaps, unfortunate from the point of view of the jurist as well as from that of the litigant. The former desires to find an authoritative exposition of jurisprudence by a tribunal which, from its central situation and universal prestige, is able to harmonise the law throughout the Empire, according to the system from which that law is derived; while the latter feels that the same ultimate Court is open to him as to any other inhabitant of the King's Dominions.

The constitution even contemplates further limitations on the right of appeal to the Judicial Committee. It is provided that the Parliament may make laws limiting the matters in respect of which such special leave to appeal to the Judicial Committee may be asked, subject to the safeguard that Bills containing any such limitation shall be reserved by the Governor-General for the signification of the King's pleasure.²

The restriction of the right to appeal to the Privy Council appears to have been imitated from the Commonwealth of Australia Constitution Act.³ This provides that no appeal shall be permitted to the King-in-Council from a decision of the High Court of Australia upon any question, howsoever arising,

(1) S.A. Act, sec. 106.

(2) *Ib.*

(3) 63 and 64 Vict., c. 12, sec. 74.

as to constitutional powers, unless the High Court certifies that the question ought to be determined by the King-in-Council. With regard to other matters, the Judicial Committee may grant special leave to appeal. A limitation of appeal on constitutional matters is, perhaps, desirable, on account of the possible danger of delay, and the fact that the local tribunal may be more directly representative of the will of the people in regard to constitutional affairs. But any further limitation of the right of appeal would appear to be unfortunate.

The seat of the Appellate Division is at Bloemfontein. It is ordinarily required to sit there, but it may from time to time, for the convenience of suitors, hold its sittings at other places within the Union.¹ In practice, this means that the hearing of appeals takes place at Bloemfontein, but that petitions for leave to appeal may be heard at Cape Town (where the Chief Justice and the ordinary judges of appeal have hitherto been residing) or at Bloemfontein. Before 1912 appeals were also heard at Cape Town; but some dissatisfaction was expressed at this by inhabitants of the Orange Free State, and the Administration of Justice Act of 1912 provided that the question whether appeals should be heard elsewhere than at Bloemfontein might only be decided by the Appellate Division sitting at Bloemfontein, except during the lifetime of Chief Justice de Villiers (now deceased).

The rules for the conduct of proceedings in the Appellate Division are framed by the Chief Justice and the ordinary judges of appeal. Those of the Provincial and Local divisions are framed by the Chief Justice and the judges of the divisions respectively concerned. In both cases such rules are subject to the approval of the Governor-General-in-Council,² which is, of course, nominal. At present the issue of consolidated rules for all the superior Courts is understood to be in contemplation; but the process is a lengthy one.

The constitution provided that all existing judges of the constituent Colonies should, on the establishment of the Union, become judges of the Supreme Court of South Africa, retaining all their rights in regard to salaries and pensions.³ If a vacancy occurs in any division, other than the Appellate Division (whose numbers must, of course, remain fixed—subject to

(1) S.A. Act, sec. 109.

(2) *Id.*, secs. 107, 108.

(3) Sec. 99.

any constitutional amendment), the Governor-General-in-Council may, if he considers that the number of judges of the Court may be reduced with advantage to the public interest, postpone filling the vacancy until Parliament shall have determined whether the reduction shall take place.¹ Thus far, in the existing condition of affairs, no reduction has been found necessary; but in the future it will probably be thought desirable to reduce the number of judges in the Transvaal Provincial Division at Pretoria, and to increase the number in the Witwatersrand Local Division at Johannesburg, where one over-taxed judge hears as many civil suits as are tried at Pretoria.²

The Chief Justice and all the other judges are appointed by the Governor-General-in-Council. Their remuneration is prescribed by Parliament, and is not subject to diminution during their continuance in office.³ In 1912 an Act was passed fixing the annual salaries of the judges at the following rates: Chief Justice, £3000; Ordinary Judge of Appeal, £2750; Judge-President of a Provincial or Local Division, £2500; Puisne Judge, £2250. Judges may retire on pension after ten years' service and attainment of the age of sixty-five, and they must retire at seventy years of age.⁴

The judges hold office during good behaviour—that is, they may not be removed except by the Governor-General-in-Council on an address from both Houses of Parliament in the same session praying for such removal on the ground of misbehaviour or incapacity.⁵

The registrar and other officers of the Appellate Division are also appointed by the Governor-General-in-Council.⁶

The constitution did not attempt to provide for a uniform mode of admission of barristers and solicitors throughout the four Provinces. The proceedings of the Convention were not open to the public, and it was consequently impossible to ascertain the views of members of the legal profession. It was, however, certain that there would be a conflict of opinion, for in the Cape and the Transvaal the barristers (advocates) and the solicitors (attorneys) formed two separate and distinct professions, basing their etiquette and conduct on the model

(1) Sec. 102.

(2) There are six judges at Pretoria.

(3) Sec. 100.

(4) Judges' Salaries and Pensions Act (No. 16, 1912).

(5) S.A. Act, sec. 101.

(6) *Ib.*, sec. 114.

of the same professions in England, whereas in Natal there was no such distinction, and in the Free State there were still a few survivals from the old *régime* who were entitled to practise both as advocates and as attorneys. It was accordingly provided that the existing laws regulating the admission to practice of advocates and attorneys of the superior Courts of the constituent Colonies should apply, *mutatis mutandis*, to the corresponding divisions of the Supreme Court of South Africa; and that all advocates and attorneys entitled to practise in an existing superior Court should be entitled to practise as such in the corresponding divisions of the Supreme Court.¹ Thus there is no uniform system of admission in the superior Courts of the Provinces; nor, in view of the overwhelming body of opinion in favour of the separation of the two branches of the legal profession which prevails in all the Provinces except Natal, is there likely to be any such uniformity until a complete separation of the professions in all the Provinces is brought about. The constitution, however, provides that all advocates and attorneys who are entitled to practise before any Provincial Division of the Supreme Court are entitled to practise before the Appellate Division.² Such a provision was necessary, otherwise an advocate who was entitled to conduct his client's case before the Supreme Court in a Province (such as Natal or the Free State) where advocates were allowed to practise in partnership with attorneys, might be prevented from appearing on behalf of his client in an appeal.

(1) S.A. Act, sec. 115.

(2) S.A. Act, sec. 115.

CHAPTER XXV.

THE WORKING OF THE COURTS.

THE JUDICIARY of South Africa has at all times commanded and, on the whole, deserved the respect of the people. Its members have almost invariably been barristers of standing, and they have endeavoured to administer justice according to the same traditions of uprightness and fearlessness as have prevailed with judges of the Supreme Court in Great Britain. The majority of them are native-born citizens of the Union—all of them, indeed, at the present time, with three or four exceptions. In the early days of the Supreme Court in the Cape Colony, the judges were appointed from the English Bar, as the field of selection from the local Bar was too small. It was not long, however, before men of South African birth showed that they were capable of fulfilling judicial duties with credit, and there were several of them who attained great distinction as expounders of the law or as dispensers of justice. Even in the Boer Republics the judges observed the same practice and adhered to the same traditions as their brethren in the neighbouring British Colonies, and they treated decisions of the English Courts with the same respect as that which they accorded to the judgments of local tribunals. Natal, in its early days, was, perhaps, an unfortunate exception, owing to the circumstances, previously mentioned, that no distinction was maintained with regard to barristers and solicitors, and that the qualifications required for admission to either branch of the legal profession were not such as to ensure either a sound training in the principles of law or practical knowledge in applying them. This state of affairs reacted upon the personnel of the Bench, only one of whose members¹ enjoyed general juristic repute. Of late years, however, the status of both the legal profession and the judiciary in Natal has undergone a great improvement, and there is every prospect that in the

(1) Sir Henry Connor.

future they will reach the same level as their *confreres* in other parts of the Union. This will not, however, be attained completely until legal practitioners in Natal observe the same traditions, whether as barristers or as solicitors, as are followed by lawyers in the rest of South Africa. Hitherto the effect of the comparatively lower status of the Natal Courts has been that their decisions have seldom been applied, by way of precedent, or even referred to in argument, in the other Courts of South Africa.

The establishment of the Appellate Division of the Supreme Court marks a great advance, inasmuch as it will be the means whereby (subject to the final decision of the Judicial Committee in appeals taken to that tribunal) uniformity in the interpretation of the law may be secured. Such a result could not be attained at a time when there were four independent Courts, possessing equal authority, whose decisions were rarely brought in review before the highest Court of the Empire. It is true that they all administered the same common jurisprudence, that of the Roman-Dutch law; but it is a matter of familiar experience that laws, or principles of law, are susceptible of varying interpretations, and there were many important cases in which the South African Courts differed in their application of the common law. This was not due to any want of learning or of diligence in interpreting the law. It is rather to be ascribed to a desire, in certain instances, and with the best of intentions, to harmonise the law with the facts of the particular case. It is the function of a supreme appellate tribunal to create certainty and uniformity in the interpretation of the law, so far as this is compatible with changing conditions. There is another tendency, to which certain judges have been prone to succumb, which such a tribunal may check and correct. This is to discard certain well-established principles of the Roman-Dutch law, and to apply in their stead decisions of the English Courts *in pari materia*, on the plea that such decisions are better adapted to more modern conditions. The danger is that such a practice will result in the creation of a jurisprudence which is neither English nor Roman-Dutch. This is not to suggest that English decisions should not be applied in regard to matters as to which the Roman-Dutch law is silent, such as recent developments of commercial law or pri-

vate international law on which, in the nature of things, no light is thrown from the sources of Roman-Dutch law, or in regard to subjects provided for by statute law, such as companies, workmen's compensation, bills of exchange, trades unions, and other matters on which there is a long range of valuable decisions given by the Courts of England, from whose legislation such statutes have been imitated. But the general principles of Roman-Dutch law are to the full as equitable as those of the English law, based, as they are, on the eternal rules which were codified and arranged by the great jurists of the age of Justinian, whose work has had a deep and abiding influence on the jurisprudence of most modern civilised countries.

With the occasional difficulties in the interpretation of the common law another problem is involved. Is it desirable to substitute for it a code? There have not been wanting suggestions to this effect. It may with a considerable degree of plausibility be argued that there are many advantages possessed by a codified system of jurisprudence in comparison with a common-law system, such as greater certainty, less difficulty in interpretation, and uniformity. On the other hand, experts in the working of code systems on the Continent of Europe have stated that the main faults of a code are rigidity and inelasticity, and they point to the fact that judicial decisions on the meaning of paragraphs in a code are as numerous and as conflicting as those given with regard to the interpretation of principles of the common law. This is not the place to enter upon a discussion of the subject. It may, however, be said that the general opinion of South African lawyers appears to be opposed to the establishment of a code of the whole law. The solution of such matters depends on the genius and habits of a people, and a system which works admirably in one locality may be entirely unsuitable in another. In any case, there have been statutory codifications of the law relating to various special subjects, such as criminal procedure, insolvency (bankruptcy), water rights, and the like. The activities of a modern legislature cover so wide a field that little escapes its attention, and while, on the one hand, the work of the judiciary, considered as a body existing for the authoritative in-

interpretation of the law, may be lightened, there is a danger on the other hand that very little may be left for it to interpret. To this, however, it may be answered that the main work of a judge is to decide the merits of a particular case, and merely to apply the law as he finds it. It is certain that "judge-made law" has its defects as well as its merits, and there has been no lack of law-making judges in South Africa.

In the superior Courts, criminal cases are ordinarily tried by a judge sitting with a jury of nine men. The new criminal procedure Act (1917) provides that a prisoner may request a trial by a judge and two assessors, sitting without a jury. In the past there have been many criticisms directed against the verdicts of juries, in some cases well-founded; but it cannot be said that any of these verdicts have been more perverse or unjustifiable than similar verdicts given by juries in England, France, or the United States. On the whole, the jury system has worked fairly well; and the saying that it is "the palladium of our liberties" imports more than a mere truism. Provision for the trial by jury of civil cases exists in the Cape Province and in Natal, and there appears to be no reason why it should not be extended equally to the Transvaal and the Free State.

The weakest feature of the "inferior" or magistrates' Courts is the almost entire absence of any qualification for appointment. At one time, indeed, ordinary members of the civil service were appointed as magistrates, exercising judicial functions, and no legal attainments were required of them. More recently, the passing of an elementary law examination has been made a necessary qualification for appointment as a magistrate. Very few barristers or solicitors, however, have been appointed, and although it has often been proposed that only qualified legal practitioners should be appointed as magistrates, the determined opposition of the civil servants, as a body, has made this desideratum unobtainable, with unfortunate results for the people of the Union, in many instances. The civil servants, as a whole, are hard-working and meritorious, but in their opposition to such a reform they appear to have been somewhat blind to the public interests. It must, however, be admitted that not many lawyers are likely to ac-

cept appointments as magistrates, unless the emoluments of such offices are considerably increased. The same criticism applies to the public prosecutors in the criminal Courts of inferior jurisdiction, many of whom are not possessed of legal qualifications.

CHAPTER XXVI.

NATIVE AFFAIRS.

ONE OF THE most difficult problems which the framers of the South African constitution had to face was that relating to the administration of affairs connected with the aboriginal natives who either were inhabitants of the territories comprised within the Union or who might in the future be included in its area. It was obvious that the same principles of legislation and executive government could not be applied indiscriminately to all of them, but that they must differ according to locality and permanence of residence. In the first place, there were many thousands of natives who lived in parts of the Union which were also inhabited by white persons. Some of these, in the Cape Province, enjoyed the parliamentary franchise, and were therefore citizens in the full sense of the term. Others, again, did not possess the franchise, and were British subjects without being British citizens. Then there were natives, born within the Province, who were not under the control of any native chief; while others were subject to such control, although their chiefs had their settlements or locations within Provincial territory. A great number of natives, again, were permanent residents in the areas administered by native chiefs, though such areas lay within Provincial limits; while some of them, though nominally subject to such chiefs, were absent for longer or shorter periods while doing service for white employers who resided in the Provinces. Thus, at the Witwatersrand goldfields, thousands of natives were employed who belonged to tribes within what was known as native territory, and regarded such territory as their permanent home, from which they were absent only temporarily in order to earn a livelihood. Again, most of the natives permanently residing with the white population, in "white" territory, were treated on a differential basis from their European neighbours, being

subject, in the Transvaal, Free State, and Natal, to pass laws, and prohibited from purchasing or selling intoxicating liquors. Lastly, there were large numbers of natives in the protectorates, permanently subject to their chiefs, whose government was under the direct supervision of the Imperial Government, exercised by the Governor-General in his capacity as High Commissioner for South Africa. Of these, Basutoland lay entirely within Union territory, forming an *enclave* therein. Swaziland, again, was almost entirely bounded by Union territory, except along the Portuguese border. The Bechuanaland Protectorate, again, lay entirely outside the Union, though bounded by it on one side.

To deal singly with each of the complicated problems which arose in connection with the subject would have been impossible. Indeed, these problems were rather indicated than grappled with. Only a broad division was recognised by the constitution, as a fundamental document dealing with general principles of government. This regarded the natives as belonging to two classes: (1) those inhabiting territory of the Union, and (2) those belonging to the Protectorates which were under the direct supervision of the Imperial Government. For the time being, the Protectorates were to remain under their existing control, although the constitution provided for their future administration, if and when the government of the Protectorates should be transferred to the Union.

The control and administration of native affairs throughout the Union (that is, native affairs apart from the Protectorates) is vested in the Governor-General-in-Council.¹ The power of general legislation, however, resides in the Parliament of the Union. To the same authorities, administrative and legislative, are confided matters specially or differentially affecting Asiatics throughout the Union.² Some Asiatics, like natives, enjoy the parliamentary franchise; others do not. But of all of them it may be said that, in certain respects, they are subject to special legislation which does not apply to the European population. It must not be forgotten that the term Asiatics includes both those who come from British India, and are British subjects, and those who are subjects of foreign

(1) S.A. Act, sec. 147.

(2) *Ib.*

Powers, such as Chinese or Japanese. But the same legislation, such as an immigration Act, may affect both classes.

The Governor-General-in-Council is to exercise all special powers in regard to native administration previously vested in the Governors of the constituent Colonies or exercised by them as supreme chiefs.¹ Included in such powers are that of legislating for the native territories of the Cape Province by means of a Governor's Proclamation, subject to the condition that such proclamations must be laid before Parliament, and are effectual only until altered or varied by Parliament.² The powers of a "supreme chief" were exercised by the Governor of Natal over the people of Zululand.

All lands vested in the Governor or in the Governor and Executive Council of any constituent Colony for the purpose of reserves for native locations became vested, by the South Africa Act, in the Governor-General-in-Council, who exercises all special powers in relation to such reserves as were previously exercisable by any such Governor or Governor and Executive Council. No lands set aside for the occupation of natives which, at the establishment of the Union, could not be alienated except by an Act of the Colonial Legislature (Parliament) to whose jurisdiction such lands were subject, may be alienated or in any way diverted from the purposes for which they are set apart, except under an authority of an Act of the Parliament of the Union.³

It was further provided by the South Africa Act that all rights and obligations under any conventions or agreements which were binding on any of the constituent Colonies should devolve upon the Union at its establishment.⁴ This provision had reference, primarily, to the agreement known as the *modus vivendi* between the Transvaal Government and the Government of Mozambique, as well as to various treaties for extradition and other purposes (e.g. copyright conventions) between the constituent Colonies and foreign countries, whether concluded directly or through the medium of the Imperial Government; but it is also applicable to conventions, if any, entered into with independent native chiefs.

(1) S.A. Act, sec. 147.

(2) See, e.g., the Pondoland Annexation Act (No. 5, 1894).

(3) S.A. Act, sec. 147.

(4) *Ib.*, sec. 148.

The powers of the Governor-General-in-Council, as we have seen, are exercised in practice by the Ministry, acting through the various Ministerial departments; and, for reasons of convenience, a separate department was created at the inauguration of the Union, with a Minister for Native Affairs at its head. To it, in terms of a Ministerial minute published at the time, were confided (1) the administration of the native territories in the Transkei, Zululand, and elsewhere, including native reserves; (2) the direction and supervision of the recruitment of native labour; (3) the control of the native pass system; (4) the general supervision of all matters concerning the welfare and interests of the native races of the Union.

So far as legal proceedings, civil and criminal, are concerned, natives in the "white" territories of the Union are, as a general rule, subject to the jurisdiction of the ordinary Courts, superior and inferior. By virtue of special statutes, however, certain Courts exist in definite areas, which have exclusive jurisdiction with regard to native suits. These are: (1) The Native High Court of Natal, from which an appeal lies to the Appellate Division. This Court tries serious criminal cases where the persons accused are natives. (2) The Courts of magistrates and of the Chief Magistrate in the Native Territories of the Cape Province. Serious criminal cases, it may be noted, which arise in such territories as Griqualand East, are tried by a judge and jury on circuit of the Supreme Court (Eastern Districts), but a separate penal code exists for the native territories, which is applicable to such trials. In civil suits tried by a magistrate in the native territories, where one of the parties is a European, an appeal lies to the Cape Provincial Division or the Eastern Districts Local Division; but where both of the parties are natives, the appeal lies only to the Chief Magistrate and two assessors. The decisions of this Chief Magistrate's appeal Court form a valuable collection of native law and custom. (3) Courts of native commissioners and sub-commissioners, which exist in the Transvaal for the trial of (a) suits between natives, or between Europeans and native tribes; (b) criminal charges against natives. The commissioner is usually the magistrate of the district, while the

sub-commissioner is an officer of the Department of Native Affairs. From their decision an appeal lies to the Transvaal Provincial Division. The cases heard by sub-commissioners in which Europeans are involved are usually charges of contravention of the native pass laws, or the masters and servants laws.

The administrative matters with which the Department of Native Affairs is principally concerned are: (1) The administration of the Native Labour Regulation Act, 1911 (No. 15). This statute is of great importance, as it controls the conditions subject to which native labour is recruited, principally for the mining areas. It consolidates the laws relating to the recruiting, employment, housing, and control of natives; their transfer to or repatriation from centres of employment; the payment of workmen's compensation for accident and death, not exceeding £50 in case of total incapacitation and £10 in case of death, and the establishment of labour districts. Extensive powers of making regulations, under the Act, are conferred on the Governor-General-in-Council. The Act does not apply to natives who are recruited for service under the Government. Inspectors are appointed to enquire into and redress or report grievances of native labourers. All these matters are under the control of a Director of Native Labour. In addition to workmen's compensation, he assesses compensation under the Miner's Phthisis Acts where natives contract that disease. His office exercises a paternal superintendence over the natives subject to his jurisdiction. Formerly, natives who worked at the gold and diamond mines were often victimised by unscrupulous traders, while many of them, returning to their homes, were waylaid and robbed of their savings. Much has been done to remedy this state of affairs by the establishment of a deposit and remittance agency, which receives money from the natives in what are known as "labour districts," and discharges the ordinary functions of a bank. Provision is also made for the medical treatment of native labourers, under the supervision of the Mines Medical Officer on the Witwatersrand. (2) The administration of all matters relating to the tenure of land by natives. The most important of these is the

working of the Natives Land Act, 1913, which prescribes the conditions under which natives may acquire and alienate land. The broad principle of the Act is to restrict, as far as possible, dealings in land between Europeans and natives, and to confine the natives to native areas or territories. Certain areas are scheduled as native areas, within which, as a general rule, only natives may acquire land, and outside of which natives may not acquire land—except, in either case, with the approval of the Governor-General-in-Council. All cases in which such approval has been given to the transfer of land between Europeans and natives must be reported to the Union Parliament. The Act is also aimed at prohibiting natives, other than *bonâ fide* servants, from residing on farms belonging to white persons. Persons who claim to represent native opinion have made bitter complaints that the Act has been harshly applied.¹ On the other hand, such complaints were inevitable when the Act first came into operation. Another important statute is the Glen Grey Act (No. 25, 1894), relating to the individual, as distinguished from communal, tenure of land by natives in the districts of Glen Grey, Herschel, and elsewhere. The Department also controls the tenure of land in the Transkei, in Natal, and in Zululand, and administers laws relating to prospecting for precious metals, etc., in native reserves, irrigation and water-boring, the use of Government dipping-tanks for cattle, grants of trading stations, sale and other transactions in land, fencing and forestry, in native areas and reserves. (3) Local government, as far as natives are affected thereby. This relates to (a) white urban areas, and (b) native areas. The white areas are, of course, under the control of municipal bodies; but the Department examines and criticizes, or approves, all bye-laws and regulations in which the interests of natives are involved. Natives are, except where residing independently, or with their European employers, ordinarily housed in locations, which may be situated either in “white” districts or in distinctively native areas. Those in “white” districts are either ordinary residential townships, or compounds for labourers in mining areas. The compound system is one which

* (1) See, for instance, *Native Life in South Africa*, by Sol. Plaatje.

has had important results, and presents important problems, both as regards the social condition of the native themselves, and so far as their relationship to their European surroundings is concerned. One of these problems is the illicit liquor traffic, by the sale of intoxicants to natives, in the Transvaal, which has had serious moral effects so far as both whites and blacks are concerned. The same problem, of course, also presents itself in the native territories, where the sale of intoxicants is equally prohibited; but there it is comparatively easy of solution, since the natives are not brought into contact with white illicit traders, as they are elsewhere. In some of the native territories local government is carried on by general councils (Transkei and Pondoland), district councils (Transkei and Glen Grey), reserve boards (Witzieshoek, Seliba, and Thaba 'Nchu, in the Free State), and management boards of mission stations and communal reserves. These bodies are partly elective, partly nominated, the chairman of the general councils being the Chief Magistrate. (4) The maintenance of relations with native chiefs and headmen, hereditary and appointed, who are officially recognised, and receive salaries or allowances from the Government. These chiefs and headmen are responsible for the maintenance of order within their jurisdiction, administer native customs (so far as the same are not repugnant to civilised notions), and punish petty offenders. Their power naturally varies with their rank, and they range from paramount chiefs, through tribal chiefs, sectional chiefs, headmen of locations, down to headmen in charge of very small settlements. (5) The supervision of missions. These are either offshoots from the various European Protestant churches, where the activities of the Department are limited to the approval of church and school sites in native areas; or they are native Christian churches, conducted by native clergymen without control by the European churches. "These apply to the Department for privileges for their members, such as exemption from pass and native law (i.e. the operation of native custom) and the grant of school and church sites in native locations and reserves. The domestic and parochial differences of these bodies impose on the Department a considerable burden of responsibility."¹

(1) *Official Year Book of the Union* (No. 1, p. 193).

While the Parliament is the legislative authority for the existing native territories within the Union and belonging to it (that is, excluding Basutoland and Swaziland), and has full power to make laws of any kind relating to natives within the Union, we have seen that, in the event of any future transfer of the native Protectorates to the Union, and provided that the constitution remains unaltered in this respect, the legislative authority for the territory so transferred is to be the Governor-General-in-Council. Such legislation is to take place by means of proclamations.¹

The power to make such a transfer to the Union of the government of any native territory, belonging to or under the protection of the Crown, resides in the King, with the advice of the Privy Council.²

The Schedule to the South Africa Act defines the conditions on which any transferred territory is to be governed. The administration is to be entrusted to the Prime Minister, who is to have an advisory commission of not fewer than three members, with a secretary appointed by the Governor-General-in-Council to conduct correspondence and have custody of official papers. The commissioners are to be similarly appointed, holding office for ten years, subject to extension for further successive periods of five years. Their salary is to be fixed, and they may not be removed except on address from both Houses. They may not be members of Parliament. One member is to be appointed as vice-chairman of the commission. The Prime Minister or a Minister nominated by him is to preside over the commission, and, failing him, the vice-chairman, in either case with a casting vote. Detailed provisions are made for the procedure of the commission. In the event of a difference as to policy between the Prime Minister and the commissioners, the final decision will rest with the Governor-General-in-Council. A resident commissioner is to be appointed for each territory, who must prepare annual estimates. Provision is made for the mode in which revenues and expenditure respectively are to be allocated. Then follow provisions for the protection of the natives: no land in Basutoland, and no portion of the native reserves in the Bechuanaland Protectorate and Swazi-

(1) See chap. V., above.

(2) S.A. Act, sec. 151.

land is to be alienated from the native tribes inhabiting those territories; there is to be total prohibition of the sale of intoxicating liquors; the custom of holding "pitsos" or other recognised forms of native assembly is to be maintained, where it exists; no differential duties on the produce of the territories are to be levied, but Union customs and excise laws are to apply; there is to be free intercourse for the inhabitants of the territories with the rest of South Africa, subject to the laws, including pass laws, of the Union; and all revenues from any territory are to be spent for and on behalf of the territory, subject to contributions for the common defence of the Union. The King may disallow any law made by the Governor-General-in-Council by proclamation, within one year from the date of the proclamation, and the law is to be annulled upon notification by proclamation of such disallowance. Appeals from any Court in the territories, hitherto made to the Privy Council, are to be made to the Appellate Division. All bills to amend or alter the Schedule to the South Africa Act are to be reserved for the Royal assent.¹

(1) Clauses 1-25.

CHAPTER XXVII.

THE CAPITALS.

WHILE THE CONSTITUTION was still in the making, that is to say, during the secret sittings of the National Convention and after the draft of the South Africa Act was published for the information of the people, no subject agitated men's minds so much as that of the selection of a site for the future capital of the Union. With it were bound up local sentiments and rivalries, and, though the student of constitutional affairs or the unemotional lawyer or historian might regard it with comparative indifference, the problem was one of real, living interest to the people at large. It is safe to say that it excited more discussion than any of the more important matters which constituted the real *raison d'être* of the Convention, such as the choice between unification and federation, fiscal, economic, customs, or railway policy, the official languages, native affairs, or the establishment of an appeal Court. So strong, we are told, was the feeling on the subject within the Convention itself that there was a risk that Union might not be accomplished.¹ It was proposed by ex-President Steyn that the matter should be settled by the future Union legislature. For this a precedent existed in the constitution of the United States, which left the selection of a capital to the joint action of the States who were to cede territory for the purpose and of Congress which was to accept such territory, and in the constitution of Australia, which left the matter to Parliament. But the reference in those constitutions, as in that of Canada (which fixed the capital at Ottawa, until the Crown should otherwise direct), to the seat of government, indicates the importance to the people of such a selection, although the matter may not in strictness be regarded as appropriate to a constitutional document. The main contest lay between Pretoria

(1) Walton (*Inner Hist. of the National Convention*, p. 206).

and Cape Town, and, in order to avoid future disputes, it was determined that the matter should be settled in the constitution itself. A compromise was ultimately arrived at, as the result of which the South Africa Act provides that Pretoria shall be the seat of Government of the Union, save and except that Cape Town shall be the seat of the Legislature of the Union.¹ The term "capital" was not used, but, whatever virtues it may connote, it is clear that the reference to the "seat of Government" must embrace all that is included in "government," except the making of legislation. So that for all practical purposes Pretoria is the official capital. It cannot, however, be said to be so exclusively: for it is obvious, and must have been present to the minds of the framers of the constitution, that when the Ministers attend Parliament during the legislative session, much administrative work must be done by them at Cape Town instead of at Pretoria. The South Africa Act further provided that the Appellate Division of the Supreme Court should sit at Bloemfontein.² This does not, however, mean that Bloemfontein is to be regarded as a "judicial capital," for the fact that the Appellate Court may sit elsewhere indicates that Bloemfontein is not its exclusive home; and it cannot be said to be the centre of legal administration, whose headquarters are at Pretoria. The members of the judiciary are assigned to different tribunals throughout the Union. All that can be said is that Bloemfontein is the main seat of the Appellate Court, having been selected on account of its central situation. In any event, it could not be contended that any executive, legislative, or judicial act or decree was invalid because it was not executed or given out at Pretoria, Cape Town, or Bloemfontein, as the case might be. It is conceivable, for example, that for reasons of emergency the legislature might sit elsewhere than at Cape Town; and it could not be said that an Act passed by it at such other place was of no effect on that account. It has actually happened

(1) Secs. 18, 23.

(2) *Id.*, sec. 100, Act 27, 1912 (sec. 16), provides that whenever it is necessary to determine whether it is for the convenience of suitors to hear any appeal pending in the Appellate Division elsewhere than at Bloemfontein, the fact shall be determined by the said Division on application thereto made at Bloemfontein by any such suitor. The hearing of an appeal elsewhere than at Bloemfontein shall not be deemed to be for the convenience of any such suitor unless exceptional circumstances exist.

that administrative proclamations affecting the Union have been signed by the Governor-General during his absence in a territory outside the Union.

The selection of the seats of Provincial government was a matter comparatively easy of solution. It was provided that the capital towns of the constituent Colonies should become the seats of Provincial government—Cape Town for the Cape of Good Hope, Pietermaritzburg for Natal, Pretoria for the Transvaal, and Bloemfontein for the Orange Free State.¹ All these towns had been the seats of an independent legislature and ministerial government, and these privileges, by the Act of Union, ceased to belong to Pietermaritzburg and Bloemfontein. In order to compensate these towns for any diminution of prosperity or decreased rateable value which they might suffer on that account, it was provided that for a period not exceeding 25 years their respective municipal councils should receive from the Consolidated Revenue Fund an annual grant of two per cent. on their municipal debts, as existing on the 31st January, 1909, to be ascertained by the Controller and Auditor-General. The Financial Relations Commission was also to report what compensation should be paid to Pretoria and Cape Town for the losses sustained by them. The Commission, however, reported that these two towns had not suffered any loss by the establishment of the Union. One-half of the money granted to any of these towns was to be applied to the redemption of their municipal debts. At any time after the payment of the tenth annual grant the Governor-General-in-Council, with the approval of Parliament, might after due inquiry withdraw or reduce any such grant.²

Although it is open to Parliament to alter the constitutional provisions relating to Cape Town and Pretoria, and to fix the seat of both executive and legislature at one or the other of them, or to fix any other place as the seat of government, such an alteration is not likely to happen, at any rate for many years to come. Local sentiment is still too strong to permit of any such innovation, even although the existing compromise may be productive of much inconvenience. The question of

(1) S.A. Act, sec. 94.

(2) Sec. 133.

the Provincial capitals is by comparison an easy problem. The duration of their existence depends upon that of the Provincial administrations, though here, also, local sentiment will have much weight.

CHAPTER XXVIII.

LOCAL GOVERNMENT.

MUNICIPAL INSTITUTIONS have existed in South Africa from early times. In the days of the Dutch East India Company the *landdrosts* or magistrates were at first charged with the superintendence of local affairs in the country districts, while at Cape Town, the only urban settlement of any importance, there was a special body, known as the College of Commissioners of the Council of Justice, which performed such functions as are nowadays classed as municipal. In 1792 the city was divided into 23 wards, and the gardens at the foot of Table Mountain into two wards, in each of which two respectable burghers were selected to act as wardmasters. "Their duties were to prevent nuisances of all kinds, to enforce cleanliness in the streets and public places, to give directions in case of fire, and generally to maintain order."¹ They stood under the direction of the College of Commissioners, which levied rates for local purposes. In 1804 the Batavian Republic granted a coat-of-arms to Cape Town. During the early days of British rule the city was directly administered by the Government, and it was not until 1840 that a special Ordinance was passed whereby it was created an independent municipality. Before this, in 1836, a general Ordinance had been promulgated whereby the establishment of elective municipal councils in the other towns and villages of the Cape Colony was permitted. With the growth of population, special Acts of Parliament were passed for the government of large municipalities, such as Grahamstown and Kimberley, and in 1882 a general Act was passed for the regulation of smaller municipalities. Village management boards were created for those urban units of population which were too small to rank as municipalities. All these bodies were elective, and had rating powers, and powers

to raise loans subject to the control of the Colonial Secretary's department.

The municipalities of the Cape Colony had no power to deal with matters of justice and police, which were always retained within the sphere of the central government. In Natal, however, the municipalities maintained their own police force, and they were given the important power of granting licences for the sales of intoxicating liquors, which in the other Colonies was exercised by licensing boards directly appointed by the Government. But throughout South Africa municipalities have never possessed the right to establish criminal Courts, such as exist in the case of the Corporation of London and other municipal bodies in England. Nor has a mayor any State functions to perform, as in the case in most municipalities on the Continent of Europe, where the "Maire" or "Burgemeester" has important official duties, such as the solemnisation of civil marriages, and similar matters. A South African mayor cannot even authenticate documents for use abroad, and in cases of riot or civil disturbance he has no powers beyond those of an ordinary justice of the peace, holding that dignity *ex officio* during his term of office.¹ In short, municipal powers in South Africa are limited to strictly local concerns, such as streets, sanitation, and municipal undertakings, like installations for water, light, or electric power.

In Natal, the smaller municipal bodies are known as local boards, in the Transvaal as village boards and health boards, and in the Free State as village management boards.

In the Cape Province, rural government is entrusted to divisional councils, which are regulated under a general ordinance passed in 1917, each having jurisdiction over what is known as a fiscal division. They have rating powers, and powers to raise loans subject to the sanction of the Administrator. They are charged with the maintenance of roads, bridges, ferries, and similar works; with the care of public health in those parts of the division which are outside of municipal control; and with the destruction of noxious weeds, and the maintenance of pounds. The system of divisional councils has been in existence since 1855. No such system exists in the other Provinces,

(1) The Government has now even ceased to appoint justices of the peace.

where the control of rural affairs, such as roads and bridges, is still under the direct superintendence of the Provincial Administration. In Natal the rural areas were at first divided into counties (though without any kind of county government, such as exists in England). These divisions are now known as districts, as they are in the Transvaal and the Free State; but they are districts only for purposes of Union and Provincial administration, and not for local government.

The legislative control of local government, as we have seen, is vested in the Provincial Councils, which possess independent power to create, as well as to regulate, bodies for the control of urban and rural affairs. The Union Parliament also possesses an overriding or concurrent power of legislation in relation to local affairs, consequent upon its general legislative authority, but it cannot directly veto ordinances passed by the Provincial Councils. The superintendence of municipal and rural affairs, including the audit of municipal and divisional accounts, is vested in the Provincial Administration. All the Provincial Councils have enacted legislative measures in connection with local government, but although each Provincial Administration exercises a superintendence, more or less complete, over the methods in which local bodies exercise their powers, it is only in the Cape Province that such superintendence may be said to have attained complete development. In that Province there is a chief local government inspector, who directs valuations of property for rating purposes, and otherwise exercises control, subject to the Administrator, in matters relating to local government, urban and rural. The other Provinces cannot hope to attain efficiency in such matters until they appoint officers with similar functions.

Hospitals are ordinarily governed by special boards, whose revenues are derived from fees and Provincial subsidies. In Natal there are four hospitals directly controlled by the Provincial Administration. There are eight mental hospitals in the Union, which are under the direct control of the Union Government, through the Department of the Interior, the chief officer being known as the commissioner of mentally disordered or defective persons. Leper asylums are also under the control of the Department of the Interior. Mental hospitals are

governed under a general Act passed in 1916, but no general legislation relating to lepers has yet been promulgated. A general Act relating to public health was the principal measure passed during the Parliamentary session in 1919. There is a Department of Public Health for the Union, under the direction of the Medical Officer of Health, subject to the control of the Minister of the Interior. The admission and professional control of medical practitioners, dentists, midwives, and nurses are regulated by a Medical Council in each Province, while chemists and druggists are under the superintendence of Pharmacy Councils. In each district there is a District Surgeon, who is mainly charged with police and prison cases, although the larger prisons and convict establishments have separate medical officers. Cases of violent or mysterious death are investigated by the magistrates, although the inquest system, as it exists in England, is not in vogue. It existed for some time in the Cape and the Transvaal, but was abolished; but there is a strong body of opinion in favour of the continuance of such a system, though in a more simple and effective form than that of a coroner's jury.¹

(1) An Act conferring additional inquest powers was passed in 1919.

CHAPTER XXIX.

PROPORTIONAL REPRESENTATION.

THE FIRST DRAFT of the South Africa Act contained proposals for the election of members of the House of Assembly according to the system of proportional representation. It was proposed that each constituency should return three members. When, however, the draft was published, such opposition was manifested that the proposal was abandoned, and at the final sitting of the Convention at Bloemfontein (May, 1909) the existing scheme of single-member constituencies was adopted in its stead. Under that system, there is no room for the operation of proportional representation, and elections take place by direct vote, the candidate with the clear majority of votes being elected.

The system of election according to the principle of proportional representation is, however, retained in the election of senators, and of members of the executive committees of the Provinces.¹ In either case, the electors, as the constitution stands, are the members of the Provincial Councils. Regulations for the conduct of these elections have, in terms of the constitution, been framed by the Governor-General-in-Council, but they are subject to amendment by Parliament. The particular kind of proportional representation adopted is by means of the single transferable vote, each elector having as many votes as there are candidates to be elected.

The real opportunity for demonstration and testing of the system only occurs when there is a general election for the senate, or when there are several senators to be elected, or when a Provincial executive committee is elected as a body after a general election of the Provincial Council. In the case of a single vacancy for a senatorship or for membership of the Provincial executive, the system can hardly apply, there being no opportunity for the representation of minorities, and

(1) S.A. Act, sec. 134.

the party with a clear majority in the Provincial Council being enabled to return its candidate. If, however, a party, though the largest numerically, has no clear majority over all the other parties in the Council, its opponents may combine, and elect an opposition candidate; unless each party nominates and votes for its own candidate, in which case the most numerous party wins.

Where there are several groups or parties, and a corresponding number of vacancies for election, each group or party may be enabled to return its candidate, because it will give its first preference to its own candidate, and if it commands the requisite quota of votes, that candidate will receive a sufficient number of votes to ensure his election on the first count of votes. Where, however, there are more candidates to be elected than recipients of the requisite quota at the first count, the fate of those who do not receive the quota will remain uncertain, and the result in their case depends on the number of votes transferred to them.

The actual working of the system may be illustrated by two cases. During 1915 a senatorial vacancy occurred in the Transvaal representation on the Senate. The Provincial Council consisted of 23 members of the Labour Party, 20 members of the South African Party, and two members of the Unionist Party. The Labour members all gave their first preference to their candidate, and, having a majority of one, were enabled to elect him on a direct vote. After the general election of the Transvaal Provincial Council in 1917, there were 14 members of the South African Party, 12 of the Nationalist Party, 10 Unionists, and 8 of the Labour Party, and one "Independent." There were four members to be elected to the Provincial executive. The result was that one member of each of the four groups, South African Party, Nationalists, Unionists, and Labour Party, was elected to the executive. Whatever may have been the result so far as the future internal working was concerned, each group having sufficient strength to give its candidate a quota, or enough surplus votes to constitute a quota in the last resort, obtained representation. But the "Independent" was unrepresented. In the Cape Provin-

cial Council, where there was a similar cleavage of parties, at the election in 1917, similar results followed.

The results of the working of proportional representation on a large scale have been exhibited in connection with municipal elections in the Transvaal. It was introduced in 1909, but was abolished in 1912. In 1915 it was revived by the Labour Party, which had a majority in the Provincial Council, but in 1918 it was again discontinued under an Ordinance passed by a combined majority of the South African Party and the Unionists. Opinions on the merits of the system varied in accordance with party predilections. The results of six annual municipal elections appear to indicate that the system does not give much representation to minorities, and that victory rests with the party which is best organised for the polls. Given a lengthy list of candidates from whom to make a selection, the voters are often either puzzled or indifferent as to their choice, and the party whose electors are the best drilled and vote rigidly and consistently on party lines, confining their choice to the party candidates and giving no surplus votes to others, has the best chance of success. Experience has shown that a large number of voters will not vote, whatever the risk to the party or section of opinion to which they nominally adhere. The only condition under which the working of the principle of proportional representation may be adequately tested is that every voter shall vote (being compelled to do so by penalties, if necessary), and that he shall vote in the order of his preference for every candidate to be elected.

CHAPTER XXX.

THE INTERPRETATION OF THE CONSTITUTION.

THE SOUTH AFRICA ACT, being a statute passed by the Imperial Parliament, stands in the same position as any other statute, and is subject to interpretation or construction in exactly the same manner. According to the principles of jurisprudence which prevail in England, and are followed in the British dominions whose government is based on English constitutional precedents—more especially in the case of the Union of South Africa, which is a legislative union analogous to the union of Great Britain and Ireland—, while the law-making power resides in Parliament, the function of interpreting the laws belongs to the Courts of law. This is not to deny to Parliament the power of passing interpretative statutes, designed to explain previous legislation. Beyond this, however, Parliament cannot go. It cannot take an existing law, and apply to its various parts, or to the whole of it, a meaning or interpretation to suit the facts of a particular case. Cases depending on facts are decided by the Courts of law, and they must as a necessary consequence have the power of applying to the facts any law which bears upon the matter. Such an application of the law can only be made by interpreting its meaning. It follows that Acts of Parliament are construed by the Courts, and as the constitution is embodied in an Act of Parliament, it is interpreted by the Courts in the same way as any other Act. This power is not expressly conferred on the Courts by the South Africa Act, but is an inherent power, having regard to the function of the Courts as interpreters of the law. "The duty of the judge is merely to explain and enforce the law as prescribed by the legislature."¹

(1) Sir John Kotzé, in the case of *McCorbindale's Executors v. Bok* (2 Kotzé's Rep., p. 262).

The Court, however, has no power, under the South Africa Act, to enquire into the validity of a statute once passed by the Union Parliament and duly promulgated, that is, published. It must take the statute as it stands, and then give to it the meaning which in the opinion of the Court it bears. It may enquire whether the statute has been promulgated. But there its functions end. It is not for the judge to say what the law should be, or to inquire whether the legislature has properly passed the law, or whether it was within the province of the legislature to pass the law. In brief, the Courts have no jurisdiction to enquire into the validity of an Act of Parliament.¹ From this it follows that the Courts cannot ask whether a given Act passed by the Parliament is in accordance with the legislative powers conferred by the South Africa Act. Apart from the nature of the constitution as itself a statute, such an inquiry is precluded by the provision which gives the Union Parliament "full power to make laws for the peace, order, and good government of the Union."²

The constitution, however, expressly confers upon the Provincial and Local Divisions of the Supreme Court jurisdiction in all matters in which the validity of any Provincial ordinance shall come into question.³ This means that those Courts have power to decide whether such an ordinance is or is not valid, and that from their decision an appeal lies to the Appellate Division. The test of validity of an ordinance is whether it comes within the scope of the legislative powers which have been conferred in terms of the constitution upon the Provincial Councils.⁴ It would also appear to follow that it is within the competency of the Courts to enquire whether a Provincial ordinance has duly received the assent of the Governor-General-in-Council, and has thereafter been promulgated.⁵ The right to test the validity of Provincial ordinances is not conferred by the South Africa Act upon inferior, *i.e.* magistrates', Courts, and a statute of the Union Parliament expressly declares that magistrates have no such jurisdiction.⁶

Although the Provincial Councils are strictly limited in their powers, their legislative functions embrace matters of considerable local importance, and it is not surprising that

(1) See the case of *Doane and Johnson v. Field* (1 Boscoe's Rep., p. 165).

(2) S.A. Act, sec. 59.

(3) *Ib.*, sec. 98.

(4) Under the S.A. Act, sec. 85.

(5) *Ib.*, sec. 90.

(6) Magistrates' Court Act, 1917.

there have been many occasions on which the validity of Provincial ordinances has been brought in issue before the Courts. In deciding such cases, the Courts have often resorted to analogies derived from other constitutions, more especially that of the Dominion of Canada, which in the limitation of powers of the Provincial legislatures has some resemblance to the terms of the South African constitution. But the only reliable test is that furnished by the language of the South Africa Act itself. The Act, construed in the same way as any other statute, is the only authoritative source from which the meaning of the powers which it confers, whether in regard to Provincial legislation or any other matter, may be deduced.

CHAPTER XXXI.

AMENDMENTS OF THE CONSTITUTION.

THE SOUTH AFRICAN constitution, as we have seen, does not belong to the Rigid type; and it may be amended by the legislature which it creates, without reference to any external or superior body. On the other hand, the method by which amendments of the constitution may take place is not in every case the same as that which is applicable to the passing of ordinary statutes by the legislature, and in this respect the constitution cannot be classed as Flexible. The point may be illustrated by comparison with the English constitution (though that is not contained in any single document, and in some instances is to be found existing in unwritten customs and precedents). The Parliament of Great Britain and Ireland has full power to alter or amend the whole or any portion of the British constitution by passing an Act in the same way as any other statute. It may by such an Act create a complete written constitution, or it may confer a written constitution upon any portion of the Realm, as it has done by passing a Home Rule Act. The only exception—if it be a real exception—appears to be that existing under the Parliament Act (1911), whereby the House of Lords may only obstruct or reject a bill for two years, after which a Government in control of the Lower House may pass the measure into law with the Royal assent without the Upper House having any further voice in the matter.

The South Africa Act, in the first place, declares that the Union Parliament may by law (that is, by an Act passed by itself) repeal or alter any of the provisions of the constitution.¹ In strictness, this means that Parliament may repeal or alter the whole of the Act, even to the extent of resolving the Provinces of the Union into independent Colonies under the Crown. But it cannot, for the reasons which have pre-

(1) Sec. 152.

viously been advanced, change the Union under the Crown into a Union not under the Crown, as by constituting it a republic, or transferring it to the dominion of a foreign Power.¹

While any ordinary repeal, alteration, or amendment of the South Africa Act may take place by legislation in the usual course, that is, by passing an ordinary Act of Parliament, there are certain definite exceptions to this rule. I. No provision of the constitution, for the operation of which a definite period of time is prescribed, may be repealed or altered during such period. These limitations of time exist in respect of (a) the dissolution of the Senate, which may not take place before the expiration of ten years after the establishment of the Union; (b) the original constitution of the Senate, which holds good for ten years; (c) the power of Provincial Councils to legislate in regard to education, which exists for a minimum period of five years from the establishment of the Union; (d) the payment of compensation to the capitals of the constituent Colonies for any diminution in their prosperity.² II. Any bill for repeal or alteration in any of the following matters, to be valid, must be passed by both Houses of Parliament sitting together, and at the third reading be agreed to by not less than two-thirds of the total number of members of both Houses (i.e. two-thirds of all the members, not merely two-thirds of the members present): (a) the mode in which the South Africa Act may be amended; (b) increase in the total number of members of the House of Assembly, or diminution in the number of members representing an original Province of the Union, until the number of members in the House reaches 150, or until ten years have elapsed from the establishment of the Union, whichever is the longer period; (c) disqualification, on grounds of race or colour only, of persons qualified to be registered as voters in the Province of the Cape of Good Hope; (d) alteration in the provisions for equality of English and Dutch as official languages.³

Too short a period has elapsed since the inauguration of the Union to enable us to judge or to predict whether it is

(1) See Chapter II. (2) See S.A. Act, sec. 133.

(3) S.A. Act, sec. 152.

likely to undergo much change. Hitherto, a few alterations of no great importance have been made—such as the definition of functions of the Railways and Harbours Board, minor modifications in the right of appeal, and under the Elections Act of 1918, so as to enable the registration of parliamentary voters who are on active service. Views have been expressed in several quarters that other changes are necessary; and the opinion is maintained, with considerable weight, that after ten years of working the constitution of the Provincial governments should be altered. There are, however, only two alternatives—the institution of a federal system, with consequent expense, and the weakening of the central government; or the entire abolition of the Provincial legislature and executive. Both are radical measures, and there will be considerable hesitation before either of them is adopted. Probably a middle course will be found in the cautious extension of the powers of the Provincial Councils. Other changes, in relation to matters which are temporary, and must be settled sooner or later, such as the constitution of the Senate, the ultimate control of educational affairs, and the financial relations between the Union and the Provinces, are almost inevitable from their transitory nature. But even with regard to them the tendency will, in all likelihood, be conservative, if constitutional stability is to be maintained. Apart from these matters, it is not likely that there will be any violent changes. The very flexibility of the constitution is, perhaps, its best safeguard. Such wide powers of legislation are entrusted to the Union Parliament that adaptations may be made to suit novel circumstances, emergencies, or changing conditions without any disturbance of the fabric of the constitution itself. Before 1910 there were strong objections, in certain quarters, to the formation of the Union, and these views are still entertained to some extent. Any unnecessary interference with the constitution, as it stands, will only furnish an additional argument against the existing organisation of the Union.

PART II.



PROBLEMS OF STATE AND GOVERNMENT.

PART II.

PROBLEMS OF STATE AND GOVERNMENT.

CHAPTER I.

THE UNION AND THE EMPIRE.

PERHAPS THE MOST fruitful subject of controversy which has arisen in South Africa since the inauguration of the Union has been concerned with the problem of the relationship of the country and its people, regarded as an integral portion of the British Dominions, to Great Britain and the British Empire as a whole. There are two broad aspects of the matter—the continuance of the Union as part of the Empire; and the future government of the Empire as a whole, assuming that South Africa continues to form part of the British Dominions.

That there exists in South Africa a strong body of opinion, though only held by a minority, in favour of complete separation from the Empire, no impartial observer of political movements and tendencies can deny. The formulation of this idea, at first tentatively and in disguised language, later on openly and without compromise, was the main cause of the split in the ranks of the South African Party, and the consequent establishment of the Nationalist Party, which has sought, by proposing resolutions both in the House of Assembly and the Transvaal Provincial Council, to force a decision on the subject. The leaders of the Nationalist Party hold the belief that the salvation of South Africa is to be found only in its attainment of complete independence, with its own flag and its own government—preferably in the form of a republic, as the political institution familiar to most Dutch-speaking South Africans. From the British point of view, this attitude is an “extreme” one; but it is capable of explanation, and the reasons for it merit attention if we would arrive at a comprehension of the situation. It must not be forgotten that there are many persons in South Africa who view British dominance with undisguised hostility. Among them

are a very few who retain personal memories of the "bad old days" of British rule, when South Africa was governed from Downing-street by an unsympathetic and uncomprehending bureaucracy, wholly careless of the consequences which might ensue to the welfare of the Empire as a whole. By far the larger number, however, are former citizens (burghers) or the children of citizens of the defunct South African Republic and the Orange Free State. Their position is that they became British subjects through no wish of their own, but by force of arms; they hold that a compulsory allegiance implies the right to break away from it at a favourable opportunity, and that no breach of honourable obligation is committed in doing so. They disclaim any active hostility to British rule and institutions, holding merely that the republican system is best adapted to their own national traditions, and that it fully satisfies all their aspirations in regard to government. There are others, again, who are hostile to British influence. Of these, some are actuated by racial predispositions, although we must add, by way of caution, that it is difficult to define where racialism begins and ends in these matters. Fundamentally, British and Dutch are not alien in race, but branches of one parent stem (with, of course, subsequent admixtures), and, though the terms "racial," "racialism," and "racialistic" are freely used, they are often employed with great want of accuracy. Nevertheless, persons holding the "racialistic" point of view are firmly of opinion that British and Dutch have separate destinies, that there is no possible chance of their blending, and that they must eternally continue on parallel courses which are never to meet. This is the famous "two-stream policy," which is opposed, on political platforms, to that of the South African Party, which aims at blending the two races, or, rather, branches of the population, into a single whole, forming part of the British Empire. Here, again, among those who entertain Nationalist views, there is a distinction to be made. Some hold these views genuinely, on historical or ethnological grounds. Others, again, are influenced by personal hostility to the British, as such. They deny that they dislike individual Englishmen, although they candidly admit that they are un-

friendly to British national ideals and institutions.¹ They trade freely with men of British birth, are not averse to meeting them in social intercourse, and even marry English wives. It is a singular circumstance that among those who have fought against Great Britain, either in the Boer War or during the Rebellion of 1914, there have been many of British birth, who, apart from the fact that every nation has its traitors, cannot have been influenced by racial motives, but must have acted on political, environmental, or personal grounds alone. Whatever may be the causes of the Nationalist movement as a whole, of which a slight explanation has been attempted, there is no doubt that, having regard to the extent of its geographical diffusion, and the proportion which its adherents bear to the population of South Africa, it is one of no negligible importance. Its propaganda, although its leaders, many of them with sincerity, disclaim the responsibility, has already issued in a Rebellion or "armed protest," the feelings engendered thereby not being likely to disappear for several years to come. This Rebellion has been officially attributed to a widespread secret propaganda by Germany to seduce citizens of the Union from their allegiance and to cause rebellion and civil war, and to the fact that the government of German South-West had, through its numerous spies and agents, communicated with and corrupted citizens of the Union "under the false and treacherous pretext of favouring the establishment of a Republic in South Africa." But there can be no doubt that there were also many who needed no seducing, but were only awaiting a favourable moment to strike, in order to attain what they regarded as a legitimate object.

On the other hand, there are considerable grounds for holding that the Nationalist Party, and with it its ideals, have "grown by what it fed on." While the bulk of both English-speaking and Dutch-speaking people in South Africa have been sincerely desirous of living together in unity and concord, there has existed a political party, the Unionists, whose general aims were legitimate enough—the maintenance

(1) Their acts, however, belie their honeyed words. In a recent debate in the Union Parliament (Feb. 1919) Mr. Tielman Roos, a Nationalist, described the Influenza Epidemic of 1918 as the "Khaki Pest." This aroused great indignation. The women of the *Lurkham Castle* declined to sail until a Nationalist delegation had cancelled their passages.

and extension of British influence in South Africa—, but some of whose leaders have unfortunately shown little wisdom in their attitude towards their fellow-subjects of Dutch origin. Instead of welcoming them with open arms into the great Anglo-Saxon brotherhood, they have done much, by innuendo and open attack, to keep open the wounds of the Boer War, and to make many persons of Boer origin, who cannot discriminate between the British people as a whole and a political party arrogating to itself the monopoly of British "tradition," think that though kept by force within the confines of British allegiance, they were unwelcome there. In 1904 the "Progressives," the lineal forerunners of the Unionists, bitterly opposed the grant of equal political rights, including responsible government, to their fellow-subjects who had been citizens of the former Boer Republics, and they ranged themselves in futile opposition to the Liberal Party in England, whose leader, Sir Henry Campbell-Bannerman, was instrumental in granting self-government to the Transvaal and the Orange River Colony. Although General Botha at once declared himself, with his people, to be genuinely desirous of serving the Empire, and attached to its interests, the "Progressive" opposition to his government was maintained on racial lines, and when, on the inauguration of the Union, he deemed it best, having regard to party exigencies, to resist suggestions to form a coalition Ministry, he and his supporters were placarded throughout South Africa as the "wreckers," who were luring the national bark on to the rocks of destruction, while the natural, though perhaps intemperately expressed, desire of the Dutch-speaking inhabitants to maintain their language rights in the schools, was met with appeals to "vote British," as if the Unionists were the only British-minded persons in the Union..

Fortunately for South Africa and the Empire as a whole, General Botha and his colleagues, prominent among whom was General Smuts, resolutely refused to take part in the "racial" quarrel, preferring to continue in their appointed task of maintaining unimpaired the British connexion, while at the same time developing a united South African people on the lines demanded by local environment and conditions. In

this they cannot yet be said to have succeeded entirely. There are many adverse elements to encounter, apart from racial extremists. There have been serious troubles in the industrial world, whose leaders always find the Government a convenient target to aim at. The presence of an overwhelming native aboriginal population, which may, nevertheless, be said to be entirely loyal to the British Crown, is a circumstance of some complication, less on account of its own attitude than of the diverse views which are entertained by Europeans with regard to native policy. But, on the whole, General Botha and his lieutenants have had behind them the support of the great body of sober and instructed opinion in South Africa. This is only natural, as far as men of British origin are concerned, because they have been convinced, by deeds as well as words, that in General Botha they have a bulwark of the Empire. On the other hand, there are many persons of Dutch origin who are genuinely attached to British institutions and forms of government. Many of them have been born on British soil—in the Cape and in Natal—, have been educated in schools conducted according to British methods, and have known only British political institutions. There are others of them, again, who realise that the blessings of republican systems are, to say the least, doubtful in comparison with the ordered freedom which they have enjoyed in recent years under the British Crown, and that their interests, individually and as a people, are well served by continuing to enjoy the protection of Great Britain, as a world-Power, and the advantages which it confers upon them in respect of trade, or of intercourse with England and the other Dominions, not to speak of greater things. Thus there exists in South Africa a fixed body of opinion, firmly attached to British allegiance, which wishes for no other, and will not tolerate that what they have shall be taken away from them. To them, the notion of separation from the Empire is unthinkable, and they will resist it to the uttermost.

Thus there are two opposing tendencies in regard to the maintenance of Imperial relations. The partisans of republicanism claim that the movement towards disintegration is growing in strength, and it certainly has attained no mean

dimensions. To prophesy is idle, but one may venture the opinion that the ultimate issue will depend upon the extent to which the rival sections learn to accommodate themselves to one another's views. If the legitimate aspirations of the Dutch inhabitants—the maintenance of their language rights, and freedom to develop their individuality along lines which have become habitual with them, instead of being forced into an unfamiliar mould—are respected, and treated with tolerance, much may be hoped for. To treat their views with hostility, or to attribute motives to them which they do not in fact entertain, is nothing else than to maintain causes of friction, and ultimately to engender friction itself. One safeguard is the existence of a strong moderating Party, which has adopted General Botha's watchword "conciliation," often sneered at, and nevertheless supplying the only means for lasting harmony. This word was uttered at a time of intense racial and party bitterness, and its use has been much resented by extremists on both sides. Nevertheless, there are signs that its practical application is beginning to bear fruit, and there is ground for hope that the aim which it embodies will one day be realised. Meanwhile, the only safe policy is one of *festina lente*. Violent and hasty methods have been tried too often in South Africa; and there are indications that even the extremists are beginning to be convinced of their uselessness. Even among the more advanced Nationalists there has latterly been much talk of attaining their aims by "constitutional methods"; while, on the other hand, Unionists who were once irreconcilable have come to "admit" that General Botha and General Smuts, by their proved devotion to the cause which the British Empire represents, are "fit to be trusted." Nationalists still build their hopes on the gloss which they have put upon Mr. Lloyd George's words in reference to the rights of the "little nations"; but this circumstance in itself indicates that their attitude has become less militant, and that in time they may come to adopt the views of more moderate Dutch South Africans as to the policy of remaining within the Imperial fold. It must not be forgotten that, while a considerable number of them are genuinely inspired by attachment to republican ideals, there are others

whose opposition is not to British institutions, but to General Botha and his followers on personal grounds. Such causes of opposition are not in their nature lasting. The vendetta is unknown in South Africa, for vindictiveness is not a feature of the Boer character. On every side, therefore, there is cause for hope that a lasting accommodation will one day be reached, and that men of British and of Boer origin will fuse harmoniously into a united people, forming a component part of the British Empire. The process will not, however, be a rapid one, and anything in the nature of a surgical operation is out of the question. With ultimate problems, such as the continuance of the British Empire itself in the centuries to come, we are not now concerned. But all indications of the present time, the existence of a moderate body of opinion firmly attached to the Empire and led by men of proved devotion to its ideals, and the actual sacrifices of blood and treasure which have been made freely for that Empire by men of Dutch as well as those of English birth, point to a strengthening rather than to a loosening of Imperial ties. Not only in German South-West Africa, which as a neighbouring territory more nearly concerned them, but in German East Africa and on the battlefields of Flanders and of France have South African Boers as well as Britons offered up their lives, without thought of reward, in England's cause.

Much has been written in recent years, more especially in connection with the problems arising out of the War with Germany, about the future relationships which are to exist between Great Britain and the Dominions, and between the Dominions themselves. Are they to remain on the more or less informal footing which has existed hitherto, or is the British Empire to be organised on a defined constitutional basis, whether with or without a Legislature and a Cabinet common to and representative of the Empire as a whole? If there is to be a fixed Imperial constitution, is it to be federal in form, or what?

It cannot be said that these questions have, thus far, seriously engaged the attention of the people in South Africa, even of those who are leaders of public opinion. The main

issue, in the past, has been whether the British connexion should be maintained, or not. But, assuming its maintenance, very little thought has been devoted to the form which the fabric of Imperial institutions should take. People have been content to take the continuance of the existing system for granted, and, provided that South Africans be left in large measure—outside of wider Imperial and international concerns—free to settle their own internal destiny, have not troubled themselves much about forms of government. Consequently, it is far from easy to ascertain whether any, and what, views are widely entertained on the subject. So far, however, as any opinion is at all discernible, it appears to be strongly opposed to the idea of an Imperial Parliament, or even a permanent Imperial Council, containing representatives from the Dominions. Most people would prefer to see the existing system continue, with an Imperial Parliament constituted as it is at present, and a Cabinet which, without including members from the Dominions, would be free to resort for guidance to an Imperial Conference of the advisory kind, such as has assembled from time to time in the past. The proposal for a federal Empire does not appear to meet with favour. This does not arise from any desire to avoid the common burdens of the Empire. Such a suggestion is sufficiently refuted by the sacrifices which South Africans have made in common with inhabitants of the other Dominions, and by their willingness to make pecuniary contributions towards Imperial defence. But they hold the view that while broader issues, such as foreign relations, and military and naval problems, may safely be left to the Home Parliament and Government, local affairs are best decided by a local legislature. And they have no desire to participate, by electing representatives, in an Empire legislature which will be charged only with general Imperial or foreign concerns. Provided that the wishes of the people of South Africa are studied, in regard to such matters as the ultimate destiny of the German Colonies, there is no manifestation of any wish to have a direct voice in the management of Imperial affairs. Apart from problems of peace and war, other matters of general importance, such as naturalisation, fugitive offenders, postal regulations, patents,

trade-marks, and copyright, have already been settled on a satisfactory working basis. People are aware that there are other matters, such as fiscal relations, which still remain open for adjustment; but they do not believe that the existing machinery will be inadequate to deal with these problems. They see that the Empire has grown great, and has remained united, by a natural process, and without any artificial bonds; and they are content to maintain the view to which expression has been given in the words: "Daughter am I in my Mother's house, but mistress in my own."

[Since their return to South Africa (August, 1919) from the Peace Conference, General Botha and General Smuts have in several speeches laid emphasis on the new status which South Africa has attained, by reason of having, through her representatives, become a direct party to the Peace Treaty of 1919, along with the other self-governing Dominions of the Empire, in the same way as Great Britain herself. In other words, the Dominions are no longer daughter nations, but sister nations within the Empire, and so have attained a new national and international status].

CHAPTER II.

THE CROWN AND THE MOTHER COUNTRY.

THE ATTITUDE of South Africans towards the wearer of the Crown of Great Britain and Ireland is largely determined by their views with regard to the relations which should exist between the Union and the Mother Country. Those who are of English birth and descent hold much the same opinions on the subject as are entertained by people who have never left the shores of England—if possible, however, in a more intense degree. There are, of course, not wanting a few who hold, as others do in England, that monarchy is an effete institution; but the great majority have a personal attachment to the King and the Royal Family, which is in no way diminished by distance, or by the fact that, in all probability, they have never seen any members of the dynasty. Indeed, their devotion to the Crown is the more ideal on that account. And although at times, in unthinking moments, politicians, like Cecil Rhodes, have suggested the elimination of “the Imperial factor” in South African affairs, no responsible person has ever thought or spoken of the abolition of the Kingship. In times past, such events as the Queen’s birthday or the King’s birthday have been commemorated with more enthusiasm than is wont to be displayed on the same occasion in England itself. To British South Africans, the existence and government of the King are as real as if he were personally present in their midst, and their loyal sentiments towards him are sincere in the highest degree. It is possible that this attitude has been intensified by past events in South African history, but there is no reason to think that it is otherwise than an enduring one. It has also influenced the other subjects of the King within the Union, Boers and natives. There are thousands of Dutch-speaking inhabitants who, after a century of British rule, have come, notwithstanding differences of names and descent, to

share in the loyal sentiments towards the King which are held by their English fellow-citizens. Nor, in spite of the fundamentally different notions of government which are held by those Nationalists who favour a republican system, have any of them ever uttered—save, perhaps, in the case of a very few irresponsible persons, whose counterpart might be found amongst men of English birth—any language savouring of personal disrespect to the King. The “republicans” may be impatient of the kingship as an institution; but they have never ventured to speak ill of the wearer of the Crown.

So far as it is possible to gauge native opinion, the sentiment of the overwhelming mass of the aboriginal population is thoroughly, in fact deeply, loyal. There have not been wanting evil spirits to stir up dissensions amongst the natives, nor have occasions been wanting in the past when they had legitimate causes of complaint on account of the defective administration of the laws. But none of them have ever spoken of the Crown save in terms of loyalty. Indeed, their attitude is not merely one of loyalty as the white man understands it. In many instances it amounts to veneration, not untinged, in some cases, with superstition. Those who are aware of the feelings of reverence with which the average native looks upon his own Chief will readily comprehend the frame of mind in which he regards the King, whose dignity so immeasurably transcends that of any other personage within his Dominions. The wearer of the Crown is regarded by many aborigines as the possessor of superhuman powers, this being probably due to the attributes with which missionary teaching has in times past invested the subject. Most natives, however, are probably free from such sentiments, and their loyalty is based on surer foundations. They regard the King as the embodiment of a system under which they have enjoyed greater freedom, and an entire absence of that tyrannical system of government which was in vogue under the undisputed sway of uncivilised, savage potentates. They feel, though members of an inferior race, that they are secure in their possessions, and in the right to live their own lives, subject to observance of the law. But their sentiments are not necessarily inspired by a merely selfish feeling of gratitude for favours received or to come. Most

of them share to the full in that personal attachment to the Sovereign which is entertained by their white neighbours.

Next to the sentiments entertained towards the Crown comes the regard in which England itself is held, as the Mother Country. Here, again, a distinction must be made. There are many of British origin who have friends and family ties in the homeland, or who have spent the early years of their lives there. To these a love of the Mother Country comes naturally. But there are hundreds, both English descended and Dutch, who speak of England as "home," although they have never set foot on its shores, and have neither kith nor kin within its borders. This mode of allusion, it is curious to note, is often criticised by people who come from England and by South Africans who do not share this feeling of attachment to the Mother Country. And yet, remarkably enough, there are many persons who have emigrated from England to South Africa and, in the course of time, have become, if possible, more attached to their country of adoption than to that from which they originated.

The sentiment which South Africans entertain towards England is far from attributable to the fact that there is situated the central seat of government of the Empire. It may, to a slight extent, be due to a feeling of dependence. But it owes its origin, in the main, to the all-pervading influence of English ideas, and the familiar knowledge of English life and institutions, which exist within the Union. There are many South Africans, both of British and Dutch descent, who have visited England, and have imbibed something of an older and a richer civilisation than they are familiar with. But this is not sufficient to explain the "home" feeling which exists in the minds of thousands who have never crossed the sea. In part, it is due to educational influences. Several generations of school-children and college students in South Africa have grown up under the guidance of teachers and professors of English birth, who have naturally imported with them the scholastic systems best known to them. Until a few years back, South African children were more familiar with English history than with the annals of their own country. The

bounteous stores of English literature have spread their influence throughout South Africa, and more than compensate for, if they do not explain, the dearth of indigenous authors. English newspapers circulate widely in the Union, and the arrival of the oversea mail, by reason of the periodicals even more than the letters which it brings, is in ordinary times the most eagerly-anticipated of events. By these means men and occurrences in England have become as familiar as if they belonged to or had taken place in South Africa. It is not too much to say that the antiquities of London, and the scenes of the Lake Country and the Highlands of Scotland, are more familiar, through the medium of pen and pencil, to the average South African than are localities in his own country outside of that to which he belongs. Two other causes which contribute to his familiarity with things English are commerce and the stage. Most imported goods come from Great Britain, although in recent times the United States, Japan, and Germany have secured a foothold in trade. And English actors and actresses have familiarised the South African with the cockneyisms of London, the dialect of Lancashire, and the Irish brogue. All these things conspire to maintain and to spread the influence of Britain in South Africa. They have insensibly affected the Dutch section of the population, who—before restrictions were placed on export—ate English jams, wore Scotch tweeds and drank Scotch whisky, sang English songs, and used handkerchiefs of Irish linen. It has even invaded their speech, and nothing is more curious than to hear South Africans of Dutch origin carry on a conversation, in which they will use Dutch and English alternately, passing from one language to the other without a break.

Nevertheless, this pervasiveness of English things and ideas has not robbed South Africans of their individuality. They have a firm attachment to their native soil, and are proud of their country and its institutions, while they recognise that they have much to learn from the example and the culture, as well as the mistakes, of other peoples. A separate local type is in course of evolution, which is neither English nor Dutch, but partakes of the qualities of both, with something super-added—a type as distinct as the American, Canadian, or Aus-

tralian, and not likely to be merged in any other. It is distinguished not so much by speech, though there is something which, while neither a twang nor a dialect, separates the English language as used in South Africa from that of the Mother Country. The difference lies rather in temperament, in habits and modes of life. There is an unconventionality, a democratic air, which is discernible at once, and is to be met with nowhere else—a spirit with which the free life of the *veld* and its boundless spaces has had much to do. This democratic habit is to be met with in the other oversea Dominions as well, and forms one of the characteristics of the typical “Colonial.” South Africans are proud of this appellation, and nothing has surprised, or even pained, them more than to find that in certain quarters the word “Colonial” is used in a derogatory sense, or that it is thought to detract from the qualities which appertain to a citizen of the Empire. Suggestions have at times been made—not in South Africa—that “Colonial” should be eliminated from public and official vocabularies, but they do not find favour in the Union.

CHAPTER III.

THE NATIVE PROBLEM.

AT ALL TIMES there has been full recognition of the fact that the solution of what is known as "the native problem" is perhaps the most serious one with which South African statesmen, politicians, and social workers are concerned. It is a problem of great magnitude, embracing, as it does, both the relationship of the white man to the native, and the social and moral condition of the natives themselves. It is not confined to any one portion of the Union, for while there are great territories entirely inhabited by natives, they are also to be found in large numbers in the "white" portions of the country, having full intercourse in business, in employment, and in domestic relationships with persons of European descent. There is a vast literature on the subject, and the reports of various Native Commissions testify that from time to time it has engaged the attention of South African governments, with the object either of ascertaining the bearings of the problem, or of ameliorating the condition of the natives, or of settling the terms under which they ought to be governed. There are great difficulties which attend any permanent or final settlement of the matter, in all its various aspects, and it is not surprising that, while much has been spoken and written about it, no definite programme has been formulated, while, if it be formulated, it is certain to excite great controversy.

At the census of 1911, the total population of the Union numbered 5,973,394, of whom 4,697,152, or 78·63 per cent., were coloured persons. Since then no census of the whole population has been taken. In 1918 a census of white inhabitants was taken, and the total number of whites ascertained to be 1,424,690, as against 1,276,242 in 1911. In 1917 the whites were estimated to number 1,467,457, and coloured persons were estimated at 5,404,707. The estimate of whites in

1917 was some 50,000 in excess of the actual number of whites returned by the census of 1918, and it is possible that a similar correction would have to be made in the case of coloured persons. But it is safe to assume that in 1918 the coloured population of the Union numbered five-and-one-half millions. Of the 4,697,152 coloured persons in 1911, the Bantus numbered 4,019,006, or 67·28 per cent. of the total population, and "Asiatic, mixed, and other coloured" persons 678,146. "Mixed" included half-breeds and other coloured natives of South Africa not strictly classifiable as Bantus. The total population of British South Africa (including Basutoland, Bechuanaland Protectorate, Southern Rhodesia, and Swaziland, as well as the Union) in 1911 was 7,374,287, of whom 1,304,019 were whites, and 6,070,268, or 82·32 per cent., coloured persons—so that, in all, there are over five-and-one-half million pure Bantus in South Africa at the present time.

In 1916 it was estimated that the number of natives occupying various areas of land within the Union were as follows: 1,929,604 in native reserves or locations (*i.e.* not locations attached to white urban areas); 94,662 on mission lands or reserves; 123,648 on native-owned farms; 121,105 on Crown lands occupied by natives; 325,179 on European-owned land occupied by natives only; 1,264,593 on European-owned land occupied by Europeans (the bulk of the natives being employed as farm-hands, and residing on "white" farms with their families); 21,723 on Crown lands leased to Europeans; and 537,151 in European urban and mining areas (where they were employed on mines, in domestic or general service, or were permitted to live independently).¹

It will thus be seen that some two-and-three-quarter million natives live in what is regarded as purely native territory; more than one-and-a-quarter million in "white" rural areas; and over half-a-million in "white" urban areas.

The conditions under which these various sections of the native population live differ greatly according to locality. In the "black" portion of the Union they are under their own chiefs, retain and practise (subject to certain legal restrictions imposed by the white man) their own aboriginal customs in such matters as marriage, land tenure, and inheritance, and

(1) See *Official Year Book of the Union*, 1918 (p. 37Q).

are for the most part a primitive agricultural or pastoral people. The jurisdiction of the native chiefs is, however, subject to the control of the Native Affairs Department, or, in those parts of British South Africa which lie outside the Union, to that of the High Commissioner for South Africa. Within the "white" areas of the Union native laws and customs are not recognised, as a general rule, and the native is subject to the ordinary law of the Union, although in certain areas, such as Natal and the Witwatersrand, special Courts have been set up to deal with purely native cases. The native in the "white" parts of the Union lives under conditions differing greatly from those which prevail in the purely native territories. He is not subject to a chief, and is free to imitate the habits of the white man, so far as the law permits him. He is, however, subject to various restrictions. In the three northern Provinces of the Union he is (theoretically) prohibited from taking intoxicating liquor; he cannot obtain a licence to dig on his own account for precious metals or precious stones; nor does he enjoy the parliamentary franchise. And, as we have seen, various restrictions have been placed in the way of the tenure of land by natives. In the Cape of Good Hope, on the other hand, the franchise is open to the native who possesses the requisite property qualification and can read and write; he may, within limits, obtain intoxicants; and so much land is already owned by natives that recent legislative restrictions are not of much importance. Thus the problem of the future of the native as a whole is complicated not merely by the different conditions which prevail in "black" and in "white" South Africa respectively, but by the differing policies which have been followed in his treatment in the Cape and in the other Provinces. There is another source of complication. The laws of the European portions of the Union, as a general rule, make no discrimination between the pure Bantu and other "coloured" persons. It is equally a crime for a Kaffir, a Hottentot, or a "half-breed" to be found in possession of gold or of intoxicating liquor. Criminal assaults by Hottentots or "half-breeds" upon white women are regarded with as much severity as if they were committed by Kaffirs. In recent years, attempts have been made to discriminate.

The pass laws are rigorously applied only in the case of Kaf-firs; and separate schools are provided for coloured persons, as distinguished from aboriginal natives. This has largely been the result of pressure and agitation on the part of the coloured persons. The consequence is that the population of the Union may now be grouped into three considerable sections, "white," "coloured," and "black." The views of the pure native in regard to the slight distinctions which are made between him and his "coloured" brethren are hardly known, or, at any rate, very little public expression has been given to them.¹ Broadly speaking, however, the tendency of white legislation and administration in the European sections of the Union has been to make no distinction between "black" and "coloured" persons, and to draw the line rigidly between "white" and "not-white." In the "native" locations which are to be found in most white urban areas, the inhabitants consist of "black" and "coloured" persons indiscriminately. In the smaller towns and villages throughout the country, natives and coloured persons are not permitted to reside in the midst of the European population; but in the larger urban centres, such as Johannesburg, Cape Town, Kimberley, and Durban, natives reside permanently in certain of the "white" quarters, while in Johannesburg and Durban the employment of the native "boy" as a domestic means the continual presence of a large native population in white residential quarters, even though its individual units may come and go. The presence of the "house boy" is justified on the ground that it is extremely difficult to obtain white domestic labour; while the wage rate makes it impossible to employ unskilled white workers in mines, shops, or factories.

It is by no means easy to determine whether contact between the Europeans and the natives has been a blessing or a curse to either. Like most peoples of an inferior culture, the natives are imitative, and, when they come into close intercourse with Europeans, they evince a desire to copy their habits and to regulate their lives on the same model. This extends beyond such superficial things as dress, to amusements, meetings, books, trade and industrial rivalry, and political am-

(1) A native congress sent delegates to complain to General Botha that the administration discriminated between coloured and natives; but its allegations were denied.

bition. Brought by their own economic necessities and those of their white employers into European surroundings, many natives are beginning to demand that the same standards of treatment and government shall be applied to them, that they shall be free to ride in the white man's trains, trams, and taxicabs, to patronise his hotels and theatres, and, if the opinion of their white friends—not general public opinion—allows it, to stand on a footing of perfect social equality with him. These aspirations are treated in some quarters with indifference, in others even with tolerance; but they are regarded by the overwhelming mass of the European population with hostility and aversion. It is stated, with much truth, that only an inconsiderable fraction of natives has derived benefit from close contact with the European population, and that the great bulk of the natives have copied the white man's vices rather than his virtues. Even native chiefs of high standing have expressed their desire that their subjects shall be confined to the native territories, and not permitted to migrate into or seek employment, even temporary, in the European parts of the Union. There appears to be no doubt that the inhabitants of the native territories are more temperate, and less addicted to crime, than their brothers in other parts of the country. On the other hand, the white inhabitants regard the presence of the natives in their midst as a menace to European standards of civilisation. Their attitude is based on the instinct of self-preservation, which in this case means race preservation. It is the universal experience that intermarriage between white and black means the degradation of the white partner of the union. This degradation also manifests itself among those white persons who come into habitual association with natives. There have been numerous assaults by black men on white women, and public opinion on the subject is so strong that even the judges have had to bow to it, inflicting more severe sentences than in the case of similar offences by white men. Feeling on the subject reached its culminating point in 1911, when Lord Gladstone commuted a death sentence passed in Rhodesia upon a native for assaulting a white woman. The agitation that ensued resulted in the appointment of the "Black Peril" Commission, which reported on the conditions

that prevailed, but presented no recommendations of any practical importance. It was, indeed, difficult to recommend any changes in the law, which, if properly administered, is adequate to deal with the matter. The real object in appointing the Commission was to allay public feeling, and that may be said to have succeeded, temporarily. But there is always in existence a latent feeling that the "Black Peril" must be faced, not only in sexual matters, but in general social and economic relationships.

At the same time, while the majority of the white inhabitants regard the presence of the native population as dangerous to the existing social structure, there are thousands who feel that without the aid of native workers the labour problem would be wholly incapable of solution. In the past, indeed, the local supply of natives for work in the mining districts has been inadequate, and natives have been imported as labourers from Portuguese territory and south-central Africa, apart from the unhappy experiment in the importation of Chinese labourers. Thus there are two opposing tendencies or schools—one, which would get rid of the native element altogether, and another, which, while deploring the necessity for the presence of the native, regards his presence as indispensable as an economic, *i.e.* labour, factor. On the other hand, the natives assert that they have as good a right as anyone else to inhabit any portion of South Africa, and, while doing so, to exercise all the rights of white men. Expression has been given to these views in the report of the late Mr. J. B. Moffat, an expert, who was appointed by the Union Government as a commissioner to investigate certain native troubles on the Witwatersrand in 1918. He said, *inter alia*: "Apart from the employments from which natives are debarred by the regulations, there is a good deal of semi-skilled work which natives are competent to do, but owing to the opposition of white workers in the Transvaal natives cannot be employed on it. It is stated, moreover, that to a great extent the South African [white] Mine Workers' Union is supported by Transvaal public opinion in the attitude taken up by it in this matter. . . . Whatever public opinion may be there can be no question that the coloured and native races are not going to be content to

be hewers of wood and drawers of water for ever. They are advancing, and even if we wished to do so we cannot prevent their development. Public opinion must recognise this sooner or later. If artificial means of arresting that development are resorted to it will simply mean our antagonising the natives. Sinister and undesirable influences brought to bear upon them will have ample scope for mischief. Instead of the natives being law-abiding and contented citizens they will become a menace to the country's peace and prosperity."¹

The reference to "artificial means of arresting development," in Mr. Moffat's Report, appears mainly to relate to existing regulations and proposals which prohibit or would prohibit the employment of natives in certain trades or in certain classes of work, which are at present reserved for white men. But, in its widest sense, it would also embrace the policy, which is largely favoured, and has received commendation on various influential political platforms—that of total segregation of the natives. By this, it is conceived, is meant either repatriating natives to the tribes from which they originally came, or setting apart territories to which non-tribal natives are to be confined. Repatriation of natives to their original tribes would be comparatively easy, and it may be that certain chiefs would look upon it with favour, as the manpower, and consequently the productive power, of their tribes might be increased thereby; although, on the other hand, it is possible that it would only result in "more mouths to feed," with less work to do. The remedy may be "worse than the disease." There are thousands of natives who, while originally descended from tribes inhabiting the native territories, do not in any sense regard the territories as their home. Born in "white" South Africa, they regard themselves as being as fully inhabitants of the European portions of the Union as any white persons born therein; and they would feel a sense of injustice if they were removed by force of law from their existing surroundings. On the other hand, the creation of native *enclaves* in the Union, to which these natives who are not repatriated to existing tribal organisations are to be relegated, will present many difficulties. Is the population of such *en-*

(1) Mr. Moffat's Report was published in the *Union Government Gazette* for 6th Sept., 1918 (pp. 280-92).

claves to be located or graded according to race or tribal origin? Is it to be prevented from having intercourse with the white population only, or with other native tribes as well? Logically, segregation must be complete; and this will involve the removal from "white" South Africa of all its native inhabitants. But the logical end cannot be attained without the removal of the "coloured" population as well—a matter of great complexity, when the presence in South Africa of large numbers of Asiatics is taken into account. These considerations are mentioned not with the object of enunciating any view, but merely to indicate the difficulties which beset any solution of the problem.

Short of segregation, there is the "white labour" policy, which means, broadly, the confinement of natives to unskilled employment, with the object, on the one hand, of protecting the white man from native competition and thereby maintaining his status as a member of a superior race, and, on the other, of ultimately exerting such economic pressure that the native may be compelled to remain in his "kraal" instead of seeking to work for the white man. The proposal is an attractive one from the standpoint of "self preservation" for the white man. Thus far, it has not met with success. In the first place, it cannot be said to have had a fair trial. The "white labour" system has not been applied uniformly. While, in the Transvaal, the Trades Unions have more or less resolutely set their faces against the employment of natives in skilled or semi-skilled occupations, these occupations have in the Cape been freely thrown open to natives and coloured persons. Thus, at the Cape, owing to the lower wage paid to coloured compositors, a book is produced far more cheaply than it is at Johannesburg, where the white compositor receives a wage commensurate with his higher social status. But signs are not wanting that the coloured artisan or workman desires an increase in his rate of wages. So far as unskilled labour is concerned, the supply of native labour is inadequate, or alleged to be inadequate, to existing requirements, mining, urban, and rural. To stimulate the supply of unskilled native labourers by artificial means would simply mean an increase

of natives in the "white" centres—the very thing the majority of Europeans desire to prevent.

Another school, if it be worthy of the name, consists of persons who in the main are indifferent to the issues involved, or who, for selfish reasons, prefer that the existing state of affairs should continue indefinitely, and would leave things to the natural course of events. This body of opinion, if indeed it has any crystallised opinion, is not to be condemned off-hand. After all, peoples are natural growths, since "man is a part of nature," and they cannot be forced into artificial channels. Illustrations of this are to be found in the history of German Poland, Alsace-Lorraine, and Bohemia. There is something to be said for the view that the fate of peoples is best left to be determined by letting nature take its own course. This is not to say that a people cannot be elevated by the gradual introduction of civilised, as opposed to barbarous, methods.

An infinitesimal, though by no means uninfluential, school of opinion is in favour of giving the native absolute equality of opportunity with the white man, of permitting him to compete in commerce and industry, to enjoy equal educational facilities, and—though this is disguised, or not openly faced—of permitting him full freedom of social intercourse. It is an unpopular school, but it is persistent and determined, and fearless in expressing its views. Its exponents, who are men of high character, have had great influence on the native mind, but they have met with bitter opposition at the hands of the great majority of Europeans in the Union.

Any policy which attempts to deal with and, if possible, lay down more or less permanent lines for the settlement of the native problem will have to take into account and regard it from four different points of view: (1) the interests of the Empire as a whole; (2) the interests of South Africa; (3) the welfare of the white man; (4) the interests of the native. Inhabitants of the Union, as a whole, contend that the native problem is peculiarly a local one, and that those with local knowledge are best entitled to settle it; but, though the Colonial Office in London has long since ceased to determine matters of native policy in detail, regardless of the wishes of

"the man on the spot," it still claims to exercise a general supervision over matters of legislation specially affecting natives, and any laws which accord differential treatment would almost certainly be reserved by the Governor-General for the signification of His Majesty's pleasure, which in practice means submitting the matter to the decision of the Secretary of State for the Colonies, or, it may be, the whole Imperial Cabinet. In such cases, the effect would be that the matter at issue would really have to be decided from the viewpoint of six thousand miles away; and, in controversial cases, whatever decision was arrived at would almost certainly cause dissatisfaction on one side or the other. In extreme cases, such as arose in connection with Lord Elgin's interference with the sentences passed during the Zulu Rebellion of 1906, the colonists might refuse to be bound by the decision of the Home Government. On the other hand, a decision adverse to what the natives regarded as their interests might cause them to think that due weight had not been attached to their representations. Again, the interests of the Union as a whole might not be identical with those either of the white population or of the native population. Nevertheless, those interests could not be ignored. In the next place, the sentiments, or the assumed welfare, of the white people might demand the adoption of a policy which would be resented by the natives, or, at the least, might be detrimental to their interests. And concessions to expressed desires of the native population might tend to encroach upon the rights of the white man, or to weaken his position as the dominant element in the country. Accepting the white man's status as dominant, what is to be the policy in regard to the subject races? Is it to be repressive, tolerant, favourable, or merely indifferent?

Without attempting to dogmatise, one may say at once that a policy of *laissez faire* would no more solve the difficulty than its vogue in England helped to settle industrial and social problems in that country. Merely to drift would mean the gradual encroachment of the native in economic and other spheres—for he is impelled by force of circumstances, if not by his own desires, to enter into competition with the white man, while his wants, material and intellectual, increase the

more he comes into contact with civilisation. Indifference on the part of the white man would not imply a corresponding indifference on the part of the native. Having regard to the overwhelming native, as compared with white, population in South Africa, the white man will have to bestir himself if he does not wish the native to overtake and finally surpass him in the race. On the other hand, the problem will have to be faced whether the maintenance of his own position by the white man is to be associated with the degradation of the natives, that is, with compelling him to revert to his pristine, semi-barbarous condition, or whether, on the other hand, it is compatible with giving him a reasonable degree of education and an opportunity of living in comparative ease and security. It is generally conceded that a complete reversion to the state of affairs which prevailed before the white man came upon the scene would be unthinkable. The native is now habituated to standards of justice and freedom, the enjoyment whereof has raised him in the scale of humanity; and the real question is whether he should have the same degree of liberty as the white man, in other words, whether he is fitted for it. Many natives claim this degree of fitness; others among them are candid enough to admit that they are not so fitted. The general view held by white men, on the other hand, is that the bestowal upon the natives of all these privileges, of "liberties" as opposed to "liberty," would be detrimental to the natives themselves, and would certainly injure the interests of the whites. The matter will, in all probability, be solved, as such matters usually are, from the point of view of self-interest. The real problem will be what self-interest, in the highest sense of the term, ought to demand.

CHAPTER IV.

THE LANGUAGE QUESTION.

SOUTH AFRICA is not the only country that has been vexed by the rivalries between the champions of two leading languages spoken by its inhabitants. For a considerable period before the world-war which began in 1914, literary and linguistic Belgium was disturbed by the contentions between the two great sections of its population which respectively spoke French and Dutch, namely, the Walloons and the Flemings; whilst in Canada there was strife between the respective upholders of the French and the English languages. In the Austrian and the German empires there were also struggles to maintain language-rights, though there contention arose not so much between rival races in one population as between a section of the people inhabiting a particular territory and a tyrannical government which sought to impose uniformity of language throughout its dominions. In Switzerland, also, the problem has presented difficulties, though to a slighter degree, because the areas in which French, German, and Italian are each of them dominant have, in the main, coincided with the cantons respectively inhabited by Swiss of French, German, or Italian origin. All these countries have witnessed the same phenomenon—that love of and for one's native tongue is an instinctive and deep-seated sentiment, ranking next to, and sometimes before, love of one's motherland. In other countries, again, such as Ireland, historical, literary, or political reasons have led to the attempted revival of a language which, though no longer in general use, is claimed to be the mother speech of the inhabitants. In such cases, however, the language movement may be said to be artificial, rather than spontaneous.

In South Africa, Dutch is the mother tongue of roughly one-half of the European inhabitants, while English is that of the

other half. That is to say, one-half of the population habitually uses Dutch as the language of the home, or of the church, in private correspondence, or reads newspapers printed in the Dutch language. This is not to say, however, that even amongst the Dutch-speaking portion of the people Dutch is dominant for all purposes. In business transactions the overwhelming proportion of the whole European population of the Union habitually use the English language, which may, therefore, be said to be dominant as the commercial language. And most persons of Dutch origin who are able to read both languages constantly read English books and newspapers, whereas only a comparatively small number of persons of English origin read or speak Dutch, except of necessity—that is to say, as a language taught in the schools, or when it is required for some special purpose of business.

It is only within comparatively recent times that an organized effort has been made to place the Dutch language on an equality, in an official, commercial, or literary sense, with English. When the Cape of Good Hope was occupied by British forces, in 1795, it was the wise and tolerant policy of the first administrator, Sir James Craig, to permit to the original, *i.e.* Dutch, inhabitants the free use of their own language in all official matters, including proceedings of the Courts of justice. This policy contributed largely to the peaceful acceptance of British rule. In 1828, Lord Charles Somerset, who held mistaken views on the subject, decreed that in future English alone was to be the language of the Courts and official correspondence. This enactment appears to have been accepted without complaint, and for over half a century English remained the sole official language. There is no doubt that Dutch continued to be used in daily speech amongst the farming population—other than the British settlers in Albany—, and in the western and northern towns and villages. It is, however, remarkable that in the famous manifesto of Piet Retief, the *Voortrekker* leader, published on the 22nd January, 1837, no mention is made of the suppression of Dutch for official purposes as one of the grievances which led to the departure of the emigrant Boers from the Cape Colony. Dutch, however, naturally became the official language of the South

African Republic and the Orange Free State, although it was not until 1888 that an enactment was placed upon the statute-book of the South African Republic making Dutch the sole official language. At the time of the Boer War of Independence (1880-81) an agitation was set on foot in the Cape Colony for the recognition of Dutch in official proceedings, with the result that in 1884 an Act was passed by the Cape Parliament whereby the use of Dutch was made compulsory, at the request of litigants, in the magistrates' Courts, and permissive, *i.e.* subject to the consent of the presiding judge, in the superior Courts, whilst members might speak in Parliament in either English or Dutch. It is from this period that the movement for the extended use of the Dutch language may be said to date. Those who were either enthusiasts, or who felt that Dutch was not receiving the encouragement which it deserved, moved in two directions—to secure the more efficient teaching of the Dutch language, and to obtain its wider recognition for literary and commercial purposes. They were more successful in the attainment of the former of these objects. Dutch had always been taught in the schools, but with rather less than more efficiency. It was taught as a foreign language, through the medium of English, and not as the mother tongue of half the population—except in the Republics, where it was dominant in the State schools, though even there English was making its way as the medium of communication for commercial purposes. In the early 'nineties a *Taal Bond* (Language Union) was established in the Cape Colony, which conducted examinations in the Dutch language, and strove to impart and to impose a higher and more uniform standard of Dutch teaching than had previously been in vogue in the schools.

Parallel with this, another movement began. The Dutch spoken by most of the people, except as preached in the pulpit or printed in the newspapers, was not the Dutch of Holland, but an extremely corrupted form of it, with far fewer inflexions, into whose vocabulary even Malay and Hottentot words had made their way. This was familiarly known as "Cape Dutch," while a still more debased form was known as "kitchen Dutch." To these, somewhat indiscriminately, the term "Afrikaans" was applied. It was now proposed that

this should be adopted as the national speech, and certain newspapers, as well as books, were printed in "Afrikaans." An effort was also made to use and print a purely phonetic form of the language as spoken in South Africa. It was argued that the only true language was that habitually used by the people. On the other hand, the champions of the language in its original or orthodox form contended that the only true Dutch was that of Holland, whence it had come, and that all other forms of it were merely debasements or *patois*. Thus there were two movements—one for the wider recognition of Dutch, officially and in daily life, and the other for the definite fixing of the shape which the language should assume.

When these movements began, they were, unfortunately, associated with the political activities of the Afrikaner Bond. Certain people who had no concern with the matter, namely, English politicians and publicists who opposed the aims of the Bond, believing, rightly or wrongly, that its main object was to promote republican propaganda in British South Africa, now attempted to criticise and even to interfere with the language movement. They had no grievance themselves, as the English language was firmly established, and needed no artificial stimulus to secure its spread. But they foolishly represented the agitation in favour of the Dutch language, which was a natural and instinctive movement, as a deliberate attempt to injure the cause of English in South Africa. Thus, a colonist of some reputation, speaking at Wellington, with reference to the activities of the Bond, said: "They propose rooting out the English language, making Dutch the chief in Parliament and schools."¹ Others reminded the Dutch that they, or rather their ancestors, had "stamped out the French language."² They were on safer ground when they compared Cape Dutch, to its disadvantage, with the Dutch of Holland, stating that "Parliament is the place where it is proper to look for the best expression of public opinion, and it is as well that this expression should be concluded in a language the civilised nations of the world can understand."³ In any event, criticisms of the kind were exceedingly ill-timed and misplaced, and did much to fan a spirit of racialism which

(1) Greenwell, *Our South African Empire* (vol. 2, p. 141).

(2) *Ib.*, p. 235.

(3) *Ib.*, p. 216.

was already active enough. The result was that the language movement became a political platform. On one side were ranged those who sought to obtain permanence for the Dutch language, in one form or other, and who believed that critics of the movement were filled with hostility to everything Dutch; and on the other were those who held that championship of the Dutch language was equivalent to hostility to the British Empire and British ideals. Such hostility undoubtedly existed within the Republics, but it had no direct connection with the language movement. Even in the ranks of the Dutch-speaking population itself there were contending parties. Those who habitually spoke English were attacked on the ground that they were *Engelsch-gezind* (English-inclined), and they retaliated by stating that as they were unable to determine what was really the Dutch language of South Africa, the safest thing to do was to speak and write English. That there was some justification for this last point of view may be gathered from the fact that one of the regulations of the University of the Cape of Good Hope (now the University of South Africa) provided: "With regard to words and expressions peculiar to the Dutch of South Africa, and used in a sense different from that which they now have in Holland, it will be left to the judgment of each examiner to decide to what extent the use of such words and expressions may be admitted." To leave such matters to the judgment of individual examiners, whose views might be coloured by fads or political opinions, could not tend to uniformity. Nor should it be forgotten that recently, in Holland itself, an association for the simplification of the language had introduced a "reformed spelling," and advocated simplifications in grammar.

The official future of the Dutch language—apart from the form which the language should assume—was definitely assured, at the end of the Anglo-Boer War, by the clause in the Treaty of Vereeniging providing that the Dutch language was to be taught in public schools on the request of parents, and to be allowed in the Courts of law. An honest effort was made to carry out this promise, although the official use of Dutch in the Transvaal and the Orange River Colony was somewhat impeded by the appointment, natural in the circumstances, of

a large number of English-born officials under the Crown Colony system which prevailed until 1907—a policy which, just as naturally, met with much criticism. When the representatives of self-governing South Africa met in the National Convention, they were able unanimously to agree to the insertion in the Constitution of the provision that “both the English and Dutch languages shall be official languages of the Union, and shall be treated on a footing of equality, and possess and enjoy equal freedom, rights, and privileges; all records, journals, and proceedings of Parliament shall be kept in both languages, and all Bills, Acts, and notices of general public importance or interest issued by the Government of the Union shall be in both languages.”¹ There were some members of the Convention who wished to go further, and to secure the compulsory use of the Dutch language through the schools. This resulted in a violent controversy at the time of the inauguration of the Constitution, and the first Union elections were largely fought on this issue—although it was, in the main, a false issue. Ultimately, as we have seen, a compromise was arrived at, and it was agreed that legislation should be introduced and carried in the Provincial Councils whereby, in the lower standards of schools, the home language of the child was to be the medium of instruction. This set the controversy at rest as far as the schools were concerned. Where one language was to be taught as a medium of instruction, the other was to be taught as a language, unless, in the case of any child, its parents objected. The result has proved that there need never have been any controversy, from a political point of view. The overwhelming majority of English-born children learn Dutch, and all the Dutch children learn English. In the end, practically the whole of the South African born population will be bilingual. The advantage will, however, rest with English. It is the commercial language, and the language of the theatre and the cinema. A very large proportion of Dutch-born persons read English newspapers, not only those printed within the Union, but mail papers imported from England; and it is not extravagant to say that for every Dutch book read by an educated person of Dutch origin, he reads ten English books. This is, perhaps, somewhat unfair to the

(1) S. A. Act, sec. 187.

meritorious school of writers who have within recent years been producing Dutch works in South Africa on history and kindred topics.

The want of uniformity in written and spoken Dutch will, however, be felt as a drawback until the fate of the language is definitely settled. Most Dutch-born persons are able to express themselves, in writing and in speech, far more readily in English than in Dutch. During the course of a debate in the Transvaal Provincial Council the writer ventured to deplore this want of uniformity, but was met with the retort that "he need not worry himself about the future of Dutch; the Dutch language will look after itself." This observation is probably true; all that need be said is that, as far as general experience goes, language is a natural growth, and cannot be manufactured by artificial means.

Meanwhile, efforts are still being made to extend the official use of Dutch. A recent enactment of the Transvaal Provincial Council provides that all notices, including street signs, issued by municipal and local bodies shall be in both languages; and another enactment provides that, at the request of one member of a town council, all minutes and proceedings are to be kept and circulated in both languages, unless the majority of the councillors decide that they shall be kept in one language only.

It may be of interest to students of language to notice that the bilingual system has had some curious results. Many South Africans who are familiar with both English and Dutch—especially those whose mother speech is Dutch—appear to be unable to carry on a consecutive conversation in either language. They lapse unconsciously from one language into the other, and so on alternately, until their whole conversation is a medley of both. Again, many Dutch idioms and locutions have crept, by unconscious processes, into English as it is spoken by many persons of South African birth. There is the inability, which the Scotch experience, to distinguish between the use of "shall" and "will." And the Dutch accent has had its influence upon the pronunciation of English in South Africa. A marked feature, also, is the neglect of the aspirate by South Africans when speaking English.

CHAPTER V.

LABOUR PROBLEMS.

THE PERIOD which has elapsed since the Peace of Vereeniging in 1902 has witnessed the rise of a complexity of problems relating to the condition of labour in South Africa. Before the Boer War, there was no such thing as an organised labour party. The great majority of skilled workmen were employed on the Witwatersrand. They were, most of them, of British origin, and they conceived that it was in their interest, as well as their patriotic duty, to stand shoulder to shoulder with their employers in the contest which was being waged with Krugerism. It is, indeed, remarkable, if President Kruger really entertained those Machiavellian ideas with which some of his opponents credited him, that he never acted on the principle *divide et impera*, by taking advantage of or fomenting industrial disputes between masters and men. Had he done so, and had the situation at all resembled that which has arisen in the industrial world since the inauguration of the Union, the *uitlander* population would, in all probability, have been unable to present a united front, and the British Government in consequence might not have felt itself justified in intervening in the internal government of the Republics.

Although there was no organised labour movement, and no strikes occurred, the germs of industrial unrest were in the air. Those who controlled the mining industry on the Witwatersrand and at Kimberley were regarded as a class apart, and were spoken of, in no complimentary sense, as the "capitalists." Feeling against them, however, was not confined to their workmen, but was pretty general among all those classes who had not fared equally well in the battle of life. The standard wage paid to white men employed on the mines was fairly high, when compared with the reward for labour obtainable in other countries. Indeed, many white workers on the Wit-

watersrand were thought to be in an enviable position. A large proportion of them were engaged on "contract" or piece-work, the amount of their earnings being limited only by the quantity of work they were able to perform with the aid of unskilled native labourers. Some of them earned as much as £100 per month, and were justly entitled to regard themselves as ranking in the aristocracy of labour, more especially when it is remembered that all unskilled work on the mines was, and is, performed by natives. This unskilled work includes the actual labour of drilling holes by hand for blasting, which is strictly a miner's work, as well as the loading of trucks. On machine work, the most important of which is drilling, only white labour is employed, and the pressure of trade-union opinion has hitherto made it impossible for natives to be employed (nominally) on this class of work. Nevertheless, both in the mining industry and outside of it, all white men engaged in working on machines, or in such applied occupations as the electrical or plumbing trades, require or avail themselves of the unskilled assistance of natives.

During the period immediately following the Boer War, his comparatively high rate of wage was the only advantage which the white miner possessed. In other directions, very little provision was made for his comfort. He was regarded only as a part of the machinery for producing gold. A more enlightened policy, however, prevailed at Kimberley, where for several years the De Beers Company had made fairly adequate provision for the social needs of their workmen, and established a workmen's settlement at Kenilworth. On the Witwatersrand, however, very little was done to provide for the recreation, physical or mental, of the white miners; nor did the law make any provision for suitable compensation to workmen in the event of accident or industrial disease. During the period of Crown Colony government (1902-7) no attempt was made to legislate in this direction, although there were models ready to hand in the English statute-book, such as the Employers' Liability Act of 1880 and the Workmen's Compensation Act of 1897. If a workman in the Transvaal met with an accident, he was left to his remedy at common law, under which he might only recover damages if he proved

negligence, though, happily for him, the unjustifiable English defence of "common employment" had not been imported into South Africa. The attitude of the mine-owners towards their employ  s was due, perhaps, to want of thought rather than to want of sympathy. Whatever the cause, it began to arouse hostile feelings. In 1904 public attention was directed to the fact that a large number of miners on the Witwatersrand were suffering from a specific industrial disease, miner's phthisis, and that many of them had died of it. Feeling was aroused, and a government commission was appointed, although no legislation was attempted. Efforts were, however, made to ameliorate the condition of the miners in other respects. Recreation halls and grounds, and libraries were established. On the other hand, it was asserted that the blame for contracting phthisis lay with the miner himself, and stringent regulations were made to compel him to work or to change his working dress under proper hygienic conditions. No attempt was, however, made to compensate those who suffered from the disease. It was in these circumstances that a Labour Party, on a small scale, came into being. This party relied on the assistance and sympathy which it might obtain from the party led by General Botha, which it was expected would come into power on the establishment of responsible government. Its legitimate expectations were not disappointed. Immediately on coming into office, the Botha Government introduced and carried a Workmen's Compensation Act (1907), and this was followed by the Miner's Phthisis Allowances Act. Nevertheless, once fairly launched on its career, the Labour Party was ambitious of attaining the status of an independent political group. After the inauguration of the Union, its leaders resolved to act independently of the South African Party led by General Botha, and, in fact, assumed a hostile attitude towards it, declaring that the Botha Government was unsympathetic to the aspirations of labour. No great stride, however, was made by the Labour Party until after the general strike in 1914, when the deportation of some of the more prominent strike leaders by the Government resulted in the election of a Labour majority in the Transvaal Provincial Council. In the Union Parliament, however, the Parliamentary

Labour Party has remained small in numbers, though none the less vocal for that.

After the inauguration of the Union, further legislation was carried which had for its object the improvement of the conditions under which miners, artisans, and other workmen lived and laboured. A Mines and Works Act was passed, and under the powers which it conferred regulations were promulgated for securing safety in mines and other works. Then came a comprehensive Workmen's Compensation Act for the Union, improved Miner's Phthisis Acts, a Factories Act, and an Act for the protection of workmen's wages by attachment of moneys due to a contractor employing such workmen. Shop Hours Ordinances, regulating the hours and conditions of labour in shops, were passed by the various Provincial Councils. Apart from this, the general trend of legislation was socialistic. In the Transvaal, education, both primary and secondary, was free, and there was free hospital treatment without any taint of pauperism. The existing parliamentary franchise in that Province (due to Sir Henry Campbell-Bannerman) was extremely liberal, and during the period (1914-17) when a Labour majority had power in the Transvaal Provincial Council it passed (without opposition from the central government) a municipal franchise law whereby the vote was given to aliens and convicted persons. A Trades Disputes Act was also passed by the Parliament, which, however, has not been either frequently or successfully invoked. During 1917 a select committee of the House of Assembly reported in favour of the introduction of a minimum wage, although an Act embodying this principle has not yet been passed. Nor has the principle of an eight hours' day for miners yet received statutory authority, although it is, in fact, in practical working. But there has been sufficient legislative achievement to indicate that, though the South African Parliament is sometimes described as a farmers' legislature and conservative in its tendencies, it has lent a fairly ready ear to the demands of labour, organised or unorganised. Extreme demands, such as that for the nationalisation of the land and all means of production, have been resisted; nor are farmers' representatives, as a body, favourable to proposals which aim at a high tax on

unimproved land. But certain principles of state socialism, in a modified form, are familiar. In the Transvaal, the Gold Law authorises the Government to establish State mines; and government mining areas have been leased by the Crown to various companies on a royalty system, though it is claimed that this does not correspond to the original intention of the law. In the Transvaal and the Orange Free State, the Crown has an interest in every diamond mine, varying from forty to sixty per cent.; and this was imposed as an *ex post facto* measure in the case of the Premier Mine, several years after that undertaking had begun its operations. Nor must it be forgotten that the railways and harbours of the Union are owned and worked by the State.

Parallel with the political Labour movement, there has been a fairly continuous effort on the part of the Trades Unions to secure better conditions of employment for workmen. The Unions have been organised in much the same way as they are in England and Australia, and the contest between employers and employed has presented much the same phenomena as have been witnessed in other countries. The *Official Year-Book of the Union* mentions 41 industrial disputes as having occurred between the years 1906 and 1916, whereof 25 resulted in strikes, more or less prolonged. Of these, the most important were the miners' strike in 1907, the tramway strike at Johannesburg in 1911, the miners' strike at Johannesburg in July, 1913 (followed by a sympathetic strike of building trades and tramwaymen), and the strike of railwaymen in January, 1914, followed by a sympathetic "general" strike.¹ During the strike of 1907 the Government intervened, for purposes of protection only; but in the strikes of 1913 and 1914 martial law was proclaimed, that of 1913 being attended by riots and loss of life, while after the strike of 1914 the Government resorted to the drastic remedy of deporting the ring-leaders. In the case of more recent strikes, partly in consequence of the fact that both sides realised the seriousness of a stoppage of work during the existence of war conditions, a much more conciliatory tendency has prevailed, although, on the whole, the advantage has rested with the workmen, who

(1) A three months' strike of the building trade during 1919 resulted in the virtual defeat of the workmen, who, though they obtained shorter hours and a greater hourly wage, received a smaller aggregate weekly wage.

have in large measure obtained concessions of their demands. A municipal strike at Johannesburg, May, 1918, resulted in the grant to employes of far more favourable terms—in the shape of wages—than they had ever anticipated. Certain Labour leaders have declared that the salvation of the people they represent can only be attained by constitutional means, through the medium of the ballot-box. In spite of their professions, however, they have found it convenient to rely mainly on the time-honoured and more forcible methods of the strike, which, of course, furnishes a convenient and ready weapon, particularly where, as in the case of a municipality, the whole machinery and conveniences of ordinary life may readily be brought to a standstill.¹ So far as parliamentary methods are concerned, the leaders of the Labour Party, probably owing to lack of training or experience, have achieved very little. They had an excellent opportunity of demonstrating their abilities during the period between 1914 and 1917, when there was a Labour majority in the Transvaal Provincial Council. Setting out with an ambitious programme, their legislative and administrative performances were very small. This is ascribed by the Labour leaders themselves to the fact that they refused to take offices in the Provincial Executive, owing to the peculiar nature of its constitution under the South Africa Act, and to the circumstance that their most ambitious measure (a land tax), which they passed in the Provincial Council, was vetoed by the Union Government.

Through their Trade Unions, and their Parliamentary representatives, and largely owing to the liberal legislative policy which has been inaugurated by the Government, the skilled workers have a fairly hopeful outlook. The position is far more serious when we come to contemplate the condition of those white persons who have no trade to fall back upon, and, whether through economic pressure or their own fault, are compelled to lead a precarious existence, often on the very verge of starvation. There is no organised State system of poor relief, although occasional relief is afforded by such institutions as the Rand Aid Association, which gives charit-

(1) During a municipal strike at Johannesburg in April, 1919, the employes formed a "Board of Control," which purported to carry on municipal undertakings for several days during the strike. It had no real power, but nevertheless asserted a new principle.

able relief to those who are in immediate need. The Salvation Army has instituted farm colonies on the same models as those which exist in England and other countries. Public sentiment, however, is opposed to anything in the nature of State charity to the unemployed, and there is no possibility of instituting anything like the English workhouse system. The only charities which are tolerated are such as are applicable to special classes of the community in special circumstances, such as hospitals, asylums, leper institutions, homes for the deaf, dumb, or blind, orphanages, and rescue homes. But so far as paupers or unemployed persons generally are concerned, it is argued that the State should provide opportunities of free employment. At the time of the first serious strike in the Transvaal, in 1907, the Government offered to employ a large number of unskilled whites on the railways at a wage of three shillings and sixpence a day. The cause of the unskilled whites was espoused by the political Labour leaders, who advised their *protégés* to refuse this offer, on the ground that the sum offered was not a living wage. Later on, the Government were able to offer employment to unskilled whites at the rate of five shillings a day, a wage equal to that received by many skilled artisans in Europe. In these matters, however, demands are always progressive, based partly on the alleged increase in the cost of living. The report of the Economic Commission, issued in 1914, showed that the cost of living within the Union was greatest at Pretoria, Johannesburg, and Bloemfontein. The most serious factor was the cost of house-rent. For purposes of comparison the following figures will indicate rent *cost*, which is far from being the same thing as rent *value*: taking the standard of working class rents in 1913 at Johannesburg as 100, the average rental throughout the Union was 80, in the United States 47, in Australia and New Zealand 46, in Canada 45, Germany 23, England 23, France 22, and Belgium 17.¹ It is obvious that the cost of rental is the same for an unskilled worker as it is for a skilled artisan; and there is much to be said for the contention that the existing standard of a living wage is far too low. It has now come to be generally recognised that even an unskilled labourer cannot be ex-

(1) See a summary of the whole position in *Official Year Book of the Union* (pp. 299-304).

pected to live, still less to bring up a family, on a wage lower than ten shillings a day. This position has been accepted by the Town Council of Johannesburg, which pays its unskilled white labourers at a minimum average rate of ten shillings a day; and it is only the state of the Provincial finances which has prevented the Transvaal Provincial Council from adopting the same standard, so far as labourers employed by the Provincial Administration are concerned. Unfortunately, in accordance with general economic experience, a mere increase in wages is at best only a partial or temporary remedy. It has been found that an increase in wages is almost invariably accompanied by an increase in rentals and commodities, so that everything goes round in the familiar "vicious circle." Artificial limitations of rentals, as of the price of commodities, are futile, and the only remedy will be for the State or the local authorities to take in hand the provision of an ample supply of cheap workmen's dwellings, which will, of course, entail a considerable outlay. It is far more difficult to see how a State can provide "employment for all." State-owned organisations, such as the railways, can only employ a certain number, beyond which the undertaking would become unprofitable or uneconomical. All that can be expected is that the State should provide opportunities for increased employment, by encouraging immigration, promoting irrigation, and providing land settlement on a cheap scale. It has also been strongly urged, from time to time, that the poor man will be "given a chance" by increased facilities for prospecting for gold and diamonds. Experience, however, shows that, except at the alluvial diggings at Bloemhof and along the Vaal, mining in South Africa is an undertaking which requires a great amount of initial capital. Nevertheless, there is no reason why every encouragement should not be given to the individual mining prospector.

While there are many unskilled labourers who are eager to obtain steady employment at a living wage for themselves and their families, there are, unfortunately, many thousands who will not engage in regular work even if it is offered to them. These, though indistinguishable socially from their more industrious brethren, belong to the "poor white" class, corre-

sponding to the "white trash" of the Southern States of the American Union. They suffer from constitutional indolence, which has been attributed by some to their contact with the natives. This is hardly fair to the natives, who as a general rule are industrious, and not afraid of manual labour, whether in the towns or in agriculture. The true explanation may be that the presence of a large native population doing most of the unskilled work renders that class of work "degrading" in the eyes of the white man, who would, in many cases, remain unemployed rather than do "a nigger's work." But unemployment inevitably spells poverty and degradation. In South Africa there is the same tendency as is noticeable in England and other countries for the rural population to move into the towns, and to merge itself into the urban population. The result has been that many of the poorer class of farm labourers have gone to crowd the congested poor districts of such towns as Johannesburg, thereby increasing the competition for labour, and strengthening the ranks of the unemployed. They readily succumb to the more meretricious allurements of town life, such as are afforded by the race-courses and cinemas. The existence of a vast illicit liquor traffic with the natives offers a temptation which many cannot withstand, and the result is that an appalling number of "poor whites" have gone to swell the ranks of the prison population, while their daughters are often compelled to seek a livelihood on the streets. In many of these congested districts, owing to want of sufficient provision for the separate housing of natives, the "poor white" lives alongside the native, if not in the same tenement or yard, and the consequence has been that he has become still more degraded in habits and in standards of life.

The Government has not been indifferent to the problem presented by the "poor white." Agricultural colonies have been established, which have met with a fair amount of success. Indeed, the encouragement given to agriculture as a whole, and the measures taken in connection with irrigation and the conservation of water, will in time do much to offer increased opportunities of employment to the agricultural labourer. Nor has the better class of artisan been unsympathetic to the cause of the "poor white." The Labour organisations, while

adhering to their own rules so far as the employment of skilled workmen is concerned, have not been indifferent to the necessity for measures calculated to improve the lot of the unskilled worker, partly on altruistic grounds, and partly because they realise that on the amelioration of general labour conditions the future of the skilled worker also depends. The truth appears to be that much may be done with the "poor white" if he be "caught young." A creditable beginning has been made with the establishment of commercial and industrial schools, agricultural schools, and schools of forestry, and the results have given satisfaction. There is nothing to indicate that the son of a "poor white," given a fair opportunity of developing the best that is in him, will not become a useful citizen. But in every case there must be training for definite employment, and opportunity for such employment. One of the worst features dwelt upon by teachers engaged in night schools and continuation classes is the tendency of the children of the poorer classes to drift into "blind alley" occupations. This must be definitely checked. It is along these lines that improvement is to be sought. As for the adult "poor white," who has definitely elected to lead a life of idleness or crime, it seems that very little can be done—though even here it cannot be said that all hope of reclamation has definitely vanished.

Another factor, perhaps the most formidable, in the labour situation, is the presence of the native. Hitherto the overwhelming mass of unskilled labour within the Union has been performed by natives, whether on farms, in towns, or on the mines. It has been said that "in the consideration of any aspect of labour and industrial matters the presence of native, Asiatic, and other coloured workers largely outnumbering the white workers of the country must be accepted as a qualifying and in some cases a governing factor."¹ From the earliest days of European occupation, the "rough" work has always been performed by natives, and comparatively few white men have cared to do purely manual work, such as digging, ploughing, carrying loads, excavating in mines and quarries, ballasting, and the like. At first the supply of native labour was adequate to the demand, but in course of time it was found

(1) *Official Year Book of the Union* (p. 279).

that greater inducements must be offered in order to attract the native from his agricultural and pastoral avocations in the aboriginal territories. When it was found that sugar could be cultivated profitably in Natal, the planters embarked on a scheme of immigration for natives of India. The discovery of the diamond fields in Griqualand West led to an increased demand for native labour. Attractive rates of pay were offered, and many natives came to the "fields" from Basutoland and other parts, although it was found that most of them would not remain permanently, but preferred to return home for periods more or less prolonged. This system has continued to the present day, although in later days the diamond mining companies preferred to engage "boys" for a stated period. The development of gold-mining in the Transvaal resulted in a vastly increased demand for unskilled native workers, and the problem of satisfying this demand has remained insistent and continuous.

Before the Boer War, it was alleged that the Kruger Government had failed to facilitate the introduction of natives from outside the Transvaal, and that it was responsible for the high wages paid to them on the Witwatersrand. In *The Transvaal from Within*, Sir Percy Fitzpatrick says, of the conditions then prevailing: "If decent protection and facilities were given, the wage could be reduced to £1 15s. per month. The [Boer] Government has it in its power to give the mines labour at this price, but, as a matter of fact, there is no desire to see the lower-grade mines working. A reduction of £1 per month—that is, to £2 3s. 6d.—would mean an annual saving of £650,000." There can be no doubt that since the Boer War every facility has been given for the importation of native labour on the Witwatersrand. Nevertheless, the standard native wage still remains at £3—notwithstanding the fact that under the *modus vivendi* with the Mozambique Government there is free importation of native labourers from Portuguese territory, and despite the fact that from 1904 an ill-starred attempt was made to supplement the supply of natives by Chinese labourers. Nor is it easy to see how, in existing conditions, a reduction of native wages can be effected.

"Boys" who are employed in domestic service, in shops, and in factories, also receive an average of £3 per month, and they are accustomed to a higher standard of comfort, if anything, than their compatriots on the mines. Very few house "boys" voluntarily exchange domestic service for mine work. Notwithstanding all this, the rate of native pay is far lower than what is needed to maintain a white man at the minimum of existence regarded as necessary in the case of Europeans. The result is that, except under purely artificial conditions, there is no room for the unskilled white labourer in competition with the native labourer. Governments and municipalities may be compelled, by a wave of popular sentiment, to employ unskilled whites under what is practically equivalent to a bounty system. But no private employer would dream of employing white labourers when he can obtain natives at a much lower wage, who are able to do the work just as efficiently. When, in 1918, the Johannesburg Municipality proposed to get rid of certain unskilled white labourers for whom it had no work to do, a cry of indignation was raised, but no private employers offered to dismiss their native workmen and engage in their stead the white men who were threatened with dismissal.

Nor is the native a competitor with the unskilled white worker alone. There is an ever-increasing number of skilled artisans amongst the natives, and the "coloured" classes, generally known as "Cape boys." In the Cape Province, they are workers in factories and on the railways, compositors, farm managers, wagonmakers, and their competition threatens the skilled white worker. Mr. F. H. P. Creswell, M.L.A., the leader of the Parliamentary Labour Party, began his career by advocating the adoption of a white labour policy, which would mean the gradual elimination of the native from all fields of competition, skilled and unskilled. It has been stated that he never had a fair chance to complete the "experiment" he made in connection with the matter at the Village Main Reef mine, by the sole employment of white men in all classes of mine work. Be this as it may, the Labour Party has found it necessary to admit coloured men within its ranks in the Cape Province, though in the Transvaal it professes to

adhere to the white labour policy. It is obvious that, as colour knows no Provincial boundaries, there can only be one uniform policy in this matter. If a coloured man is to be tolerated in the labour market in one Province, he must be equally so in another; and *vice versâ*. Whatever the attitude of Europeans, whether members of the Labour Party or not, in regard to the employment of native or coloured labour, there are signs that not only coloured men, but natives as well, are beginning to realise the value of combination in order to protect their economic, apart from their social, interests. Reference has been made¹ to Mr. Moffat's statement that the natives "are not going to be content to be hewers of wood and drawers of water for ever." They have had many opportunities of witnessing and drawing deductions from spectacles of industrial strife between white employers and workmen, and they have begun to employ the familiar weapon of the strike—a weapon which, given a fair degree of moderation and self-control, is comparatively harmless in the hands of white men, but is capable of unimagined danger when wielded by people unaccustomed to that degree of self-restraint upon which the European prides himself. Thus far, there has been no strike on a large scale amongst native workers. One was threatened in July, 1918, but was fortunately averted; and there are reasons for believing that the evil day has been postponed for a considerable time to come. But the possibility exists, and it will be well for the European population to be prepared for it. There have recently (April, 1919) been serious disturbances amongst the natives on the Rand, the pass law being alleged as the main grievance. It must also be remembered that in recent years there has been much breaking-down of tribal distinctions, and that the spread of education—sedulously fostered, whether in wisdom or unwisdom, by education departments and missionaries—amongst the natives, tends strongly and continually to a solidarity of opinion, which is maintained by an intelligent press, writing, very naturally, from the native point of view.

Whether segregation of the natives is a possible, or a practical remedy has been discussed previously. But as long as matters remain in their present condition, the native worker

(1) See Part II., chap. III.

will come into competition with the white man, whether skilled or unskilled. It is this circumstance which differentiates the industrial situation in South Africa from that prevailing in most, if not all, other countries; and the pressing nature of the problem may ultimately compel the white "Labourite," much as it may go against the grain with him, to make common cause with his employer in an effort to solve it. Whatever the solution, it must be one that will reckon with the continued presence within the Union of a large and, given fair conditions, law-abiding native population.

CHAPTER VI.

THE TREATMENT OF ASIATICS.

ALTHOUGH PERSONS who are classed as Asiatics within the Union of South Africa are all of Asiatic and, in the main, of Indian origin, it must not be forgotten that a great proportion of them are natural-born inhabitants of South Africa. At the last official census of the whole population, taken in 1911, there were 152,309 Asiatics, of whom 149,791 were classed as Indians—in all, between 2 and 3 per cent. of the total population. Of these Indians, 63,776 were born within the Union, and were entitled to residence therein equally with any European or Bantu. Among the Asiatics were a considerable number of Malays, chiefly resident at Capetown. Their ancestors first came to South Africa in the early days of the Dutch East India Company, being imported as slaves, and the Cape Malay of to-day, except in physical characteristics and in religious observances, retains no connection whatsoever with the inhabitants of the Malay Peninsula or the Malay Archipelago, whether in language or in habits of ordinary life. Indians from the continent of Hindostan first came in large numbers to Natal in and after 1860, being imported as indentured labourers to work in the sugar, coffee, and tea plantations of that Colony. Their descendants regard South Africa as their motherland, and retain, in the main, a sentimental regard for India, largely fostered by the restrictions imposed upon them by South African laws. They have retained the language of their parents in daily speech, and the existence of a large number of Indian schools and the teaching of their own religious observances and the dissemination of Indian literature constitute a guarantee of its permanence. In the wake of the indentured agricultural labourers came many traders, free artisans, and waiters; and by 1911 the Indian population of Natal had increased to 133,031, whereas in 1918 the European inhabitants

of that Province only numbered 120,465. The Indian population of the Transvaal was 10,048 in 1911, and of that number 3,065 owned the Union as their place of birth. It has, however, been stated, and there is some justification for the assertion, that when, at the close of the Anglo-Boer War, permission was granted to Asiatic refugees to return to the Transvaal, large numbers who had never been in the country before were enabled to gain entrance owing to the absence of proper records. In the Orange Free State, owing to the early initiation of a policy against Asiatic immigration, the Asiatic population has been almost entirely negligible, and it only numbered 106 in the entire Province at the census of 1911. Of the 6606 Indians in the Cape Province at the same census, 1381 were returned as having been born within the Union.

The opposition to the introduction of Indians into the Free State appears to have been based, in the main, on racial grounds. The white population in that territory was exceedingly small, and felt instinctively that it could not afford to risk the introduction of an alien element by which it might speedily be swamped. It had the object-lesson of its near neighbour, Natal, before it. In Natal, itself, however, the existence of an Asiatic labouring population was felt to be an economic necessity, and no attempt was made to restrict the importation or the influx of Asiatics until after the inauguration of the Union. The passing of the Union Immigration Act of 1913 (No. 22), under which the immigration of Asiatics has been almost entirely stopped, was due to influences outside of Natal, and as recently as 1909 a Natal Commission, reporting on Indian labour in that Colony, stated that "absolutely conclusive evidence" had been placed before it that several industries owed their existence and present conditions to Indian labour, and that, if the importation of such labour were abolished, under existing conditions those industries would decline, and in some cases be abandoned entirely. Subsequent events have not, however, justified these prognostications. Notwithstanding the stoppage of Indian immigration, industries in Natal, including those which were chiefly dependent upon Indian labour, have flourished and increased, instead of declining. This may, in part, be due to the fact that

there are already sufficient Indian labourers in Natal, while the natural increase of the local Indian population may remedy any future deficiency in the number of labourers.

After the annexation of the Transvaal in 1877, a number of Indians made their way to that territory from Natal, and established themselves as traders and hawkers. For some years they were allowed to pursue their avocations without interference, but in 1885 the British traders, who were their only rivals, took alarm, and during that year the Pretoria Chamber of Commerce, consisting mainly of Englishmen, took action, and succeeded in inducing the *Volksraad* of the South African Republic to pass a Law (No. 3, 1885), whereby Asiatics were declared incapable of obtaining the franchise; were prevented, though not retrospectively, from becoming owners of landed property; were required, on settlement for trading or other purposes, to register themselves and pay a tax of £25 (subsequently reduced to £3); and were to reside only in quarters specially assigned to them, within which quarters, however, by a subsequent amendment of the Law, they were entitled to own land. The efforts of the British traders to deprive the Indians of a franchise which they themselves did not possess, and did not want, savour of irony. The restrictions against the holding of land still continue, although in recent years they have been evaded by the formation of limited companies owning land, in which the shareholders are Asiatics. Attempts to restrict Asiatic immigration into the Transvaal began in 1906, when they were required to submit themselves "voluntarily" for finger-print registration. There was subsequent legislation in connection with Asiatic immigration during 1907 and 1908, and during the former year a passive resistance movement was begun. Mr. G. K. Gokhale subsequently visited South Africa in an attempt to arrange an accommodation between the Government and the Indian residents, although it cannot be said that any permanently satisfactory results were arrived at. Nevertheless, the more obnoxious features of the registration system were removed. The Act of 1913 entirely restricted the future immigration of adult male Asiatics (*i.e.* over sixteen years of age) into the Union. Complaint was made of certain of its terms, notably one which

affected the recognition of Indian marriages by preventing the immigration of male children of such unions, where the father was domiciled in South Africa while the children were born in India. This, together with the imposition of a poll-tax of £3 on time-expired Indians in Natal (which had been in force since 1895), led to serious disturbances in Natal. A Commission was appointed to investigate their grievances, and reported in 1914, with the result that during that year an Indian Relief Act was passed, whereby the poll-tax was abandoned, and recognition was given to Indian marriages as far as they affected locally-domiciled Indians. It cannot, however, be said that the settlement of the marriage question has been entirely satisfactory, or that it can be regarded as permanent. In this respect the South African judiciary must share some of the responsibility. Many years ago it was laid down by the Courts that Mohammedan marriages cannot be recognised, as being solemnised according to a system which tolerates polygamy. While this may be correct, as a matter of strict law, there seems to be no reason why recognition should not be accorded to individual marriages which are not in fact polygamous. In 1860 an Act was passed at the Cape for the appointment of local Mohammedan marriage officers, who might lawfully solemnise marriages between Mohammedans. But marriages not so solemnised, or which are solemnised abroad, though in fact monogamous, are not accorded recognition. This is felt as a hardship by a considerable section of the Asiatic population, and the removal of all restrictions in the way of recognition of Indian or Mohammedan marriages, solemnised in accordance with their own customs, as long as they are not polygamous, would hurt no one, certainly not the European population. The foundation for the existing rule, according to a great legal authority (Story), is that "Christianity is understood to prohibit polygamy, and therefore no Christian country would recognise polygamy." But the interests of Christianity could not suffer if marriages, solemnised in India according to Indian customs, were recognised in South Africa, as long as they are not polygamous in the particular case seeking for recognition. These appear to be the principles acted upon by the Judicial Committee of the Privy Council in Eng-

land, which recognises marriages celebrated in India, as long as they are monogamous. The other English Courts appear to follow the rule enunciated by Story, but there appears to be no reason why, in this age of more enlightened tolerance, it should not be abolished where the marriage is not in fact polygamous.

The history of the anti-Asiatic movement in South Africa indicates clearly that, except in the Free State (where it was feared that the small white settlement would be speedily outnumbered), it had its origin in economic rivalry. In Natal, Indians were welcomed as long as they were willing to work as labourers and assist in building up the white man's industries and the white man's fortunes. It was only when they began to compete in business and to emerge as serious commercial rivals that alarm was felt, and restrictive measures were adopted. In the Transvaal, as we have seen, the English traders of Pretoria moved in the matter at a comparatively early date. It is doubtful if the Boers, if left to themselves, would have worried much about the Asiatics. Even at the present time, in the country towns of the Transvaal, such as P'otchefstroom and Rustenburg, the Boer section of the population deals freely with the Indian traders. Nor have the aboriginal natives seriously resented the presence of the Indians, who do not compete with them, but, on the contrary, give the natives trading facilities which are sometimes denied them elsewhere. In fact, intermarriage between Indians and Bantus is not unknown. It is difficult to say whether the presence of Indians affects the European population from a social point of view. The Indians in the towns reside almost exclusively in their own separate quarters, and only come in contact with white persons when hawking fruit or vegetables, selling Indian products, or exercising the calling of waiters in hotels or clubs. The majority of them lead a peaceable, orderly existence, and in no sense can it be said that they constitute a direct social menace. It must, however, be admitted that, owing in some measure to neglect on the part of the white local authorities, many Asiatics live in insanitary surroundings, and to this cause are traceable outbreaks of plague and small-pox which have occurred in the past. The strict en-

forcement of public health laws should, however, reduce these dangers to a minimum.

It must, however, be admitted that, justifiably or not, there exists a widespread anti-Asiatic sentiment on the part of the European inhabitants of the Union. It is in the highest degree unlikely that there will be a reversal of the policy whereby future Asiatic immigration is prohibited. The existing sentiment, on the part of the white population at large, probably had its origin in the ill-advised introduction of Chinese labourers into the Transvaal in 1904. That experiment is not likely to be repeated; but its effects and its lessons remain. On the other hand, it is not probable that anything will be done to interfere with the rights of Asiatics now within the Union.¹ Thoughtful persons realise that the situation must be handled with tact and forbearance, and that due regard must be had to the feelings of India, as a co-partner in the Empire.

(1) By the Asiatics (Land and Trading) Amendment Act, 1919, Asiatic companies formed to hold land are only recognised if such land was acquired before the 1st May, 1919.

CHAPTER VII.

AGRICULTURE, IRRIGATION, AND LAND
SETTLEMENT.

DURING THE last half-century, mining has been the most-advertised industry in South Africa, and it has certainly contributed very largely to the development of the country, and to the growth of the white population. Nevertheless, agriculture (including both the various forms of cultivation of the soil and all other pastoral pursuits, such as the raising of livestock and the sale of the products derived therefrom) has always been the principal industry of the people, and bids fair to maintain its position. Before the days of white settlement, the aboriginal inhabitants, notably the Hottentots, owned large herds of cattle, as well as flocks of "Cape" sheep, distinguished by their broad and heavy tails, composed principally of fat. Horses were not indigenous, and were imported by the Dutch administrators from Java and Arabia, and later on from America and England. Under the Dutch East India Company, numbers of Friesland cattle were introduced, while sheep were brought from Holland and Spain, including a fine strain of merinos from the latter country (1790). The British settlers of 1820 imported numbers of English sheep, and later on other importations followed from Saxony and France. By the middle of the nineteenth century an excellent breed of South African sheep was produced, and sheep were actually exported from this country to Australia, forming in part the nucleus of the great sheep-farming industry of the Commonwealth. Although sheep-farming became and remained a staple branch of South African industry, the wool largely deteriorated in quality, owing in part to the nature of the vegetation (principally in the Karroo) upon which the sheep were fed, and partly to the ravages of scab, which became especially virulent during the last two decades of the nineteenth cen-

tury. The Cape Government, in the face of much opposition from certain sections of the farming community who resented administrative interference, earnestly took in hand the eradication of scab, and a thorough system of dipping and inspection of flocks has resulted in a vast improvement in the quality of the wool produced. Within recent years, also, many thoroughbred rams have been imported, with consequent betterment of the breed of sheep. Not only does the future of South African wool appear to be assured, but it is likely that a considerable export trade in mutton will be developed. During 1915 the exports of mutton, though not very great in quantity, exceeded the imports, and this fact demonstrated that South Africa, at any rate, is capable of becoming self-supporting as far as this product is concerned. The European War has, however, had adverse effects on the sheep-farming as well as on other industries, and some period may elapse before a stable condition of affairs comes into existence. Generally, it may be said that most parts of the country inhabited by white men are suitable for sheep-farming. The Orange Free State, in particular, has made great strides, being second only to the Cape (the oldest Province). In 1916 the average number of sheep to the square mile was, in the Orange Free State, 171·28, in Natal, 65·20, in the Cape Province, 52·46, and in the Transvaal, 40·69. Apart from mere production, there is considerable room for expansion of industry in connection with wool. At one time (in the 'seventies and 'eighties of the last century) there was a considerable amount of wool-washing; subsequently it declined; and although there has recently been a revival, producers have generally found it more profitable, or less troublesome, to ship their wool in the rough, to be washed overseas. There are few woollen factories worthy of the name, although factories for the production of blankets have been fairly successful. Obstacles are the cost of production, the large importation of competing wares, and certain natural difficulties, such as climate and water, which are said to stand in the way of successful local manufacture.

From the oxen possessed by the natives, which, on account of the want of waterways and other means of communication,

were largely used for transport or "trek" purposes, a distinct type, known as the "Afrikander," was evolved, hardy, and eminently adapted to draught purposes. To this animal, whether used in the plough or in the transport of machinery and building materials to the diamond and gold mines or to Rhodesia, South Africa owes much of its development. In recent times, more especially since the great outbreak of rinderpest in 1896, other breeds of cattle have been introduced from Europe, with the result that a large dairy-farming industry has sprung up, while a large market for slaughter cattle has been created and supplied. Latterly, beef has been exported, and, with the use of improved methods of grading and fattening, a steady market is likely to be secured in England and, perhaps, elsewhere. The state has taken a hand in the matter, and the Agricultural Produce Export Act, 1917, provides for the proper inspection and grading of meat. Dairy farming has made considerable strides during the past quarter of a century, and not only is there a ready sale for cheese locally made, which is of good quality, but an export trade has begun in butter, of which over 4,000,000 lbs. were exported in the year 1916-17. Poultry farming is still in its infancy, though recently attempts have been made to foster the export of eggs. In recent years, also, fisheries have developed along the coasts of the Cape and Natal, and the supply of fish is now constant and adequate. Many European varieties are, however, either not found or caught in South African waters, and there has always been a large importation of European fish, cured or tinned, such as herrings and sardines, with salmon from Canada. This importation largely ceased on account of the European War, with the result that a new fish curing and drying industry sprang up locally. On the whole, it may be said that South Africa is well able to produce meat and fish for local requirements, and ought within a few years to develop a considerable and lucrative export trade.

Much the same remarks apply to cereals. The principal product is maize or mealies, which has always been the staple food of the aboriginal population. It is consumed to some extent by the white people, an excellent porridge being made from mealie meal, and is a valuable food for horses, pigs, and

poultry. In recent years an export trade in mealies has been created, only mealies of good quality, passed by government graders, being exported. Mealies are chiefly grown in the Free State, the southern and central Transvaal, and the eastern part of the Cape Province. In central Natal the greatest proportionate yield (fifteen bags per acre, of 203 lbs. to the bag) is obtained. In many cases two crops a year are reaped, but during certain years (especially in 1909 and 1917-18) abnormal rainfall has seriously injured the crops. Ordinarily, however, South African maize has a lower moisture content than that produced in the United States. The value of the maize export from South Africa in 1916 was £877,368. The maize industry offers great possibilities, not only on account of the growing export trade, but because an infinite number of articles other than foodstuffs can be manufactured from the grain and its bye-products.

Wheat is grown on a considerable scale in the south-western districts of the Cape Province, and in the "conquered territory" of the Free State, as well as in Basutoland; and every farmer throughout the Union has his wheat "patch." It cannot, however, be said that the supply is adequate to the demand, and for many years past there has been a considerable importation of flour from other countries, especially Australia and the United States. The poorness of the soil in many parts militates against success, and experts recommend a far more plentiful use of manure, as well as more intensive cultivation. It must be admitted that hitherto exceedingly primitive methods of wheat-farming have been adopted, and that more skilled attention to modern agricultural methods is required in order to place this highly necessary branch of farming industry on a sound basis. Oats are grown more readily than wheat, particularly on poor soils, and there is a considerable market for oat-hay, which is used to feed cattle and horses. In recent years, lucerne has become a popular food for cattle and ostriches, and has been profitably farmed, being easy to grow, and producing frequent crops. Rye is not much cultivated, but barley is an important crop for dairy-farming. Generally, it may be said that, apart from mealies, much still remains to be done to place grain-farming on a

satisfactory basis. Even as far as hay and grass-growing is concerned, farming is still in its infancy. There is every encouragement for the South African farmer to make progress in these matters, and all that is needed is more energy and the application of scientific methods. A paternal government which has given special attention to agricultural experiments and education, has done much to foster the growth of a scientific and payable farming industry, and it is to be hoped that before many years have passed South African grain of all descriptions will make its way into the markets of the world.

In the case of one industry, viticulture, South Africa at one time held a proud position. From the early days of the Dutch settlement, vines were planted in considerable numbers in the neighbourhood of Cape Town, Stellenbosch, and Paarl. Until the middle of the nineteenth century, Constantia and other Cape wines were highly esteemed by connoisseurs in Europe, and a considerable export trade was developed, particularly with England. Cobden's Commercial Treaty with France, in 1860, however, whereby the duties on French brandy and wines were reduced, struck a blow at the Cape export wine trade from which it has never recovered. Attention had to be directed to the development of the local market, and it was found that the greatest profit lay in the distillation of cheap brandy, which was readily purchased by natives and "coloured" persons in the Western Province, though with bad results. Viticulture suffered another "set-back" when phylloxera made its appearance in 1886. This pest was only overcome indirectly, by the introduction of American stocks, on to which the local vines were grafted. Since then there has been a considerable improvement in viticulture, and a specialty has been made of the production of light wines, which command a considerable local sale. The better class of brandies is very pure, largely owing to stringent laws against adulteration, and, if sufficient enterprise in "pushing" these products is shown, there is no reason why South African wines and brandies should not again command a large European market. There is also a large production and consumption of table grapes; and fruit-farming and canning generally have made much progress.

Apart from food products; the principal farming industries are horse-breeding and the breeding of ostriches for the sake of their feathers. As early as the seventeenth century, there was a considerable importation of Arab horses. Breeding proceeded apace, and during the first half of the nineteenth century horses for military purposes were exported from the Cape to India. The name of Governor Lord Charles Somerset is memorable, among other things, for his importation of thoroughbred stallions from England. A considerable improvement took place in the breed, the horses of the Hantam, in the district of Colesberg, being especially famous. Subsequently, however, owing to the introduction of sires of hybrid origin which were wrongly supposed to be thoroughbred, a considerable deterioration took place. At the same time, however, a new breed, the Basuto pony, hardy and sure-footed, was becoming popular, and has always maintained its position in general favour. During the past quarter of a century there has been a great improvement in horse breeding. Racing is carried on at a great many centres, notably at Johannesburg, Cape Town, and Durban, and this has led to the importation of a great many thoroughbreds of good type. There has also been a considerable importation, under government auspices, of horses for agricultural and draught purposes, and until 1910 the governments of the Transvaal and Orange River Colony maintained thoroughbred stallions at their stud farms. The predominant type throughout the Union is known as the Cape horse—"an animal with excellent constitution, extremely hardy, and possessing wonderful staying power." Mules are widely used, and good specimens command high prices. Donkeys are favourite animals for "trek" purposes.

Ostrich farming has undergone many alternations of good and bad fortune. Indigenous to South Africa, the ostrich was for a long time regarded as a wild bird, and its feathers were looked upon as a valuable curiosity rather than as a staple marketable article. Indeed, at one time Boers and Bushmen hunted the ostrich as a beast of the chase, and in early days Thomas Pringle wrote—

" The fleet-footed ostrich over the waste
Speeds like a horseman who travels in haste,
Hieing away to the home of her rest,
Where she and her mate had scooped their nest,
Far hid from the pitiless plunderer's view
In the pathless depths of the parched Karroo."

Hunters killed ostriches for the sake of their flesh, and sold the feathers, shooting the birds at all times of the year, without any regard to the breeding seasons. In consequence, the birds were scared away into desert regions. About 1860, however, it was found that, given reasonable care, ostriches would submit themselves to domestication in "camps" or paddocks, where they might roam in freedom, being caught twice a year, when their feathers were removed. In 1865 there were only eighty ostriches returned amongst the live stock of the Cape Colony. Progress was slow until, in 1869, Mr. Arthur Douglass perfected an incubator and succeeded in hatching ostrich chicks in large numbers. In 1870 the export of feathers reached the figure of £91,229. The census of 1875 showed that there were 21,751 domesticated ostriches, and in 1880 the value of the feather export reached the not inconsiderable sum of £883,632. then came the ostrich "boom," and pairs of birds were sold at prices varying from £200 to £500, while as much as £1000 was given for pairs of birds of superior plumage. About 1886 there came the inevitable "slump," and numbers of farmers, who had made heavy investments in expensive birds, were ruined. After the Boer War feathers were once more in demand, and farming was carried on on a large scale in districts suited to this form of industry, such as Oudtshoorn, Albany, Uitenhage, Somerset East, Ladismith, Graaff-Reinet, and Alexandria. At the census of 1911 there were 728,087 ostriches in the Cape Province, and several ostrich farmers were regarded as "capitalists." Just before the European War broke out in 1914, however, there was another great "slump", and ruin came to the ostrich farmer on a more widespread scale than ever before. The extent of the decline in the industry may be gauged from the fact that in 1916 the number of ostriches in the Cape Province had fallen to 342,720.

The fall has been largely attributed to over-production. In 1913 the export of feathers had reached the sum, prodigious for an article of pure ostentation, of £2,953,587. There is every hope that the industry will revive in time, provided that means are taken to regulate the rate of production and export. It must not be forgotten that the feather industry, more than any other, is subject to the capricious dictates of fashion. A Paris or New York milliner has it in his (or her) power to control the fate of hundreds of farmers and farm-hands in South Africa. In any event, as long as there is a demand, the Union must benefit, for South Africa is *par excellence* the country of ostrich farming. Of late years experiments have been in progress with a view of inter-breeding the local ostrich with the Barbary ostrich, but it is too early to determine what results will follow. Research at government agricultural stations appears to indicate that the cock-bird has no influence upon the shape or general appearance of the egg.

Taken as a whole, agricultural pursuits have made vast strides since the inauguration of the Union. This is due, in the main, to the adoption of more scientific methods of farming. In this, the Government of the Union, aided by Parliament, has played a prominent part. Schools of agriculture and experimental farms have been established at Elsenburg and Groot-fontein, in the Cape Province; at Cedara, in Natal; at Potchefstroom, in the Transvaal; and at Glen, in the Orange Free State. The formation of a great agricultural college at Pretoria is in contemplation. Comprehensive courses of instruction are carried out, and the system of training will compare favourably with that in vogue at such places as Rothamstead, in England. An army of experts is employed by the Government, and such men as Sir. A. Theiler have made valuable contributions to veterinary research. Opportunities are given, by means of scholarships, for students to obtain special agricultural training in other countries, and South African students have distinguished themselves in the United States and in England, returning to receive appointments under the Union Department of Agriculture. Apart from direct education, much has been done to encourage more scientific farming. Numbers of pamphlets on agricultural subjects are

distributed periodically, and encouragement by means of grants-in-aid is given to agricultural shows at various centres. As is only appropriate to the largest market, the annual show of the Witwatersrand Agricultural Society holds the foremost place. The analysis of soils and agricultural materials, and the testing of milk and seeds required by farmers, are carried out by the Department; and annual sales are held of the stock bred at the government farms. The South African Railways also assist the farmer, by carrying produce at nominal rates. Endeavours have also been made to encourage co-operative farming, although it must be admitted that the system has not hitherto attained success. Acts have been passed for the incorporation of co-operative societies, which have been assisted by loans from the Land and Agricultural Bank of the Union, a State institution, created for the purpose of developing agriculture by means of loans on mortgage of farm land. In the Cape Province eighteen societies were established under the Act of 1905, but most of them have not been successful, and "a number have signally failed." In the Transvaal and the Orange Free State there were thirty societies in 1911, and only nineteen in 1916. The main cause of failure appears to be the lack of trained methods of finance, and unbusinesslike modes of disposing of or finding markets for produce. It is, indeed, doubtful whether the co-operative system can have a fair chance of success without a much larger population than at present exists in the Union. Given an increase of population and mortgage facilities from the Land Bank, there is every reason to suppose that there may be a brighter future for the co-operative movement. Experience has shown what improvements have taken place in agriculture in such countries as France, Denmark, and Germany. In the last-named country, "the excellent system of mortgage banking has facilitated and cheapened building operations in the cities, and has, in the country, made the change from serfdom to peasant proprietorship easier. It has raised the level of German agriculture, has procured for the farmer drainage and improved breeds of livestock, and, while assisting the borrowers, it has at the same time afforded the capitalist and investor safe permanent, invaluable

securities."¹ The management of the Land Bank has been carefully conducted, and its advances (£474,377 in 1916) are well covered by the value of the security (£970,484 in 1916).

There are many natural obstacles to the progress of farming in South Africa, chief among which are diseases of stock and insect pests which ravage herds and crops. The principal diseases are, or have been, "horse-sickness" and biliary fever in horses; rinderpest, contagious pleuro-pneumonia, Texas fever, and East Coast fever amongst cattle; scab, heartwater, malarial catarrhal fever, "yellow thick head," tick paralysis, acute rheumatism, vomit sickness, and "fullsickness" amongst sheep; and cerebro-spinal meningitis and infectious pleuro-pneumonia in goats. Heartwater is common to large and small stock; and so are dietetic diseases, such as gallsickness, bushsickness, and veldsickness, caused by errors of diet and harmful vegetation, such as wild tobacco, stramonium (stinkblaar), oleander, "chinkerinchee" (*ornithogalum thyrsoides* Jacq.), and *cynotomum Capense* or "klimop" creeper.² Cirrhosis of the liver is common to horses and cattle. Anthrax and glanders have been largely subdued. Rinderpest is a pandemic disease, which makes extremely rare appearances, but creates terrible ravages when it does come (as in 1896). At present it is not known to exist in South Africa. The active veterinary department of the Union has done much to keep other animal diseases in check, though they may always be said to be existent in a greater or less degree. Weeds, such as *xanthium spinosum*, and "khaki-bush", have been most destructive to wool-farmers and to farming land in general, although vigorous efforts have been made to eradicate them. Locusts are an insect plague of the first magnitude, although, owing to the stringent measures adopted for their destruction, their appearance in recent years has been comparatively rare.

By far the most serious obstacle to uniform farming, however, is the unequal distribution of rainfall and water supply. Near the coast, especially in the south-west of the Cape Province and in Natal, the water supply is fairly regular, but elsewhere it is most unequal in its occurrence and distribution.

(1) D. N. Frederiksen (in *Quarterly Journal of Economics*, vol. 9, p. 47); see also H. W. Wolf's *Agricultural Banks*.

(2) One cattle disease ("gallamsiekte") is stated by the Department of Agriculture to be due to ptomaine poisoning, caused by eating the partly-decayed bones of dead animals.

Even at Cape Town droughts have been experienced from time to time. Currency has been given to theories that in certain districts, such as the Kalahari (which is not in reality a desert, but has ample vegetation in many parts) and the Waterberg (Transvaal), a gradual "drying-up" of the land is in progress. On the other hand, during the seasons of 1908-9 and 1917-18 there have been phenomenal falls of rain in the Transvaal. The lack of proper means of conservation of water has, however, resulted in the non-utilisation of heavy falls of rain when they do occur. While crops have, to a certain extent, benefited from increased rainfall, the excess of moisture, coupled with lack of drainage facilities, has probably done more harm than good in times of flood. During the rainy season of 1917-18 it was estimated that the damage caused by excessive rains amounted to at least a million pounds, including the waterlogging of large mealie crops and washaways of railway lines. The seasonal distribution of rainfall varies greatly in the Union, according to influences of wind and climate. Thus, the Transvaal constitutes a typical summer rainfall area (September to March), while the south-west of the Cape Province is a typical winter area (April to August). In the interior of the Union most of the precipitation takes place by means of thunderstorms, which are often of such violence that no means for conservation of water are effective. The most remarkable fall occurred at Wolhuterskop on the 18th February, 1915, when 4·19 inches fell in thirty minutes.¹ Much damage is also done by hailstorms in the interior (especially in the Transvaal and northern Free State), which destroy orchards, growing crops, and small stock. During these heavy storms of rain the rivers, which ordinarily are mere runnels, fill rapidly and become impassable, discharging their contents, however, within a few weeks or even days into the main streams which empty into the sea.

With such an unequal distribution of rain, the water problem is a pressing one. Water rights are valuable in the case of those comparatively few streams which have a fairly constant supply, and there has been much litigation between riparian proprietors as a consequence. Special water Courts have been created to decide these disputes, and the whole subject of the

(1) *Official Year Book*, p. 71.

conservation and distribution of water has been made the theme of special legislation (the Irrigation and Conservation of Waters Act, 1912). A Department of Irrigation has been created, under the control of a Director of Irrigation, and government irrigation engineers are available in connection with public and private water schemes. Boreholes are sunk on application, and loans are granted to assist irrigation works. On the 31st March, 1917, fifty-six "irrigation districts" had been sanctioned, some of which were completed, while a few had been abandoned. To most of these considerable loans had been made, the cost of some works being great, as much as £252,500 in the case of the Olifant's River Scheme (Van Rhynsdorp and Calitzdorp), and £120,000 in the case of the Nel's River scheme (Calitzdorp and Oudtshoorn). Large works on the Vaal River (Vereeniging) and at Hartebeestpoort (Magaliesberg) are now in course of construction. Large municipal waterworks have also been installed, and the water supply for urban purposes may be said to be adequate, although there have been times when drought has caused anxiety, particularly at Cape Town and Johannesburg. The new Vaal River works will ensure a permanent and ample supply to Johannesburg and the mines of the Witwatersrand.

The Irrigation Act defines water rights, and regulates the use of public and private water, while it also defines rights to subterranean streams. It also provides for the expropriation of land for irrigation works, and for the acquisition of servitudes (easements) in relation to the use of water. The Act, however, deals in the main with existing sources of supply, although it provides the machinery for acquiring or laying out the future works. But if agricultural development is to proceed on a scale commensurate with the area and productive possibilities of the country, much more will have to be done. Irrigation will have to be undertaken on a large and comprehensive scale, and this will require the expenditure of much more capital than has been devoted to this project in the past. Indeed, the matter is too large for private enterprise, nor can the expense be met out of the ordinary annual revenues of the State. The raising of a large irrigation loan has been advocated, and it is possible that it may become a matter of practical politics in the not

distant future. During a visit to South Africa, Sir William Willcocks, the eminent engineer, reported in favour of the canalisation of the Orange and Vaal rivers, and there is no doubt that if this work were carried out large tracts of land hitherto regarded as barren would be rendered fertile. Along with these problems goes that of arresting the extensive denudation or erosion of the soil which is continually taking place. The rain which falls on the interior plateaus immediately makes its way to the sea, and carries with it thousands of tons of valuable soil. The valleys of the great rivers furnish the most striking evidence as to the amount of denudation which is in progress. The superficial extent of the denudation area of the Orange river is over 35,000 miles.

But it will not be sufficient to spend money on the conservation of water and the preservation of the soil. What is needed to develop to the full the agricultural possibilities of the Union is the presence of a large population, carrying on farming operations on a more or less intensive system. Great as has been the progress within recent years, it is as nothing compared to what might be attained if there were a steady flow of agricultural immigrants into the country. This need has been realised for a long time, but experiments which have hitherto been made in the direction of land settlement have not been very fruitful, nor has much encouragement been given to immigration. The land settlement system which was inaugurated under the Crown Colony government of the Transvaal and Orange Free State after 1902 has largely proved a failure. In 1912 a comprehensive Land Settlement Act (amended in 1917) was passed. By virtue of this, the Minister of Lands may acquire private land for purposes of settlement, and may dispose of it as available Crown land by advertisement, on lease for five years, with an option to purchase extending over twenty years. Applicants must be prepared to pay in cash one-fifth of the cost of allotments, and lessees may receive advances not exceeding £250 for the purpose of developing their holdings. Advances may also be made for boring operations or other substantial improvements. The Minister is assisted by an advisory Land Board in each Province, consisting of five members. Applicants for grants must be at least eighteen years

of age, possess qualifications sufficient for utilising the land, must intend to occupy, develop and work their holdings, and must be of good character. In the case of farms leased for five years, no rent is charged for the first year, while 2 per cent. per annum on the purchase price is charged for the second and third years, and $3\frac{1}{2}$ per cent. for the fourth and fifth years, payable half-yearly in advance. Leases may be extended for five years, no rent is charged for the first year, while 2 per cent. the purchase price. Options to purchase may be exercised at any time with the Minister's consent, subject to fulfilment of the lease and construction of improvements to the value of 10 per cent. of the purchase price. Instalment payments on every £100 of purchase price amount to £7 6s. 2d. per annum. Where farms are specially purchased for applicants payments are not made during the first two years, and during the remaining eighteen years they are made at the rate of £7 17s. per annum. Until payments are completed such farms are held under lease, and the lessee must pay one-fifth of the total sale price before allotment. Personal occupation by allottees is required in all cases, and the land is only to be used for agricultural or pastoral purposes, mineral rights being reserved to the Crown. On cancellation for wrongful use of land, the capital instalments are refunded, subject to deduction of debts. From 1912 to 1918 the value of land let under the scheme was £700,159, there being 1256 tenants; while the value of land purchased for applicants was £328,660, and there were 266 lessees. Government contributions to purchase price amounted to £262,357, and contributions by assisted persons to £66,303. The working of the Act appears to have had beneficent results, but still more liberal measures will have to be adopted if immigration is to take place on a large scale. Much of the most valuable land is held by large private companies, and drastic measures will have to be taken in hand to compel them to sell land at reasonable prices, instead of holding land, as they are at present doing, for merely speculative purposes. In recent times proposals have been made to throw open land to returned soldiers, for whom some outlet must be found, as well as for the surplus population of the towns.

Allied to the problem of water supply is that of the extension of forest lands, which are considered to have an influence upon the rainfall. There is a Forest Department, which administers the Forest Act (No. 16 of 1913). Its chief functions are the protection and preservation of indigenous forests, the increase of production of timber by forming plantations of exotic trees, and the encouragement of general afforestation by farmers. The largest timber forests exist in the districts of Knysna and George, on the Woodbush Mountains, and on the Zoutpansberg range. In the Knysna forests the virgin timber is said to be approaching exhaustion.¹ Other scattered forests, though of no very large dimensions, exist throughout the Union. The total extent of scrub forests is some 120,000 acres, and of timber forests 400,000 acres. The yield of timber is far from sufficient for local requirements, amounting to only about one-tenth of the timber which is imported. In Natal there is a flourishing wattle bark industry, the export of which in 1917 amounted to £273,502. This industry bids fair to expand greatly, and to furnish one of the staple articles of South African commerce. The area of private wattle plantations in Natal is some 250,000 acres.

(1) *Official Year Book*, p. 413.

CHAPTER VIII.

THE MINING INDUSTRY.

It is, strictly, incorrect to speak of a mining industry within the Union, for, in fact, there are several mining industries, which differ greatly in their methods of working and economic conditions, and in some cases are widely unrelated, so that the product of one class can have no possible effect, from an industrial point of view, upon the product of another. Nevertheless, the group term "mining industry" is constantly employed, owing to the fact that the larger mining industries, though otherwise independent, are in the main subject to the financial control of a comparatively small body of persons, who are familiarly spoken of as the "mining groups" or "houses," and in certain respects bear resemblance to the American "trusts" which so largely dominate industrial undertakings in the United States. The South African "houses" are not merely concerned with the direct management of mining undertakings, but they exercise a large influence upon share market operations. It will thus be seen that where a "group" controls a number of apparently unrelated concerns, any rise or fall in the market may be made to affect many undertakings, although the ostensible reason for any movement may be assigned to developments in relation to one only of such undertakings. The reasons for this interrelated control are largely historical. Mining in South Africa assumed no proportions of any magnitude until the discovery of diamonds in Griqualand West. The richness of the "finds" at Kimberley enabled young men, such as Rhodes, Beit, Barnato, and Robinson, who had come there with comparatively small capital, to amass considerable fortunes, and ultimately to gain the control of the whole of the diamond mines, through such undertakings as the De Beers Consolidated Mines. Nor was it difficult to obtain control over the only considerable dia-

mond mine in the neighbouring Orange Free State, that at Jagersfontein. The directors of the De Beers Company, as the only corporation of great magnitude in the Cape Colony, acquired considerable political influence, and it was not long before even an institution as particularist as the Africander Bond succumbed to the charms of Cecil Rhodes. As an Imperialist, he availed himself of the financial assistance of diamond companies under his control to extend British influence in a northerly direction, and ultimately the British South Africa Company obtained its charter, with the foundation of Rhodesia as a consequence. When, in 1886, it was seen that an extensive and permanent goldfield had been discovered on the Witwatersrand, the Kimberley capitalists were enabled, by their nearness to the scene of operations, to secure possession of the chief mining properties before any oversea competitors could hope to step in; and, through their influence with the leaders of the money-markets in England and France, they were enabled to obtain the necessary capital to open up and exploit the mines of the Witwatersrand. For it soon became apparent that "banket" mining required vastly more initial capital than was necessary to mine for alluvial gold; and that, with the exception of such specially rich deposits as had been found at the Sheba mine, at Barberton, the probable yield of alluvial gold was as nothing compared with the output to be won from the conglomerate beds of the Rand. Most of this original capital for developing the mines of the Witwatersrand came from flotations in England; and at the outset comparatively little South African capital was invested. Many of the companies which were formed in this way were heavily "watered" with vendors' and promoters' shares, and, notwithstanding the proved wealth of the new gold fields, they were doomed to failure from the outset, on account of their enormously inflated capital. It has been calculated that in the early days of Witwatersrand mining infinitely more capital was sunk by European investors in unremunerative undertakings than was ever returned by way of dividends to shareholders. Fortunately, the output of gold was so great that the leading outcrop mines, as well as several of the deep-level mines, were able to yield fabulous returns, notably in the case

of such companies as had been floated with a small capital, like the Wemmer, the Ferreira, the Johannesburg Pioneer, and the Bonanza. At first it was believed that only the mines on the outcrop of the reef could be worked with profit, but, owing mainly to the foresight of Messrs. Eckstein and Co. (afterwards Wernher, Beit and Co., and now the Central Mining and Investment Corporation), deep-level properties were acquired, and they have since proved to be one of the most enduring factors of mining prosperity. The "deep-level theory" was received with scepticism in many quarters, one of its pronounced opponents in early days being Mr. (now Sir) J. B. Robinson, but it has certainly vindicated itself. While, as we have seen, much of the initial capital for these undertakings was raised in England and France, other groups, such as those of Albu and Goerz, were enabled to obtain capital from German banks and financial undertakings, while mining machinery was largely supplied by German firms, such as Siemens, and Orenstein-Arthur Koppel. Much of the machinery for actual hauling and crushing was, however, supplied by English and American firms, such as Robey, Sandycroft, and Fraser and Chalmers. Generally, it may be said that a new and profitable field for export was opened up for the machinery manufacturers of the world, particularly when it was seen that the gold fields of the Rand were not only more or less permanent, but were the largest producer of gold on the face of the globe.

At the same time as the mining "houses," through the capital which they controlled or attracted, were enabled to develop the gold mining of the Witwatersrand, they acquired large tracts of land at and near Johannesburg, which they turned to account by letting as building-sites, on leases of longer or shorter duration, to the population which flocked to the Rand. Plots of land were let on monthly stand licences, and thus a large new source of revenue was opened up. Much of Johannesburg and the towns along the Main Reef (i.e. from Springs to Randfontein) was let in this manner; while tenants were encouraged to build by the grant of building-loans on mortgage. Even in the case of land sold by the Government the stand-licence system prevailed, and it was not until

1909 that the tenants of government leasehold stands were enabled, on payment of a sum in commutation, to convert their holdings into freehold. The commutation of holdings in privately-owned townships is still a matter of arrangement or "free" contract with the township owner. In the case of some townships the price charged for conversion is so great that the tenant has no prospect of being released from his obligation to pay licences during the remainder of his life.

In 1902 the Premier diamond mine, near Pretoria, was acquired by Mr. (now Sir) Thomas Cullinan and others, and soon proved to be the largest, though not the richest, diamond mine in the world, having an area of 3570 claims, or only one hundred claims less than the three largest mines (Dutoitspan, Wesselton, and Bultfontein) of the Kimberley group taken together. Although the average price of diamonds obtained from the Premier mine in 1913 (the last complete year before the European war) was only 22s. 4d. per carat as against 53s. 9d. in the case of Kimberley, and 61s. 2d. in the case of Jagersfontein diamonds, the output of stones from the Premier mine was so great in the aggregate that it formed an important factor in the world's product of diamonds. For some years this mine remained under the same control, but through a number of fortuitous causes, including market fluctuations in the price of shares, it ultimately passed under the same control as the De Beers Consolidated Mines. From the point of view of the controlling "group," this had the effect of concentrating the production, output, and sale of South African diamonds under one management, so that their price can be regulated with almost absolute precision. It must, however, be admitted that there is a certain advantage to the country at large in the internal control of diamond production, as absolutely free mining would result in a lowering of the market price to an unprofitable figure. The present system of control of production, whereby the output can be more or less accurately adjusted to the demand, results in the maintenance of a standard value which, while remunerative to the mine-owner, enables him to maintain a large number of per-

sons in steady employment. Before the European War a considerable quantity of stones (amounting in value in 1913 alone to nearly £3,000,000) was produced in German South-West Africa, which threatened to become an important competitor. It is, however, probable that much of this source of supply will pass under the same control as the other important diamond mines in South Africa. During 1914 it was already realised, as between the Union and the German South-West producers, that a concerted effort must be made to regulate the price of diamonds, and a conference with this object in view was held in London, which broke off prematurely. Subsequent events, however, have rendered the attainment of this object a matter of no great difficulty.

The most "democratic" form of diamond production in South Africa is by alluvial digging. Attempts have also been made to concentrate this under one control, but for the present it affords means of livelihood, and possibly of amassing moderate wealth, to many small holders, as it does not require elaborate plant or a great labour organisation, such as is necessary in the case of the mines. Alluvial diamond digging is by no means negligible, as it represents nearly ten per cent. of the whole annual product of the Union. Diamonds from alluvial diggings are purchased largely, or in the main, by the groups which control the output from mines. The chief alluvial deposits are to be found in Griqualand West, along the lower Vaal, and in the Transvaal districts of Bloemhof, Christiana, and Schweizer Reneke.

Another important result of the financial strength obtained through the "group" control of the leading mines on the Witwatersrand and elsewhere is that the financial "houses," or some of them, have acquired a preponderating interest in several of the large banking concerns. This has enabled them to make advantageous arrangements for the financing of mining and other companies, and, at times, to control advances by such banks to brokers, speculators, and mercantile men.

As an offset to the centralised control of mining and financial operations, a movement has of late years sprung up for giving the State a direct interest, apart from general control, in mining concerns. We have seen that the Government

holds a six-tenths interest in the Premier mine, under the Precious Stones Ordinance of 1903, and this interest extends to any mines which may be discovered in the future. In the Free State, it holds a four-tenths interest in all mines discovered after 1904; but this is not applicable to the Jagersfontein mine, which was discovered in 1870. In the Cape Province, also, the Crown is entitled, under an Act of 1907, to one-half of any future mine discovered on private property. Apart from the Premier mine, however, the Crown interests in diamond mines have, thus far, proved to be very small. Under the Gold Law of the Transvaal, also, it is competent for the Crown to work State mines under Parliamentary sanction, or to lease mines for working by private lessees. The terms of these leases of Crown land for mining have been settled, in the case of certain mines on the Eastern Witwatersrand, by an Act passed in 1918, and it is anticipated that considerable profit will accrue therefrom to the public revenue, although there has been some criticism of the conditions on which the grants were made. Apart from this, there has, from time to time, been considerable agitation in favour of throwing open Government mining ground on easy terms (such as non-payment of claim licences and non-forfeiture) to prospectors. Thus far, however, no feasible project has been adopted. It must not be forgotten that profitable gold-mining, in the case of quartz or "banket" reefs, is almost impossible for the small prospector or claim-holder, on account of the large initial outlay of capital which is required.

This brings us back to the conditions under which gold mining has been rendered profitable on the Witwatersrand. At the beginning, mining at the surface or "outcrop" was very easy, and so long as it could be carried on at a convenient depth no great difficulty was presented. But when it became apparent that the gold reefs went down to a prodigious depth, a new problem was presented. Fortunately, the discovery of coal at Boksburg and elsewhere in the Eastern Transvaal, almost coincidently with the discovery of gold on the Witwatersrand, assured the future of the gold fields, as it provided a constant and cheap supply for the production of steam and electric power. Coal mines had existed in the Cape Colony

from early times, and mining on an extensive scale began at Molteno and Cyphergat about 1884. Ultimately the Indwe mines became, for a time, the principal source of supply to the diamond mines at Kimberley. The cost of coal in the Cape Province has, however, always been much greater than that prevailing in the Transvaal, the average price at the pit's mouth in the coal mines of the Cape in 1916 being 11s 6d, as against 4s 6d in the Transvaal, so that Transvaal coal is as cheap as coal produced anywhere in the world, with the exception of British India. The principal coal-mining areas of the Transvaal are the Middelburg and Witbank districts, while there are also mines at Brakpan and Vereeniging; and there are large unworked areas in the Ermelo district. The coal-fields of the Free State are of great though undefined extent, producing, however, coal of only second-grade quality. The product of the Natal mines is of much higher calorific value, the principal mines being situated at Hatting Spruit, Dannhauser, Newcastle, and Utrecht. The output of Natal coal is in excess of 3,000,000 tons per annum. That of the whole of the Union exceeds 10,000,000 tons yearly, which is small in comparison with other countries, though sufficient for immediate requirements. The output is capable of unlimited development, although this is only likely to come with a great expansion of industrial undertakings, which is not probable until a large increase of population takes place. The low price of coal is due to keen competition amongst producers; and all the product is not employed to the best advantage. Owing to the standard (usually 12:5 caloric value) required by the railways and the mines, which are the largest consumers, "an enormous waste is necessary"; and at Witbank, the principal colliery district, "of the coal actually mined at least 12 per cent. is sorted out as waste." Only one-seventh of the coal is actually worked, of which 55 per cent. is eventually extracted and marketed. "The coal discarded or left behind is lost for ever, for the dumps take fire immediately, and the mines crush and take fire within a few years of their abandonment."¹ Such a state of affairs constitutes a damning indictment of the industrial system which prevails in South Africa—a system which will not be remedied in the absence

(1) *Official Year Book*, p. 462.

of a large industrial population. On the other hand, the presence of a population large enough to mine all the coal profitably will mean a great reduction in the wage rate, which may not be an unmixed blessing.

Another factor in the production of gold, coal, and diamonds has been the presence of a large body of unskilled native labourers, paid at a rate of wage which appears to be sufficient for their requirements, although it is not enough to keep a white man alive. Before the Boer War, as we have seen, the mine-owners declared that if they were given greater facilities to import unskilled native labour they would be able still further to reduce wages, and thus decrease the cost of mining. A change in the government of the country has not, however, resulted in a decline in wages, although the mine-owners have received every facility, both by the *modus vivendi* with the Mozambique Government and a widely-extended system of recruiting licences, to obtain additional labour. Nevertheless, in other respects, the cost of mining has been reduced considerably, and this means a proportionate increase in the profit per ton milled. The comparatively large profits earned by producing companies in the early days were due to the ease with which the gold could be extracted, not to the high percentage of extraction. In the beginning, comparatively crude methods of extraction were employed, the ordinary process being by amalgamation with mercury, and the percentage of gold in the ore which was extracted amounting only to fifty or at most sixty per cent. It was not until the MacArthur-Forrest cyanide process was perfected, about 1892, that it became possible to extract practically all the gold. This was an epoch-making discovery, although, as is frequently the case, those who first applied it failed to reap its benefits. More recently (in 1904) came the invention of the tube-mill, by which the tonnage of ore crushed per stamp per day was increased from two tons to twenty tons. Although the percentage of extraction has now practically reached its maximum, it is only in the case of mines with rich bodies of ore that large profits can be looked for. On the average, the Witwatersrand gold fields are of low grade, and several of the low grade mining companies only maintain a precarious existence. Recently,

however, there has been a great development on what is known as the Far Eastern Rand, which bids fair to rival the best portions of the Main Reef on the Central Rand. The calculations of experts indicate that there is still a vast tonnage of payable reef to be mined, which will support a large population for many years to come. Their estimates vary. That of the Government Mining Engineer, given to the Dominions Royal Commission in 1914, was to the effect that there were 587,000,000 tons to be crushed from mines then producing, and at least the same quantity from mines and areas not then producing. The duration of mining must depend on the practicability of working the very deep mines; and it is at present thought that the limit of working, having regard to the increased cost and temperature at lower depths, is about 7000 feet. The prediction may be hazarded that there is a likelihood that profitable mining will be carried on on the Rand for from half a century to a century to come.

Bearing in mind that the Witwatersrand is the largest gold field (yielding, at the present time, nearly half of the total gold product of the world), it is somewhat remarkable that a great deal of conservatism has existed, both in respect of mining methods and of care for the health and safety of the men employed. This must be set down to want of forethought on the part of mine-owners rather than to any deliberate neglect. At the beginning, when there was uncertainty as to the duration of life of the gold fields, all endeavours were directed to the quick extraction of payable ore. To this end an army of highly-paid mine managers, engineers, geologists and chemists was imported. At first Cornish methods were in fashion; then came the turn of those who were accustomed to American mining practice. Notwithstanding the presence of all these experts, however, changes and consequent improvements were very gradual, and although before long the mine-owners realised that Witwatersrand mining could only be made permanently profitable if strictly scientific methods were adopted, it was long before the system could be regarded as approximating to the most modern requirements. There was no parsimony in expenditure on development and equipment of plant, but visitors to the Rand who

were acquainted with mining methods elsewhere frequently made the criticism that the Witwatersrand mines were by no means "up to date." This state of affairs has now been remedied, in the main. An encouraging feature, in recent years, has been the increased employment of men of South African birth as managers, engineers, and assayers. At one time, also, men of oversea origin had the monopoly of white mining, which was regarded as an unattractive occupation to South Africans, especially those of Dutch origin. With regard to this the position has now entirely changed. Of 24,781 white persons employed in the Transvaal mines on the 31st December, 1917, 11,885 were of South African birth. It is only just that this great wealth-producing industry shall give employment to men born of the soil, who would otherwise drift into unprofitable or possibly degrading occupations. And this is all the more satisfactory when one remembers how much wealth, in gold and diamonds, has left South Africa, never to return. Complaints are frequently made in Europe that South African mines have absorbed more capital than they have ever returned. The truth is that much of this capital has been intercepted in Throgmorton-street and its neighbourhood, and has never found its way to South Africa.

The conditions under which native labourers are employed at the mines have always been fruitful of controversy. At a comparatively early stage in the history of diamond mining, it was found necessary to introduce the "compound system," under which these labourers were housed in large compounds near their place of work. The compounds were not introduced in the interests of the natives so much as in those of the mine-owners. The ease with which diamonds could be secreted and stolen rendered close supervision of the workers a matter of necessity. Apart from this, the presence of such a large number of aborigines, of a low standard of civilisation, was a menace to the white population of Kimberley and Beaconsfield, and unless they were kept in strict control many of them might give rein to their natural propensities, and commit assault, robbery, or murder, more especially when they had unchecked access to intoxicating liquors. On these grounds, the introduction of the compound system was entirely justi-

fiable; and it must be admitted to have been successful, both from the point of view of the mine-owners and that of the native. Thefts of diamonds and, on the Witwatersrand, of gold, have been brought fairly well under control, although there is always a certain amount of "leakage." At Kimberley, though not on the Rand, it has been possible to enforce total prohibition of the supply of liquor. The health of the native has been well cared for; he is not subject to the temptations and the dangers which assail natives who are free to live their own life in the towns; and although tribal and faction fights, and occasional murders or assaults, take place in compounds from time to time, they are, on the whole, comparatively free from crime—except, in the case of the Witwatersrand, such crimes as are traceable to the consumption of the forbidden intoxicants. The native worker who lives in a compound has also been enabled to save most of his earnings, and to return with most of his capital intact to his place of origin at the end of his period of contract. During this period of contract, which varies from six months to three years, the native remains in the compound at his mine, although, on the Witwatersrand, he has a certain amount of freedom of movement on Sundays, and is by no means in the position of a person who inhabit a penal settlement. The best testimony to the compound system is the fact that a large proportion of time-expired natives, after a short visit to their homes, are willing to return to work on the mines. There is always more shortage of native labour on the farms, where natives are free to move about, than on the mines, where their movements are restricted to the compounds. One serious drawback, however, is that the native is compelled to lead a celibate life while he is in the compound. No women or children are allowed to live there, and the natives are removed from all the influences of family life. Various remedies have been suggested for this state of affairs, the most popular of which is the formation of native locations or villages near the mines. To this it is replied that locations inhabited by men, women and children would completely defeat the objects which the establishment of compounds had in view—that the result would be an increased traffic in intoxicants, more thefts of diamonds and

gold, and less working efficiency of the native miner. But the strongest opposition to the compound system has come from the white shopkeepers. When the system was inaugurated at Kimberley, they were deprived of a large part of their trade, as the mines took upon themselves the business of supplying the wants of their native labourers. It has frequently been alleged that this was the death-blow to retail trade at Kimberley. Whether this be true or not, it is certain that ever since then general commercial business at that mining centre has declined, and that ever since the amalgamation of the diamond mines the population, as a whole, has been far less prosperous than before. Indeed, Kimberley is but the ghost of what it once was. The same result has not followed on the Witwatersrand. Public opinion has prevented the mining companies from establishing stores in the compounds. All they can do is to supply food rations for the natives, and mining materials, such as candles, lamps, and explosives, for the use of both white and native miners. General merchandise, and eatables other than those which are supplied as rations, are obtained by the natives from shops and eating-houses of private traders which have been established in the vicinity of the compounds. The number of these "trading rights" is strictly limited. They are granted by the Mining Commissioners under the provisions of the Gold Law; and in urban areas the eating-houses are subject to the supervision of the municipal authorities. Ordinarily, there are only one shop, one eating-house, and one butchery allowed on one mine. The result is that a monopoly is created in the case of every mine, and the fortunate possessors of these establishments, as a rule, amass large fortunes. Still, there is a semblance of free trading, and the profits do not flow into the coffers of the mining companies. It is easy to keep these trading establishments under supervision, and they cannot readily engage in the illicit sale of liquor. Only in the rarest instances has the unlawful traffic in intoxicants been traced to the "reef" traders. The "liquor dealer" is usually a waiif and stray, who selects a *caché* in a tailings dump or some similar hiding place for the scene of his operations.

Although, on the surface, the natives appear to be fairly well satisfied with conditions of existence in the compounds, and their wants, as members of a primitive race, are not extravagant, a good deal more might be done to increase the amenities of their life. When all is said, the daily round in a native compound is dull, drab, and cheerless. Apart from religious gatherings on Sundays, which not all of the natives attend, there is nothing to excite their interest or raise them above a purely mechanical existence. A few of them may be found indulging in a mock war dance—a relic of conditions which have happily passed away—or playing on crude native musical instruments. A large number are sunk in the torpor induced by “illicit” liquor. Much might be done by providing a rudimentary system of education, and simple amusements, such as circuses, and cinematographs adapted to their elementary standards. The native, with his child-mind, is easily amused or interested, and it should not be difficult to provide him with means of diversion and relaxation in his leisure hours.

On the whole, however, the wants of native labourers are more readily satisfied than those of the white miners, nor are they as numerous. Nor are the natives as articulate in giving expression to their grievances; and they do not possess the same power of combination. So far as the white workers are concerned, they have strong and flourishing trade unions, and they have their representatives in Parliament and in the Provincial Council. It must be admitted that in the past, little attention was paid to the interests of the workers, in regard to both recreation and safe conditions of labour. Thanks largely to governmental interference, stringent regulations have been promulgated in recent years providing for safe conditions of work; and the rousing of the public conscience with regard to the terrible ravages of miners’ phthisis has led to the enactment of provisions designed to check the growth of the disease, and the passing of Acts for the payment of compensation to sufferers and their dependants. Nor have the recreations of the miners continued to remain a matter of indifference. Social clubs and recreation grounds are now provided at most of the mines, and interest in their general welfare is evinced by the

mine-owners, actuated partly by politic reasons and partly by promptings of duty. What is still wanting, however, is an atmosphere of conciliation and mutual comprehension in the region of industrial disputes. While, in the case of all demands for an improvement in the conditions of labour, such as hours of work and rates of pay, there appears to be a sincere desire to remedy genuine grievances, there is still lacking a spirit of harmony, while at the same time there is a certain brusquerie in dealing with industrial crises. Want of tact was responsible for the tragic occurrences in connection with the strike riots of July, 1913. The fault lies not so much with the heads of the mining industry, in other words, the supreme controllers and owners of the mining houses, as with some of their subordinate managers, who are accustomed to carry things with a high hand, to "fire" (discharge without notice) men who are regarded as sources of possible trouble, and to neglect opportunities of making themselves acquainted with the real condition and aspirations of the men who work for them. One source of evil is the absence from South Africa of several of the men who hold the controlling interests in mining concerns. Their presence on the Witwatersrand would ensure greater stability, as they would enjoy greater personal respect than some of their subordinates, who, while posing as "heads," are regarded merely as superior clerks, without any direct interest in the mining industry, and certainly none in the welfare of the country as a whole. The survival of the "guinea pig" director, who sits on a board merely to vote as he is ordered, is also looked upon as an anachronism.

There is nothing which calls for special attention in relation to the conditions prevailing in the smaller branches of mining industry. Copper mining has been carried on with profit in Namaqualand since 1852, and from 1904 at Messina, in the Northern Transvaal. The yield has attained considerable dimensions, but it appears probable that it will decline. The total product from the mines of the Cape and the Transvaal, to the 30th June, 1917, exceeded in value twenty-one million pounds sterling. There are large deposits of iron in the Union, mainly in the district of Pretoria, and it is probable that, apart from export, there are the materials for building up a flourish-

ing iron and steel industry. This is, however, subject to payment of wages at a rate which is not excessive; and in this connection it must not be forgotten that skilled workers in South Africa receive wages which compare favourably with those paid anywhere else. Deposits of other metallic minerals occur in the Union, although they do not at present appear to be of great importance. The principal non-metallic minerals, other than coal, are asbestos, rough salt (extracted from salt pans), and soda.

CHAPTER IX.

FREE TRADE, PROTECTION, AND PREFERENCE.

IT IS NOT intended to enter here into a discussion of the relative merits of a free trade policy and a protective policy. Many of the arguments which are relevant to the subject elsewhere are equally applicable in South Africa; while, at the same time, it must not be forgotten that it is misleading to reason from the conditions prevailing in one country to those of another. As in most other countries, there are two schools of thought, which are violently divided. One is in favour of free trade with all nations; the other is of opinion that the establishment and prosperity of industries within the Union can only be secured by the adoption of a protective tariff, designed to encourage and foster the growth of local manufacturers. A leading Minister, apparently expressing his own views and not the formulated opinion of the Government, has to a certain extent declared himself in favour of free trade; but it is possible that his views have undergone modifications in consequence of the new situation created as a result of the European War, which is likely to modify profoundly both fiscal relations within the Empire, and those prevailing between the Allies of the Entente. While, on abstract grounds, there is much to be said for the adoption of a free trade policy, and there can be no doubt that it has led to England's great commercial prosperity, there is no certainty that it will not need considerable modification in England in the future; and conditions which apply to English trade and finance are by no means adaptable to South Africa. The Union is a young country, with struggling industries, many of which require to be carefully nursed into existence. It is argued that without protection they are foredoomed to failure, and experience certainly has shown that it is hopeless for articles of local manufacture to compete on equal terms with imports of a like nature from England or other countries.

This may be due to inferiority in manufacture, but it is contended that no stimulus to excel in manufactures exists as long as wages are higher within the Union than elsewhere, and producers have to compete with outside manufacturers who can make and ship goods at much lower cost. As is usual in such controversies, a good deal of what is said on the subject is based on self-interest. The man who endeavours to maintain a young and struggling industry is naturally on the side of protection; while the importer from England or the Continent is a thorough-going advocate of a free trade policy. The curious phenomenon has been witnessed of a man who has for many years been the manager of one of the most heavily-protected and monopolistic industries within the Union posing as an earnest champion of free trade. He is probably quite sincere in the expression of his views; but they lose force because he does not apply them in his own case. On the other hand, most of the printers are ardent protectionists; and they give point to their theories by advocating a heavy tariff on stationery and printed matter—even on books, which they would tax if they dared. But they do not insist on a tax on printers' materials, such as machinery, type, and paper, because they know that these things cannot readily, if ever, be manufactured within the Union. One printer has, however, been enthusiastic in advocating the establishment of paper-mills, for which there are facilities and raw materials within the Union. His critics, however, reply that one year's output of a South African paper mill will suffice to keep the local newspaper and printing trade in paper for ten years, and that there is no hope of competing in an export trade in paper with the mills of England, America, and the Continent of Europe. A heavy export duty on rough diamonds is also advocated, so that a diamond-cutting industry may be established within the Union. To this it is answered that in the United States, where a cutting industry has been established, employment is found for only a few hundred hands. This answer is, however, misleading, because diamonds are not produced in the United States.

The decision of these questions must rest, in the main, on two considerations—the extent to which it is necessary to maintain, and to modify, a tariff for purposes of revenue; and

the desirability of taxing imports of manufactured goods and raw materials with the object of encouraging local industries. The main source of revenue is the customs; and only the boldest financier would venture seriously to modify the existing fiscal system in the direction of free trade. Situated outside of the main stream of international commerce, South Africa is not, and is not likely to become, a clearing-house for the world's goods. Even those who are most sincerely attached to the institutions of the Mother Country cannot see their way clearly to adopt, without modification, a policy which may have answered well enough in England in the past, but may be fraught with the most serious consequences for the future welfare of South Africa. Even in England views and policy on the subject are undergoing a change.

It must be noted that it is extremely difficult to draw any deductions from the so-called "balance of trade." During 1913, the last-completed year before the War, the total value of imports into the Union exceeded forty-one million pounds, while the total of exports from the Union (including re-exportations and specie) was over sixty-six millions. In the exports there was, however, included over fifty-one millions' worth of mineral products (counting gold and diamonds), so that the total value of other exports locally produced, consisting mainly of raw materials, and deducting re-exported goods, was less than fourteen millions. Of the thirty-seven million pounds' worth of gold produced in the Transvaal in 1913, eight-and-one-half million pounds were paid in dividends. When the amount expended on wages, cost of mining materials, and local taxation is deducted, it will be seen that of the value of minerals (principally gold and diamonds) exported there is a large surplus over what is received in exchange by way of goods imported and money paid from other countries. In other words, for a considerable proportion of these mineral exports the Union received no exchange value whatsoever.

Within the Union itself, free trade is a settled policy. It is enshrined in the Constitution, and the raising of tariff walls as between the Provinces is out of the question. Customs agreements also exist between the Union and Southern and Northern Rhodesia. The necessity for the adoption of a policy

of free trade between the Provinces was one of the principal motives for the establishment of the Union. As far as may be judged, this policy has been successful. It has meant relief from unnecessary burdens, and the simplification of customs management, which is concerned mainly with oversea trade. The Mozambique Treaty of 1909 (which replaced the *Modus Vivendi*) practically provides for free trade between the Union and the Province of Mozambique, abrogating, as it does, all customs duties on articles from that Province or of the Union which are the products of its soil or, so far as the elements or chief constituent parts thereof are products of the soil, of its industry. This treaty was to remain in force for ten years. The exceptions from its free trade clauses are goods locally manufactured from oversea products, and distilled and fermented liquors, which are liable to the highest duties imposed on liquors imported from oversea.

Whatever happens, no advocate of free trade need expect that it will ever be accepted in its entirety. Apart from any purely temporary conditions which may arise in consequence of the War, and of the obligations undertaken on behalf of the Union as a component part of the British Empire, the system of Imperial preference has, so far as may be predicted, come to stay—whether it extends only to the Mother Country, or is to form part of an all-embracing scheme for the whole of the Empire. The form of preference hitherto favoured has taken the shape of rebates on goods and articles produced, grown, or manufactured in the United Kingdom, and a reciprocal rebate on goods from other British Dominions. The amount of the rebate is, in the case of most articles, 3 per cent. It cannot, however, be said that this is sufficient to deter the entry of goods from non-British sources, and if it is intended to grant such a preference as will give a distinct advantage to British and British-Colonial goods, it will have to be considerably higher. In any future arrangement it is probable that reciprocal advantages will be sought.

CHAPTER X.

INDUSTRIES.

ON THE formation of the Union in 1910, a separate ministerial department of Commerce and Industries was created. It cannot, however, be said as yet to have justified its existence. There was ample scope and a wide field for the energies of such a Department, but nothing was accomplished by it adequate to what the situation of a young commonwealth demanded, having regard to the general opinion that industries must be fostered and encouraged if the Union was to become productive, in the true sense of the word. In 1912 the portfolio was abolished, and the Department of Industries was made an adjunct to the Department of Mines, the holder of the office being designated Minister of Mines and Industries. The same person also held the important office of Minister of Education, so that what was regarded as the least urgent function, that of Industries, was relegated to the background. Recently there has been a revival of official interest in the subject, and Parliament has been induced to pass certain Acts, mainly of an administrative character. In 1916 a consolidating Act was passed in relation to patents, designs, trade marks, and copyright; in 1917 the scope of the Workmen's Compensation Act was extended so as to embrace industrial diseases, such as cyanide rash, lead poisoning, and mercury poisoning; and in 1918 a Factories Act was passed, whereby the conditions of labour in factories were regulated, and a department for the inspection of factories was created. All this legislation, however, does not extend beyond providing for the supervision of industry. A certain amount of information has also been collected by the Statistical Office of the Union, which was opened in 1917 in terms of an Act passed in 1914. This has taken a census of manufacturing industries. The State has not, however, attempted to take any direct part in the encouragement

or establishment of industries, and this is a matter for politicians to decide upon in the future. Proposals in relation to the subject may be limited to the creation of favourable conditions for industrial growth, such as the adjustment of tariffs, improved means of transportation, stimulation of the supply of labour, and facilities for the production of raw materials; or they may be more ambitious, and extend to the giving of bounties to producers, or the subsidising of industrial enterprise. It is certain that in the discussion of any such projects financial considerations will play an important part; but it may be unwise to regard them as the sole determining factor.

Prejudice is one of the most important obstacles which will have to be surmounted, if manufacturing industries on a large scale are to be set on foot with any hope of success. People in South Africa have for so long been accustomed to obtain all their supplies of manufactured goods from countries overseas, that it will be extremely difficult to create a market for local products. Hitherto it has been impossible for "colonial goods" to compete with imported articles, in point either of quality or of cheapness; and it is certain that a very real and widespread prejudice exists against the "local article." This can only be overcome by manufacturing goods which will bear comparison, in respect of quality and price, with imported goods, which are easily obtained, and to the use of which the people have been accustomed for many years. Certain local manufacturers have been known to refuse to apply for trade marks for their goods, preferring to pass them off as articles of foreign make.

There are many industries which, strictly, cannot be said to exist at all. There are few textile manufactures worthy of the name: most of the woollen and cotton fabrics for clothing are imported. Nor is the position any better in the iron and steel industries: no attempt is made to manufacture machinery, and practically all spare parts, whether for domestic or mining purposes, or for vehicles, are brought from other countries. We have seen that there is no paper mill, no type foundry; no attempt is made to manufacture electrical goods, or arms or ammunition. Until recently, although there were dynamite factories within the Union, not only the bulk of the raw ma-

terials, but even the cases, were imported. The bulk of the local industry is confined to foodstuffs and chemical manufacture, such as butter, cheese, biscuits, refined sugar, beer, aerated waters, matches, soap, candles, and chemicals such as sulphuric acid and other bye-products of explosive works and soap works. The official list of manufacturing industries includes concerns such as tanneries, brick kilns, salt pans, flour mills, dairies, and building and contracting, which really are not to be classed as factories, except in the most primitive meaning of the word "manufacture."

It is matter of debate whether the foundation and growth of manufacturing industries can be accomplished satisfactorily by any artificial process or stimulus, or whether the desired end ought not rather to be attained by unforced, natural means. Probably only a great increase in the population, with a sufficient number of persons habituated or adapted to industrial pursuits, will render such undertakings sufficiently remunerative, or at least self-supporting. The supply of unskilled labour, in the presence of a large native population, is assured, to some extent. It is the population of consumers which is wanting. Such a population must be in existence within the Union; because it will need a long apprenticeship, and a high degree of excellence, before South African manufacturers can hope to compete in the markets of the world.

Nevertheless, it cannot be said that the prospect is wholly dark. In recent years, laudable efforts have been made to establish local industries; and if many of these are struggling, it is not the fault of their promoters, but that of the general population, which ought to have given greater encouragement to what, after all, must tend to the general increase of prosperity, or, of not that, then to the growth of habits of industry, within the Union. The hope of the future lies with the younger generation; and it is reassuring to find that something has been done by the educational authorities to stimulate a knowledge of, if not a liking for, the industrial arts. Several industrial schools have been founded, in which free tuition in technical subjects is given; while there are other institutions devoted exclusively to youthful offenders, where they receive training in the various trades. In others, again, simple indus-

tries, such as weaving and basket-making, are taught to poor children; and in this way it is hoped that a direction will be given to their energies which will equip them to become useful members of the industrial organisation of the Union. The trade schools at Capetown, Johannesburg, and Pretoria are also doing work of importance, although their energies are at present confined to the training of artisans, in such work as plumbing, wagon-making, forging, and electro-technics. Considerable encouragement has been given to these trade schools by the fact that youths trained in them are accepted as apprentices and improvers by the Witwatersrand mines and the South African Railways; and it is hoped that in time others will find employment in such factories as may need young men with an elementary technical training.

Some stimulus may also be given to industrial development as the result of the recent formation of an Industries Advisory Board, and of a Scientific and Technical Committee, which have since (Oct., 1918) been amalgamated as the Advisory Board of Industry and Science. Its function is to advise the Minister in regard to industrial development and economic questions.

CHAPTER XI.

FINANCIAL AFFAIRS.

ONE OF THE most important considerations with which those who have the administration of the Union are concerned is the object of taxation as an instrument of government, and its incidence. Broadly speaking, taxation has two main ends in view—the liquidation or reduction of public debt, and the payment of the current or recurring expenses of administration of public affairs. In any consideration of the public debt, regard must be had to the degree of its productivity, that is to say, to the extent to which the funds raised by incurring the debt have been expended upon things or objects which are themselves capable of producing a return or revenue—which, in other words, constitute a capital fund no matter how many forms it may take, which is likely to yield a more or less constant income to the State, regarded as an investor. At the present time, the public debt of the Union amounts to about one hundred and sixty million pounds, a considerable part of which is due to expenditure incurred as a consequence of the participation of the Union in the European War, chiefly in connection with the campaigns undertaken in German South-West Africa and German East Africa. On the 31st March, 1918, the public debt amounted to £160,436,000. of which £115,513,920 (or 72 per cent.) was classed as productive debt. and £44,922,080 (or 28 per cent.) as non-productive debt.¹ Of the productive debt, much the greater proportion had been expended on railways and harbours, which must be regarded as a commercial and revenue-producing organisation carried on by the State. Of the capital embarked in this branch of administration, over one hundred millions were regarded as debt on which the Railways and Harbours Department paid interest to the Consolidated Revenue Fund. In the same way, a large amount, raised by way of loans which went to form part of the

(1) *Official Year Book*, p. 717.

State debt, had been expended on posts, telegraphs, and telephones, which, if held in private hands, would be regarded as a purely commercial undertaking. But it is not strictly correct to say that the portion of the public debt classed as unproductive is all of it unproductive in reality. At first sight, funds expended for war purposes would appear to have been lost for ever. But when it is remembered that, as a consequence of this expenditure, South-West Africa has become part of the Union (subject to certain restrictions), it will be seen that the debt incurred in connection therewith is by no means unproductive, and that, having regard to revenue to be raised from the newly-acquired territory, and possibilities of future expansion, it may be looked upon in the light of an investment. Expenditure of loan funds on such matters as irrigation and agricultural education, though not directly productive in the sense that a revenue accrues therefrom, may also be regarded as indirectly productive, because it is devoted to the development of the natural resources of the country, and is therefore likely to contribute materially to its ultimate prosperity. Looking at the subject from this point of view, it may be said that in truth very little of the public debt of the Union is unproductive.

Having regard, then, to the fact that most of the public debt represents realisable or revenue-producing assets, the credit of the Union may be said to rest on a thoroughly sound basis. And it may be said that the methods employed for the extinction of debt are equally sound, modelled, as they are, on those which have approved themselves to the most experienced and cautious of British financiers. No daring experiments in finance have been attempted, and those who are charged with the superintendence and liquidation of public debt have been content to proceed on conservative lines. While the Union has become liable for the debts of the several Provinces existing at the date of its establishment, which are now all consolidated in the general public debt, it has raised loans in the same manner, and has, on emergency, issued treasury bills at short call. Due care is taken that surplus revenues, over and above current expenditure, are paid to the Public Debt Commissioners and applied to the payment of interest and the aug-

mentation of the sinking fund; and an effective control is also exercised over the debts due by the Provinces to the Union Treasury, the interest and redemption charges of such debts ranking as ordinary expenditure of the Province for purposes of the yearly subsidy from the Union Treasury to the Province. In general, a strict control is exercised, not only in respect of current expenditure, but of debt redemption, by the Controller and Auditor-General, and careful attention is paid to the regulations embodied in the Acts which settle the financial policy of the government, such as the Exchequer and Audit Act, 1911 (amended in 1916), the Public Debt Commissioners Act, 1911, the General Loans Consolidation Act, 1917, and the Financial Relations Acts (1913 and 1917). The satisfactory prices which South African government stocks, more particularly the $4\frac{1}{2}$ and 4 per cent. stocks of the Cape of Good Hope, have always maintained, is an indication of the esteem in which they are held by the European investor. The lower prices of Transvaal and Free State stocks, which were issued to secure the loans raised after the Anglo-Boer War, are due to the lower rate of interest paid. But the security is equally good in all cases, being that of the credit of the Union as a whole. Nor must it be forgotten that, apart from the productive nature of the public debt in itself, the State has several valuable assets to fall back upon in case of need, such as its rights to dispose of mines and minerals, and its direct interest in the product of diamond mines. Under the South Africa Act, these, together with all Crown lands, public works, and all movable and immovable property throughout the country belonging to the constituent Colonies, including ports, harbours, and railways, became the property of the Union Government, and they are accordingly to be looked upon as security for the public debt. Further evidence of stability is afforded by the fact that recent loans issued in connection with the European War, have been entirely taken up by investors within the Union; though the latest issues have been at a rate of 5 per cent., and free of income tax and super taxes and excess profits duty. It is, however, clear that local investors have plenty of disposable capital. This is indicated by the heavy purchases in recent years of South African mining shares, which were formerly regarded as the monopoly of the European investor.

While the principles which are applicable to the management and extinction of public debt are fairly constant, the sources from which come the means of extinction, as well as of defraying ordinary recurring expenditure, *i.e.* the annual budget, may vary considerably, in accordance with the modes adopted for raising revenue. To some extent the public revenue is obtained from permanent sources, such as the surplus earnings of the railways, and the money-making departments of State, such as the post office, mining licences, sales of Crown land (which, however, represent a diminishing asset), rents of government property, and sales of timber from Crown forests. It is in the region of taxation that there is the greatest room for fluctuations of policy. Certain forms of taxation, mainly of an indirect nature, are fairly constant, and may be regarded as permanent sources of revenue, such as customs dues, excise, stamp duties, trading and professional licences, native pass fees, and duties on transfers of land. It is in the sphere of direct taxation that the greatest room for controversy arises. It is only within comparatively recent years (*i.e.* in the Cape Province since 1904) that an income tax has been levied; but there is every indication that it has become permanent, and a consolidating Income Tax Act was passed in 1917. The same remark applies to death duties. The income tax has been followed by its inevitable modern accompaniment—though this has only been imposed for temporary war purposes—of an excess profits tax. A super-tax is also imposed on large incomes. The fairness of this form of taxation is generally admitted, though, as we have seen, it is extremely difficult to collect from the rural population. This has led to a strong demand from the towns-people for equality of taxation, which they consider will be achieved by the imposition of a tax on unimproved land values. This proposal has met with much hostility from the farming community, and though there are signs that opposition may be overcome, and that in time to come a land tax may be levied with success. In the Transvaal and the Free State the country population strongly favour a poll tax, such as was imposed in Republican days. It is objected to this that the incidence of a poll-tax is unjust, because it is the same for the rich man and the poor.

man. In the Transvaal a considerable measure of success has attended the imposition of a house tax, based on the number of rooms; but it is stated that many of the rural population also succeed in evading payment of this tax. The freedom which the Constitution gives each Province to impose direct taxation for local purposes has led to many variations. In the Cape Province, farms are taxed by means of assessment rates levied by the divisional councils; in the other Provinces there is no land tax worthy of the name. In the Cape Province and in Natal there is a tax on amusements; not so in the other Provinces. In the Cape Province, rates are levied for school board purposes, and, in addition, most of the education is paid for. In the Transvaal, both primary and secondary education are free. It is likely that the Provinces will resent any attempt to impose a uniform standard of taxation and expenditure, preferring their existing freedom to follow, within the limits of the Financial Relations Acts, such modes of raising revenue as they deem best adapted to local conditions. At the same time, there is a considerable influence in example; and modes of taxation which have proved profitable and non-contentious in one Province will very likely be adopted in another.

Turning to private finance, we find that the banking business of the Union is in the hands of four or five banking companies. Most of them manage their affairs on English banking principles, and they may all be said to be fairly sound and safe concerns, although one or two of them are known to give undue facilities to speculative traders. That, however, is a matter for the shareholders. The banks also grant mortgages on security of real estate, and make advances against pledges of mining shares. There does not, however, appear to be any likelihood of a recurrence of the financial troubles which arose in connection with the failures of the Union Bank and the Cape of Good Hope Bank, nearly thirty years ago. Legislation has protected the public, as far as banks are concerned, by insisting on the delivery to the Treasury of quarterly returns of assets and liabilities; while, with the exception of a purely local institution, banks in the Cape Province must deposit government securities for their note issue. In the Trans-

vaal and the Free State, banks must hold cash in hand to the extent of one-third of their note issue. In Natal no like security is demanded, but this is not of importance, as there are no purely local institutions.

There are several life insurance companies, which have been founded within the Union. They do a large and flourishing business, and are carefully managed. At the same time, a large number of English and foreign companies transact insurance business in South Africa.

A remarkable feature in recent years has been the growth of building societies, especially at Cape Town and Johannesburg. There is no general building societies' Act for the Union, but as these institutions are all, or nearly all, of them limited companies, their management proceeds on well-defined principles, while the extent of the business they transact testifies to the increasing thrift of the people.

The number of limited companies is very large, having regard to the size of the population. They are regulated on the principles which have been established by company legislation in England, and the Transvaal Companies Act is practically a re-enactment of the English Act of 1908. This last-named statute introduced the "private company," which has now become a familiar feature of commercial life in the Transvaal. Public companies present much the same phenomena of good and ill fortune and management as in England, in respect of defaulting directors, "watered" capital, "wild-cat" schemes, and similar matters.

CHAPTER XII.

THE WORKING OF THE RAILWAYS.

WHILE RAILWAYS must play a great part in the development of any country, they are especially important in South Africa, where there are no other means of transport, if we except the primitive ox-wagon. There are no canals or navigable rivers, and the railway lines form the sole instrument of communication between the coast and the interior, or between the large urban centres and the remote country districts. Considering the enormous capital cost of construction, a fair amount of railway building has been done within the Union, although there is room for considerable further expansion. Of the lines already constructed, more than a negligible proportion have been laid for political reasons, at the behest of certain sections of the population whose wishes their representatives could not afford to disregard. Some public railways were also constructed to advance private land-owning interests. It was in order to prevent a recurrence of this state of affairs that the South Africa Act provided for the future working of the railways on "business principles," which, apart from ceasing to use them as a means of earning inordinate profits or of taxing the people indirectly, would ensure construction strictly in order to serve centres of population and to tap new sources of supply. It is, however, inevitable that certain lines will continue to be constructed without regard to their eventual payability, and merely with the object of affording means of access to remote parts of the country.

Reference has been made to the financial system which prevails in regard to the railways, as a State undertaking, and it is unnecessary to enter into any further discussion of the subject. It may, however, be pointed out that the full development of the railways, as a working concern, will always be hampered by the existing narrow standard gauge of 3 feet 6

inches, and by the fact that all the main trunk railways are single tracks. As a result, the speed of trains is limited, in a country where there are very steep gradients and numerous curves. Any widening of track will present very great engineering difficulties, and the expense will probably be prohibitive—although the alteration is not impossible of accomplishment. The number of trains which can be run at any one time is also limited, owing to the necessity of waiting at crossings on single lines. Having regard to these facts, great credit is due to those who have managed South African railways in the past, more especially in respect of the success which attended their use as lines of communication in the Anglo-Boer War and the campaign of 1915 in German South-West Africa.

Nevertheless, there are certain features in which a State-owned railway system compares unfavourably with a large private undertaking of a similar kind. The absence of competition, in other words, the existence of a monopoly, makes a State railway less responsive to the wishes and needs of the public. There are small facilities, which are appreciated by the frequent traveller, which are often absent in the case of a State railway. Thus, in South Africa, there is no uniformity in the system of issuing excursion tickets and season tickets. And an insufficiency of rolling-stock makes itself manifest at holiday times, obsolete carriages being pressed into the service, to the discomfort of passengers, especially those who pay full fares. There is also a certain amount of conservatism in the development of traffic in congested areas. At Johannesburg, especially, no effort has been made to link thickly-populated districts by rapid transit communications, and a direct electric line between Johannesburg and Pretoria, the two most important towns in the Transvaal, has "hung fire" for many years. In the same way, railway station accommodation at Johannesburg is sadly lacking. The truth is that the largest centre of population appears to have been sacrificed, in railway matters, to political needs. In the early days of Transvaal railway construction, lines were built to enable the ports and other large towns "to reach the gold fields." This spirit still appears to prevail; and there does not appear to be abroad any idea of enabling the gold fields to reach anywhere else.

On the whole, however, the South African railways system is well managed, and in many respects compares favourably with the best systems for comfort and safety in travelling. Accidents are rare, though when they do occur they appear to make up in degree of severity for their infrequency. Railway lines are especially subject to flooding, which is frequent in South Africa, with its high plateaus and torrential downpours. It is only at times of congestion that the weaknesses of the system make themselves manifest; but at such times critics abound, and their causes of complaint are magnified. Railways are always the butt of the travelling public, and in South Africa there are as many grumblers as anywhere else. The management is always ready to respond to public criticism, and seldom fails to correct a grievance or abuse which is clearly known to exist. After all, it must not be forgotten that the Union railway system now ranks as a really important industrial undertaking, with between ninety and one hundred millions of capital expenditure, and more than thirty-five thousand white railway servants.

Like the mines, the South African Railways (to use the official designation of the railway department of the Union) have given employment to large numbers of young men of local birth, as station-masters, guards, engine-drivers, and firemen. Statements are frequently made that South Africans are indolent and unwilling to work; but they are largely refuted by the fact that these two great industrial systems, the mines and the railways, largely depend for their supply of labour on the "local product." At the same time, it is still regarded as unsafe—though for no manifest reason—to entrust South African-born men with the responsibilities of management. It is possible that, if employed in this sphere of action, they may display as much capacity as the "imported article."

The railways form one department of public administration together with the ports and harbours of the Union. In the case of the harbours, the chief practical difficulties in their management have been physical obstacles, such as the sand-bars which for so many years have been the cause of trouble and expenditure at Durban, East London, and at Delagoa Bay, which, for all practical purposes, may be regarded as a

Union port. At Port Elizabeth and Mossel Bay, also, the anchorage problem is a serious one. It is certain that much expenditure will still have to be faced before these ports can be regarded as at all adequate in respect of berthing and landing facilities, apart from questions of safety. At the present time, Cape Town is the only port with proper dock accommodation, and it is hampered by the greater popularity of the other ports as centres of goods traffic.

One source of weakness in the management of the railways is the system of general control, which is bound up with its existence as a State undertaking. In the case of a private railway, there is a general manager, who is responsible to a board of directors; and the control of the board is practically supreme, the shareholders of the concern having little, if any, right of interference in the management. Indeed, for most practical purposes, the board itself does not exist, surrendering all active control to the general manager. In the State railway system, however, there are three authorities—the Minister of Railways and Harbours, who is the political head responsible to his ministerial colleagues and to Parliament; the Railway and Harbour Board, established by the South Africa Act, consisting of three members, together with the Minister himself as its chairman; and the General Manager of Railways. Under the Constitution, the control and management of the railways, ports, and harbours of the Union is exercised by the Railways and Harbour Board, subject to the authority of the Governor-General-in-Council, *i.e.* the Ministry. The final control resides in the Parliament. It is, however, extremely difficult, not to say impracticable, for the legislature to exercise any direct authority over the administrative working of the system. All it can do is to criticise accounts, and to express its disapproval if some glaring instance of incompetency or maladministration is brought to its notice. At the same time, the Minister's tenure of office is dependent on the goodwill and support of Parliament, so that in this way some sort of control, which may or may not be political in its nature, is exercised over him. The Railway Board was apparently intended to be non-political, although some of its members in the past have certainly not been appointed on account

of their technical knowledge of railway matters. The fact that the Minister belongs to the Board gives it, to a certain extent, a political complexion, though there is no ground for thinking that any Minister of Railways has been, or will be, guided in his acts by his political leanings. The Railway Board is in the habit of presenting an annual report to the Minister, to be laid before Parliament, and it has happened that this report, addressed to the Minister, has been signed by the Minister himself as Chairman of the Railway Board. Accepting the position that the Board is constituted for technical and business management, curious positions may arise where a Minister, as the mouthpiece of the Governor-General-in-Council, declines on political grounds to accede to the recommendations of the Board to which he belongs. If there is to be a Railway Board, it would seem more logical that the Minister should not belong to it, and that he should merely receive its recommendations, which he might be at liberty to accept or refuse. But if the Board is to be a merely technical advisory or administrative body, then there would appear to be no necessity for it to exist, as its functions could equally well be performed by the General Manager of Railways, who is, after all, the active technical and business head of the administration. In any event, a Railway Board, composed mainly of men who have had no practical railway experience, would hesitate greatly to override the recommendations or decisions of the General Manager, particularly when he is both able and experienced, like Sir William Hoy, the present holder of that office. The conclusion appears to be that there is no real necessity for the existence of the Railway Board. Regarded as an advisory body, its functions may well be absorbed in those of the General Manager; as a controlling or merely a concurring authority, it is also superfluous, for the Minister is the responsible head of the Department, and it is he who must answer to Parliament, and take to himself the blame or praise of any final decision. Even if the Board continues to exist, it will in many instances be compelled to acquiesce in many acts of a General Manager who is forceful or "pushful," because in times of stress rapid decisions will have to be taken, which cannot be submitted to the, presumably, careful consideration

of a Board. If the Board is to remain, the railway servants, who are voters as well as employes of the State, have demanded that they shall be represented upon it. Opinions have been expressed in Parliament that there is no necessity for the Board. Its abolition would require an amendment of the South Africa Act.

A word remains to be said of the railway system as an educative factor. Next to the missionary, who has spread the Word of God among the heathen, and to the *voortrekker*, who first made a pathway through the trackless wild, civilisation in South Africa owes most to the South African railway line, which has brought in its wake sanitation and healing, a knowledge of a wider life, and the means of employment to thousands of natives who once were merely primitive savages; and has given the lonely farmer the knowledge that he is not lost to all his kind. In other countries, the existence of railways has merely been incidental to progress, in a comparative sense. Thus, in Europe, the arts and manufactures, and most of the accompaniments of civilisation, have grown and flourished independently. But in South Africa, where most of what has contributed to enlightenment, comfort, and refinement of life is of exotic origin, the railway has been the all-important factor. Without it, the Transvaal would still be a handful of primitive farmers; the wealth of the diamond fields and gold fields have remained unexploited; and the pathway to the North an idle dream. "The wonderful north-bound train" is no empty imagining of the poet, when he sings—

"So we return to our places,
As out on the bridge she rolls;
And the darkness covers our faces,
And the darkness re-enters our souls."

CHAPTER XIII.

EDUCATION.

FOLLOWING THE example of Canada and Australia, the control of educational affairs is entrusted to the Provincial Councils, with the exception of higher education, which is the charge of the Union Minister of Education. It is, however, provided in the Constitution that after five years from the establishment of the Union (*i.e.* at any time after 1915), it shall be competent for Parliament to make other enactments for the management of educational affairs. It is thus within the power of Parliament to deprive the Provincial Council of all control over education, elementary and secondary, and to vest it in the Minister, or to determine that for a definite period such control shall remain with the Provincial legislature. If nothing is said about the matter, the existing system of Provincial control will continue. The strongest argument in favour of the transference of all educational management to the Minister of Education is that thereby uniformity will be secured, not only in actual teaching methods and the school curriculum, but in administration and the rights, privileges, and qualifications of teachers, while financial inequalities will disappear, so that every citizen will be treated on exactly the same footing, as far as taxation for educational purposes, and the payment of fees or, alternatively, the provision of free education are concerned. There are certainly important points of local difference in the existing system. In the Cape Province, parents contribute by means of fees about 25 per cent. of the cost of education, besides paying for it directly by means of a school board rate, and indirectly by means of taxation; in the Transvaal, school boards have power to levy rates, but have not done so hitherto, and the whole cost is defrayed by the Provincial administration out of its general revenue, no fees being paid for tuition in government schools; in Natal,

a certain proportion of fees is paid by parents to a central fund, which meets all the charges of education; while in the Free State the Provincial administration bears all the cost. There is much to be said for uniformity in respect of the financial burden of education; while it is also urged that identical methods of teaching are likewise desirable. If, however, a uniform system is introduced, the principal work of the Provincial legislatures and administrations will disappear, unless further powers are granted to them, beyond those now available under the Constitution. Against those who advocate a central control of education, it is argued, with much force, that uniformity is not in itself a desirable thing to aim at, as it will tend to stifle originality or adaptability to local conditions, and will only produce a dull, dead level of mediocrity. Each Province will prefer to retain its existing educational system; and it is thought that local control will be more direct and effective than the incomplete supervision which will be exercised by Parliament. Besides, the control of a Minister will tend to bureaucracy and autocracy, unless he be an enlightened despot of the best type. What may weigh in the ultimate decision is the question of cost; although that may be settled by a proper adjustment as between the Provinces, basing education subsidies according to population, or some like standard of equality. At the present time expenditure on education by the Provincial Councils is roughly calculated on a capitation basis, although the cost varies according to local conditions, salaries of teachers and expenses of school building being greater in some Provinces than in others.

Among teachers the complaint is general that they are inadequately paid. In this respect South Africa does not differ from other countries; for teaching has long been recognised as the "Cinderella" of the professions. There appears to be no doubt that, having regard to the rates of payment which prevail in other callings, teachers ought to receive remuneration on a higher basis. The whole question is one of adjustment to the financial capacity of the population. It is certain that the existing burden of education estimates is no light one, and everything depends upon what the people will bear in taxation for the purpose. Something has been done

to lighten the lot of the teacher in government schools. He is regarded as a servant of the State, and enjoys the benefits of a pension scheme, which is applicable to female teachers as well. At stated intervals he is entitled to a period of "long leave," apart from the ordinary vacations; and during holidays he may travel on the railways at reduced fares. The annual salary of the secondary school teacher varies, in the Cape Province, from £400 to £700; in Natal, from £500 to £600; in the Transvaal, from £600 to £800; and in the Free State, from £350 to £650; while a principal of a primary school receives, on an average, from £300 to £600 (in the Transvaal, if the school has a commercial secondary department, up to £700). Assistants are paid in proportion, according to grade. It will be seen that the Transvaal offers the greatest attractions in the way of salaries, and many teachers from the other Provinces apply for appointment in this Province. Although excellent training institutions are provided, it cannot be said that the supply of trained teachers is adequate to the demand; and the reason commonly given for this is that scholars are reluctant to enter as student-teachers, believing that the prospects in the teaching profession are not sufficiently attractive. It must not be forgotten that, in the Transvaal, many clerks and shop-assistants receive from £20 to £35 per month; while many skilled artisans receive from £30 to £40. Owing to antique conventional notions which may one day disappear, the teacher is supposed to be under the necessity of "keeping up appearances" to a greater degree than the classes just named. On the other hand, it must not be forgotten that the teacher, like the civil servant, enjoys security of tenure during good behaviour, and the prospect of a pension at the end of his career.

As between the Provinces, much may be done by insisting on uniformity in training of teachers, and in the scales of their remuneration.

There is no doubt that the free compulsory system has come to stay, and the tendency will rather be in the direction of extending its sphere of operation than of reducing it. The system has had its greatest application in the Transvaal, where, as in the Cape Province and the Free State, attendance

at elementary schools is compulsory between seven and sixteen years of age. In Natal the age limit is fifteen. In the Transvaal, secondary education is free, and so is training in commercial and technical schools, and evening continuation classes. There is a strong movement in favour of free university education, and certain would-be reformers look forward to the time when attainments will depend on opportunity rather than on merit. It is doubtful whether universal free higher education would result in a higher standard of general efficiency, or better equipment for the battle of life. The existing bursary system, by which students of a certain standard are enabled to obtain a university education at little or no cost, appears to afford better opportunities to ability than would exist if university training were a free gift entirely independent of individual effort and attainments. The tendency of the age, however, in South Africa, is towards "equal opportunity for all," and it will be difficult to resist it. The cost to the State will be great, and it is certain that in many cases the boon of higher education will not be appreciated, or will be wasted. If there is to be free university education, it must be made to depend upon merit, and the State should not be asked to pay for those who are not likely to make an adequate return for its expenditure.¹

The advantage of a compulsory system is that it tends to raise the standard of literacy, that is, to diminish the proportion of illiterates in the general population. As far as the white population is concerned, even at the present time very few persons are unable to read or write. What illiteracy exists is due rather to want of opportunity than to lack of interest. Every farmer throughout the country desires that his children shall receive good education. The only exception exists in the case of the "poor whites," and it is to their reclamation that efforts should be directed. Vigilance on the part of school attendance officers may be relied upon for much.

(1) Speaking of the United States, Lord Acton (*Historical Essays*, p. 123) says: "In a country where there is no distinction of class, a child is not born to the station of its parents, but with an indefinite claim to all the prizes that can be won by thought and labour. It is in conformity with the theory of equality to check the causes which disturb it, and to give as near as possible to every youth an equal start in life. . . . In several States a system of instruction was introduced which enabled a pupil to advance from the first rudiments of knowledge to the end of a university course and to prepare himself for the learned professions, without payment of a single shilling."

Absence of illiteracy is not, however, a necessary guarantee of a high educational standard. The degree of attainment of the average child in the schools is not very high, though the blame rests not so much with the plastic material, which is capable of taking any shape, as with a system which allows educational faddists to indulge their eccentricities unchecked. The school curriculum is entirely in the hands of the departmental officers, being subject to no external interference or control; and complaints are often heard of want of elasticity in curricula, on the one hand, and of a too great multiplicity of subjects taught, on the other. Fashions change in education, as in other things, and there is some danger that school children may be made the victims of passing whims or caprices. There is nothing to indicate that the old-fashioned plan of teaching a few subjects thoroughly is not as efficacious as the more modern (and at the same time more ancient) one of imparting a superficial knowledge of many things. In the case of pupils with special adaptability, of course, full encouragement ought to be given to their particular bent; but in the case of the child of average or mediocre attainments it will be better to teach fewer and less complex subjects. Much success was obtained under the sound and unadventurous system which was set on foot in the Cape Colony by the late Sir Langham Dale, and continued by his successor, Sir Thomas Muir, who was a notable product of the thorough system of training teachers which was in vogue in Scotland during the nineteenth century, and, even at the English universities, produced such conspicuous examples as Professor Caird and Dr. Strachan Davidson. South Africa owes much to Scotch teachers, especially those who have been engaged in higher education, such as Professor Walker, at Stellenbosch (Victoria College), Professor MacWilliam at Somerset East (Gill College), and Professor Ritchie at Cape Town (South African College). It would, however, be unjust to give all the credit to Scotsmen. Excellent work has been done by English and Irish teachers, while men and women of South African birth have achieved notable success in the teaching profession.

There is one element which militates against true success in imparting knowledge. South Africa is an examination-rid-

den country. The "matriculation fetish" prevails, and everyone is judged according to his ability or failure to attain this not very high intellectual standard. Children are trained to pass examinations, and to neglect subjects which, though more useful, are regarded as less essential from the examiners' point of view. In this way there is a great misdirection of energy, and an entirely false standard of instruction has been set up. The evil is not confined to South Africa, and educational authorities will probably take their cue from developments or changes of opinion on the subject which manifest themselves in other countries. This may not be an unmixed blessing. Complaints are heard to the effect that there is already too much imitation, or rather lack of initiative, in South Africa.

At the same time, a more enlightened notion of the true aims of education has begun to prevail during recent years. While it is recognised that one of its functions is to impart knowledge, or the means of directing the mind so as to acquire the most useful knowledge in later life—what American authorities call "post-school education"—much is being done to train pupils to fit themselves for citizenship in the South African democracy. "Civics" has been accepted as a recognised subject, and much attention and energy are being directed towards imparting a knowledge of local affairs and problems, and of the relations of South Africa to the Empire and the world at large. It has been recognised that a "cramming" system, designed to produce Admirable Crichtons, such as was in vogue in Germany, only blinds the intellect to a conception of higher and wider things. At the same time, while, as we have seen, too many subjects are taught in the elementary schools, it is recognised that a many-sided curriculum is of advantage in the secondary schools, offering a liberal field of choice to vocational and cultural tastes, interests, or needs. And the school system is being organised so as not to encourage or even permit the segregation of social classes. It is now generally recognised that the free school is as capable as any other of producing the future physician, engineer, inventor, or military commander.

The surroundings in which children are being trained have also begun to engage much attention. School buildings of the

most advanced type, in respect of structure, appliances, and hygiene, have been erected, and many elementary schools in the Union compare favourably with well-endowed institutions, designed for far more ambitious purposes, in England and the United States. The medical inspection of schools is being organised on an efficient basis, and such experiments as the feeding of poor children during school hours, inaugurated under the London County Council, have been imitated at centres like Johannesburg. The one conspicuous feature of the system is that it is neither conservative nor hide-bound, but that educational authorities, given the requisite financial powers, are ready and willing to adopt any methods which may be calculated to advance the welfare of the children entrusted to their charge.

The question of financial control has been a matter of considerable dispute, especially in the Transvaal, where school boards originally (when the Education Act of 1907 came into operation) had the power of spending money, being subsequently deprived of this, and left with only the power of recommending expenditure, which was to be settled by a somewhat autocratic Education Department. Round this question controversy still rages, the contention on the one hand being that school boards are best acquainted with and sympathetic to local needs, and, on the other, that it is the function of the Department, which is responsible to the Provincial treasury, to check the wanton expenditure which might take place if it were deprived of control.

In the Transvaal, also, school boards demand that they shall be vested with the control of secondary schools, which are managed by special committees which make recommendations to the Education Department. It is contended that there is, in principle, no difference between the management of a secondary and that of a primary school, more especially as the secondary schools are free. Many secondary school teachers prefer not to be subject to the jurisdiction of school boards, as they prefer their schools to maintain a "tone" which, it is alleged, does not exist in the primary school. Their attitude is resented by those who are in favour of absolute equality.

The real object of the school boards appears to be the maintenance of continuity and co-ordination between the various classes of schools. For this reason they also desire to have the control of continuation classes, which at present are directly administered by the Union Department of Education. Opponents of the proposed change, however, contend that if the wish of the school boards is granted, there is no logical reason why they should not have a voice in or control of university management as well.

CHAPTER XIV.

THE UNIVERSITIES.

DURING FORTY-FIVE years (from 1873 to 1918) the control of higher education in South Africa was vested in the University of the Cape of Good Hope, which was created by Act of Parliament, and received a Royal Charter in 1877, whereby recognition was accorded to its degrees throughout the British Dominions. It was purely an examining institution, framed on the original model of the University of London, and students received their actual training in affiliated colleges, each of which had its staff of professors and lecturers. These were, at first, the South African College at Cape Town, the Diocesan College at Rondebosch (now a high school), the Victoria College at Stellenbosch, St. Andrew's College at Grahamstown (since merged in the Rhodes University College, but carrying on the work of a high school), the Grey College at Bloemfontein (now the Grey University College), and the Huguenot (Womens') College at Wellington: to which were subsequently added the Rhodes University College, the South African School of Mines at Johannesburg, the Transvaal University College at Pretoria, and the Natal University College at Maritzburg. The Cape University prescribed courses, and conducted examinations for degrees from the matriculation standard upwards, as well as for solicitors and land surveyors, and the law department of the civil service, and its degree examinations were generally recognised as conforming to a fairly high standard. The lack of teaching organisation by the central university authority, and the want of a medical school where students might receive local training instead of having to walk the hospitals of Great Britain or the Continent, were generally recognised as elements of weakness, although the University performed a useful function in the efficient training of many hundreds of students for professional life in South Africa.

During the course of its independent existence some 18,000 students matriculated at the University, and over 2000 graduated. Ultimately a movement began in favour of altering the constitution of the University, so as to make it a teaching institution instead of a purely examining body.

Mr. Alfred Beit, who died in 1906, bequeathed the sum of £200,000 for the purpose of founding a teaching university in South Africa. His intention was that the site for this university should be fixed at Frankenwald, between Pretoria and Johannesburg, and it was clearly his object that the university to be founded with his bequest as the nucleus should be situated in the Transvaal. Nothing was done, however, until after the Union came into being, when, in 1912, the Minister of Education published a Bill, to be introduced into Parliament, providing for the establishment of a new university. Although this was not expressly stated, it was clear from the terms of the proposal that the new institution was, in the main, to be a post-graduate and research university, conducted on methods similar to those prevailing at the Johns Hopkins University at Baltimore. The scheme met with much criticism. It was pointed out that a post-graduate institution was premature and out of place, in a country with a small population, where only about one hundred graduates were passing annually out of the existing University. The proposal was abandoned. The death of Sir Julius Wernher, who by his will left a further sum of £300,000, to be used for the same purposes and administered by the same trustees as the Beit bequest, made a total sum of £500,000 available for the endowment of a South African University. A Bill was introduced into Parliament for the conversion of the existing Cape University into a teaching university, to be known as the University of South Africa. The measure was widely criticised, both in and out of Parliament, and was referred to a select committee. Ultimately a University Commission was appointed to enquire into and report upon the subject of higher education, and to make suggestions with regard to future developments. The Commission reported in favour of the creation of a second University at Pretoria, and the incorporation of the various university colleges as constituent colleges either of the new University or

of the Cape University. This proposal, again, did not meet with favour. Local interests and prejudices and vested rights felt themselves assailed. Many people at the Cape feared that Pretoria might become the centre of academic and intellectual influences, and, what was more practical, that none of the Beit moneys might find their way to Cape Town. It was strenuously urged that Cape Town, as the oldest place of European settlement, was the ideal site for a South African university. This alarmed the authorities of the Victoria College at Stellenbosch, which in recent years had grown to be a formidable rival of, if it did not surpass, the South African College at Cape Town. Various influences were set to work, and ultimately the Beit trustees were induced to agree to the bestowal of the bequest upon a university situated at or near Cape Town. It was suggested that an ideal site was to be found at Groote Schuur, the former estate of Cecil Rhodes, near Rondebosch. A question then arose with regard to the disposal of the existing Cape University, and its affiliated institutions. It was suggested that this University should be transferred to Pretoria, and that the existing colleges, except the South African College and the Victoria College, should remain affiliated to it. Effect was given to these proposals by three Acts, which were passed by the Union Parliament during 1916, the last year in which the Beit bequest might be accepted. The South African College was to become the University of Cape Town, being transferred to Groote Schuur, receiving all the benefits of the Beit bequest. The Victoria College was to become the University of Stellenbosch. It has since received generous gifts and bequests from residents of Stellenbosch. The Cape University became the University of South Africa, with its seat at Pretoria. It remains an examining university, but embraces, as constituent teaching colleges, the Transvaal University College (Pretoria), the Grey University College (Bloemfontein), the Huguenot College (Wellington), the Natal University College (Maritzburg), the Rhodes University College (Grahamstown), and the School of Mines (now University College, Johannesburg). Each of the three Universities was to be independent, with full powers to conduct examinations, confer degrees, appoint professors and

lecturers, and to grant scholarships and endowments for research. To ensure a certain degree of uniformity, it was provided that for defined purposes there should be a Joint Examination Board, managed by the University of South Africa, which was to conduct a matriculation examination common to all the Universities, and examinations for the law certificate, civil service law certificates, and land surveying. The three Acts took effect on the second day of April, 1913 (the first day of that month being ignored).

It is too early to judge of the work or of the future influence of these three Universities. Full concession has been made to local prejudices and ambitions. The University of South Africa, with its wider sphere of influence, and as the legal inheritor of the Cape University, with its past record of good work, is likely to maintain a sound position, increasing with the growth of its constituent colleges. It may find an obstacle in the lack of adequate endowments, although this is a deficiency which may be remedied by the lapse of time. The two other Universities are fairly well endowed, and as the number of students, attending the colleges from which they have been developed, constituted the bulk of the college candidates for the examinations of the former Cape University, their future is probably assured. None of these three institutions will take full rank as universities until provision has been made for an adequate faculty of medicine, and the proper endowment of and facilities for scientific research. Lack of opportunity for research has constituted one of the principal drawbacks in university work in the past. Students who desired to gain more scientific knowledge than was involved in the passing of ordinary degree examinations, or who wished to become specialists, were compelled to resort to European or American universities. And even medical men who have obtained their qualifications in England or elsewhere out of South Africa are compelled, if they wish to keep abreast of advance in the science of their profession, to make periodical visits to European or American hospitals and medical schools. There is a great field in South Africa for local scientific research. Diseases such as miners' phthisis and bilharzia are almost peculiar to the country, which has also a flora and a fauna highly individual and characteristic. Properly equipped with labora-

tories, science museums, and other scientific resources, the South African universities ought to do valuable work in the advancement of research.

The foundation of three more or less local universities has naturally led to an agitation for the establishment at Johannesburg, the largest centre of population within the Union, of a university which shall minister to the needs of that community, and be adapted, in a greater or less degree, to the special forms of industrial life which are associated with the Witwatersrand. This has met with a favourable response. In March, 1916, the Witwatersrand University Committee was formed, and pledged itself to obtain the necessary funds for the expansion of the School of Mines into a University College. An annual grant was made by the Municipal Council of Johannesburg, and the same body reserved an area of eighty acres at Milner Park as a site for a future University of Johannesburg. An arts department, with capable professors and lecturers, has been added to the School of Mines, and a beginning has been made with a medical school. The Johannesburg Hospital, a large and well-equipped institution, compares favourably with European hospitals, and, together with the adjacent bacteriological and general research laboratories, offers an excellent training-ground for medical students. There are justifiable hopes that, given continued public interest and support, Johannesburg will have its own university before many years have passed. The people will, however, have to rely upon their own exertions, and the chance generosity of local men of wealth, for officialdom looks coldly upon Johannesburg, which has also been deprived of all hope of sharing in the Beit bequest.

The universities of South Africa have a great work before them in the creation and diffusion of an atmosphere of learning, which so far has been a matter of ridicule and jest. The colleges, with all the sound work they have done on conventional lines, have hitherto done little to create such an atmosphere. Their professors, in the main, have been content with routine class-work, and have done little to make their influence felt among the people at large. It is to be hoped that a new era has dawned, which will see the growth of better things.

CHAPTER XV.

LOCAL MOVEMENTS AND INTERESTS.

DURING NEARLY one-half of the nineteenth century, politics in the Cape Colony were largely concerned with the rival interests of the Western Province and the Eastern Province in that Colony. In the later days of the Crown Colony *régime*, there was a separate Lieutenant-Governor for the Eastern Districts. After the introduction of representative government, an Eastern Province party was formed in the Cape Parliament, with a distinctly separatist tendency. When responsible government was mooted, it was opposed by the Eastern members, who wished that any change in the parliamentary system should be made dependent upon the complete separation of the East from the West. It was at this time that the political division of "British" and "Dutch" began. Most of the Western Province people were of Dutch origin, while in the Eastern Province the majority of the population, descended from the settlers of 1820, were mainly British. The chief subject of contention, however, was not the difference of race. It was argued that the balance of power in legislative and administrative affairs was preponderatingly Western, and that Eastern Province interests were cold-shouldered or neglected. In 1864 a superior Court for the Eastern Districts was established at Grahamstown, but this did not satisfy the aspirations of the inhabitants. They desired complete separation, and for some years kept up a vigorous agitation to that end. In this object they were thwarted, largely by the attitude of the inhabitants of British Kaffraria. This region had been made a separate Colony in 1847, and was annexed to the Cape Colony in 1865. After the annexation, however, its parliamentary representatives indicated that they were more inclined to go with the Western Province than to side with the aspirations of the Eastern Province. Kaffraria was, in reality,

the far-Eastern Province, and if its people were opposed to separation, it was plain that the Eastern Province, lying between Kaffraria and the Western Province, would have no chance of obtaining an independent government. The extension of the Cape Colony by the annexation of the Transkei, Tembuland, East Griqualand, and Pondoland, caused the hopes of the people of the Eastern Province to recede still further into the background. Meanwhile, a change had taken place in the composition of the Eastern Province population. Many of its inhabitants had gone to seek their fortunes on the Diamond Fields and on the Witwatersrand. They were replaced by Dutch farmers who moved in from the adjacent Western districts; and at the present time the majority of the people in the Eastern Province districts of Colesberg, Albert, Aliwal North, Wodehouse, Barkly East, Hanover, Middelburg, Steynsburg, Cradock, Tarka, Jansenville, Somerset East, Bedford, Steytlerville, Humansdorp, and Uitenhage are of Dutch origin. The "British" centre of gravity, which was first at Grahamstown or Port Elizabeth, has now shifted to East London, and the course of political events has led the people of Kingwilliamstown, the old Kaffrarian capital, and the districts to the east of it, to forget the former bonds with the Western Province, and to feel themselves in absolute harmony with the inhabitants of Port Elizabeth, Grahamstown, and East London. Thus, except for judicial purposes, there is no longer an Eastern Province. Except in the Cape Peninsula and in Griqualand West all the people in the Cape Province to the west of Queenstown, Cathcart, Fort Beaufort and Albany may be said to be one in political sentiment, and of Dutch origin in the main. This is very far from suggesting that they are hostile to British ideas or ideals, but their sentiments are of necessity South African rather than anything else. It is probable, however, that economic interests will lead to a revival of the movement for separation between East and West, based on the old geographical boundaries of Court jurisdiction.¹ For their trade, the people of the Eastern

(1) There is no statutory definition of the boundaries of the "Eastern Province," which is ordinarily taken to include the area subject to the jurisdiction of the Eastern Districts Court, now the Eastern Districts Local Division of the Supreme Court of South Africa.

Province are mainly dependent upon the Transvaal and the Orange Free State, and there is practically no commercial intercourse, or none of any importance, between them and the inhabitants of the Western Province. While blood may be thicker than water in matters of sentiment, it is probable that the weight of commercial interests will prevail, in the long run. The business centres of the Eastern Province have every possible motive for cultivating the goodwill of the people of the interior; and there are many ties which bind them, and the people of Natal, more closely to the Witwatersrand, at any rate, than to the inhabitants of the West. In recent years expression has been given to these sentiments, which have been strengthened by the fact that the newly-founded University of South Africa embraces, in its field of activity, the colleges of the Eastern Province and Natal.

At the same time, there has been a tendency in another direction. In a country where the bulk of manufactured goods consists of imports, the mercantile and forwarding houses at the ports have derived vast benefits from the trade with the interior. They had the advantage of being established before the diamond fields and the gold fields came into existence, and through their influence were enabled to arrange shipping, landing, and forwarding facilities very much to their own profit. It is no exaggeration to say that Cape Town, Port Elizabeth, East London, and Durban owe their progress in recent years almost entirely to the capital they have been enabled to accumulate from the profits of trading with the Witwatersrand and, in a less degree, with the rest of the Transvaal and the Orange Free State. Most of this has been done by mere forwarding and commission business, in which the coast firms act as agents for shippers and manufacturers overseas. The expansion of wool-farming has also led to the aggrandisement of certain firms at Port Elizabeth and East London. On the whole, the inland consumer has suffered by this system, more especially as he has had to pay heavy railway rates on goods forwarded from the coast, while the consumer at the ports has been enabled to buy his supplies without paying more than marine freights, which are comparatively low. Many complaints have been uttered in this con-

nection, although it seems difficult to devise any adequate remedy. The "zone" system of railway rates has been suggested as a palliative. Another proposal is that railway rates should decrease in proportion to distance of carriage. Meanwhile, in order to avoid the charges of forwarding firms at the coast, many commercial houses at inland centres have developed a system of "direct importing" from oversea, without the intermediacy of the forwarding agents at the ports.

In such matters, the urban and the rural populations of the Transvaal and the Free State, and of the remote inland districts of the Cape and Natal, have a common interest. Agriculturists have come to realise more and more that they depend upon urban markets, with whose continued prosperity their own welfare is bound up. At the present time the racial cleavage between town and country is still fairly strong, but it is likely to grow less, and haply to vanish, when the community of interest between the two sections of the population is fully realised. Any rise in the cost of living, or of the price of manufactured articles, affects the farmer equally with the townsman; and they feel that they have a common right to withstand and, if possible, to put an end to unnecessary exploitation. The realisation of these mutual advantages, and the adoption of measures to escape from impediments to progress, will probably result in a breaking-down of sectional interests, and, in time to come, the extermination of that spirit of racialism which merely annoys and retards. To a healthy national spirit there is no objection, as long as it is compatible with the advancement of the whole people.

CHAPTER XVI.

THE LIQUOR QUESTION.

APART FROM THE Imperial problem, and racial differences, no subject has so much engaged the minds of thinking men and women, or excited such violent controversy, as that of the supply of intoxicating liquor to aboriginal and "coloured" natives. Many interests are involved in it, and the solution of other problems is said to depend upon it in a greater or less degree—such as the "black peril" question, the problem of native labour for mines, towns and agriculture, and the raising of the native himself in the scale of civilisation.

In certain of the native territories, such as Basutoland and Bechuanaland, total prohibition of the sale or supply of intoxicating liquor to natives is in force, and it may be said to have met with practically complete success. It must not be forgotten, however, that natives in the territories are accustomed to brew Kaffir beer, which, though non-spirituous, has intoxicating qualities. Whether total prohibition of the manufacture of Kaffir beer would meet with equal success is doubtful. It is thought that such a measure would meet with great opposition, and might be incapable of enforcement.

In those parts of the Provinces of the Union which are occupied by a mixed population of Europeans and natives, the problem is immensely complicated. The European inhabitants are free to consume as much intoxicating liquor as they please, and in the south-western districts of the Cape Province the whole future of the viticultural industry is bound up with the manufacture and sale of liquor. Any restriction of the sale of liquor to natives is scarcely felt by that industry, while total prohibition in the case of both whites and blacks would mean its death-blow, in view of the fact that there is practically no export trade in brandy and wine. It is contended that on the maintenance of viticulture the prosperity

of these south-western districts, popularly known as the wine-farming districts, mainly depends. On the other hand, it is argued that viticulture may easily be replaced by other agricultural industries, and that in any event the welfare of the people as a whole, and the convenience of administration, imperatively demand the suppression of the liquor industry, whatever the cost. The parliamentary representatives of the wine districts have always wielded considerable influence, possibly quite out of proportion to their numbers.

More than thirty years ago the people of the Cape Colony began to realise that the unchecked and unlimited sale of intoxicants to natives was leading to serious abuses. Canteens flourished in every town and village, and the streets were the scene of debauchery and crime. An agitation began for the restriction of supply. Greater care was exercised in the granting of liquor licences, and ultimately a law (the Innes Liquor Act) was passed in 1891, whereby local option was introduced in respect of the granting or renewal of licences, liquor might only be sold by the bottle between eight a.m. and eight p.m., and Kaffir beer was declared to be an intoxicating liquor—in other words, its sale was made illegal. The law was subsequently modified, and the sale of liquor to aboriginal natives was prohibited, there being, however, no restriction on the sale to coloured persons or to natives registered as voters. The restriction on the sale to aborigines in the Cape is not, however, as extensive as it may appear, as the Act of 1898, whereby the law was amended, only refers to seven tribes whose members may not be served with intoxicants, while natives of the numerous other South African tribes, though unmistakable aborigines, can obtain an unrestricted supply. "The Act as it stands is useless: much abuse is made of the 'Registered Voter' qualification, little or no trouble being taken by hotel and bottle storekeepers to satisfy themselves that their native customers are really *bona-fide* registered voters; and, again, the *bona-fide* native acts as agent for his less fortunate native and coloured brethren, and successfully evades the law. Illicit liquor traffic on these lines is very prevalent in Kimberley and many of the country districts. Farmers in the latter have experienced very considerable difficulty in dealing with the

illegal brewing of Kaffir beer. Many complain bitterly of the laxity of the liquor laws and the absurdly easy manner in which they can be evaded."¹ One alleged source of evil is the provision in the law whereby any person engaged in agriculture may, without a licence, sell on his farm liquor produced by himself in quantities of not less than seven gallons at one time, provided it is not consumed on his farm. Efforts have been made to increase the stringency of the law, but they have met with determined opposition from the wine farmers. There appears to be no doubt that in recent years the amount of drunkenness and crime due to drink has in some measure declined, possibly owing to the spread of education amongst coloured persons and natives.

In the Free State, there is a statutory total prohibition of the sale of liquor to natives and coloured persons, although a custom, winked at by the authorities, has long prevailed whereby employers give their native servants one "tot" of liquor per diem. It is said, however, that this custom is almost invariably abused, and that, in the large towns at any rate, there is a considerable illicit sale of liquor. The illicit traffic is not very great in Natal, where there is total prohibition in the case of aboriginal natives, Indians being allowed to consume liquor only on licensed premises, while there is no restriction on sale to other Asiatics or coloured persons. In Durban the municipality has undertaken the manufacture and sale in limited quantities of Kaffir beer, which natives throughout the country are allowed to manufacture, but not to buy, for personal use. In the Free State, natives may make Kaffir beer for personal use, but may only hold "beer parties" on a magistrate's permit. In the Cape, natives may now make Kaffir beer for personal use on permission of the owner of the land.

It is in the Transvaal, more especially on the Witwatersrand, that the illicit sale of liquor has assumed the greatest dimensions, and has given rise to great social evils. Originally, under the Republican Government, there was no restriction on the sale of liquor to natives. A monopoly existed for the manufacture of spirits, which amassed much money by the liquor traffic. Canteen licences were granted indiscriminately, and

(1) Police Report, 1911.

a native was at liberty to obtain as much liquor as he pleased. It speedily became apparent, after the gold mining industry had been established, that this state of affairs had serious industrial consequences. A high percentage of native labourers were regularly incapable of performing their duties, and serious representations on the subject were made to the Government by the heads of the mining industry. The *Volksraad* was induced to pass a law whereby a permit system was introduced. Then, in 1896, total prohibition was brought into operation. It was, however, extremely difficult to enforce it, partly by reason of the large number of licensed houses which were still allowed to exist, which made effective supervision impossible, and also because the law offered various loopholes of evasion. It was also stated that the police administration of the law was lax and corrupt; although, as will be seen, no greater success has attended its enforcement since the Transvaal became a British possession. In 1898 the law was modified, heavy fines, with the alternative of imprisonment, being imposed for a first or second contravention, and imprisonment for a minimum period of two years and a maximum of three years being fixed as the penalty for a third offence. It was, however, allowable to give (not to sell) liquor to natives elsewhere than on proclaimed gold fields. On the whole, it cannot be said that the Republican Government was unresponsive to the demands of the mining industry. During 1898 and 1899, with Mr. Smuts as State Attorney, and Mr. de Villiers as Chief Detective, an effective police administration existed, and strenuous efforts were made to suppress the illicit traffic. Perhaps the most successful period was that during which martial law was administered after the occupation by Lord Roberts, by means of a military tribunal presided over by Lt.-Col. C. R. M. O'Brien. On the establishment of Crown Colony government, Lord Milner promulgated a stringent Liquor Ordinance (1902), which is still in force. Under this, the sale of intoxicants to natives was punished, on a first contravention, with a minimum period of six months' imprisonment (subsequently, in 1919, made optional in the case of first offenders), with increasing penalties for subsequent offences. It was confidently anticipated that this law would be effective in putting

an end to the evil. Nothing of the kind happened. On the contrary, notwithstanding the abolition of the distillery monopoly, and an enormous reduction in the number of licensed houses, the illicit liquor traffic flourished unabated. It was exceedingly remunerative, natives being willing to pay anything from ten shillings to one pound for a bottle of liquor. This offered a great temptation, not only to indigent persons, but also to those who preferred to make money easily, though at the risk of imprisonment if caught. And many were caught. Men, women, and children engaged in the drink traffic, and went to gaol by the score. The number of "statutory criminals" increased by leaps and bounds, and it soon became apparent that there was a large, steady, and permanent growth in the prison population. Many persons who had hitherto led orderly lives succumbed to temptation, and were enrolled in the criminal ranks. The great majority of them were "poor whites," the problem of whose rescue from degradation had previously been sufficiently complex, and now became well-nigh insuperable. While one section of the thinking community, politicians, philanthropists, mine-owners, was concerned with the enforcement of prohibition, another was equally alarmed at the moral effect of "statutory" imprisonment on so large a portion of the white population. From a practical point of view, it had become apparent that prohibition, as an effective measure, with its attendant penalties, had broken down. Large numbers of natives were still being supplied with intoxicants, while, on the other hand, numbers of white persons, including many women who had young children, were being added to the criminal classes. It was, of course, their own fault and their own responsibility; but it was a matter of serious concern for the State, which could not stand idly by and see many persons who might otherwise lead useful lives become hopelessly irreclaimable in consequence of the unworkability of the liquor law. The evil was intensified by the "trapping" system employed in the detection of illicit selling, with its informers, its methods of espionage, and its frequent perjuries and miscarriages of justice. The liquor law had set up a machinery subversive of the whole social plan and ordinary notions of jurisprudence and

good government. The "trapping" system, with its *agents provocateurs*, employed in the detection of thefts of diamonds and gold, had long been felt to be contrary to British notions of justice and "fair play," but its evils were intensified when it was used for the prevention of the sale of liquor, especially as so many natives were employed to aid in denouncing whites, and in exercising a detestable power and influence over the fate of European women.

In this condition of things, various remedies were proposed; government commissions of enquiry were appointed; the imprisonment clause of the liquor law was at first relaxed, and then applied again in all its stringency, when it appeared that the relaxation was illegal (until the Act of 1919). Controversy has proceeded without abatement until the present day. In 1916 the electors of the Johannesburg Municipality had an opportunity of casting their votes on the question whether total prohibition for Europeans should be introduced, and decided, with no uncertain voice, in the negative. It is equally clear that, had an opportunity for a referendum on the abolition of total prohibition for natives presented itself, the system of total prohibition would have come to an end. Thus, popular opinion, which is largely founded on experience and common sense, is opposed to total prohibition. If it be well-founded, there is certainly no justification, in fact there is the strongest condemnation, for the maintenance of the existing system, since there can be no possible excuse for the retention of a law which, while failing to accomplish its purpose, by its operation degrades a large section of the community. On the other hand, it is strenuously urged that the break-down of prohibition is due to ineffective administration of the law, which, if properly carried out, is bound in the long run to have a deterrent effect;¹ that there is an equal duty to protect the natives against the results of indulgence in liquor with that of protecting the white man against the consequences of his own wrongdoing; and that the unchecked sale of intoxicants is bound to

(1) Those acquainted with the history of the criminal law will remember how, in England, a mitigation in punishments was followed by an enormous decrease in crime. "At the beginning of the (nineteenth) century most felonies were capital. Down to 1808 the crime of stealing from the person above the value of a shilling was punishable with death....and up to 1821 a fraudulent bankrupt was liable to be sentenced to death" (*A Century of Law Reform*, p. 45).

have a serious economic effect upon gold production and other forms of industry.

It is not proposed to enter into a discussion of the various remedies which have been proposed. On the one hand, it is suggested that the law should be made more severe, and that total prohibition should be extended to the European as well as to the native population; on the other, that, the law having failed to secure its object, "free trade" in liquor should be allowed, or, at any rate, the native should be permitted to obtain a restricted supply of intoxicants, either on a "permit" system, or from State canteens.¹ It is certain that any permanent solution of the matter will be bitterly assailed by one side or the other. Too many interests are at stake—financial (the mining industry on the one hand, and the wine farmer on the other); moral (the clergy, the "temperance" people, and those who are concerned on sociological or political grounds). It is possible that the matter will only be solved by the appointment of a commission selected from outside South Africa, with no local ties, predilections, or prejudices; but no solution is likely to result in general satisfaction, where so many clashing interests and opinions are involved.

(1) The mine-owners are permitted to supply natives in compounds with Kafir beer. This has met with a certain degree of success; but the illicit sale of spirits continues.

PART III.

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POLITICS.

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CHAPTER I.

POLITICAL PARTIES.

AT THE inauguration of the Union the Governor-General (Lord Gladstone) invited General Botha to form the first Ministry. It was plain that the continuance of parliamentary institutions would involve the maintenance of the party system. Nevertheless, the suggestion was made by the leaders of the Progressive Party, who had opposed General Botha in the Transvaal Parliament, that he should signalise the establishment of the Union by forming a coalition government, composed of leaders of the parties which had previously been in opposition to each other. General Botha, however, felt that in view of the inevitable continuance of the party system, it was wiser to form a Cabinet on party lines. The Progressives of the Cape, the Free State, and the Transvaal, thereupon formed the Unionist Party, and shortly afterwards the two parties which in the Transvaal had supported General Botha ("Het Volk" and the "Nationalists"—not to be confused with the National Party which was formed subsequently), together with the "Africander Bond" Party of the Cape, were amalgamated into the South African Party. The Transvaal Labour Party, which had given a quasi-support to General Botha, was formed into the South African Labour Party, with an independent organisation and platform, and announced that it was a distinct party, recognising only its own members, and pledged to secure the election of Labour candidates, "who shall abstain strictly from identifying themselves with or promoting the interests of any other political section or party." When General Hertzog and General de Wet, together with their adherents, seceded from the South African Party in 1913, they formed the National Party. At the outset, several Natal members of Parliament announced that they would not ally themselves to one party or another, preferring

to call themselves "Independent." They were mainly concerned to maintain and strengthen Imperial ties, and preferred, in internal affairs, to adopt an opportunist policy, or, more strictly, to vote with any party which favoured either Union interests as a whole, or those of Natal in particular. In course of time, however, as political issues became more crystallised and defined, the electors of Natal took definite sides, and their representatives ranged themselves with the South African Party, the Unionists, or the Labour Party, in accordance with their special shade of opinion. The Province, thoroughly devoted to the Imperial connexion, has not given any appreciable support to Nationalist politics, and is not likely to do so.

Parties are to be judged of rather by their performance than by their promises. Nevertheless, each party has adopted a constitution and a programme, more or less defined, and these afford, on paper, some criterion of their aims. Consequently, it is desirable to examine them briefly. It must, however, be premised that party programmes change, according to circumstances, and sometimes become so inapplicable to existing conditions as to be hopelessly out-of-date, though, for various reasons, they continue to serve as a nominal rallying point. There are also many points which are common to the different party programmes, having been adopted in order to attract the favour and support of the electorate; and sometimes one party endeavours to forestall another, or to "annex" attractive parts of its programme.

The South African Party, in the words of its leader, General Botha, was founded in a spirit of conciliation and co-operation, having for its chief object the smoothing away of points of difference between the two main factors in the population, and the blending of the South African people into one harmonious whole, working for the advancement of the Union and the maintenance of existing Imperial relationships. These statements of its objects are not mere platitudes, but have been proved to be genuine by the success of the party in resisting disruptive tendencies, and its action in connection with the war and the rebellion of 1914. Its programme of principles, however, makes only one explicit reference to Imperial affairs

—"the maintenance for South Africa as part of the British Empire of an adequate system of national defence." That reference, however, embraces a great deal—that South Africa is to remain part of the Empire; and that national defence is to be organised for Imperial purposes. This pledge has been carried out to the letter, as all the world knows. More than this, however, has not been insisted on. The bulk of the supporters of the party are of Dutch origin, a great many of them ex-republicans, and to expect them to accept a full-blown Imperialistic or "jingo" programme would have been utterly unreasonable. The South African Party has, in fact, done wonders in leading so many people to accept the British Imperial tradition. It has leant neither to one extreme nor to the other; and, while Ministers have declared that they will not tolerate interference from Downing-street in the internal affairs of the Union, they have been equally unshaken in their adherence to the ties which bind the country to the Empire. The greatest work of the party has been done in continuously striving for the obliteration of racial barriers, or, as its constitution expresses it, "its political object is the development of a South African spirit of national unity and self-reliance, through the attainment of the lasting union of the various sections of the people."

The Unionist Party has expressed its main aspirations in equally general terms. Though it welcomes anyone into its ranks, it is the heir of those parties which, in the former Colonies of South Africa, regarded themselves as the special standard-bearers of British traditions, and relied, in the main, on the support of voters of British birth or descent. The name of the party, however, must not be taken to identify it with the Unionists in Great Britain. Apparently, as its programme suggests, it was adopted because "the object of the Unionist Party is to bring to completion the Union of South Africa in accordance with the spirit and intention of the Constitution." This, in fact, claims too much, for one of the objects of the South African Party is "the maintenance of the fundamental principles of the South Africa Act," which in effect is the same thing. The real reason for the formation of the Unionist Party, as expressed quite openly at the time, was the fear on

the part of its founders that General Botha and his followers, in entering into the Union, were doing so with the ultimate object of forming an independent State, in other words, of breaking off the Imperial connexion. Events have not justified this foreboding; on the contrary, General Botha's adherence to the "fundamental principles" of the Union has been unshaken; and the Unionists themselves were led to give him their support in his Imperial policy. They have since announced that, with the termination of the crisis brought about by the European War, they intend to resume a "free hand" in internal affairs. It is doubtful, however, if the differences between the parties are so fundamental as to justify any permanent hostility between them, although it must be admitted that the attitude of the Unionists towards General Botha has been at times exceedingly provocative. The main criticisms by the Unionists against the South African Party have been based on the alleged reluctance of the latter to encourage immigration and to impose land taxation. How far these criticisms are justified this is not the place to enquire.

The Labour Party, as its name implies, was formed to advance the interests of labour. It professes no distinctively nationalistic or Imperial aims, and is not concerned so much with the formation of a special nationality as with the attainment of a system of government which shall give effect to its aspirations for "the socialisation of the means of production, distribution, and exchange, to be controlled by a Democratic State in the interests of the whole community, by means of a continued agitation for the demands from time to time contained in the Platform of the Party." A subsidiary object is "the extension of the field of employment for white persons in South Africa." These are comparatively limited aims; but, broadly speaking, the aspirations of the Party are similar to those of its kindred organisations in Great Britain and Australia. The conduct of some of the more extreme members of the Party, the "War-on-Warites," aroused great resentment amongst the British population of the Union after the outbreak of the European War in 1914, and the executive of the Party was compelled to disavow their utterances and even to remove them from positions of control,

as well as to depart from its non-national position by declaring its adherence to the aims and principles of Great Britain and her allies. As many supporters of the party came forward to volunteer for active service as those of any other political section, but the party itself suffered greatly in prestige on account of the proceedings of the "War-on-Warites," and the indulgence which was displayed towards them by their leaders in the beginning. Much, however, was done to rehabilitate the party in the eyes of the public by the patriotic attitude of Colonel Creswell and other leaders.

The National Party was formed by those advanced members of the South African Party who declined to co-operate with General Botha in his policy of maintaining existing relations with Great Britain and the rest of the Empire, and accordingly seceded and formed a new party. They have not only disavowed Imperialistic leanings, but have frankly declared their desire for a republican form of government in South Africa, both by frequent utterances on the platform and in the press and by attempting to pass resolutions in Parliament and in the Provincial Councils. The printed programme of the party, however, declares that "the position of the Union with regard to its relationships with the United Kingdom, which exists on the good faith of the two *nations*¹, is acknowledged [by the Party] without reservation, and it is convinced that a good understanding between the Union and the Empire is dependent on the strict avoidance of any act whereby the people of the Union may be thwarted or hindered in its constitutional freedom, or whereby any one of the liberties of the land or of its Government may be withdrawn from the immediate dominion or control of the people of the Union." In a literal sense, this expresses no more than what would be contended for by politicians in any other British dominion, who desired to maintain allegiance to the British Crown. The statement is, however, contradicted by the openly-expressed aims of the party, and by its sympathy with the Rebellion or "armed protest" (as its leaders preferred to call it) of 1914. There is more directness in the announcement that "the National Party represents the national conviction and aspirations of the South African People, and strives to develop

(1) The italics are mine.—M.N.

that conviction and those aspirations, and to realise them as the greatest blessing for the country and its people." By "national aspirations" is meant the desire to convert the Union into a republic wholly independent of the British Crown, in which event the "relationship" of South Africa to Great Britain would not need acknowledgment, and a "good understanding" would no more need fostering, than they would between South Africa and any other country. The true aims of the National Party are expressed in another article of faith, which declares that "it [the Party] acknowledges the necessity of propagating a powerful consciousness of national independence, and earnestly declares that it places the interests of the Union and its population above the interests of any other *country or people*."¹ This indicates, as politely as possible, that the party considers South Africa only, and has no concern or interest in the British Empire.

In fairness to the Unionist Party, it must be stated that it does not regard Imperial interests only. Its other objects are "to work for the advancement of every section of the People, for the promotion of agricultural, commercial, and industrial prosperity, and for the settlement of a permanent, contented population"; and "to build up in South Africa a strong and united nation, working out its own domestic problems according to its own needs and aspirations, and taking its share in the defence of the Empire and in all movements leading to more effective participation by the different portions of the Empire in its common benefits and obligations."

As far as native policy is concerned, the South African Party and the Unionists, to judge by their programmes, have the same ends in view—though there are no details as to what those ends are exactly, or by what methods they are to be attained. The South African Party advocates "the conviction that all questions affecting native policy should be approached by the white people of South Africa in a broad spirit of co-operation between Parties, and in the endeavour to secure for native races their natural and distinct development, and to ensure that in the building up of South Africa all grounds for future discord between white and black shall be avoided."

(1) The Italics are mine.—M.N.

This is not vastly different from the desire of the Unionists "to improve the social conditions of the people...by a native policy, admitting of the treatment of questions relating to natives, in accordance with the degree of civilisation attained by them, and with the different and local conditions under which they live and work." Apparently, both parties have been studious to avoid going into particulars—which is, perhaps, wise, in view of possible future complications, though somewhat puzzling to one who wants to know what is aimed at. The Labour Party, which desires to extend the field of employment for white persons, is compelled to advocate the "separation of native and white races as far as possible," by means of separate representation for "Kaffirs" in native areas in separate advisory councils; prohibition of squatting, "Kaffir farming," and native ownership of land in white areas, with provision of suitable native reserves; prohibition of inter-marriage; proper education and agricultural training for natives in reserves; application of sums out of proceeds of native taxation, to establishment of "suitable" industries (apparently limited to cotton and sugar planting) in native reserves; and application of any eventual profits to reduction of native taxation. The Labour Party has, however, found itself in a difficulty in the Cape Province, where there are many natives and coloured voters, and it has discovered that the "white labour" policy which, independently of the Labour Party, finds a suitable home in the Transvaal and the Free State, is not applicable to the conditions prevailing at the Cape. The party aspires to the suffrages of the Cape native and coloured voter, and it will be interesting to see what will be done to adjust and accommodate its apparently conflicting aims. The National Party, while emphasizing the "superior control of the white population, in a spirit of Christian guardianship, and strong disapproval of every attempt at racial admixture," joins with the other parties in the object "of giving the native the opportunity of developing himself in accordance with his natural situation and aptitudes"—words which, it is clear, are not intended to be taken too literally. The truth is, that none of the four parties desires to enter too closely into a discussion or forecast of native policy, which

is beset with difficulty and involves the solution of the most delicate problems.

The same generality is to be found in all the party programmes, in relation to other matters as to which there is great diversity of opinion, with consequent risk of offending susceptibilities within as well as outside the party. Thus, there is fairly general agreement as to equal treatment for all parts of the Union, economical administration, efficiency and contentment in the public services, equitable taxation, agricultural development, promotion of commerce, encouragement of immigration (except Asiatics), improvement of conditions of labour, effective administration of justice, maintenance of public health, and general development of the resources of the country. Such a list might be extended indefinitely. But none of the parties commits itself positively to such a choice, for example, as that between free trade and protection, although the Labour Party declares that no fiscal burden is to be placed on the necessities of life, and the Unionists bravely swallow free trade, protection, and Imperial preference together by proposing "the adoption of a *moderate* Customs Tariff *primarily for revenue purposes*, but providing for adequate encouragement of *legitimate* South African *industries and products*, together with the maintenance and extension of the principle of *preferential tariffs* within the Empire."

The Unionist Party, however, has definitely committed itself to "the maintenance...of the prohibition of the sale of drink to natives". The Labour Party, on the other hand, seeks the "nationalisation of the liquor traffic," and the "abolition of trapping" (*i.e.* the trapping system), which, it need hardly be said, will follow *ipso facto* if the drink traffic be nationalised.

Many articles in the "fighting platform" of the various parties have been eliminated by legislation which has been accomplished the South African Party government of General Botha. Thus, the Unionists advocate workmen's compensation, conciliation boards, fair wage clauses in government contracts, ventilation of mines and factories, irrigation schemes, land settlement for sufferers from miners' phthisis, agricultural development, and general technical education, all of which

(1) The italics are mine.—M.N.

have passed into law or been brought into being. Much of the Labour programme has also been realised. The Labour Party, however, still seeks the prohibition of importation of contract labour; taxation of site values of all land; an eight hours' day (it is now eight-and-a-half hours from bank to bank, in gold mines); women's suffrage; open prospecting for metals and minerals, with compulsory working; discouragement of native immigration to white centres; nationalisation of mines and liquor traffic; and "free speech and public meeting"—whatever that may mean.

It will thus be seen that the party programmes and "platforms" do not furnish any definite indication of what the parties stand for, in the eyes of the electors. The real test is the associations which attach to a party, the "label" by which its position and promise is summed up. In the eyes of its supporters, the South African Party stands for the maintenance of the Union and the ties of Empire, and the blending of the different sections of the people into one whole; while its opponents regard its programme of "conciliation and co-operation" as too indefinite, if not insincere. The Unionists, again, regard themselves as the protectors of "British" traditions; but their antagonists class them as jingoes, and fomenters of racial strife. The Labour Party styles itself the champion of advanced democracy, the breaker-down of class distinctions, and the protector of the oppressed; those who dislike it call it the party of violence, anarchy and class interest. The Nationalists alone agree with their opponents in dubbing themselves the champion of republicanism, who desire to form an independent people (predominantly of one race, if possible), and to eliminate the Imperial factor from South African affairs. No one party can be said to be specially or predominantly concerned with any economic or fiscal programme; while all may be given credit for desiring the general advancement of the people—subject, however, to undefined reservations where particular class or local interests are concerned. The result is that in many matters of internal policy, where vital subjects of political, racial, or national difference are not affected, the parties are often in agreement. Sometimes, again, in regard to such questions as free trade, land

taxation, the supply of liquor to natives, and general native policy, there are acute differences of opinion within the ranks of the parties themselves, and cleavages result which cut right across party lines. It is difficult, if not unwise, to hazard any opinion as to the future; but this state of affairs seems to indicate that, once racial questions (as between Imperialists and republicans, and between white and black), are definitely settled or ended, parties will be divided on economic and social lines, rather than any other.

At the same time, objectionable as this state of affairs may appear to those who desire continuance or permanence of British rule in South Africa, it would be idle to disguise the fact that the republican, which means anti-British, propaganda of the National Party has fallen on fruitful ground, and secured a strong foothold, which will take much patience and determination to dislodge. All the efforts, tactful efforts let us hope, of the South African Party and the Unionists will be needed to counteract this movement, and, in their own interests, they will do well to sink their mutual differences, and combine to secure the end they have in view. There is much justification in the criticism which has been levelled against, not the South African Party itself, but its parliamentary leaders, that they are too lukewarm in the management and administration of the country's internal affairs, and too much inclined to let things drift. On the other hand, many Unionists are extremely tactless, failing to make sufficient allowance for the natural sentiments of the Dutch people in regard to such matters as language, while some of them affect a social superiority which is extremely galling. These may appear to be things of small moment, but they rankle, and have a deep political influence. The aim of the South African Party to draw together the two great sections of the people is often neutralised by the utter tactlessness of some of the Unionists, their allies in the work of sustaining Imperial influence in the Union. What is wanted is more vigour in government on the one hand, and more tact on the other. Failing these, there is a great likelihood of the attainment of power by the Nationalists, with consequent injury to the British cause, and to British methods of government. And, in such an event, the

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Nationalists will obtain adherence from many who, while not republicans, feel that the Ministry representing the South African Party has been too inactive in internal administration (though not neglectful of the interests of Empire), while the Unionists have kept alive a mischievous spirit of racialism. It must not be forgotten that the National Party professes a love of democracy—though it will find it difficult to reconcile the conservative instincts of the older Boers with the socialistic aspirations of a younger generation. Before the National Party came into being, the Labour Party secured many adherents among the Dutch working-men on the Witwatersrand, who desired better conditions of labour, and had real or imagined grievances against the “capitalists”, with whose fortunes and interests the South African Party, rather unjustly, was said to be identified. The Labour Party fondly imagined that the Dutch workers would become its permanent supporters. These hopes were disappointed when the National Party was formed, and gathered the Dutch miners and artisans into its fold, by means of its anti-Imperialist propaganda. The result, however, has not been hostility between the National Party and the Labour Party, but rather an offensive and defensive alliance. If sufficient urban members of the Labour Party are returned in a future general election, it is quite possible, notwithstanding anything in their official programme, that they may form a coalition with the Nationalists. In this way a democratic programme will be held out as a bait to the urban voter, while the extreme rural elector will rest secure in the belief that a definite check has been administered to British influence.

At the same time, none of these tendencies may be permanent. There is much opportunism in politics. At a senatorial election in the Transvaal Provincial Council in November, 1918, several Labour members and more than one Nationalist, who voted, gave their second preference votes to the Unionist candidate, thereby securing his return, as against the candidate of the South African Party. This may have been a mere party move, but it indicates that, on occasion, racial and class prejudices may readily be overcome.

CHAPTER II.

THE PARTY MACHINE.

THE VARIOUS political parties have largely framed their organisation on the same model, and there are very few fundamental differences in their constitution. Each party has its district or local branches, with working committees, where necessary, and its general council, which supervises the general policy of the branches, sanctions or approves the nomination of candidates for Parliament or for the Provincial Councils, and adopts such measures as may be required, by way of propaganda or otherwise, to carry out the policy or programme for which the party stands. All of them, with the exception of the Labour party (whose activities hitherto have been confined, in the main, to the larger urban areas), have their Provincial executive committees, which, under the superintendence of the general council, control the management of party affairs in a Province. In each party, the branches elect delegates to the annual general congress, which discusses internal arrangements, appoints the general council or executive, has power to make alterations in the party constitution, and passes resolutions with regard to the policy to be pursued by its representatives in the legislature. The real differences between the parties lie not so much in the form, as in the activity and and vigour, of their organisation. A party which supports the government of the day, or the dominant element in the Provincial Council, is apt to be less active and less critical than a party which is in opposition, because it relies on the ability of its legislative majority to carry measures which are in accordance with its policy—though such inactivity, if too long continued, may be a source of danger at election times, for it is often the party which makes most commotion that succeeds in attracting the attention, and even the support, of the less thoughtful portion of the electorate.

As in other countries, the parties are largely aided in spreading their propaganda by means of newspapers, although, on account of the definite views which journalists usually adopt, press support has, in the past, been mainly confined to the two parties which stand for pronounced racial sentiments. A few newspapers, although these sometimes command a large following, are inclined to adopt a neutral attitude, and to support a policy of mutual toleration. The usual tendency, however, is to hold either precise or restricted views on any political subject; although it does not follow that such views, expressed through the leading columns of influential organs, are always adopted by the electorate.

The people, generally, take a keen interest in political affairs, and bring to bear upon them a fairly accurate knowledge of the issues which are at stake. Party opinions are pretty firmly held, and at times of crisis or strong emotion waves of sentiment may sweep over the whole community, and brush aside all opposition. Consequently, it is the fault of the party executive alone if it does not marshal its forces well, and make the best use of the opportunities presented to it. Actual experience has shown that parties are far better organised in the country than in the towns, notwithstanding such natural obstacles as distance and the lack of railway communications. Country members are, or are expected to be, more conscientious than their urban colleagues, and hold many more political meetings, even in the remotest constituencies, with the object of carefully explaining to their supporters, who have not the advantage of following affairs by means of a daily newspaper, what work has been done or attempted by the legislature. At elections, the rural voters, as a general rule, poll more heavily than do the electors in the towns. Wide-spread enthusiasm is, however, reserved for general elections, and it is seldom that a bye-election attracts much attention, unless it happens to coincide with some sensational political development, or to occur in a time of acute controversy. In such cases, bye-elections are regarded as indications of "which way the wind blows," in the same manner as they are in England.

Electoral successes are often attributed to skill in party organisation when they are due to purely fortuitous circumstances. An attractive catchword or rallying cry will often induce electors to support a particular party or candidate who, at other times, would feel themselves bound by no tie of allegiance. Not all the voters belong to a definite party or school of political thought, nor are they always responsive to racialistic sentiment. There is a very large body of middle or moderate opinion, which may go with one party or another according to the swing of the pendulum, and judges of candidates or programmes on their merits, without reference to prepossessions or prejudices. A popular or unpopular act on the part of a Government may also have its effect on elections, which, as a general rule, constitute a fairly accurate reflection of prevailing sentiment.

In Parliament, and in the Provincial Councils, each party has its "caucus", which settles the line of action to be taken by its members in controversial matters, which come before the legislature. Ministers consult or confide in the "caucus" of their party, although, as a rule, the "caucus" follows the lead given by the Ministers. The "caucus" has no influence on elections or political movements outside of the legislature. The party "whips" are a necessary corollary to the "caucus", and discharge the same functions as their prototypes in England. Party discipline is enforced, and party loyalty, as a rule, is of a fairly high order. One rarely hears of breaches of faith with party, except in cases of the most flagrant opportunism or political dishonesty.

In the holding of elections, much the same phenomena are witnessed as in other countries with parliamentary institutions. Election meetings are a great feature, although it is doubtful if they produce as much effect as other forms of propaganda: though, as a rule, much depends on the personality of a candidate. Such meetings are often acrimonious and have been known to degenerate into turbulence; but electors rarely attend meetings of candidates belonging to parties to which they are not attached. The election law is fairly stringent with regard to illegal practices, but it is often ignored, although the closing of licensed premises on election days contributes large-

ly to orderliness on such occasions. It is with regard to minor matters, such as the provision of transport for voters to the polls, that the election law is often contravened. There are, however, few instances of bribery or corruption of electors, although the majority of candidates in urban areas find it difficult to keep within the limit of electoral expenses. In rural constituencies, to judge by the returns of electoral expenses, the cost is often surprisingly low.

CHAPTER III.

THE COMPOSITION OF PARTIES.

PARTLY ON account of the short period during which the country, including even the oldest Province, has been accustomed to parliamentary institutions, there is a singular dearth of men trained to political life. And the nature of the population has, thus far, prevented the formation of a leisured class, able to devote a great deal of time and sacrifice of private means or convenience to public affairs. The only people who may be said to be able to spare the time and money for these purposes, assuming that their inclinations lie in this direction, are retired financiers and commercial men, most of whom reside at quiet places on the coast, such as the suburbs of Cape Town or the environs of Maritzburg, and large farmers. The independent farmer resembles an English squire rather than an English yeoman. He has several white "bijwoners" to assist him in superintending operations, and a considerable number of native farm hands. Though generally, when he can afford it, fairly progressive in agricultural methods, he is cautious and conservative by temperament, and opposed to rapid or violent change. It is not usually from the older, propertied Dutch farmer that movements savouring of rebellion or "armed protest" have come, but rather from the younger and less responsible men.

These retired men and large farmers have formed the backbone of the British and Dutch parties in the past. Solid in opinion, they have been unadventurous, and have left the leading of enterprise or change to those who, without offence, might be termed professional politicians. This is not to suggest that all these leaders have, or have had, no other profession or occupation. In fact, South Africa has thus far been singularly free from the carpet bagger or political adventurer, though there are signs that his coming will not be long delayed.

But the mere business of politics, even in a country with a small population, takes time, and those who seriously engage in it find that, if they aspire to leadership, it must gradually engross all their attention. That, at any rate, is the common belief. Thus, Ministers have to devote their whole time and attention to public affairs. For this they are paid. But opposition leaders, and even rank-and-file members of Parliament, find it more and more necessary, with the long (though not very fruitful) legislative sessions to which the country has become accustomed since the Union began, to devote all their time to political matters. The distance of Cape Town, the legislative seat, from the other Provinces and even the more remote parts of the Cape Province, is another factor of importance. It is almost impossible for the professional man, or even the small business man, who is without an independent private income, to throw up his means of livelihood and reside at Cape Town for five or six months in the year. A member either must have a private income, or he will look to various crumbs that may fall from the political table to supplement the salary which he receives as a legislator. It says much for the character of political life in South Africa that there have hitherto been few men who have regarded politics as a means of livelihood, apart from a legitimate aspiration to hold a ministerial portfolio, and that so many farmers, commercial men, doctors, and lawyers have been able to make the sacrifice of convenience and money which public work entails. There are also some men, including persons of considerable distinction, who, though not possessed of independent means, have felt that their true vocation lay in politics, or, perhaps, were more fitted by inclination and temperament for a political career than for any other. This is not necessarily to suggest that they have made a success of politics; but they have been as successful as they might have been in any other walk of life. And even when their career, regarded as a whole, may be considered to be unfruitful, they have nevertheless earned respect by their ability in debate, their fairness in controversy, and the persistency with which they have held not so much to their ideals as to their predetermined course.

But, as we have indicated, there are signs of a change in the composition of the legislative class. Owing to its recent origin, the Labour Party has been unable, with a few outstanding exceptions, to rely upon men of great ability to represent it in Parliament and the Provincial Councils, and it has had, in several instances, to fall back upon paid union officials (not necessarily any the less worthy of respect on that account), or on men who have had only their parliamentary salary to depend upon. This has, in some respects, been a misfortune for the Party, and it has had to suffer through the acts of a few misguided persons who have been dishonest in their political dealings. The Labour Party has not had the advantage, as in England or Australia, of being able to draw many of its recruits from men of intellectual worth who sympathised with its legitimate aims, though it is possible that in this respect there may be an improvement in the future. For the existing state of affairs the Party, as a whole, cannot be blamed. It has had to make its way from small beginnings, and in the face of a great deal of prejudice. There are many men in its own ranks who will welcome the disappearance of the blatant and sometimes dishonest type of politician of whom there have been some instances. Such evils are not peculiar to the Labour Party, but are to be expected in a young democracy which has still to find its feet.

Distance from the seat of the legislature has had a definite effect upon the farming representation in the House of Assembly. Conditions are different with regard to the Provincial Councils, about one-half of whose members are farmers. But at the Parliamentary general election of 1915 no fewer than one-fourth of the candidates elected to the House of Assembly were barristers or solicitors, many of them representing country constituencies. Though, for some undefined and probably ill-founded reason, lawyers are regarded with a certain degree of suspicion by the general body of the electorate, the large legal membership is probably not without its advantages, because lawyers are trained to legislative methods and forms, and can usefully assist in consolidating legislation, of which there has been a considerable amount since 1915, such as the Insolvency (Bankruptcy) Act, the Patents, Trade Marks

and Copyright Act, the Railways Regulation Act, the Mental Disorders Act, the Criminal Procedure and Evidence Act, the Magistrates Court Act, and the Deeds Registration Act—most of them dealing with technical matters, in which the aid of expert lawyers is useful. This is not to suggest that legal men, like others, have not also their “fads” and “pet fancies,” which they are anxious to advance. There is also a considerable body of commercial men, though their political ideas are often tinged by their occupational prepossessions. Medical men, for some reason or other, have always figured fairly prominently on the Parliamentary stage, both before and since the inauguration of the Union. At the general election of 1915 two clergymen of the Dutch Reformed Church were chosen among the representatives of the Nationalists. But the electorate, as a rule, does not favour the clergy, probably holding that the pulpit is a better place in which to expound their views, and believing that such men as Sieyès and Talleyrand are illustrious exceptions. Then there are a few mining company directors or financiers, three or four working-men, twenty or thirty farmers, and the total is completed by the professional politicians who have been mentioned. The membership of the Cabinet, as recently constituted, is to a certain extent an index to the general composition of the Parliament. It included two farmers, one financier, one retired civil servant, one journalist, one medical man (now deceased), and five lawyers. The greatest number of retired farmers and business men is to be found in the Senate, which, somewhat unfortunately, has come to be regarded as a legislative chamber of old men. The constitution of the Senate will have to undergo revision in 1920, and it will probably be found most effective to change the existing mode of electing senators. Perhaps one of the best ways will be to adopt the French system, by dividing each Province into ten electorates, in which the electors shall be the members of the House of Assembly and the Provincial Councils, together with delegates from the municipalities, divisional councils, and school boards. With the present number of eight nominated members, the total of the Senate would be raised to forty-eight.

The distribution of members, according to their avocations, amongst the existing parties, has to some extent followed the principles for which those parties stand. The Unionist Party has, in the main, been dependent upon the urban electorates, and consequently it is not surprising to find that most of the commercial and financial members are enrolled in its ranks. Most of the farmers are to be found in the South African Party and the National Party, although the former is not by any means solely or exclusively a "country" party. It contains many lawyers, for lawyers, though sometimes men of extreme radical or revolutionary tendencies are to be found amongst them, are usually on the side of moderation and restraint. Some legal men have pronounced sympathies with the Labour Party, but they have not hitherto found their way into Parliament, and the Party has had, in the main, to rely upon members drawn from the ranks of the working-men, who are their natural representatives, and most familiar with the needs and aspirations of their own people.

South Africa has formed no exception to the experience of most constitutionally-governed countries in the prominence which lawyers have assumed in political leadership. Special circumstances, arising out of conditions resulting from the Anglo-Boer War, brought General Botha, a farmer, to the front as the natural leader of his people, even as he had been their skilful commander in the field. But his principal opponent, General Hertzog, is a barrister. In pre-Union days, lawyers were at the head of several Colonial ministries—Sir Thomas Scanlen, Sir Thomas Upington, W. P. Schreiner, Harry Escombe, Henry Binns, and Abraham Fischer. Sir Gordon Sprigg was a journalist, Mr. Merriman, a land-surveyor and farmer, Sir Starr Jameson, a medical man, while Cecil Rhodes, a successful though dilettante financier, had a career which in its special characteristics marks him as a man of no common mould.

CHAPTER IV.

THE PEOPLE.

TAKEN AS A WHOLE, the people of the Union are keenly interested in political affairs. In some degree this is due to the part which racialism has played in the policy of parties. When such things as language rights are made political issues, it is easy for man, woman, and child to become interested in politics, which may be said to begin on the school benches. To some extent the language question has been settled; but there are many other things which, regarded as commonplaces of ordinary life elsewhere, are looked upon as burning questions in the Union. One of these is the programme of railway construction. Those who live in remote parts of the Union, and pay taxes, think it only reasonable that, in a country where the railways are State-owned, every district should be brought into direct communication with the main lines. But these involve important financial considerations, and there are many members of Parliament who, having regard to the constitutional requirement that the railways shall be managed "on business principles," are opposed to the construction of lines which do not hold out a prospect of being able to pay their way. The failure of the government in power to construct lines to each and every part of the country is regarded by many inhabitants of the remoter districts as a distinct grievance, and it has had a considerable effect upon the country constituencies. On the other hand, townspeople complain that not enough has been done to foster and encourage industries. Any South African Government is bound to hold the balance fairly evenly between town and country, and to suffer in consequence. Complaints are rife of neglect of local interests, regardless of financial or other obstacles; and those who are in power lose votes accordingly. The Labour Party complain that the Government has neglected working-class interests,

while one of the principal criticisms made by the National Party against the Ministry is that it is lax in internal administration, fails to govern, and "lets things drift." For a time these issues have been overshadowed by the problems arising out of the European War. But, once they have been settled, the Government will find many difficulties in its path. Its legislative achievements during the first ten years of the Union will be ignored, and it will have to make a stern fight for existence. For, in South Africa as elsewhere, the electoral pendulum swings with greater or less regularity; and there is always an uncertain, though considerable, proportion of the voters which transfers its allegiance, according to circumstances, from one side to the other, irrespective of racial or national issues. It is even conceivable that, where no fear is felt as to the future of "the Flag," a number of "British" voters may give their support to a party which, though originally regarded as inimical to Imperial interests, may place racial issues in the background, and come forward with an alluring programme of social reform. One of the alleged failings of the Botha Government, if it be a failing, is that it is not "showy" enough, that it does not "put all its goods in the front-window." What people want in South Africa is a strong government, and it sometimes happens that if an administration does not put forward the appearance of strength, it is set down as weak. The history of English Ministries shows clearly that administrations which began with the support of enormous majorities have gradually dwindled down to comparatively small majorities; and the same rule appears to hold good of past Ministries in South Africa.

It is not suggested that the bulk of the electorate is fickle, or that voters are generally otherwise than faithful to the respective party whose declared adherents they are. Many members of the South African Party and the National Party, and even some of the Unionists, are conservative in their tendencies, particularly with regard to such subjects as immigration (especially Asiatic immigration), land settlement, and tariffs. In recent times, however, there has been a strong movement for the taxation of land and site values, championed

by the Labour Party, which also finds enthusiastic adherents among the Unionists. To this many, if not most, of the country people are opposed, fearing that its success will mean the end of the present land-owning system, under which the farmers have largely succeeded in retaining the land in the hands of their families, from generation to generation. Probably nothing will conduce so much to heal up the breach between the South African Party and the Nationalists as a vigorous land-taxing campaign.

The people, as a whole, have attained a fairly high standard of intelligence. There is a keen appreciation of the value of popular education, and every farmer of average means is anxious to provide his children with the best opportunities for educational advancement. Many years ago the "school-meester" was a familiar figure at most farms, and at the present time the most remote country districts are provided with farm schools, equipped with certificated teachers, and ministering to the needs of the neighbourhood. The people grudge no expenditure for educational purposes, and the Union and Provincial authorities are often at their wits' end to find the money necessary to provide for all the calls for new schools and teachers.

As we have seen, political meetings in the country districts afford almost the only means for interchange of ideas, and they are consequently well attended. Members of Parliament are severely heckled, and are made to realise that their conduct in the legislature is subjected to the closest scrutiny. Questions and issues of the day are hotly debated, and the rural electorate may be described as the reverse of apathetic or indifferent.

Both townsmen and country-folk are apt to blame the Government for mistakes or faults of the permanent administration, forgetting or ignoring the fact that the civil service is a continuing body, which goes on its way independently of political changes. Criticisms of the public officials are often justified, but it is extremely difficult for any Ministry of the day to effect a change in a system which has its roots in the past, and is to a great extent impervious to public criticism. The civil service, as a whole, is very quick to voice its own

grievances, but less ready to modify its methods to suit public convenience. Except in the judicial and magisterial services, public officials are largely inclined to bureaucratic methods, with a considerable tendency to red tape and circumlocution. Although the population is comparatively small, and the civil service is well manned, there are many complaints of delay in attending to correspondence, and in remedying grievances. Nor is the public service, as a whole, much disturbed by criticism. Many of its members regard themselves as above every other class in the community, and as entitled to a degree of veneration altogether out of proportion to their merits and attainments. There are, of course, men of real distinction and worth in some departments of the civil service, notably those engaged in scientific and agricultural work or research; but there is a feeling abroad that the members of the service, as a whole, are too apt to regard themselves as above the general public.

The native electorate in the Cape Province, as a whole, is an element of uncertainty. It has always been distinguished by its loyalty to England; but there is a natural tendency to vote for candidates who profess to be especial friends of the natives, as a distinct element in the community. All the political parties in the Cape Province have, from time to time, angled for the native vote; and if the native voter grows in strength, he may come to realise, if he does not already realise, his strength as a determining factor in elections. It is probable that here, as elsewhere, self-interest will step in, and that his suffrages will be guided by his opinions on such matters as education, taxation, and land-settlement. Native politicians have expressed strong opinions about the Native Land Act of 1913, which all the political parties united in passing. It is possible that they may, in future, form parties of their own. The probability, however, is that they will adhere to the "loyal" parties, believing that they hold out the best prospect of stable government and permanence of existing conditions of life and freedom.

CHAPTER V.

THE WOMAN'S MOVEMENT.

HAVING REGARD to the fact that a large number of natives are in the enjoyment of the franchise in the Cape Province, it is somewhat remarkable that there has been no prolonged and vigorous agitation in favour of securing the vote for white women, such as disturbed the political world in Great Britain for several years before the European War. This is all the more surprising, in view of the Black Peril agitation, which on various occasions has engrossed the attention of men and women in South Africa. It is true that several women's franchise societies have been formed, and at parliamentary and other elections some enterprising ladies have addressed questions on the subject to candidates. But it cannot be said that there has been any very active or pronounced movement in this direction. The Transvaal Provincial Council, in 1917, passed a resolution requesting the Union Government to introduce legislation into Parliament conferring the franchise upon women, and during the session of 1919 the Union Parliament adopted a resolution in favour of woman's franchise. It appears that opinion on the subject is fairly evenly divided, and it is by no means certain that even the majority of white women are desirous of obtaining the right to vote. So far as can be ascertained, the women in the country districts are largely opposed to the extension of the franchise. This is rather surprising, as they are usually keenly interested in political questions, and have not hesitated, when occasion demanded it, to assist their husbands and brothers on the field of battle. In connection with this, it is of interest to recall the statement of Commissioner (afterwards Mr. Justice Cloete), who was appointed by the British Government to settle certain disputes with the early Boer Republic in Natal: "the state of suspense in which I was kept was agreeably re-

lieved by a formal deputation which I received from the standing committee of the ladies of Pietermaritzburg, headed by Mrs. Smit, the wife of a person officiating as missionary. The spokeswoman commenced by declaring that, in consideration of the battles in which they had been engaged with their husbands (*sic*), they had obtained a promise that they would be entitled to a voice in all matters concerning the state of this country; that they had claimed this privilege, and although now repelled by the *Volksraad*, they had been deputed to express their fixed determination never to yield to British authority."¹ Whether the Natal *Volksraad* made such a promise or not, it is clear that during the subsequent history of the Boer Republics no formal attempt was ever made by women to demand the franchise.

There do not appear to exist any very cogent reasons against the grant of the vote to women in South Africa. Their sisters in many other countries with a parliamentary constitution (excepting the Latin countries) have the franchise, and South African women are equally capable of exercising an intelligent judgment in public affairs. It certainly appears anomalous that they should remain without a vote which is freely exercised by men of an inferior race. It is probable that before long this anomaly will be remedied.

In the Transvaal, women possess the municipal vote; while in the Cape Province and in the Transvaal women may be elected as members of school boards, though in the Transvaal they cannot vote at school board elections, as the vote depends on the parliamentary franchise.

(1) Bird's *Annals of Natal* (vol. 2, p. 258); Theal's *Hist.* (1828-46, p. 388).

PART IV.
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SOCIAL CONDITIONS.

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CHAPTER I.

RELATIONS BETWEEN THE WHITE RACES.

WE HAVE SEEN that racial differences have entered largely into the political relationships existing between the two predominant white races in South Africa; and it is now desirable to investigate, however superficially, the extent to which they affect social conditions. It is, in the first place, necessary to make a distinction: whereas, on the one hand, for our purposes the Dutch, whether of pure Hollander or of partly-Huguenot or other descent may all be regarded as one, the question of racial differences mainly affects the Englishman, and has by no means the same application to Scotchmen and Irishmen. Between the Scotch and the Dutch of Holland there has always been some sort of affinity, which extends to the South African Boers. Just as Scottish students two or three centuries ago took their courses at the Universities of Leyden and Utrecht, and brought back with them numbers of words which have since formed part of their native speech, so, on the other hand, Scotchmen have had a profound influence on the life and thought of the Boers in South Africa. Many of the leading divines of the Dutch Reformed Church (such as the Murrays, the Frasers, the MacGregors) have been Scotch, or the sons of Scotchmen; most of the bank managers, as elsewhere in British countries, are Scotch; the Victoria College (now the University of Stellenbosch), long regarded as the home of Dutch culture in South Africa, has been largely built up by Scotch Professors and lecturers; Scotch teachers of Boer boys and girls are to be found throughout the country; and inter-marriage between members of the two peoples has taken place freely. It is also remarkable that of all those who come from Great Britain, the Scotch are those who learn to speak Dutch most readily and fluently. This has been a great passport to

confidence; and one might wish, for the sake of the elimination of social antagonism, that all sections of the population might be compelled to learn both English and Dutch. This, as has been shown, is taking place on a considerable scale so far as the present school-going population is concerned. The only subject for regret is that the process did not begin a generation back. It is not, however, suggested that knowledge of the language alone will solve racial differences. The unhappy example of Ireland proves the contrary. It is, however, clear that many of the Scotch settlers in South Africa, notwithstanding their known and proved loyalty to the British Crown, have won the esteem and even the affection of the Boers to a remarkable degree. Nor has there been much hostility to Irish settlers. It is a remarkable circumstance that, notwithstanding the known antagonism between the Dutch Reformed Church, as a Calvinistic body, and the Roman Catholic Church (or *vice versa*), there are on record many cases of intermarriage between Protestant Boers and Irish Catholics. And, to digress for a moment, one may be permitted to point out that, whereas at one time the Dutch people adhered rigidly to the Dutch Reformed Church, there are now numbers of Dutch members of the Anglican, Presbyterian, Wesleyan and other non-Dutch churches. Many Irishmen fought on the Republican side in the Anglo-Boer War: and social relationships between Boers and Irishmen have usually been harmonious, although there have been Irishmen, not Protestants only, who have been bitterly opposed to the Boers in politics.

There is no doubt, however, that in the past relationships have been least satisfactory between Englishmen, as distinguished from the Scotch or the Irish, and the Boers. In part this has been the result of political conflict, which has had its effect upon the views of individual members of both people. The differences between them have been set down, in the main, to racial causes; but it would be interesting to investigate whether these alleged social differences are not, as a matter of fact, purely superficial, and whether they are not rather to be classed as national. Notwithstanding previous conflicts between the two peoples, there is no necessary deep-seated racial cleavage between them. Apart from the fact that

"there is no permanent national character: it varies according to circumstances";¹ there are probably many racial (i.e. ethnological) affinities between the Dutch and the English. They are also, in the main, both of them Protestant peoples—although this is not of too great importance nowadays, when differences of religion do not count for much. They engage freely in commercial transactions with each other. Allusion has been made to the growth of English literary influences in South Africa, and the extent to which English books and journals are read. Nevertheless it cannot with truth be said that hitherto there has been absolutely free social intercourse between these two great sections of the white population. It has been suggested that this is partly due to the fact that in the large urban centres the population is predominantly English, and that the townsfolk know little of the people in the country and their ways of life. But even in the country towns, though there is, as a rule, much greater friendliness, and much hospitality is shown by Boers to visitors, there is not much social intercourse between the two sections apart from necessary business or professional relationships, and such social functions, charitable or public, as require co-operation. It would be wrong, however, to say that the social cleavage is complete. In the Cape Peninsula, for instance, members of the old Dutch families, who probably regard themselves as a South African aristocracy, have at all times taken part freely in social intercourse with the English people; their daughters have married British officers, they belong to the same clubs, frequent the same race meetings, and take part in the same football and cricket matches. Indeed, it is probable that the common love of sport has done as much as anything to break down social barriers throughout South Africa; and it is on the football field, the tennis court, the race course, that the two peoples find a neutral ground.

In spite of all this, there is on the part of many members of one section an aloofness, a failure to mix freely with, many of the other section of the population. In part this is due to long-continued habits of life, though, as we have seen, there is an increasing tendency to indulge in the same recreations, and to meet on common ground. But there is something more—

(1) Dr. Johnson.

the attitude of the two sections towards each other. And it is not so much a question of the mutual attitude of Briton and Boer, as of Englishman and Colonial—for, in course of one or two generations, through environmental influences, the English-descended Colonial has imbibed far more of the Africander spirit than he retains of his English ancestral tendencies, notwithstanding his loyalty to the “home” country and British traditions. The same difference in spirit is observable in other British dominions, where, as in Canada, feeling against the “raw” Englishman led to the publication of such notices as “No Englishman need apply.”

Now it is certain that these differences do not exist because of any set purpose or evil design on either side. They are probably only skin-deep, though none the less hard to eradicate on that account. On the one hand, the Englishman is accused of adopting a lofty, patronising pose, and of assuming a conscious attitude of being superior to the rest of the human race. More than a century ago, Lady Anne Barnard wrote: “We never despise anybody, which I can perceive has been one great error in some of the English.” All the while, in reality, the Englishman is supremely unconscious of all this, and does not deserve the accusation. What others take for patronage is meant, on his part, for general goodwill. The attitude, and its interpretation, are probably due to the extreme reserve of the Englishman. His occasional inability to unbend, which is set down to pride or arrogance, is in reality due to age-long insularity. This is a fault, if it be one, which certainly cannot be cured by artificial means, for it is too deep-seated; nor can nations go to school to unlearn national characteristics. From the point of view of English greatness, it is probably an admirable fault; for to it are due those habits of self-reliance, self-restraint, doggedness, and inability to admit defeat which have made England a mighty Power. On the other hand, the Boer, or rather the Colonial, is regarded as suspicious or self-centred when he is merely shy or *gauche*. The fault of the Colonial is that he is too sensitive, too ready to fancy the infliction of a slight where none is intended. His isolation from the rest of the world, with its consequent tendency to loneliness and introspection, has made him unskilled

in the ways of the world, and extremely critical. How far these characteristics will disappear with the growth of population and of intercourse, time alone will show. The Colonial, also, has been accused frequently of irreverence. But it is doubtful if there is much proof of this. On the one hand, South Africa is a young country, and there are not many institutions old enough to venerate. The country has been built up within the memory of most men now living; but if pride in the past, the cherishing of historical associations, and a determination to uphold the national honour, such as have been evinced by British and Dutch South Africans on battlefields in three continents, constitute any indication, there is a great deal of the spirit of reverence amongst Colonials. Another accusation, easy to make, and hard to repel, has been made, even by South Africans of Dutch birth, that the young Afri-cander is prone to untruthfulness, and that he "is aggressively conceited where he has but little reason to be so." He is also charged with ingratitude for favours done to him. In such matters one must decline, with Burke, to draw up an indictment against a whole people. After all, one of the severest critics of the young South African says: "The young South African has all the makings of a noble manhood in him. With proper guidance he becomes a magnificent athlete; with right treatment the generous and hospitable and kindly side of him prevails over the ignorance and prejudice and craftiness which he too often inherits in his blood; in his studies he shows a desire for higher knowledge and a capacity for hard and steady work which almost amount to genius."¹ We may accept the more favourable part of this criticism without subscribing to the rest of it.

(1) W. Way, "The Disabilities of the South African Schoolboy" (British Association Report, 1905, p. 614).

CHAPTER II.

THE WHITE MAN AND THE NATIVE.

REFERENCE HAS BEEN made to the large political aspects of the relationship between Europeans and natives in South Africa, and some indication has been given of the extent to which they are influenced by social intercourse. In the existing conditions of life within the Union, such intercourse is unavoidable, and, though apparently trivial in its incidents, may be far-reaching in its application. It must not be forgotten that, to the average European, the mind of the aboriginal native is a sealed book. Very few white persons understand any of the native languages, and the ideas, the comments, the aspirations of the natives are consequently unknown. It is quite possible for a dangerous conspiracy or for a widespread movement to be propagated amongst the natives without any European being aware of it. Fortunately, there does not appear to be anything to justify such an apprehension. The inclinations of the natives, as a whole, are pacific; and it is remarkable, having regard to the martial history of certain tribes, how they have settled down, within a comparatively short period, to peaceful ways of life. There are, of course, law-breakers among them; but there are also white criminals; and, on the whole, the natives may be said to be thoroughly law-abiding. To what extent this is due respectively to past experience of the futility of resisting the white man's dominance and fear of the consequences, on the one hand, or to an appreciation of the blessings of settled life and orderly government, on the other, it is not possible to say.

For a long time past, the native has been accustomed, not merely to be ruled by the white man, but to look to him for employment and the necessities of daily life. Without native labourers, the existing modes of agriculture and farm management would come to an end; and, in the towns, where most of

the domestic and rough manual work is done by "house-boys" or "shop-boys," there would be a great industrial disorganisation. Indeed, most Europeans in South Africa are unable to conceive of a dispensation under which the native would be eliminated as an industrial and economic factor. The "boy" is a part of daily existence, and, perhaps on that account, is regarded as a machine rather than as a man. Nevertheless, he is treated with a certain tolerance, and, in turn, he perfectly understands his position. Occasionally, there are instances of natives being treated with severity; but allegations of cruel treatment, which in former times were freely made against European employers, particularly farmers, were largely apocryphal, and were, in the main, the figments of the over-heated imaginations of well-meaning but misguided missionaries or pseudo-philanthropists. Indeed, at the present time natives, who have been too familiarly treated by ignorant or foolish white men, are apt to take liberties themselves, and to treat certain Europeans with a familiarity which borders on contempt. There are many well-authenticated cases of ferocious assaults committed by natives on white men. In some of these cases there may have been provocation; but many of them have resulted from a fatal practice, fortunately not too widespread, of treating the native on a footing of social equality. One thing may safely be affirmed—that however well-meaning, faithful, or diligent, however anxious to advance, the native, on account of his widely different outlook and innate characteristics, cannot be treated as a being on the same level with the white man. Indeed, attempts so to treat him he regards at first with suspicion, and, if they are persisted in, he regards his would-be benefactor with contempt, leading, in the end, to retaliation and unpleasant consequences.

Those white employers fare best who treat the natives with justice, but at the same time hold them at a distance, and rigidly suppress any attempt to trespass beyond the barriers which nature has set up between the two races. The Boers, as a whole, have long appreciated this, and they have, as a rule, been successful in their treatment of the native, whom, to a certain extent, they regard as an overgrown child, to be

treated with tolerance, but to be punished if he transgresses. It is usual, where natives are disobedient or negligent, for their masters to inflict moderate personal chastisement; and the native seldom resents this. The native rarely deserts his service because he has been punished; and although in recent times farmers have complained of the lack of an adequate supply of native labour, this is due to the inducements held out to natives to reside in the towns, where they can either command higher wages, or, in the smaller centres, lead a comparatively lazy life, without giving themselves much trouble to find the means of subsistence. So far as farm servants are concerned, many of them remain for years in the service of one master, and sometimes pass the whole of their lives on one farm. On such farms, life is semi-patriarchal; the owner exercises a general superintendence over the lives of his native servants, not only as far as their work is concerned, but also in regard to their domestic affairs. He advises them in their little business transactions, seeks to obtain employment for their children, and his offices are invoked as an arbitrator in the settlement of their disputes. Such natives frequently entrust their employers with the care of their savings; and the farmer often shows his confidence in his natives by leaving his family in their charge when he is absent on business or for other reasons. Sometimes, but not often, this confidence is misplaced.

In the towns, also, instances occur in which natives remain firmly attached to the service of one master. Many native servants, however, owing to the fact that their wives or other relations live in the native territories, will not bind themselves for long periods of service, and are accustomed to regular "holidays." In the towns, also, owing in part to the drink traffic, the native is more liable to be led astray, and to succumb to numerous temptations which beset his path. And, unfortunately, there are many white men of a low moral standard who do not hesitate to employ natives as instruments in the commission of crimes. Instances may be found in thefts of gold and diamonds, which are difficult to perpetrate without native accomplices. Docile and unquestioning as a rule, the native obeys his white master even in these matters without hesitation.

With just and fair treatment, then, the native not only renders good service, but frequently repays his master by a sincere devotion to his interests. The loyalty of David Livingstone's attendants, Susi and Chuma, has been matched times without number in the history of the intercourse between the white man and the black. It was not only the poet Pringle who loved to ride "afar in the desert, with the silent Bush-boy alone" by his side. Many a trader, hunter, and prospector has owed his life and safety, sometimes even his success, to his native servants.

It is undue familiarity between Europeans and natives that has led to evil results. One of the greatest of these evils is miscegenation, which almost invariably has had the effect of lowering the white man who has embarked upon it to the level of his native partner. In early days, when white men "trekked" into the lonely desert, cohabitation with native women was well-nigh inevitable. The case of Commander Bethell and his Barolong wife is well known. Much evil, also, resulted from the slave-holding system at the Cape, of which, as in the Southern States of the American Union, mixture of the races was the consequence. More recent instances of miscegenation are less excusable. They occur mainly in the case of white men of a low standard, unions between white women and black men being very rare. While the evils of the practice of miscegenation are fully realised by all thoughtful persons, legislation on the subject has been imperfect and one-sided. While, in the Transvaal, marriages between white persons and natives are prohibited,¹ both in the Transvaal and in the Cape Province cohabitation between white women and coloured or native men (which, as above stated, rarely occurs) is severely punished, but there is no prohibition of voluntary intercourse between white men and coloured or black women; and the coloured or native woman needs protection just as much as her white sister does. It is, indeed, difficult to believe that such legislation is free from all taint of hypocrisy. Apart from the harm which results in individual cases, miscegenation may have serious effects upon the future of both white and black races in South Africa. In this matter education is no remedy: for many white men fancy that an educated native woman has been raised to their level.

(1) The law, however, has fixed no penalty for infraction of this prohibition.

CHAPTER III.

NATIVE LIFE.

IT IS FAR from easy, if not impossible, to give any description or to make any general reflections in regard to the social life of the natives which would be capable of universal application. There are very important differences, arising not only from diverse tribal origins and habits, but also from locality. There is little, if any, affinity between the Zulu and the Fingo or the Namaqua; and none between the Zulu and the Bushman or the Hottentot, whose manners and customs differ widely from those of the pure Bantu. Nevertheless, all of these are familiarly classed as natives. Some of them, like the Zulus and the Matabele (a Zulu offshoot), have had a martial history, and in former days held a dominant position. Conquered by the white man, forced to abandon warlike pursuits and to devote themselves to peaceful avocations, they have nevertheless not lost all trace of that superiority in bearing and habits which they acquired as successful warriors, and in many respects those tribes which for long periods enjoyed a reputation for bravery and prowess on the battle-fields still retain characteristics which elevate them above others that cannot boast of a past equally glorious or distinguished. While the Zulus, on the one hand, are regarded as manly and intelligent, there are infinite gradations among the native tribes in South Africa, and some of them are very low in the scale. Not all of them have the same aptitudes, or equal capacity for advancement; and it would be absurd to suggest, for instance, that a uniform educational system could be applied to all of them with equal possibilities of success. The general policy hitherto followed has been to interfere as little as possible with the purely tribal life of the natives. But it has been difficult to refrain from all interference. The mere enforcement of law and order, as understood by a European

community, even with a minimum infraction upon such modes of life as are deemed to be reasonable or semi-civilised, must produce a certain effect upon aboriginal habits and customs. For a century past the natives have been subject to missionary teaching and influence, and, though the effects to a considerable extent have been beneficial, they must have resulted, even to a slight degree, in a modification of purely aboriginal habits of life and thought. Wars and trading relations have also had their influence. Thus, all things considered, the aboriginal native is far from being the same as he was a century, half a century, or even a quarter of a century ago. Year by year, thousands of natives, hailing from as far as the remotest districts of Portuguese East Africa, go to work on the gold mines, subjecting themselves in the process to entirely new and even bewildering influences and experiences, and return to spread new ideas, however fragmentary or highly-coloured, among their fellow-tribesmen who have remained at home. Many of them display remarkable aptitude in learning the details of technical work on the mines. There is a constant coming and going, and the fact that it is mainly restricted to labour purposes makes very little difference in social or intellectual consequences and processes. As in the case of the Dutch people living in remote country districts, the advent of the railway has also had a profound influence.

Nevertheless, it would be dangerous or misleading to attribute too much importance to impulses which are purely external. The aboriginal native has deep-seated and immemorial characteristics, which no artificial methods can ever efface. He stands, from the beginning of things, on another plane than the white man; and, though he is a human being, and ought to be treated with humanity, he is no more a white man than a wolf is a dog, or a tiger a cat. On anthropological and ethnological grounds, there is a great gulf fixed between him and the white man. For these reasons, the policy of non-interference, in other things than the essentials of orderly government, which in recent years has been adopted in the guardianship of the native by the white man, is perhaps the correct one. Nor is it displeasing to the native, who is by nature essentially conservative, and is best left to develop along his

own lines. The natives are exceedingly tenacious, in their own territories, of their ancient customs, and the fact that, despite superficial differences between one tribe and another, these customs are so widespread, if not universal, is a testimony to the common origin of the aboriginal tribes. Polygamy was at one time universal; although, owing to economic reasons, it has ceased to play the important part in tribal life which it once did. But the system of native marriage by purchasing the wife with cattle (*lobola*) as dowry still continues universally, except in the case of Christianised natives. There have been some attempts to modify this custom, but the Courts which administer native law have always regarded the giving of dowry as essential to a marriage. The dowry custom has its origin in much the same principles as are applicable in the case of white women. The payment of dowry, it has been said, is in the nature of a guarantee of good conduct on the part of both husband and wife, and unquestionably amongst the native people tends to uphold the best aspects of their domestic life. It also furnishes a means of support to the woman and her children in the event of their falling into necessitous circumstances. But the only remedy which the father or guardian of a woman has is to impound her (*teleka*) for non-payment of dowry and detain her until the dowry is paid. Sometimes a father of a family will allot a daughter to one of his sons. The son then gets what is realised on the marriage of his sister, i.e., he has the benefit of the dowry paid for the girl, which is usually devoted to the purpose of getting a wife for himself. By native custom, where the wife dies without issue shortly after marriage, the dowry is recoverable. This also applies if she dies in child-birth, but not among the Tembus, Gaikas, Fingos, and Gcalekas. Although native ideas permit of pre-marital customs which are far removed from European ideas of modesty, actual incontinence is severely reprobated, while adultery meets with social punishment, to a greater extent than is the case with Europeans. Actions are sometimes brought in the native Courts to recover damages for adultery, but they are repugnant to native ideas, which regard the acceptance of damages as condonation of the adultery. According to native custom, a claim for damages bars one for disso-

lution of the marriage. And, if a husband recovers damages from his wife's paramour, and then refuses to cohabit with his wife, he cannot reclaim the dowry paid by him. If anything, the native stands in these matters on a higher plane than the white man. He may rid himself of his wife, on account of her misconduct; but he is not encouraged to claim damages as a *solatium* for what she has done. Among other grounds for dissolution of marriage is desertion. And a man who drives away his wife on a charge of witchcraft loses all claim on her, the marriage being regarded as dissolved by his act. But the fact that a woman has been "smelt out" and driven away does not deprive her of the right to recover the inheritance of her minor children from the estate of her husband who has driven her away.

As is only natural among primitive peoples, the position of the woman is one of complete dependence upon her husband. She never receives property; and she and her children do not even eat until the wants of the head of the household have been satisfied. A woman is only entitled to maintenance whilst she resides with her husband; and though she may leave him and go to reside with her own people if he ill-treats her, she cannot claim maintenance or use his cattle as long as she is away from him. On the whole, great regard is paid to the sanctity of domestic life, and native parents not only treat their children well, but centre all their affections and hopes in them. Such conventional appurtenances as clothing trouble them little, or not at all; but more attention is paid to frugality, temperance, and discipline. Just as the tribesman venerates his chief, so the child respects the parent, and care for the aged is a supreme duty—though, in former warlike times, the aged and the feeble were regarded as useless encumbrances. Illegitimate children are treated with more humanity than amongst white people. The ordinary rule is that they belong to the woman's father. This is a convenient rule, for a native woman has no independent status, being always dependent on her husband, father, or the male head of her family, for the assertion of any rights she may possess. Even a widow has no independent rights, as it is an established principle that she cannot remove the children or pro-

perty of her late husband and take them to her own people. If a woman has no male relative, she becomes the ward of the paramount chief (if there be one), and the property in the estate goes along with her. If there is no paramount chief, it seems that she becomes the ward of the headman of the *kraal* or location where she resides.

Complex rights of property and inheritance, which are too intricate and technical to be explained here, depend upon the system of polygamy, which is recognised only in the strictly native territories, and is not countenanced in the "white" portions of the Union. The general law of inheritance on intestacy is simple, for the principle of primogeniture is of universal application. The eldest son inherits, and he is responsible for all debts due by his father's estate. His duties include the provision of a wedding outfit where there are daughters, killing an ox or a sheep at the Intonjane feast, and providing part of the dowries when his brothers marry. By native custom, the nearest male relative being a major becomes the guardian of minor children, on the decease of their father. A native woman has no right of guardianship, nor, as we have seen, any independent administration of property. But she may bring an action in the native Courts against the guardian of her late husband's estate, to protect herself and children and property from improper administration. A son, though a major, is entirely subordinate to the head of the family, particularly as regards property, which is liable for his father's debts.

Property itself is ordinarily held in communal tenure, and individual titles are unknown. In 1894 the Cape Parliament introduced what is known as the Glen Grey system, by which natives in the district of Glen Grey and other proclaimed areas were permitted to hold land in individual tenure. This system has not, however, been widely extended, nor are there sufficient data to judge of its effect upon native life, as inhabitants of the districts affected have long been in the neighbourhood of white settlements. The prevalence of communal tenure has led various writers to hold that a socialistic system prevails amongst the natives. This is true to a certain extent; but the analogy must not be pushed too far. Every native in a territory is subordinate to his chief, who, if the restraints

of white government were removed, would be an absolute autocrat, possessing the power of disposing not only of tribal property, but also of the lives of the tribesmen, at his own sweet will. With the existing safeguards, however, the communal system is well adapted to secure the well-being of the tribe as a whole, to prevent poverty, and to furnish work for all—though work in agriculture, as a rule, is the woman's lot.

Taken as a whole, the lives of the natives are thrifty and industrious. They are frequently represented as idle, and dependent entirely on the work of their women. There is no doubt that certain tribes regard agricultural labour as distasteful, but it is a slander on the native to suggest that he is incapable or unwilling to undertake hard and effective work. It is sufficient refutation of this to state that the great mining industries of South Africa, subject to the superior intelligent direction of the white man, have been built up entirely by aboriginal unskilled labour. The native may be regarded as a social and economic menace to the white man, but he has, after all, been the main contributor to the white man's comfort in South Africa. The discipline of the chiefs (except in a few unworthy instances) has led to general orderliness and temperate living in the native reserves and territories. Of this the Basutos and the Bechuanas are outstanding examples. To this, there can be no doubt, the general prohibition of the sale of intoxicants has largely contributed. Kaffir beer, however, is generally consumed, and occasional orgies are the consequence. In former times these orgies were disgusting in the extreme, but the action of the Cape Parliament in prohibiting the Abakweta and Intonjane dances in certain proclaimed areas had an excellent effect. Widespread profligacy does not exist amongst the natives, although there is a considerable amount of venereal disease. So there is amongst the white population. It is, however, impossible to arrive at definite conclusions on the subject, until proper machinery is set up for obtaining statistics and general information regarding health and mortality in the native territories. Their interests in matters of public health have been largely, if not almost entirely, neglected in the past. No provision is made for native hospitals in the reserves and territories, and there are few medical men to whom they are able to resort. In cases

of sickness they have to resort to native remedies, such as herbs, and they are completely at the mercy of any epidemic disease which may break out amongst them. That such epidemics have not caused greater ravages in the past is entirely due to their temperate habits of life, and their naturally sound constitutions. When exposed to civilising influences, such as life in the mining districts, or perhaps change of climate, on the other hand, the physique of the natives appears to be totally unable to withstand disease, and they rapidly succumb.

Life in the native locations attached to the towns and other "white" portions of the Union is very different from that in the native territories. Polygamy is forbidden, and family life approximates more or less to that led by the poorer class of whites. The inhabitants of locations are employed in the towns, whether as unskilled workers or as artisans, and their wives and daughters become laundresses or domestic servants. Most of these families lead decent, orderly lives, but in many cases both men and women become subject to the baser influences which beset slum life in the towns—for the locations, though several natives take a pride in having neat houses, are as a rule not far removed from slums. Drink and vice produce their effect, which is increased by the ministrations of the more debased elements among the whites. It is for this reason that the proposed policy of segregation finds considerable favour, because as long as natives are brought into contact with undesirable elements amongst the European population they are likely to imitate vicious methods and habits of life which are likely to lead to their degradation, with an inevitable reaction upon the whites in whose midst they are. The location problem is a serious one, and needs to be taken in hand earnestly by the central government and the local authorities. Close supervision of the locations is absolutely necessary to secure the well-being of the population, both white and black. A glaring instance of neglect is that of the so-called "Malay location" at Johannesburg, which for many years was situated on the property of the Railway Department, and was notorious as a hotbed of disease, vice, and crime. The Railway Department drew the rents from this location, but made no provision for sanitation or the preserva-

tion of order. On the urgent protests of the Town Council, this property has now been handed over to the Johannesburg Municipality, and it is anticipated that a better *régime* will be the consequence. Worse even than the locations specially allotted to and solely inhabited by natives are those urban areas in which blacks and whites dwell side by side, the slum portions of Johannesburg, Cape Town, and Port Elizabeth. Until natives are definitely prohibited from living in these areas, no improvement is to be looked for. It is needless to emphasize the fact that in these areas the traffic in intoxicants flourishes practically unchecked. Vested interests are very strong. The slum landlord is very powerful, and a determined movement on the part of the better elements in the population will be necessary to eradicate the evil. But it must be done. Failing segregation, the compulsory removal of natives to locations is absolutely necessary. In Cape Town, where some of the worst slums inhabited by natives are in close proximity to some of the best white residential quarters, the existing state of affairs has had serious social results; and the appalling mortality at Cape Town and Kimberley during the influenza epidemic of 1918 was largely attributable to the condition of the native slums. It must, however, be admitted that, while it is easy to suggest remedies, it is far more difficult to apply them. Great expenditure will be necessary; and many diverse interests and prejudices will have to be conciliated. Not the least complex portion of the problem is the varied character of the population which inhabits these slums—white “dagoes,” Indians, Chinamen, Cape Malays, Hottentots, and aboriginal natives.

What of the future? While South Africa is a temperate country, fit for habitation by white peoples, there are many who, in view of the present overwhelming preponderance of the aboriginal population, do not hesitate to say that it is a “black man’s country,” and will remain so. Only immigration of Europeans on a large scale will redress the balance, if it be at all possible to do so. There are others who predict that in time to come the entire population will be “white-brown,” or “dirty yellow.” In these matters we can only speculate. The future, which is posterity, must take care of itself.

CHAPTER IV.

PROVINCIAL LIFE.

GIVEN SUFFICIENT *data*, it would be a matter of great interest to ascertain to what extent the creation of the Union has affected the lives, or modified the sentiments, of its inhabitants. The time which has elapsed since the inauguration of the Union has, however, been too short to enable one to arrive at any accurate conclusions, or even forecasts, upon the subject. Much has been said and written by politicians and journalists about the advantages of union, of the benefits which are derived from the creation of a united South African commonwealth, compared with the selfish and particularist tendencies of the constituent Colonies out of which it was formed, and of the desirability of creating a South African spirit, with a realisation of the advantage of bringing into life a universal national feeling, and the position which the country ought to occupy as one of the great self-governing dominions of the British Empire. Hitherto, however, the Union, as a visible fact, has impressed outside observers more than it has its own inhabitants. Those who live in other countries are, perhaps, better able to judge of the figure which the Union makes in the world at large, and of the place which it occupies, or is destined to occupy, among the nations. But, so far as the people of the Union are concerned, it is doubtful—though it is impossible to make any dogmatic assertions on the matter, one way or the other—whether they have formed any adequate conceptions of its destiny as a nation or country, that is, of its future as their country. Comparatively few people, Dutch or English, speak of themselves as South Africans. The Dutch, it is true, often refer to themselves as “Afrianders,” but this term has come to possess a special connotation, and is ordinarily restricted to those who are distinctively of Dutch descent—though, in early days, travellers and philo-

logists applied it to aborigines, who are African by origin in the true sense. Most persons of English descent who were born in the Cape Colony (now the Cape Province) call themselves "Colonials," and are proud of the epithet, notwithstanding the suggestions of certain well-meaning but ignorant wiseacres in England that it should disappear. The people of Natal still call themselves Natalians, those of the Free State, Free Staters, and those of the Transvaal, Transvaalers. As to these, it should be noted that nearly all the people of Natal are of British origin, nearly all of the Free State are of Dutch descent, while those of the Transvaal are fairly equally divided between the two races. The Transvaal, however, has attracted the largest admixture of foreign peoples—not a few Germans, some French, Russians, Italians, and Portuguese (mainly introduced through Delagoa Bay). It will be seen that these distinctions according to the Provinces (or former Colonies and Republics) of origin are based not upon race, but on territory. There is, or should be, nothing to differentiate the Afriander of the Cape from the Afriander of the Free State or of the Transvaal. They are all ultimately descended from the Dutch (later on blended with French Huguenots) who colonised the Cape from 1652 onwards. Nevertheless, the experienced observer is able to note differences, which in this instance are the result of environment far more than of heredity. The same thing is to be observed of persons of British origin in the respective Provinces. So that, whatever may be predicted of the ultimate blending of the population of the Union as a whole, there appears to be little doubt that a process has already taken place with regard to each separate Province, whereby its population, taken as a whole, may be broadly distinguished from those of other Provinces. This is not to suggest that there are not certain bonds which unite all British or all Dutch portions of the community throughout the Union. Thus, the bulk of those who are of British origin would strongly oppose any movement to separate South Africa from the rest of the British Empire—unless the Empire itself fell into disintegration by a movement from its centre. Again, the Dutch people, as a whole, would firmly resist any attempt to deprive them of their language rights. In both cases, prob-

ably, the sentiment would prevail over more practical considerations. And both British and Dutch would offer opposition to any organised or concerted movement on the part of the aboriginal natives to assert *their* real or pretended rights as a people.

Thus, while differences are not so marked as in the case of inter-State distinctions between men from New England, Kentucky, Montana, or Texas (who all, on the other hand, have realised their national homogeneity as citizens of the United States), there are subtle differences which are readily noticeable by the keen observer. One finds numerous dialectical variations—in the spelling of words, and in their pronunciation—between Dutch as it is spoken in the Western Province of the Cape, and the Dutch language which is in currency in the Eastern Province; and between the Dutch spoken in the Cape Province, as a whole, and that used in the Transvaal. In the Cape, as a whole, Dutch contains more corruptions than it does in the Transvaal. This may be due to the fact that in former days the Transvaal contained more teachers imported directly from Holland, who naturally tried to maintain their language with as great an approximation to purity as possible. In the Cape, on the other hand, a much older Colony, most of the teachers were of local birth, who were not so much concerned to uphold strict literary canons or traditions as to find a ready medium of intercourse. Their use of Dutch was also influenced, to some extent, by the predominance of English in commercial transactions—while, on the other hand, English as it was spoken at the Cape was affected, to some extent, by Dutch forms of speech. In neither of the two Provinces (the Cape and the Transvaal), however, is any attempt made to speak the Dutch language of Holland—though advocates in the Courts and preachers in the pulpit have made gallant attempts to approximate to it, usually incurring the reproach that they “are speaking above the heads of their hearers.” The Cape University (and now the Universities of South Africa, Cape Town, and Stellenbosch), and organisations like the *Taal Bond*, have endeavoured to enforce a uniform standard of Dutch, but it will be difficult for the efforts of academic institutions to prevail over use and wont.

As far as views of life and daily habits are concerned, the people of the Cape Province may be said to be the most conservative. They regard themselves as the aristocrats of South Africa, and, curiously enough, are apt to consider the Dutch people inhabiting the rest of South Africa as, in some degree, junior to themselves, although the latter are able to boast of precisely the same origin, descended, as they are, from the burghers and yeomen, and the Huguenots, who settled at the Cape in the days of the Dutch East India Company. Holding their homesteads and farms in the Cape Division, Stellenbosch, and the Paarl in unbroken descent for many generations, they have felt no temptation to seek fresh woods and pastures new, to go farther afield, or to renounce any of their old customs and traditions, which in many ways are charming enough. They represent the stay-at-home element, and seldom feel any stirring of the blood, though some ardent spirits in their midst—but perhaps not of them—have been keen enough in the discussion of political problems, mainly racial. They are least conspicuous in enterprise and adventure, though, by reason of the localities which they inhabit, with fertile soil and a plentiful supply of water, they are prosperous enough. This conservatism has spread to the English merchants of the coast towns, whose business, situated as they were at the forwarding ports, grew of itself, and required little trouble or attention to make it grow. By reason of their one or two generations of earlier settlement, they regard the merchants, storekeepers, and traders of the interior as mere *parvenus*, with whom they are ready enough to trade, but whose society is not to be cultivated on other grounds. There is something to be said for this conservative spirit. It is desirable to hold fast to old-established institutions, when they are good. But they must not hinder progress. It is a remarkable fact that, with perhaps four exceptions, none of the great mercantile firms of Cape Town took advantage of the immense and nearly unique opportunities of trade expansion offered by the discovery of the Griqualand diamond fields and the Witwatersrand goldfields to establish themselves there. The great trustee companies of Cape Town left these thriving centres in the interior severely alone. The merchants and companies of Port Elizabeth were

more enterprising; but they were easily surpassed by the traders and manufacturers of Natal, who, with adequate foresight, grasped the new opportunities opened to them, and made themselves the leading traders of the Witwatersrand and Kimberley.

The more adventurous among the Dutch of the Cape Western Province at first made their way eastwards, until they were checked by the hostile Kaffirs, and felt the neighbourhood of the British Settlers in Albany, who were equally adventurous and enterprising, somewhat irksome. On the whole, however, relationships between the Dutch and the British in the Eastern Province, politics apart, have always been excellent. Both follow much the same farming methods, and mix fairly freely in social affairs (except in the towns), while the descendant of the British Settler speaks Dutch better than any other person of English origin in South Africa. In Natal, for instance, owing to the almost entire absence of Dutch population in that Province, very few persons are able to speak Dutch. The sea-side resorts of Natal are, however, greatly favoured by the Dutch people of the south-eastern Transvaal and the Free State. The people of the eastern Transvaal, owing to the facility of railway communication, mainly spend their holidays at Delagoa Bay.

Chafing at the fancied restraints of life in the Eastern Province, many of the *voyageurs* who had made their way from the Western districts determined to seek a new home beyond the Orange river. They became the *Voortrekkers* or pioneers. Some of them settled on the broad plains of what afterwards became the Orange Free State, at Thaba 'Nchu and Winburg, while others crossed the Drakensberg, and descended upon the uplands of Natal. The history of the Boer Republic in Natal was brief. The English were at Durban, and before long Natal was annexed to the British Crown. Most of the citizens of the Natal Republic re-crossed the Drakensberg, and joined their former comrades at Winburg, or at the newly-founded settlements of Potchefstroom and Rustenburg, across the Vaal. For many years the Boers of the Free State and the South African Republic remained isolated from the rest of the world, until the discovery of diamonds and gold brought in a new and alien

element. They led a different life from that of their brethren in the Cape Colony, who were in a settled country, where they were able to attend peacefully to their agricultural and pastoral avocations. For many years the Free Staters and the Transvaalers carried their lives in their hands. They fought with Basutos, Matabele, and Zulus. They were not allowed to settle down to tillage and pasturage. They depended mainly, more especially in the eastern and northern Transvaal, on shooting game—which then abounded in almost incredible numbers—for their food. They had to be on lasting guard against wild animals as well as against savages. Constantly in the saddle, with their weapons ever at hand, they became men of the plains and the woods, living a life entirely different from that of the farmer in more settled regions. Thus they developed an entirely different outlook, communing with nature alone in its wildest forms, learning self-reliance in the isolation of the bush, far removed from neighbours or softening or enervating influences, knowing the trail and the ways of the wild beast and the wilder savage with unerring acuteness. Theirs was also a kind of conservatism, but it was the conservatism of the man who has tried and proved things for himself, and prefers the ways of his own experience to those which, however well approved, he has to accept at second hand. Conscious of his power to subdue the land and bring it under his control, the Boer of the *Voortrekker* era and thereafter became somewhat self-assertive, regarding himself as the chosen instrument of Providence for the settlement of the interior. Whether chosen or not, he was in fact the instrument. Such a man was sure to be deeply religious, seeing the hand of God in everything—in the storm cloud, in the flood, in the cattle plague, in the locust flight. Naturally, his spiritual leaders had great influence over him. The piety of the Doppers, to which body many of the *Voortrekkers* belonged, was of a severely ascetic cast. Far removed from secular literary or other worldly influences, the Bible was the great subject of meditation and disputation. Fierce religious conflicts arose, which have only been finally allayed within recent years. On the whole, however, the Dutch have remained faithful to orthodox Calvinism, though at one time the “free thought” move-

ment inaugurated by the Rev. (afterwards President) T. F. Burgers, the Rev. J. J. Kotzé, and the Rev. D. P. Faure, gave rise to much controversy in the western districts of the Cape Colony.

In the Transvaal, the *trekking* spirit still survives, to a far greater extent than in the Cape Province. The Cape farmer has not the same inducement to roam. His land has been cultivated for a much longer period, and produces more. It is only within recent years that agriculture has begun to make strides in the Transvaal, where there is much more uncultivated land, and the farmer is poorer, living, in the average case, in a more primitive style than his brother of the Cape Province. The annexation of new regions has, however, checked the *trekking* habit. Recently, economic pressure has led many of the poorer members of the farming community of the Transvaal to seek a livelihood on the mines and in the towns. What effect this will have on social conditions cannot yet be told. So far, experience has not been altogether reassuring. With scanty means, sometimes on the verge of starvation, the emigrant from the countryside into the large towns is often compelled to become a slum-dweller. In many cases, failing to find honourable employment, he falls into the toils of crafty and unscrupulous men, who use him as a tool in the illicit liquor traffic and other nefarious pursuits. Thus arises the race of the "poor whites," whose social and moral regeneration should be the principal task of reformers in South Africa. Descendants of the men who were companions and followers of Van Riebeeck, of Hugo Grotius and Van Tromp and De Ruyter, of Coligny and Bayle and Duquesne, these people deserve a happier fate.

The existence of a large mining industry in the Transvaal, with the modern methods which are requisite to the successful exploitation of its huge deposits of gold, coal, and diamonds, has also in recent years exercised a profound influence upon the life of this portion of the Union. Land throughout the Province, because of its real or fancied mineral wealth, has acquired a much greater value, which in some instances is fictitious. Every landowner, Dutch or English, has become an amateur prospector, apart from the army of prospectors by

vocation, who habitually search the country for indications of precious metals or precious stones. Johannesburg is the great market for agricultural produce, and is frequently visited by farmers from all over the Province. They have become accustomed to share-dealings, to participation in company flotations, and to other financial transactions which their ancestors would have anathematised as contrary to Holy Writ. Their intercourse and familiarity with town life is far greater than their brother farmers in the other Provinces can boast of.

Geographical and climatic conditions have also influenced life in the different Provinces of the Union. The coastal belt of the Cape and Natal, from Table Bay eastwards (with the exception of the neighbourhood of Port Elizabeth) has both a rich alluvial soil and a regular annual rainfall, and is extremely fertile. North of Table Bay much of the coast is still uninhabited, although the district of Malmesbury is one of the best wheat-producing areas in the Union. These coast regions are traversed by numerous small streams, which, though not long, are perennial. Apart from cultivation, natural vegetation and herbage are abundant, and neither man nor beast need starve. Life is easy and prosperous, and there are few inducements to change their mode of life or place of residence. The Natal coast, however, is sub-tropical, and while eminently adapted to the cultivation of sugar and other sub-tropical products, is not likely to become the home of a large white population. Many thriving industries, it is true, have sprung up at Durban; but the coastal region of Natal, as a whole, is better adapted to settlement by dark-skinned races, who will probably continue to form the bulk of its population. The areas bordering on the coast offer attractions to the small farmer which are not available in the interior of the Union. Although agriculture in the interior has made, and is making, great progress, there are many parts in which it can only advance by the employment of capital on a considerable scale. The Free State contains only two rivers, the Modder and the Caledon, of any size, while the Orange river forms its southern boundary, though its stream is not always available for irrigation. The Vaal, the Limpopo, and the Komati are the only considerable streams in the Transvaal, the last-named flowing,

for the greater part of its course, through an unhealthy area, which may, however, be reclaimed for cultivation in time to come.

While the people of Cape Town who are natives of that city have originated little in the way of enterprise or intellectual movement in South Africa, it is not suggested that they have had no influence upon movements or tendencies in the country as a whole. To state that would be to do a great injustice to the work of such educational institutions as the South African College (now the University of Cape Town) and the Diocesan College (Rondebosch), which, with the Victoria College (Stellenbosch), have produced several generations of able professional men, who have done valuable work throughout South Africa. Nevertheless, it still remains true that much, if not most, of what has made for the welfare and advancement of the Union has been done by men from overseas, or outside the Cape Peninsula. One has only to recall such names as Rhodes, Kruger, Steyn, De Villiers, Hays Hammond, Theiler, Greathead, Mackenzie, Moffat, Atherstone, Selous, Paterson, Escombe, and Robinson, to admit the justice of this statement. On the other hand, Cape Town has produced John Brand and Jan Hofmeyr.

At the present time, the Provincial spirit is keen, and local feeling is strong. This is not altogether disadvantageous. It makes for rivalry and emulation in enterprise, and tends to develop individuality. As long as it does not degenerate into petty jealousy or exclusiveness, and fosters a pride in the best local institutions and characteristics, it deserves to be encouraged. The local universities may become important factors in bringing out what is best in their areas of influence. At the same time, the larger life of the Union demands a broader vision, and a deeper conception of national aims, to be realised for the common good of the Union as a whole.

CHAPTER V.

LIFE IN THE TOWNS.

THE MOVEMENT from the country to the towns, which has manifested itself in recent times in other parts of the world, has also become apparent in South Africa. The four largest towns of the Union (Johannesburg, Cape Town, Pretoria, and Durban) contain, taken together, one-fourth of the entire white population of the Union, and there is a steady stream of immigration flowing into them from the country. The largest of them, Johannesburg, is not, however, a very large city, according to European or American standards. The official census figure of its population, 140,000 Europeans (132,000 natives), is, however, notoriously unreliable, owing to the apparent inability of many of its inhabitants to remain settled in one locality for any considerable period. It is no uncommon experience, in a "Reef" or Rand constituency, to find that one-half of its registered voters have removed during the triennial period of registration. This is, to some extent, due to the "newness" of a considerable portion of the population, and to the fact that many miners appear to like variety in their work, and readily give up their engagements to seek work elsewhere along the "Reef." The Mine Managers' Association states that on the average each miner remains on one mine continuously for only thirty-four days. By reason of its bustle, the open-air or street life which many of its people lead, and its general aspect of liveliness, Johannesburg appears to be a very much larger town than it really is. Its vehicular traffic, its clubs, hotels, theatres, and cinemas, its cafés and restaurants, its cosmopolitan population, its ambitious buildings, all give the impression of a capital city in Europe. To this the gold mines which border immediately on the town lend an air of strenuousness and industrialism which is lacking elsewhere in South Africa. People spend much

money, and give the impression that their incomes are commensurate with their expenditure. The travelling representative of a great American motor-manufacturing firm (the Willys-Overland Company) has stated that there are more motor cars in proportion to the population in Johannesburg than in any other city in the world. With all this, there are thousands of its inhabitants who lead as decent, orderly, even humdrum lives as do any of the people of Canterbury or Bruges. Large numbers of young men and women attend evening classes at the unhappily-named School of Mines (now, August, 1919, altered to "University College"). The churches have large congregations; and, while an unduly great number of the people resort to the race-courses and the gaming-houses or "bucket shops" (places for illegal betting), there are hundreds who have no more exciting recreation than tennis or golf. In its short history Johannesburg has produced many well-known athletes, as well as excellent cricketers and footballers, some of whom have achieved an international reputation. Nor has it failed on the intellectual side. Its engineers, chemists, metallurgists, and geologists are among the best exponents of mining industry and practice anywhere. Its hospitals are excellent institutions, which may compare favourably with any in England. Its municipality has done much for the improvement of the town—though much still remains to be done. The suburban streets, owing to the immense cost of making pavements and constructing drainage works, present a generally untidy and unkempt appearance. The winter winds carry great clouds of cyanide-laden dust from the tailings-heaps of the mines into the streets, and make existence anything but cheerful. Nevertheless, the rate of mortality is very low. The moral condition, also, of the population is satisfactory, as disclosed by police returns. Apart from the illicit liquor traffic (with its special temptations and conditions), there is very little serious crime—amongst the white population, at any rate. The sensational murders, suicides, and robberies which startled the world in the "early days" of Johannesburg, when it was merely a mining camp, are things of the past.

In spite of all this, a legend has grown up about Johannesburg. A distinguished South African politician, who ought to have known better, has denounced it as "a university of crime." The town is regarded with suspicion by more conservative communities in the Union, who were startled somewhat by its rapid growth, its insistence on making its wants known, and its general air of independence. They regard, or regarded, most of the people of Johannesburg as *parvenus*, *arrivistes*, and *rastaquères*. To a great extent this unjustly-earned reputation has been lived down. Whether Johannesburg will survive its reputation is a problem that gives the more reflective among its inhabitants much food for thought. The life of the mines is limited; and only the growth of other industries and general trade will ensure permanence.

Except for the seaside resorts in the Cape Peninsula, Natal, Port Elizabeth, and East London, the other urban centres of the Union present no special features. Kimberley has long settled down into staidness and sobriety, though its diamond mines will always remain a source of attraction for the tourist. The town itself is an unimpressive collection of one-storied, corrugated-iron buildings. Cape Town enjoys the great advantage of situation amidst beautiful scenery—"the fairest Cape in the whole circumference of the earth"—, and the more human influence which it radiates as the Parliamentary capital of the Union. It has numerous historical associations, excellent educational institutions, is the port of entry for passengers to the sub-continent, and will always attract holiday-makers, as well as those who seek pleasant retirement when nearing the close of life.¹ Much has been done for it by its corporation in the way of street-paving and lighting, and it has many transportation facilities. But a great deal remains to be done in the way of sanitation, and the provision of a regular water-supply. Whether its climatic conditions—its heavy floods, and its violent south-east wind, or "Cape doctor"—constitute a drawback to residence, or not, depends on individual temperament.

Geographically, Pretoria has a good situation as the administrative capital of the Union. It has all the public buildings

(1) The Royal Observatory, near Cape Town, will always be a place of profound interest for astronomers, associated as it is with the work of Sir John Herschel, Sir Thomas Maclear, and Sir David Gill.

requisite for official purposes—millions of pounds having been spent on their erection and equipment. The growth of the town, generally, has, however, been very gradual, and the population consists, in the main, of officials and other State employes, and the professional men, merchants, and tradesmen who minister to their wants. The expansion of trade and industry in the Transvaal will probably, however, lead to a proportionate increase in the population.

Bloemfontein will always remain the most important centre for the trade of the Free State. It is the junction for several railway lines, and is also situated on the main line of railway from the Cape to the Transvaal. It forms a convenient meeting-place for congresses of all kinds. It lies in an exposed situation, open to the winter winds that blow from the Drakensberg, but is generally regarded as healthy, and a suitable residence for persons suffering from pulmonary complaints.

Pietermaritzburg (or Maritzburg), the Provincial capital of Natal, is one of the most beautifully-situated towns in the Union, though its very situation renders it unbearably hot in the summer. It is not, however, unhealthy, and has the advantage of nearness to Durban and other coast resorts. A sort of rivalry has always existed between Maritzburg and Durban, but all the advantage is on the side of Durban, as a port, and a large commercial centre. The growth of Maritzburg has been comparatively slow, but the increase in agricultural and industrial pursuits which has taken place in recent years will probably add to the importance of this town as a centre of industry and trade.

It is sufficient to add that Port Elizabeth and East London are thriving ports, each with a great forwarding and exporting trade quite remarkable in comparison with the size of its population. Port Elizabeth has had to overcome many natural difficulties, with its poor and—in former years—dangerous anchorage, and it owes much to its enterprising merchants and public men. The same may be said of East London. Indeed, all the South African ports have had great obstacles to contend with; but they have successfully overcome them.

Most of the inland towns and villages present much the same features—two or three churches, a school, a magistrate's court, a gaol, sometimes a town hall, a post office, and tennis and football grounds; with the magistrate, the clergyman, the attorney, the teacher, the bank manager, and the postmaster as their leading citizens. Their inhabitants meet few strangers, and are quite content with week-old newspapers. Nevertheless, they have an intelligent appreciation of what is going on in the world, and their lives are well ordered, and far from sterile. These little towns have sent out thousands of their young men to fight on the battlefields of Flanders and France, and deserve to be held in the esteem of the Empire on that account. No meretricious ambitions disturb them, and their inhabitants are content to amuse themselves in simple fashion, with a church bazaar, an agricultural show, an occasional dance, a tennis match with a neighbouring town, or a concert. Illiteracy is very rare. Every English-descended child knows how to read and write, and so does nearly every Dutch one. There is little or no crime, and, if drunkenness is occasionally met with, it is always severely reprobated.

CHAPTER VI.

COUNTRY LIFE.

THE UNION includes spaces so vast that they embrace the most diversified forms of life, and an infinite variety of manifestations of nature. There are great desert tracts, such as the Kalahari, Namaqualand, and the "Coup," in the western Karroo; majestic mountain-ranges and peaks, like the Drakensberg, the Lebombo, the Sneeuwberg, and the Zwartberg; foaming torrents, such as the Elands, the Tugela, and the Valsch; placid streams, like the Umzimvubu and the rivers of the south coast of Natal; great forests, such as the Knysna and the Bushveld. Vast areas are covered by cactus and euphorbias; there are huge fever-stricken swamps; and the country ranges from tame vineyards and cornfields to the haunts of the elephant, the lion, the baboon, the mamba, and the crocodile. There are a sugar belt, a cotton belt, a tea belt, a coffee belt, tobacco belts, mealie belts, pine-apple belts. In Zululand, there are localities suitable for cultivating rubber. Near Delagoa Bay, the cocoa palm may be grown, where it is possible to emerge from the mangrove thickets. The potential mineral wealth of the country is great. There are vast deposits of iron ore, coal, manganese, and copper. Stones of rare beauty, such as crocidolite, are found. Granite is quarried near Cape Town and Paarl, and there are traces of marble. Salt pans abound, and there are hot springs with varying medicinal properties. Everywhere there are traces of volcanic action, but there is no active volcano. Earthquakes are not unknown, probably due to the shifting of strata.

The country has peculiarities of its own. A cynic has said that South Africa is a place where the birds have no song, the flowers no scent, and the rivers no water. This is an exaggeration. Owing to the rapid descent from the inland plateaus to the sea, the rivers certainly are not navigable, but they dis-

charge enormous masses of water, although they are low in dry seasons. There are many sweet-smelling flowers, and some that are evil-smelling. Birds like the nightingale, the lark, and the thrush are unknown; but all the local species have their clear, unmistakable call, which in some instances is distinctly pleasant. It is, however, true that most birds partake of the general atmosphere of silence which pervades the sunlit spaces of the interior. The vastness of these spaces is itself accountable for this. It is only at night, in the regions tenanted by wild animals, that one hears the bark of the jackal, or the snarl of the leopard or wild-cat. But in the areas inhabited by human beings, silence is the rule, with man and beast—except, perhaps, in Kaffirland. The song of the milkmaid, the flute of the shepherd, are things unknown in South Africa. The silence is that of the great plains of Russia and Siberia. This is not to suggest that the country folk in South Africa are gloomy. Only, they are not musical; nor are they wont to give much expression to their emotions. Nevertheless, they are genial enough, and full of hearty laughter on festive occasions. Religious, they are not solemn. Their wit is elementary, their jokes mainly of the practical order. Their wants are few, and their recreations simple. Except among the educated farmers of the better class, their enjoyment lies chiefly in the satisfaction of the inner man, and in dispensing a boundless hospitality. The hospitality of the South African farmer is proverbial. Even the poorest delights to entertain a guest, to set before him the best he has, and (with a few churlish exceptions) to give an opportunity of shooting over his land. With the most simple materials, the South African farmer has managed to evolve a varied dietary, which is much appreciated by the local *connoisseur*, including, as it does, *sasaties*, *bobotee*, *carbonaadjes*, *roosterkoek*, *stormjagers*, *watermelon konfyt*, *most konfyt*, *pampelmoes konfyt*, and *meebos*. With few veterinary surgeons available, he has discovered various homely remedies for stock diseases—although many of the younger generation have learned, at agricultural schools and elsewhere, how to apply more modern methods of treating and caring for stock, as well as scientific agriculture.

Family prayers are the rule, after the evening meal. Then, after the native servants have received their food, the household goes to bed, rising long before dawn, to attend to dairying, to count the sheep before they are driven to the pasture, and to prepare for the work of ploughing or reaping. Once in three months, the family go to the nearest town, to attend the *nachtmaal* or communion service. At this time, too, the younger members of the family who have learnt the catechism are examined, and confirmed. Confirmation is an absolutely essential preliminary to matrimony—but not with the “poor whites” who are permanent residents in the towns, and are not always mindful of religious observances. Life on the farms is also varied by an occasional visit to a neighbour's farm, or to a country store, where clothing, groceries, or agricultural requisites are purchased. The credit system is almost universal, and few country storekeepers insult their customers by demanding payment in cash.

Young women of the more luxurious class play the piano—some of them with sympathy and technique. Most of them have learned the latest dances, read the most recent novels, know something of the latest fashions (in regard to which all South Africa is, to the benefit of drapers and milliners, usually one or two seasons behind London and Paris), and are adepts at tennis or golf. Usually they have been for two or three years to good boarding-schools, returning with some knowledge of a more sophisticated world, but at the same time able and ready to turn their hands to domestic duties, and even to milk the cows or take a spell in the fields in case of emergency. Their brothers are good cricketers or footballers, accurate shots, and experts at taming a young (“wild”) horse or a buck-jumper. Thus, the isolation and comparative silence of the *veld* have produced a far from gloomy folk. Under the influence of contact with people from oversea, much of the old puritanical spirit has disappeared so far as the Boërs are concerned—perhaps not altogether for the better. As in the towns, country people are acquiring luxurious habits. The old “Cape cart” is disappearing, and is being replaced by the motor car. This, it is true, makes for speed, but not necessarily for economy. On the whole, it may be said that

there is much want of thrift. Many farmers are heavily in debt,—indeed, there are some districts in which nearly every farm is fully, and perpetually, under mortgage. With the older generation of Boers it was a cardinal article of faith to retain the farm in the family, and wills were, and still are, carefully framed with this object in view. But in several instances the habit of incurring an overdraft at the bank in the neighbouring town, the purchase of a motor car, or even the growing fondness for visits to Cape Town and Johannesburg, have in the long run led to the sale of the family estate, which passes for ever into the hands of strangers. There are, of course, exceptions—large tracts of country still tenaciously held by rich farmers, who are the special target of the so-called land reformers, whose desire, regardless of the fact that the country is far too large for its population, is to see the whole of the land broken up into small holdings.

Many farmers complain of the scarcity of labour, due, in the main, to the flow of population, white and black, into the towns. Most persons who are willing to take employment, whether European or native, demand a fair share of the produce of their toil, and are not content with ordinary wages. The natives are often regarded as better workers than the white agricultural labourers or small-holders, who are frequently far from industrious, producing poor crops plentifully interspersed with weeds, working few hours during the day, and resignedly leaving everything to Providence instead of trusting to their own efforts. Their common fate, as we have seen, is to become “poor whites” and drift into the towns. Under these circumstances, the better class of farmer, who genuinely desires to improve the land, has a hard struggle, accentuated, as it is, by the many natural obstacles and visitations with which he has to contend. It is much to his credit that he has managed to overcome so many difficulties, and that agriculture and pastoral pursuits have made such great strides since the inauguration of the Union.

CHAPTER VII.

THE FOREIGN ELEMENT.

CENSUS STATISTICS with regard to the birthplaces of white persons (other than those born in the United Kingdom or other British Possessions) afford some indication as to the amount of immigration into the Union. At the census of 1911 there were 12,798 persons who were born in Germany, 24,028 born in Russia, and 18,281 born in other countries. A nearer approximation with regard to the number coming from each separate country is afforded by the classification of new arrivals according to nationality and race, during the years 1913 to 1916. The total numbers during these four years were: South Americans, 25; North Americans (United States), 824; Austrians, 117; Belgians (of whom a large number must have been in transit to the Belgian Congo), 967; Dutch (Holland), 490; French, 213; Germans, 1148; Greeks and Italians, 319; Ottoman, 26; Portuguese and Spanish, 227; Russians, 2824; Scandinavians, 1311; Swiss, 176; and other unspecified races, 101. The total number of foreign immigrants during these four years was 8758—a very small figure compared with the numbers entering the United States, Canada, or Australia. It will be seen that by far the greater number of persons of foreign origin already in or entering the Union came from Germany and Russia; and that the immigrants from Teutonic, Scandinavian, or Slavic Europe far outnumbered those hailing from Latin countries.

It is, indeed, remarkable that there should be so many persons of Latin origin as there are. French is no longer spoken in South Africa; and the ties, if any, which bind South Africans of Huguenot origin to France are only vaguely sentimental, if they exist at all. Very few South Africans, to their discredit be it said, know anything of the French language, or even of the history and institutions of France. Spaniards

and Portuguese naturally tend towards South America, where a new Spain and a new Portugal have been created. The emigration of persons from Holland to a country where Dutch is spoken is more readily intelligible. Of the Russians, by far the greater part are Jews, who have fled from anti-Semitic persecution in Russia. Many of the considerable number of German settlers probably came to South Africa either to escape tyrannical Prussian government, or to avoid conscription.

Thus the foreigners in the Union are some 5 per cent. of the total white population. They are not, generally, looked upon with disfavour—except, perhaps, in the case of some of the Russian Jews, for a certain amount of anti-Jewish prejudice exists, which is, however, dying down with the decay of religious animosities and the realisation that the Jews form a steady and industrious element in the population. Occurrences connected with the great European War have tended to bring the Germans, as a whole, into disfavour, and many of them have drawn unpleasant attention to themselves by their open manifestations of attachment to their country of origin—though several Germans naturalised as British subjects have remained loyal to the country of their adoption. Of the foreign elements in the population, as a whole, it may be said that they are not regarded with disfavour or hostility by the other white inhabitants of the Union. The great majority of them are perfectly law-abiding, devoted to industrious pursuits, and among them are to be found many agriculturists, factory-hands, and miners. Anti-foreign feeling amongst the Boers, who are themselves almost entirely of Continental origin, is practically unknown.

The extent of foreign influence is not to be calculated by mere numbers. In local political or social movements they take little part; and when, in 1915, the Transvaal Labour Party, during their temporary majority in the Provincial Council, in a fit of altruism or, as their opponents declared, with a desire for vote-catching, conferred the municipal franchise upon aliens, the recipients of this unsought-for gift treated the matter as a huge joke, though some of their number voted in order to gratify their benefactors. On the other

hand, they include in their ranks a few International Socialists, whose influence is not at present very far-reaching. In more serious matters, however, foreign-born persons, whether naturalised or not, have achieved conspicuous success. Thus, there have been mining magnates, like Eckstein, Wernher Beit, and Neumann; financiers, such as Lewis and Marks; engineers, like Rouliot; scientists, like Von Babo and Sir A. Theiler; merchants, like Mosenthal, Wilman and Spilhaus, or Hansen and Schrader; manufacturers, such as Fatti, Schlesinger-Delmore, and Ginsberg; stevedores, like Messina and Sciamia; and many others whose influence has been felt in the industrial and commercial world. In such districts as Ermelo and Heilbron, sound work is being done by Russian-Jewish farmers; and much of the market-gardening of the Witwatersrand is in the hands of Italians and Portuguese—not to speak of the ubiquitous Chinaman. Thus, while the statement of a well-known journalist may be true that “there are few maxims sounder than one which teaches that a country does not export its best citizens,”¹ there can be no doubt that South Africa owes much to those of its inhabitants who hail from foreign countries.

This is especially noticeable in connection with the lighter side of life. Most of the hotel-managers, band conductors, and musicians come from the Continent of Europe. In the early days of mining at Kimberley and on the Rand, unfortunately, there was also a considerable influx of undesirables, men and women, who engaged in the forbidden traffic of the underworld. Stringent legislation, including morality laws and immigration laws, has resulted in the almost total disappearance of this element—not entirely to the advantage of South Africa, which in recent years has recruited its “undesirables” from indigenous sources of supply.

The children of aliens, almost without exception, who are born in South Africa, become good British citizens. Many of them have fought well on the British side in the Great War, and one, the son of a naturalised German, was awarded the Victoria Cross, while many others of German descent have gained British decorations in the field. But, decorations apart, there are thousands of them who know only South Africa as their home, and the Union Jack as their flag, and

(1) Hamill Grant, *Two Sides of the Atlantic* (p. 57).

are fully as loyal to the British Crown as any one born within the sound of Bow bells. They have no ties of sentiment with the country of their origin, and their only desire is to work for the welfare and advancement of the Union, of which they are citizens by birth.

CHAPTER VIII.

THE CAPITALISTS.

IT IS NATURAL that in such a country as South Africa, where mining for gold and diamonds has produced most of its wealth during the past fifty years, those who direct and control the output and distribution of these sources of affluence should figure most prominently in the public eye. They are familiarly spoken of as "the capitalists," although there are many others, not connected with the mining industry, who own and control great possessions. Owing to the special nature of their business, or their own modesty, these do not attract as much attention, although they are capable of exercising great influence upon the economic condition of the country, and upon the relations which exist between employer and employed. There are not a few merchants, whose names are wholly unknown to the world at large, whose wealth entitles them to rank as millionaires. Among similar favourites of fortune are to be reckoned the great sugar planters and refiners of Natal; the controllers of the meat trust; and some of the large contractors for public undertakings. Nor should it be forgotten that there are many men who have never set foot in South Africa—or, if they have done so, then only on a patronising visit—and nevertheless have derived immense wealth from it—such as the owners of the steamship companies which carry passengers and cargo to the Union at highly profitable rates, and the great banking companies which pay highly "satisfactory" dividends wrung from the depositors and borrowers of South Africa. These last-named are worse even than the "absentees" of Ireland, because, never having been in South Africa, they cannot be said to be absent from it. Nevertheless, with the riches they derive from this country which has never basked in their smiles, they are enabled, in Europe, to contract aristocratic and even semi-Royal alliances, to aim at

social leadership, and to assist in accentuating the contrast and widening the gulf which, in countries like England, exists between the rich and the poor. From this fault, however, most of the millionaire mine-owners, who either were born or spent their early life in South Africa, are in a large measure free. With one or two exceptions, they have no extravagant social aspirations, do not seek to elevate themselves above the class from which they have sprung, and, even if they for the most part reside in England or abroad, have not forgotten their obligations to the land from which they have derived their wealth—as their educational and charitable benefactions testify. With one creditable exception, most of them have succumbed to the glamour of a baronetcy or a knighthood, but that is an amiable human weakness which they share in common with many less prominent persons. Taken as a class, the mine-owners have displayed no little generosity in the distribution of their riches. The same cannot, however, be said of most of the merchant princes of South Africa, who, buried in their ledgers and bank balances, and immersed in the contemplation of war profits, are oblivious of a suffering and poverty-stricken world outside.

Through a peculiar conjunction of circumstances, however, it is the mine-owner who has managed to incur most of the odium which attaches to the term "capitalist." Certain mine-owners had much to do with the movement which culminated in the Jameson Raid, and the agitation that led up to the Anglo-Boer War. Through this, not only they, but all the inhabitants of Johannesburg, met with the resentment and hostility of a vast proportion of the Boer population. Their rapid accumulation of wealth was also regarded with jealousy by the less enterprising or less fortunate inhabitants of the older coastal Colonies. Then there were many local fortune-hunters or "speculators" who had laid their projects or their "gold-bearing" areas before the mine-owners, and, having been "turned down," had become their bitter enemies, accusing them of "squeezing out the small man," and similar crimes. There was also the resentment which the ordinary man who is not even an aspiring capitalist feels for the owner of great possessions. Last, and most important, there was the

eternal conflict which exists, in all free countries, between the worker and his employer.

It must be admitted that certain criticisms which have been levelled at some of the capitalists who controlled the mining industry are well founded. In the "early days", before the budding millionaires of the Rand had acquired an adequate conception of the obligations of wealth, the methods which some of them adopted in increasing and consolidating their fortunes were reprehensible in the extreme. Instead of attending only to their legitimate business, which was to develop to the fullest the resources of the mines and properties under their control, they indulged in "market manipulations," raising or depressing at will the prices of shares in the companies which they controlled, and indulging in methods which, though sanctioned by the practice of stock-jobbers, are wholly unsuitable in the case of the actual owners of great industrial undertakings. These "scalping" operations, which resembled those of the makers of "corners" in the wheat markets of Chicago, were simple enough to those who had the power of flinging a million of money into the share-market or withdrawing a like amount therefrom whenever they pleased. But, while these methods were safe in the midst of a population of millions of people, they were infinitely more harmful in a small community, where the suffering and the resentment caused by market losses were correspondingly greater, and the operators were well known. Success is not always to be measured in terms of financial profit, and operations of this kind have left traces of a lasting bitterness and hatred which, though often unexpressed for reasons of expediency, is none the less deep-seated on that account. There has, however, been enough public criticism in recent years to affect the "scalpers," who, with one or two notorious exceptions, have settled down to more legitimate means of gaining or conserving wealth, and are endeavouring, with more or less success, to live up to the methods of their more respectable *confrères*. It must be admitted, on the other hand, that most of the unscrupulous "operators" were not actual owners of legitimate and profitable mining undertakings, but rather chance "speculators" who had secured "properties" whose alleged riches they were enabled to

dangle before a credulous public sufficiently long to enable them to "sell out" and retire with their ill-gotten gains.

It is not, however, everyone who has made a fortune in South Africa that has succeeded in keeping it. The number of genuine millionaires in South Africa is exceedingly small in proportion to the riches which its mines have produced. In part this is due to the fact that many of those who have made investments in South African mining companies live in other countries, so that a great deal of wealth leaves the Union, never to return to it. But the retention of wealth in comparatively few hands is attributable, in the main, to the fact that only a small number of persons have learned how to conserve it. There have been many men who, in the early days of the mining industry, when gold and diamond claims were to be had for the mere trouble of "pegging," and land was cheap, were able to make a fortune in a day. Unfortunately for themselves, they were bitten with the universal speculative mania, and, instead of being content with the possession of riches beyond their previous dreams of avarice, embarked all their wealth in some other unsound speculation, only to lose it irretrievably. A quarter of a century ago it was quite a common thing to point to beggars walking the gutters of Johannesburg, who had begun as the owners of some of the richest mining "propositions." This speculative mania has taken deep root in the community, many of whom, even now that mining has settled down to scientific methods, coupled with difficult, lengthy, and expensive processes of winning the precious metal, still persist in waiting for some lucky "find," instead of devoting themselves to less alluring but safer means of earning an assured competence.

Nevertheless, owing to its comparatively small and scattered population, as compared with its actual mineral wealth and potential agricultural and industrial resources, South Africa still affords considerable opportunities to the enterprising and energetic investor or "speculator" of amassing a fortune, more especially if he be equipped with a fair amount of initial capital. There have been some remarkable instances of men who, beginning with small resources, have succeeded in making themselves a permanent influence in the financial and indus-

trial world. One enterprising financier, applying skilled American methods in the utilisation of capital, has become the director of a great "trust," giving employment to hundreds of people, and embracing such varied matters as theatres, cinemas, insurance, banking, land settlement, and fruit-growing. He is but a demonstration of the fact that South Africa still offers a career "*ouverte aux talents*."

The mine-owners have not always been fortunate in the settlement of their disputes with labour. This is due, to some extent, to the fact that the actual mine-owner, or "capitalist" *in propria persona*, has in several cases given up the active personal control of his mines, and has delegated their management, with full powers, to subordinates who, however able, do not possess the *prestige* enjoyed by the actual owner. The great strike riots in 1913, according to the report of the Judicial Commission which investigated them, were due in a large measure to the inept handling, by the mine management primarily concerned, of the situation which had arisen. And there have been several occasions on which subordinates of the mining houses, entrusted with the settlement of delicate situations which have arisen between masters and men, have failed to respond adequately to what was demanded of them, either in tact, *finesse*, or a due appreciation of the issues at stake. Feeling on the part of miners and workmen has often become unduly exacerbated because a mine manager or consulting engineer was lacking in diplomacy, or "rode the high horse." Men are more apt to pay respect to the arguments and counsels of their real employer than to those of any intermediary who, while not having the same interest in the subject of dispute, is apt, in order to display his fancied strength of will, to misuse a brief authority and "set the men by the ears." Unfortunately, in recent years, this tendency to entrust great and delicate issues to subordinates has been on the increase. It is quite a common experience to attend the meeting of a mining company, and to find that all the original directors are absent, their places, from the chairman downwards, being taken by clerks of the "house." Sometimes the meeting of a company with a capital of half-a-million pounds or more is attended by three or four persons, none of whom hold shares

in their own right, but who are there on the strength of proxies for absentee shareholders. Those who are present figure in the mining reports of the press as men of importance, but they only enjoy a bubble reputation, even if they occasionally obtain a decoration. The reports of mining meetings in the local newspapers are in themselves a curious feature. The proceedings are reported at great length, if not *verbatim*, but no one reads them, unless there is an unusually "spicy" bit of scandal. The absence of the millionaires is often justified on the ground of health, and there is something to be said for this, as few millionaires grow old in South Africa—witness Rhodes, Barnato, Beit, Neumann, Goerz, and others. In any case, the situation is somewhat unfortunate—though it is only stated here as a fact, the remedy being the concern only of the mine-owners. At the same time, this state of affairs reacts on the workmen, and through them on the whole community. The management of affairs by those who are not directly concerned tends to weakness, want of co-operation, and lack of driving force. In times of crisis it may lead to serious trouble, such as has happened before, and, in the present unsettled condition of the industrial world, may happen again.

On the whole, the controllers of the mining industry have, in recent times, been more sympathetic to the demands of the working class than have many of the large merchants and manufacturers, whose attitude is much more reactionary and unenlightened. The mine-owner is aware that any change of policy with regard to mine-workers makes itself felt throughout the whole mining industry, if not through the whole of South Africa, and he does not ordinarily take any step of importance without previously consulting the other heads of the industry. The merchant or manufacturer tends to be more individualistic, and to consult his own interests rather than those of the community. Such an attitude will have to be modified, if future conflict is to be avoided. In the meantime, while workmen ask for shorter hours and higher wages, and some merchants "profiteer," it is the people between, the professional men, the farmers, the small traders and independent artisans, who suffer. Unfortunately for themselves, they are usually "too proud to fight."

CHAPTER IX.

ELEMENTS OF UNREST.

IT IS NOT PROPOSED, in this chapter, to do more than indicate possible or probable elements or factors of unrest in the social structure of the Union. Reference has been made to them previously and here it is necessary only to classify them. As between the white races, or, rather, as between a certain section of the Dutch people and the rest of the population, there is the issue of republicanism. Its propaganda has been pushed forward vigorously, but it is impossible to state definitely how far it has secured a hold, or what likelihood it has of success. It is clear that the would-be republicans are in a considerable minority, and that any serious attempt to put their principles into practice will inevitably lead to civil conflict, not only between Boers and Britons, but between Boers and Boers. The curious feature of the movement, as we have seen, is that it is not so much anti-monarchical, as racialistic. That is, the republican enthusiasts are not so much opposed to the Kingship as such, or because it represents ideas and constitutional forms which are at variance with those associated with republicanism. But they object to the existing system because it is English, because they desire to rid themselves of the English "yoke," and because they hark back sentimentally to the *régime* of the former Boer Republics. They are willing to admit that it was not an ideal *régime*, in other words, that it had many defects. But it was their own government, and that is why they want it replaced. If their former government had been monarchical in form, they would still have desired its restoration. It happens to have been republican, and therefore they want a republic. But republicanism, as such, is not the essence of their creed. Their real desire is to eliminate the British element in the government of the country. Rather than the existing system, they would prefer to be ruled by the Queen of Holland.

Those who ask for a restoration of the old republican system overlook, or ignore, the fact that in no circumstances can the system be brought back which existed before the Anglo-Boer War. To do that, it would be necessary to expel from the Transvaal and the Orange Free State nearly all the people who have come into those Provinces since the War—an impossible thing. Assuming the population to be left as it is, the anti-Republicans in the Transvaal would greatly outnumber the pro-Republicans. Even in the Free State there has been a considerable influx of British-born persons. Merely to indicate these difficulties is sufficient to prove the impossibility of a re-introduction of the old system. On the other hand, there is no likelihood of an abandonment of the republican propaganda in the near future. And it will undoubtedly be stimulated as long as extremists on the side opposed to the republicans continue to fan the flames of racialism. Whether the Union will ultimately disappear, and be replaced by a republican or non-monarchical system, is a matter on which speculation would be futile. There is no indication that this will happen for many years to come, even in the present age of unrest. But the old Boer Republics will not come back.

The industrial situation is more serious. The strikes of recent years have merely been straws indicating the direction of the current. But the workers of South Africa are sharing in the general upheaval which is taking place all over the world. It is upon them, far more than on the so-called "republican" extremists, that the fate of the existing constitution really depends. The Dutch people, as a whole, are conservative in their tendencies, and have no liking for violent measures, though some of them might be disposed to encourage, or rather not to resist, movements which might indirectly assist their aims. But they would strongly oppose any movement aiming at anarchy, Bolshevism, or extreme socialism. Thus they constitute the real bulwark on which the future security of the State must depend—far more so than the English element in the population, many of whom are in favour of the "social revolution," though the great majority, including probably most of the working people, are thoroughly loyal to the existing form of government. The fact that workmen

strike in order to secure an amelioration of economic, industrial, and social conditions is not to be taken as an indication that they desire to overturn the constitution. The wholeheartedness and self-sacrifice with which they have engaged in England's cause during the Great War is proof of that. But they will continue to strive for an improvement in existing conditions; and, unless they are met by judicious compromise, there will be continuous friction. There is an extreme section which will not tolerate any compromise. How far they will influence their more moderate fellow-workers the future alone will show.

Whether, and to what extent, the natives will demand an improvement in their social and economic status is also a problem to which no certain answer can be given. There have been manifestations of such a movement, which has met with a certain amount of encouragement from some among the European population. Any attempt at extreme methods is, however, sure to meet with the practically-united opposition of the white people, and, notwithstanding the numerical preponderance of the natives, is certainly doomed to failure. The whites will have all the advantage which their superior elevation in the scale of humanity gives them, and the natives will not unite in one confederation any more than did the peoples of Hindostan during the Indian Mutiny, or the Red Indians at the time when French and English were founding settlements on the other side of the Atlantic, or when American pioneers were entering upon the plains of the far West. At the same time, the natives will have to be treated justly, and due concession will have to be made in regard to their legitimate claims for fair treatment in such matters as land settlement, taxation, local government, and proper conditions of labour. Otherwise, the possibility of sporadic manifestations of unrest will remain.

CHAPTER X.

THE PROFESSIONS.

UNTIL WITHIN comparatively recent years, the professions which made the greatest figure in the public eye were the church, the law, and medicine. In a community with no very complex organisation, where the primary needs were those of government, and curing men's souls and bodies, it was not to be expected that the services of other professional men would be much in demand. The business of government, after the early days of military *régime*, was largely entrusted to lawyers. Under the influences which survived from the days of the Dutch East India Company, most of these received their training in Holland, among the more notable of these being such men as Truter, Cloete, Brand, and Hiddingh. After the adoption, in the Cape Colony, of British forms of administering justice, English and Scotch barristers and attorneys came upon the scene. It was not until the middle years of the nineteenth century that provision was made for local examinations qualifying for the legal profession. Even then, most of the aspirants to legal fame preferred to obtain their call to the English Bar. It was not until after the foundation of the Cape University (now the University of South Africa) that it was recognised that an adequate and respectable legal training might be obtained in South Africa. Since that time, the great majority of legal practitioners have been content to obtain local qualifications for practising their profession, and such names as Innes and Leonard attest that they are equally capable of attaining distinction as sound lawyers and skilled advocates with their professional colleagues who received their early training in the Mother Country. The standard of admission to practice is adequate, although it has long been felt that it ought to be raised in the case of solicitors, the examinations for whose admission are regulated by a joint board

representing the three Universities.¹ There are now some 150 members of the Bar in South Africa, and over 2000 solicitors—a far higher proportion to the total population than in England, when it is remembered that the great majority of the natives cannot be regarded as clients for any practical purposes, having their own native tribunals, and requiring no lawyers to whom to entrust the management of their estates. The result is that in the large towns the number of lawyers is altogether disproportionate to the population, while in the smaller country towns one, or at most two, lawyers are sufficient to conduct the business of a whole district. The average country lawyer usually combines with his more strictly professional work that of a valuator and appraiser, auctioneer, accountant, trustee in bankruptcy, liquidator, executor, and is often also the paid secretary of various local bodies, such as municipalities, divisional councils, and school boards. In this way he often attains great influence, being regarded as one of the most important, and often succeeding in becoming one of the wealthiest men in the district. With few exceptions, the members of the legal profession maintain a creditable standard of conduct and honour.

In the same way as the lawyers, the clergymen and medical men obtained their early training at first in Holland, and subsequently in England. It was only natural that young men desiring to enter the pastorate of the Dutch Reformed Church should receive their theological training in Holland, the first Dutch church in South Africa being practically coeval with the first Dutch settlement. The affinity, also, which exists between the Dutch Reformed and the Presbyterian creeds, led several young Scottish divines to settle in South Africa as ministers of the Dutch Church—notable amongst them being the Murrays, the Shands, the Frasers, and the MacGregors. Of the Presbyterian-Dutch clergy, probably the Rev. Andrew Murray has attained the greatest fame. In the eighteenth century a Theological College for the training of clergymen of the Dutch Reformed Church was founded at Stellenbosch, and it has produced by far the greatest number of ministers

(1) Further references to the legal profession will be found in Part I. (chaps. XXIV., XXV.).

of that denomination. With one or two exceptions, all the present holders of incumbencies have received their training there. The institution, like those of other denominations since founded for theological training, has depended entirely on voluntary effort, receiving no State aid. The University of South Africa, however, grants "undenominational" degrees in divinity. Much has been written in disparagement of clergy of the Dutch Reformed Church, especially of their undue influence upon their flocks in political matters. This charge is by no means just. There are many devoted adherents of the British connection among the Dutch clergy, and if there are at times a few extremists on the other side, they are neither better or worse than the "political parson" in England or Ireland. The Dutch clergyman is, as a rule, broad-minded, and takes a full share in the educational, social, and moral advancement of the people. He is usually a good "sport," and many students of Stellenbosch have displayed great prowess on the football and cricket fields. In addition to his theological qualifications, nearly every Dutch clergyman has obtained a degree in arts, usually with distinction. Excellent missionary work has been done by the Dutch clergy. For a great many years they have carried on evangelising labours in the Zoutspansberg; and they have gone as far afield as Nyasaland—besides establishing a colony for the reclamation of "poor whites" at Kakamas, in Namaqualand. This is not to suggest that other denominations have lagged behind in their theological training or missionary work. The missionary college at Lovedale (which imparts secular and technical as well as theological training) is a great monument to the work of Presbyterian divines in South Africa; and valuable work has been done by Anglican clergy at Zonnebloem College.

Missionaries of the Presbyterian and Wesleyan communities made their appearance in South Africa very soon after the cession of the Cape to Great Britain in 1806. With great self-sacrifice, they penetrated the unknown interior, and settled down, far from the madding world, at such centres as Kurnman, Campbell, Thaba 'Nchu, and Winburg. Their history is indissolubly bound up with such names as Moffat, MacKenzie,

Archbell, and Lindley. Clergy of these denominations have also done valuable educational work in the centres of white population. So have the Roman Catholic priests and nuns. Nearly every South African town of any dimensions has its convent school, while schools of the Marist Brothers are numerous and successful. Statistics of Roman Catholic Church membership are not very reliable, but it is certain that their educational activities (they had 262 colleges and schools in 1916, of which the best known was St. Aidan's College at Grahamstown) were very great in proportion to the number of adherents of their religion. The Dutch Church has some 600,000 adherents, but comparatively few separate educational institutions, as most of their children attend public (*i.e.* government) schools. There are some 300,000 white members of the Anglican Church, with five theological colleges, and 23 schools for higher education. For primary education, most children of the Anglican faith attend government schools. The Wesleyans number 100,000 adherents, and have three secondary schools for white children, as against 983 day schools for natives, coloured children, and Indians, and 12 native training and industrial institutions. The Presbyterians have about 20,000 European members, and 182 mission schools.

In the early days of British occupation, the only clergy of the Anglican communion were the "Colonial chaplains," attached to the fixed establishment of the government. After the arrival of the British Settlers of 1820, a number of parishes were formed in the Western and Eastern Provinces of the Cape Colony. In 1847 the Colony and its dependencies were, by letters patent under the Great Seal, constituted a bishop's see and diocese, and the Right Rev. Robert Gray was thereby appointed, and was subsequently consecrated by the Archbishop of Canterbury as bishop. In 1853 this original diocese was divided by the Crown into three distinct and separate dioceses, of Cape Town, Grahamstown, and Natal. The bishopric of Bloemfontein was founded in 1863, that of Pretoria in 1878, that of St. John's (Kaffraria) in 1873, of Mashonaland (now Southern Rhodesia) in 1891, of Zululand in 1890, and of Lebombo in 1893. In 1894 the Bishop of Cape Town was made an Archbishop, with the title of Metropolitan,

having authority over all the dioceses in the Province of South Africa, and a coadjutor-bishop was appointed to the diocese of Cape Town. Subsequently, dioceses were created at St. Helena, George, and Kimberley. The Anglican Church in South Africa is thus a self-governing metropolitan see, though adhering to the doctrines and ritual of the Church of England, and sending representatives to the pan-Anglican synod. Its position has, however, been vigorously if not effectively disputed by a small number of clergy and their adherents, who claim that the Province of South Africa has no original or separate jurisdiction, and own canonical obedience only to the Archbishop of Canterbury. The separation of this small body originated with the theological disputes which are associated with the names of Bishop Colenso (Natal) and Dean Williams (Grahamstown). These disputes, however, as causes of violent friction, are things of the past, and the Anglican clergy have long settled down to civilising and educational work. As is only natural, having regard to the constitution of the Church, most of its clergy have been ordained in England, though there are some sixty priests born in South Africa, one of whom, the Right Rev. H. B. Sidwell, is the Bishop of George. The dioceses of St. Helena, Southern Rhodesia, and Lebombo are outside the Union.

As there is no established or State church in South Africa, its clergy do not play the same part in social and public affairs as, for instance, Anglican clergymen do in England. They are mainly concerned with the spiritual needs of their parishioners, among whom they do unselfish and unobtrusive work in tending the sick and raising the fallen. Living in the midst of a democratic population, they do not aspire to elevation above their fellows, but rather to recognition as unselfish co-workers with them in the task of building up a nation worthy of its forbears and their history.

Mention must be made of the Salvation Army, which does valuable work on the familiar lines of that organisation.

Hitherto South Africa has lacked the advantage of a medical school for the training of physicians and surgeons. A movement is on foot, with Government assistance, to remedy this want, and it is hoped that before long two medical schools,

of university rank (*i.e.* attached to existing Universities), will be created. The most suitable centre for such a school is Johannesburg, with its well-equipped modern hospital, containing 600 beds, apart from its maternity, fever, and mine hospitals. In the past, most South African medical students have obtained their degrees at Edinburgh and London, while a few have been trained on the Continent. There are, of course, a large number of oversea-born medical practitioners in the Union. It is not suggested that a student will really be fully equipped, even if he qualifies within the Union, unless he also takes a medical course in Europe or America.

Owing to the scattered population, most medical men are general practitioners. They number in all some 2000, a small figure in proportion to the total population. There are comparatively few specialists, and of these few can avoid occasional excursions into general practice. The standard of the profession, as a whole, is high, and a strict watch is maintained over the conduct of its members. In each Province the supervision of matters of etiquette is in the hands of a Medical Council, which controls the registration of medical men, dentists, midwives, and nurses, in the same way as the Medical Council does in England. The registration of chemists is controlled by Pharmacy Councils.

The annals of the medical profession, as far as its more serious members are concerned, are marked by as much self-sacrifice and devotion to duty as are displayed by medical men elsewhere. They have, perhaps, not distinguished themselves greatly in the more advanced fields of scientific research, though much has been done in the investigation of local forms of disease. The general practitioner has, however, small opportunities of research, especially if he lives in the country, where he has sometimes to travel a hundred miles to see a patient. Research will only obtain adequate encouragement and a field for its activities when a medical school is established.

The land surveyor is a familiar figure in South African life, especially in the country. In olden days, the possession of a measuring-chain (and in some instances, that of a theodolite) appears to have been regarded as a sufficient qualification for the exercise of this profession. In consequence, numerous

blunders were committed in fixing beacons and marking the boundaries or delimiting the areas of farms, with much litigation amongst the farmers as a result. This led to a higher standard of training being insisted upon, and ultimately it was made compulsory to pass an examination in the theory of land surveying under the auspices of the Cape University, while a practical examination was also conducted under the superintendence of the Surveyor-General. To-day, the land surveyor is thoroughly trained, and accurate in his work. Few people realise how much the sciences of geography, geodesy, and topography owe to the land surveyor, who has trailed his chain over desolate mountain peaks, in uninhabitable swamps, and through well-nigh impenetrable forests. An important branch of this profession is that of the mine surveyor, who does underground, amid similar difficulties, what the land surveyor does on the surface.

The great expansion of mining in South Africa has opened up a large field of employment for other professional men—the mining engineer, the geologist, the mechanical engineer, the assayer, and the chemist. As we have seen, many of these rank high in their profession, and have made great contributions to mining. Of all of them it may be said that they are, perhaps, more serious in their devotion to professional avocations than are most other professional men in South Africa. In civil engineering, the most remarkable work has been done by men who, unknown to fame, have rendered great service in planning and constructing the railways of South Africa, bridging torrents, crossing difficult mountain ranges, opening pathways over uncharted deserts, and bringing the interior of an unknown land into easy contact with the civilised world. The service these men have rendered to humanity is inestimable. But the anonymity which is the consequence of employment by a government department has obliterated their names from memory, and has resulted in a want of appreciation of the work they did. Here and there a surveyor or engineer survives in some geographical name, such as Michell's Pass or Bain's Kloof, but that is all.

CHAPTER XI.

THE UNIVERSITIES AND THE COLLEGES.

THE THREE South African Universities which have recently been created by Act of Parliament are still in embryo, and nothing can be gained by indulging in speculations with regard to their future. Each of them will have a store of local sentiment and tradition upon which to draw, which may have some influence in moulding their future character. Much will depend upon the nature of the teaching to be imparted within their walls, as well as upon the social and moral force which they will exert upon the community at large. There is little, if anything, to guide us in the history of the purely examining body (the University of the Cape of Good Hope) which they have replaced. This institution did not possess its own corps of professors, and made no provision for lectures apart from those which were delivered in the independent constituent colleges in which its examination candidates were trained. These colleges were concerned entirely with preparing their students for Cape University examinations, and did not embark upon any independent curriculum or research work. In a measure, this largely stunted their growth. Lectures, in the true sense of the word, were unknown, and a college course became a mere matter of class teaching, except, perhaps, in the case of the very few students who entered upon a post-graduate course. The professors, with few exceptions, became teachers in the same sense as the college "tutors" of Oxford or Cambridge. There was no such thing as a course of lectures, whether in literature, history, or science, apart from preparation in set subjects for an examination, or without reference to authors and text-books specially indicated for study in connection with university examinations. This is not to suggest that the Cape University failed in its mission. Within its limited sphere, it achieved excellent results. And the personal

influence exerted by professors upon their classes was in very many cases of the greatest benefit. But the stimulus to individual development, and the broadening of thought which comes from the opening-up of untried paths that results from the free choice of subject and untrammelled range of exposition in the typical university lecture, were wanting. It is in this direction that the new Universities, if those to whom their destinies have been confided will but guide them aright, may achieve much. The stereotyped mind and the groovy brain must make place for the free play of the unfettered intellect.

It is rather in things unconnected with formal studies that the existing colleges have made their influence felt. Each of them has been a real centre of local patriotism and pride, which, while it has had nothing of antiquity or long traditions of learning to boast of, has nevertheless become an object of affection and a rallying-point. The influence of some professors has extended beyond the walls of their colleges, though it must be admitted that few, if any, of them have made permanent contributions to literature or science. More directly, they have had an important share in training some generations of young men and women, both in the conduct of life and in the knowledge of a wider world than exists within the Union, with its small population and its want of tradition, or, rather, history—though the short history of the Union, and its varying phases of thought and action, are interesting enough. The influence of the colleges in building up tradition, self-respect, and respect for others, has been considerable. It has meant discipline, and *esprit de corps*, with much effect in inculcating a feeling of common nationality, and in creating a vision of common aims. The colleges have also been centres of patriotic feeling, and the lessons thus learned have been demonstrated both in the council-chamber and on the battle-field.

Perhaps it is in the realm of sport that the influence of the colleges has been mainly felt. South African students have been adept at mastering the technique of games, and at the same time in imbibing the spirit of fairplay and manliness which results from them. So far as the actual skill of footballers and cricketers is concerned, there has been a remark-

able display of ability, when one recollects how small the population is, and how few are the opportunities for really first-class training. The first cricket team from the Mother Country, Major Warton's, visited South Africa some thirty years ago, and since then several teams have followed its example, while South African teams have had return seasons in England; and the same has happened with regard to football. But students have had few opportunities of seeing first-class football or cricket, and what has been achieved by players like Tancred, Schwartz, or Nourse is probably due to individual aptitude rather than to a generally high standard of play—though in football the all-round excellence of such a team as the "Springboks" points to a different conclusion. Rugby football has, for some reason or other, attained a far greater vogue than Association football. In their sports and pastimes then, regard being had to climatic differences, South African students and schoolboys follow much the same pursuits as do their contemporaries in Great Britain. Boating and boat-racing, however, owing to the extreme variations in the flow of South African rivers, are to a great extent unknown—and so is swimming, except where there are swimming-baths. The majority of South Africans, by the nature of their surroundings, are condemned to remain "landlubbers" all their lives.

The residential life in the colleges and secondary schools is regulated and conducted on much the same principles as in the English public schools—although the monitorial and "fagging" systems are not carried out with anything like the same thoroughness. Indeed, there is little, if any, "fagging" in the secondary schools—which is, perhaps, a loss so far as *esprit de corps*, discipline, and subordination according to age and merit are concerned. In several colleges and schools the resident students have, perhaps, too much liberty—not the liberty of the beer-drinking and cheek-slashing gatherings of Heidelberg and Bonn, but too little restraint from contact with the world outside the college gates. This sometimes results in a lack of "atmosphere." Nor is the discipline of college youth so far as their moral conduct (meaning hereby sexual relations) is concerned, particularly at an age when this is

all important for their physical and mental well-being, all that it should be in the case of some institutions.

In many respects the colleges and secondary schools for young women and girls stand on a higher plane than do the places where their brothers are trained—so far as regards seriousness of purpose, cleanliness in life and conduct, and devotion to work. The young women who are the products of these institutions often reach a high standard of behaviour, sportsmanship, and intellectual attainment—though there are schools and colleges, which it would be invidious to particularise, where the standard of training and teaching is far from being what it ought to be. In some of them there is a distinct air of “slackness”—which may be due to a too-easily acquired reputation for efficiency. The reason for this is that there are far too few secondary schools in proportion to the population, many promising pupils being either compelled to relinquish all hope of further scholastic education on emerging from the primary school, or to seek their training in other countries. The three Universities are too many in proportion to the population; the secondary schools (especially those of the residential type) are far too few. A secondary school which refuses accommodation to pupils, merely because external circumstances have made it impossible for it to find room for them, is in a different position from one which can afford to turn pupils away because of the high reputation which it has attained in strenuous and high-souled competition with other institutions of a like nature.

CHAPTER XII.

THE PRESS.

IN VIEW OF the great obstacles which the average printer or newspaper-proprietor has to overcome in South Africa, the journalistic press in this country is able to claim a good record of achievement. Owing to the small population, a newspaper cannot expect to reach a high circulation. A paper which attains to thirty or forty thousand readers is entitled to claim a "colossal" reputation; and such instances have been few and far between—not even to be numbered on the fingers of one hand. All printing machinery, type, and paper have to be imported from abroad; a cable service, which is indispensable in the case of a newspaper, is very expensive, and sometimes irregular; few compositors can receive an adequate training in the country, and the wages of all of them are high; and the means of distribution, even though the railway system is fairly extensive, are inadequate. In the face of these difficulties, it is remarkable how much effort has been put into the work of producing newspapers of a fairly good standard, with a reputation for reliability in reporting news, and honesty in the formation of public opinion. There are, of course, certain newspapers which exist to expound the views of their proprietors; but even they are better than none, having regard to the immense risk which is involved in embarking upon a journalistic enterprise in South Africa. It costs at least as much, if not more, to equip and maintain a newspaper in this country as elsewhere, and the return is wholly inadequate to the outlay. The production of a paper in a country town is a perilous undertaking, often rewarded only with bread-and-butter, or becoming merely a labour of love.

The early days of journalism in the Cape Colony, when Thomas Pringle (the poet) and John Fairbairn had their famous struggle with Lord Charles Somerset for the "freedom

of the press," are now of merely historical interest. The modern newspaper in South Africa began with the foundation of the *Cape Argus* by Saul Solomon, and that of the *Cape Times* by R. W. Murray (senior) and F. Y. St. Leger. The *Cape Argus* soon acquired a reputation for outspokenness, which it maintained for many years, especially under the vigorous and lively editorship of Francis Joseph Dormer. It was not long, however, before the *Cape Times*, which had the advantage of being a morning print, began to make its influence felt. Its leading articles have always enjoyed an excellent reputation for their literary standard, and its parliamentary and law reports are equal to those of the best English journals. It was raised to its high place by its first editor, St Leger, and this was maintained by men like Edmund Garrett (who died prematurely) and his successors. The *Cape Times*, indeed, became a newspaper for the whole of the Cape Colony, though journals of a reliable type were subsequently founded in the Eastern Province—such as the *Eastern Province Herald* at Port Elizabeth, the *Journal* at Grahamstown, and the *Dispatch* at East London. Most of the provincial newspapers, however, aim merely at furnishing cable news (supplied chiefly through Reuter's Agency, not many establishments being able to afford an independent cable service), and local "items" in a matter-of-fact form, few venturing on original articles or reviews. This is due not so much to lack of intelligence on the part of the reading public, many of whom often express the wish for more originality in the columns of the paper they are compelled to read, as to the scarcity of writers and the lack of means to pay them adequate remuneration. It is in Natal, perhaps, apart from the journals which have been named, that newspapers have succeeded most in conforming to a fairly high standard. The principal journals in that Province are the *Mercury* (Durban) and the *Natal Witness* and the *Natal Advertiser* (Maritzburg). At Kimberley the *Diamond Fields Advertiser* has had a long and honourable career. For some years it was opposed by the *Independent*, which ultimately had to strike its flag. The history of newspapers in the mining centres is somewhat curious. In some instances they were founded in order to advance the financial

interests of a mining house, and were allowed to languish and die when they had served their turn. Others, again, which lacked mining-house support, bravely struggled along for a few years, and then succumbed. In Johannesburg, for instance, no newspaper can afford to dispense with the well-paid advertisements of the mining companies, which consequently, in the case of several journals which are now relegated to the limbo of forgotten things, enjoyed entire immunity from criticism. To found a completely independent newspaper was a matter of the greatest difficulty. There are now only two daily journals published in Johannesburg—*The Star* and *The Rand Daily Mail*. The first was founded by the brothers Sheffield, who originally conducted *The Eastern Star* at Grahamstown. It attained great prominence by its pronounced championship of the "uitlander" cause against the Kruger régime before the Anglo-Boer War, under such editors as F. J. Dormer, F. H. Hamilton, Robert J. Pakeman, and W. F. Monypenny (the biographer of Disraeli). Rather too solid and serious in tone for an evening journal, *The Star* has always maintained its news service at a high level, while catering, in its articles, for every section of the diverse population which it reaches. *The Rand Daily Mail*, founded in 1902, has aimed at championing the cause of the working man, and its staff has included such men as Edgar Wallace and A. W. Lloyd (the *Punch* artist). The leading organs of the Dutch portion of the population are *Ons Land* ("Our Country") and the *Volkstem* ("Voice of the People"), which advocate South African Party politics; and *De Burger* ("The Citizen") and *Ons Vaderland* ("Our Fatherland"), published in the interests of the Nationalist Party. In proportion to their circulation, the Dutch papers exercise probably more influence than do their English contemporaries. Finding their way to lonely farms in the "back veld," they usually—if their readers are not bilingual—constitute the sole source of intelligence and the only means of forming a judgment of men, things, and movements in the outside world. Of both Dutch and English papers, in general, it may be said that they exercise comparatively little influence on parliamentary elections. In such a matter they do not stand alone. During three or four suc-

cessive general elections in England a journal with such a colossal circulation as the London *Daily Mail* has failed, notwithstanding gigantic efforts, to exercise an influence on the course or result of the election, and, where it has failed, a newspaper with a small circulation is not likely to succeed. Of course, there is no such thing as a "yellow" journal in South Africa. To publish one, with the limited circulation which it must have, is not worth the expense or the trouble. In no South African newspaper is there such a thing as a *feuilleton*, or a column of semi-political, semi-personal "chat" such as is found in many English journals, both in London and the provinces. Now-and-then, however, a special article may exercise a good deal of influence. Thus, an adverse criticism in *The Star* sufficed to "kill" the theatrical season of a famous English actress in Johannesburg; and even flaming head-lines have been known to cause a riot. Long leading articles are still adhered to, more as a matter of tradition than anything else; few people read them; and in most of the smaller country towns they are apparently written solely for the purpose of indulging in journalistic amenities in the style of the *Eatonsville Gazette* and the *Eatonsville Independent*.

If the daily paper finds the struggle for existence a hard one, the chances of success are infinitely smaller in the case of a monthly or weekly magazine or journal, owing to the limited circulation. Praiseworthy attempts have been made in the past to launch monthly magazines, and to keep them alive, but without avail. Some of them were of a fairly high class, such as *The Cape Monthly Magazine* and *The African Monthly*, but they were compelled to cease publication. One or two Dutch monthlies have had better fortune, mainly because of their official or semi-official connection with the Dutch Reformed Church. But hitherto there has been no room for the purely literary or scientific monthly in South Africa. The only English monthlies which survive are those which are devoted to the interests of a particular church, profession, or trade—such as medical men, teachers, builders, manufacturers, trade unions, or licensed victuallers. Some weeklies have managed to maintain their footing in spite of the cost of production and the limited circulation (it is not a question of

competition) which they must necessarily enjoy. To have much chance of success, a weekly must be of the satirical and critical order; and then it must be prepared to risk actions for libel. One of the earliest of these was *The Lantern*, published at Cape Town by Thomas MacCombie, which for some years led a chequered existence, and then went out. For several years Henry Hess conducted *The Critic* (now *The Transvaal Critic*) at Johannesburg, with fearlessness and ability. At Cape Town there are also two critical weeklies, *The South African Review* and *The Cape*. The largest circulation of any weekly is enjoyed by *The Sunday Times*, at Johannesburg, which is, however, a newspaper in the main, conducted more or less on the same lines as an English Sunday journal, without any religious features.

Mention should also be made of the recent growth of native (i.e. aboriginal) periodicals, of which there are several. Of their influence it is difficult to speak at first hand; but there is no doubt that they have many readers, who probably accept without question what is served up to them. The native who has been taught to read (and there are many) is a most diligent reader, and he does not possess the power of discrimination enjoyed by the more sophisticated white man. For many years *Imvo* was the chief organ of native opinion, its utterances, when translated by its European contemporaries, being received with a certain amount of tolerant amusement, not unmixed with a vague alarm; but it now has several competitors. As I have indicated, it is not easy to gauge their influence; but it is probably greater than most people imagine.

One great obstacle which South African journals have to face is the competition of publications from overseas. The average South African is an omnivorous reader of "mail" papers, against which, in respect of literary quality and price, it is impossible for a local printer or publisher to compete. The faithfulness with which English papers are read is sometimes carried to amusing lengths. Without any of the party or sectarian conservatism which leads the reader in England to adhere with blind devotion to the organ which reflects his particular views, the South African reader, in the most catholic spirit, cheerfully buys half-a-dozen or even a dozen English

papers every week, and with the utmost diligence reads the same news in *Lloyd's Weekly*, *The Daily Mail*, *The Weekly Dispatch*, *The Daily Graphic*, and similar publications. English and American monthlies have a large circulation in South Africa.

With all the drawbacks to successful journalism, the professional standard of journalists in South Africa is a high one. Many of them are men of ability; and, if they do not often publish articles of high literary merit, the reason is, as previously indicated, that such articles do not meet with much appreciation. But they serve their readers with fidelity, and are conscientious in the presentation of news and opinions; and it is seldom that they succumb to the temptation of writing what is merely mischievous or hurtful. Of course, there are exceptions; and a certain class of journalist sometimes yields to the temptation of writing what is merely vulgar or offensive. Such "pressmen," however, are to be found all over the world. Of the journalistic body in South Africa, as a whole, it may be said that it has much the same characteristics, virtues and vices, as are displayed by newspaper men anywhere else, and that it stands on an equally high level. If, in his private life, the journalist occasionally displays traces of a Bohemian spirit, this is not to be deplored in a country where the general tendency is towards sombreness and lack of humour, where any show of mild eccentricity excites comment, and "dourness" is the rule rather than the exception.

Professional interests are regulated by the Newspaper Press Union of South Africa, which has been established to maintain the status of journalists, and to make provision for benevolent objects. There are also societies of journalists in the different Provinces.

CHAPTER XIII.

COMMERCE AND COMMERCIAL LIFE.

THE NATURE of a country's commerce cannot be gauged from the examination of mere statistics of imports and exports, from returns of railway traffic, or revenues derived from customs and excise duties. In South Africa, hitherto, there has not existed any very large or influential manufacturing class, whether of employers or workers; and although, during the last decade, factories have made great strides, so that the annual output of manufactures now amounts to some fifty million pounds sterling, there has not been sufficient experience to enable us to judge of their influence upon commercial activities and habits. Even with the present growth of factories, it is hardly possible, as we have seen, to obtain in South Africa any locally-manufactured machinery, paper, clothing, carpets, chemicals (except such crude products as sulphuric acid or ammonia), and many other articles; all of them are imports; and it does not appear probable that factories to produce them will exist within the Union for a very long time to come. The two principal obstacles to the growth of such manufactures appear to be the high cost of white labour, and the prejudice which undoubtedly exists in the minds of consumers against buying goods of local origin. Whatever the cause, it is undoubtedly the fact that the vast bulk of goods sold and consumed in South Africa consists of imports from other countries. Even the means of transport are of external origin. There are no locally-built steamers, and the steamship lines which carry goods to South Africa all have their headquarters elsewhere. Probably half a century will elapse before it becomes possible to manufacture such a thing as a motor car within the Union. Even railway trucks are imported. It is possible to go through certain towns or villages in South Africa, and to fail to find therein a single article of

local manufacture, from the schoolmaster's birch which arouses the pupils to a consciousness of their duty in the morning, to the curfew bell which summons the natives home "to roost" at night.

The result of all this is that the commercial classes within the Union consist almost entirely of middlemen—whether they be merchants, shopkeepers, native traders, representatives of shippers oversea, commercial travellers, forwarding, landing, and shipping agents, or the clerks and storemen who carry out their orders. This army of commercial men exists, in the main, for the benefit of manufacturers and merchants oversea, who are only interested in South Africa for the sake of what they can get out of it, and never by any chance do anything for the country from which they derive their wealth—any more than do the shareholders in other countries into whose pockets go the profits from the gold and diamond mines. In recent years foreign countries have benefited greatly by South African commerce. Japan, for instance, has begun to drive a thriving trade within the Union. This would be a very good thing, if South Africa exchanged her products for Japanese goods. But very little of the productions of the Union finds its way to Japan, whose goods are paid for, not with goods, but with money.¹ It is quite right that trade should be carried on with an allied nation like Japan, provided that such trade confers permanent benefits on South Africa as well as upon Japan. Germany has been removed, temporarily, from the sphere of competition. Whether that country is to be allowed to enter again into the Union market on the same favourable footing is a matter of future policy. It would be interesting to know how much South African wealth has gone to the making of explosives and other deadly weapons employed in the destruction of British soldiers. If South Africa is to suffer its money to go permanently overseas, it were better that it should go into the pockets of manufacturers within the Empire, as in that case there may be some indirect return by way of contributions to a common fund for Imperial defence, and the extension of Empire trade. The British Government has

(1) The critic may fancy that there is an economic fallacy in this statement, as money, after all, only represents goods. But South Africa consumes what it buys, and gives in return, not consumable goods, but capital for the extension of foreign industries.

culties will arise. There must be no slavish adherence to obsolete forms and outworn creeds. Of this there is a fairly general perception, which is indicated in the frequently expressed desire to create a distinctive and self-reliant South African nationality—a desire expressed by Englishmen and Dutchmen alike. The Union will, having regard to universal historical experience and local factors, in all probability develop well-marked features of its own, in personal characteristics, in habits of life and thought, and in conceptions of what makes for the common weal. The same evolution of a distinctive national type, which has taken place in the United States, in Canada, and in Australia, will almost certainly result in South Africa. As an evolutionary process, however, it will be attended by well-marked stages, hardly discernible at the present time. To the superficial observer, the Union now appears to be divided into a number of hopelessly detached and conflicting elements, racial, social, and economic. All of them have and profess their own ideals, both for their individual welfare and for the future progress of South Africa as a whole. There will be many conflicts before the country is welded into an indissoluble union, with a common conception of national aims. There is much unrest in the industrial world, whose members have introduced into the arena of discussion a whole set of problems which are apparently foreign to the habits of life and modes of thought of two great sections of the population—the Boers and the natives. The prevailing industrial unrest is but a replica of what is manifesting itself elsewhere. Many of the aspirations of the industrial workers are legitimate, and must be met in a wise and conciliatory spirit. The more extreme expression of their aims will inevitably clash with the views of a long-settled and conservative people, who will especially resent any attempt to interfere with the habits of life, particularly in industrial and economic matters, of the aboriginal population. And the effect upon the natives themselves of an indiscriminate propaganda, unsuited to their traditions and cast of mind, and submitted to their immature and unsophisticated judgment, may produce a fermentation fraught with disastrous consequences—perhaps most injurious to those who have produced them.

their qualification shares (which in law amounts to bribery) is also common. In fact, very little supervision is exercised over the transactions of public companies.

Another great evil is the extensive credit system. In the country towns a trader must either give his customers long credit, or close up his business. It is quite an ordinary thing for a farmer, with his farm mortgaged "up to the hilt," to have an overdraft at the bank, and a six or twelve months' credit account with the local storekeeper. In most of the large towns a "cash" trade is the rule, although some great department-stores have made a practice of soliciting well-known people to incur credit accounts with them. Stress of competition also leads wholesale houses to run great risks in giving credit to small retailers of no stability, often with disastrous consequences. Even the banks, which generally are cautious in their dealings, at one time erred very much in giving advances on overdrafts to traders. They have, however, been taught by experience, as have the wholesale merchants. Bankruptcies are not so frequent now as they used to be, and the credit of most commercial houses and the businesses they support is in a far sounder position than it was in former times.

Legislation on commercial subjects is by no means as complete or as advanced as it ought to be, having regard to modern trade developments. Each Province of the Union has its own company law, with the result that whereas in the Transvaal the most recent Act (the English consolidating statute of 1908) has been adopted practically in its entirety, in the other Provinces the law is not suited to the requirements of the day. Private companies are recognised only by the law of the Transvaal, where they are as popular as they have become in England since 1908. A uniform statute for the whole of the Union, based on the English Act, is much needed. So is a code of the law of partnership. The law with regard to the liability and property rights of married women also leaves much to be desired. Bills of exchange are regulated in all the Provinces by statutes framed, with very slight alterations, on the model of the English Act.

We have seen that in South Africa there is a growing tendency towards the formation of "trusts." The bulk of the retail trade in the larger towns is in the hands of half-a-dozen great department stores, alongside which the smaller tradespeople, who are numerous, struggle for existence. The small tradesman has a better chance in the country towns, in spite of the credit system which prevails there. If he has to give credit, he also receives it; and he has not to face the same competition, nor is he likely to be crushed by an overgrown rival. The same thing has happened with regard to the banks, which are now only three or four in number, having amalgamated with (*i.e.* swallowed up) smaller concerns. The dividends they pay testify to the bulk of the work they do, and the monopoly which they enjoy; and they also indicate that even if the system of advancing money on overdraft is extensive, it is also profitable. Most of the provisioning of the country—a young agricultural country, be it noted—is also in the hands of "trusts"—meat, fish, sugar, and soap being conspicuous examples. Attempts have also been made from time to time to "corner" the grain market, fortunately, thus far, without success. Even newspaper distribution is practically a monopoly.

CHAPTER XIV.

FEATURES OF LOCAL GOVERNMENT.

ALTHOUGH, as we have seen, most of the towns in the Union have enjoyed some form or other of local self-government for a considerable period, few of them have attained to an adequate conception of the dignity of civic life. In certain towns municipal activities are regarded with apathy, some times even with aversion, by the mass of the inhabitants, with the result that their control has often been allowed to pass into unworthy hands, in the same way as "rings" have been allowed to dominate civic government in New York and Philadelphia. The consequence is that municipalities often acquire an undesirable reputation even if they do not deserve it, and the public apathy with regard to municipal affairs waxes greater, if possible. In Johannesburg there have been frequent allegations of municipal corruption, and public enquiries have been instituted. Though there has been some foundation for these charges, in two or three individual cases, which have their counterpart elsewhere, there is no ground for saying that corruption exists on a large scale, or that municipal government, on the whole, is carried on dishonestly. It is often carried on incompetently or with little dignity, and municipalities have been slow in awakening to a realisation of their duties with regard to the prevention of epidemic and other notifiable diseases, slums, and housing. They have been somewhat too ambitious in providing transportation, and in engaging in other forms of municipal trading. In some towns, such as Maritzburg, Germiston, and Boksburg, the provision of electric traction has not been successful, from a financial point of view. Extravagance is a familiar feature in South African municipal government, and many towns appear to be desirous of emulating certain of the London boroughs in adding to the burden of the rates. Nevertheless, much useful work has been

done, in towns like Durban, Cape Town, and Johannesburg, in the improvement of sanitation. Durban is generally regarded as the best equipped municipality, so far as sewage, water supply, street paving, and drainage are concerned—a circumstance all the more creditable in view of the large Asiatic population within the borough, since cleanliness and immunity from epidemic disease are not usually associated with Asiatics. As a matter of fact, Durban is one of the healthiest municipalities within the Union, and it was fortunate in escaping with a comparatively slight death-rate during the great influenza epidemic outbreak of 1918. In this respect it formed a bright contrast to Cape Town and Kimberley, where there was great mortality. In Kimberley, as in many of the smaller towns, the absence of a proper sewage system probably had much to do with the virulence of the disease—though, in South Africa, the expense of providing such a system is almost prohibitive. Even in Johannesburg there are large districts which suffer from the want of proper sanitation; and, owing to the enormous expense, the municipality has been unable to do more than pave the main roads, and provide kerbing and guttering, without any pavement, for the side-walks.

In the provision of “beauty spots” most of the municipalities display an entire lack of imagination or artistic sense. With one or two exceptions, as at Cape Town (with its ancient and renowned botanic garden), and at East London (which has a picturesque natural park), the municipal “parks” are inartistic enclosures of overgrown vegetation, choked with weeds, which the people instinctively avoid. Nor, except in Maritzburg, is there any statuary. Cape Town, nearly three hundred years old, is able to boast of four statues. Johannesburg has none. Some places have an ambitious town hall, but nothing more. Since the inauguration of the Union, however, some worthy buildings have been erected for purposes of government—such as the Law Courts at Cape Town, and the Union Buildings, the Post Office, and the Railway Station at Pretoria. Johannesburg still lacks a respectable railway station, although it is the centre of railway activities in the Union.

In one respect the municipalities have done fairly well. They have provided good music for the people, sometimes at low rates, sometimes free. Cape Town, Durban, Maritzburg, Port Elizabeth, and Johannesburg have each a good municipal organ, while Cape Town maintains a good municipal orchestra. At Pretoria and Johannesburg there are zoological gardens of considerable merit, the former maintained by the State, and the latter by the municipality. Port Elizabeth has an excellent municipal museum, the principal feature of which is its collection of live snakes. Nearly every town in the Union has its public library, those at Cape Town, Pretoria, Maritzburg, and Bloemfontein being not merely State-aided, but entitled, under the Copyright Act, to a copy of every work published within the Union.¹

The form which municipal government should assume has given rise to a great deal of controversy, more particularly in Johannesburg, where much friction has existed between the town council, striving to make reductions in expenditure, and its employees, who demanded greater wages on account of the general increase in the cost of living and new conditions created as a result of the Great War. In consequence, two serious strikes (happily unattended by results more serious than temporary stoppage of tramway traction and lighting) took place in May, 1918, and April, 1919. In both cases, the majority of the Town Council, though feeling that they were justified in their policy of economy, as the guardians of the interests of ratepayers, gave way, partly because they did not feel themselves entitled to provoke civil strife with possible bloodshed, and partly because, having regard to the ordinarily apathetic attitude of voters at elections, they were not sure to what extent they were supported by public opinion, in so far as such opinion might be expressed at the polls. Coincidentally with the second strike, also, there were serious native disturbances at Johannesburg, partly owing to alleged unsympathetic treatment of natives at a municipal location (Klip-spruit), and partly because many natives refused to carry passes under the pass law, such passes being regarded by them

(1) In addition, a copy must be sent to the British Museum.

as a badge of servitude.¹ The native disturbances were settled without much trouble, the government promising to remedy their legitimate grievances. In the municipal strike the Administrator of the Province intervened as a mediator; and the conflict was settled by considerable concessions to the municipal employees, including a forty-eight hours' week, and the appointment of a consultative committee of men to advise the council and its committees on all matters relating to wages and conditions of service. The strike was marked by an extraordinary feature—the temporary usurpation (for three days) of the functions of the Town Council (which had no force at its back to maintain its position) by a "Board of Control" appointed by the strikers—which many persons regarded as the introduction of Bolshevism. In the opinion of the more conservative portion of the inhabitants, the only remedy is to replace the Town Council with its party system, by a board of paid commissioners, charged with the government of the town, on the model of certain municipalities in the United States and Canada. The matter has formed the subject of consideration by the Provincial authorities. Any solution is, however, likely to be provisional and experimental.

A worthy feature in most of the towns is the excellent provision of buildings for educational purposes. Most schools have been erected on approved modern principles of ventilation and air-space, with adequate playgrounds. Indeed, some critics complain that less money might have been spent on ornate school buildings, and more on teachers' salaries, or in increasing the numbers of the teaching staff. It is not uncommon to find a well-equipped building, containing classes of fifty or sixty children to one teacher. At the same time, it must not be forgotten that the expenditure of the Provinces on education is very large, and compares more than favourably with that in most other countries.

The passing of the first comprehensive Public Health Act for the whole of the Union (1919) will, it is anticipated, enable municipalities and other local bodies to take in hand vigorous-

(1) The native "strike" was in part fomented by white agitators. It was pointed out to the natives by Government officials that the pass system afforded the natives themselves a considerable measure of protection, as it led to easy identification (a matter otherwise notoriously difficult in the case of natives), and ready communication with their relatives and friends in the native territories, in the event of trouble, disease, or distress.

ly the work of sanitation and checking or preventing disease. Ample powers are conferred upon them in respect of notifiable and epidemic diseases, and it will rest entirely with the public bodies concerned whether they will make use of their powers or not. If they fail to take necessary measures and precautions, power is reserved to the Union Medical Officer of Health, who is under the Ministry of the Interior, to intervene. In rural and native areas, however, having regard to great distances to be traversed without railway communication, it may for a long time to come be difficult to enforce the provisions of the Act. And though a large number of the natives have come to appreciate the services of European medical men, the course of education in sanitation and hygiene must of necessity be prolonged in the case of the majority of them. Many white persons are not too far advanced in knowledge of such matters.

There has been much controversy with regard to the principles on which municipal rates are to be levied. Apart from matters which are charged as services, such as light, water, sanitation, and (indirectly) traction, assessment rates are raised on the value of property. In the Transvaal, a large proportion of the urban community favours the taxation of site values, leaving improvements in the way of buildings practically free from taxation. In the past, improvements were taxed as heavily as land; but in recent times the site values tax has been more frequently imposed, and there are indications that it may entirely replace the rate on improvements. Among those who object to the site values tax are the owners of agricultural land within municipal boundaries. They contend that rating on this basis is unfair to them, as their land, though not built upon, has been improved by its agricultural use. There is also a school of thought which believes that the fairest system of rating would be to impose a tax on rentals, irrespective of the use to which the land is put, or of the improvements upon it—practically an income tax on rents. The objection to this proposal is that in nearly all cases the landlord would escape taxation by increasing the rent. This he is, however, able to do under most of the prevailing systems of assessment.

The use to which the revenue derived from assessment rates should be put has also given rise to keen controversy. The theory of municipal trading is that the profits derived from municipal trading concerns should be applied in relief of rates. In the case of certain municipalities, however, these trading concerns have been carried on at a loss, which has had to be made good out of the rates. And members of the Labour Party boldly argue that all municipal services should be carried on at cost, or less than cost, while some of them hold the view that such services should be supplied entirely at the expense of the ratepayers, as the owners of property within the local area—for the existence of such services, they contend, increases the value of the property in proportion.

CHAPTER XV.

LITERATURE.¹

FOR A PERIOD of over two hundred and fifty years Southern Africa has been colonised and inhabited by emigrants from Holland and England. As a territory settled by white men it is but a little younger than Canada and the United States, while it is much older than the Australasian Colonies. Those who have followed the intellectual development of those countries, therefore, might reasonably expect that a similar development would have taken place in South Africa, and that this country would be happy in the possession of a flourishing and virile indigenous literature. Such an expectation would be all the more justifiable in view of the circumstance that the parent countries from which came, or from whose inhabitants are descended, the white colonists of South Africa have not merely originated intellectual movements which have shaken and altered the history of the globe, but have likewise been the home, in each case, of a literature of inspired poets, of great thinkers, of skilled craftsmen in words, of philosophers, historians, essayists, dramatists, and romancers, whose collective achievements have not been surpassed by any nation save ancient Greece. The marvel, then, is that the descendants of those who were contemporary with Cats and Vondel and Hooft, with Milton and Jeremy Taylor, and Burton and Clarendon, have produced practically nothing in the realm of thought, nothing that is music making, world-shaking, or world-moving. Certainly this is not due to lack of material. In whatsoever direction we turn we find plenty to our hand.

It is but repeating a truism to state that South African literature, as a coherent body of expression of thoughts and actions in words, does not exist. There are but one or two native-born writers, and very few of those who have settled in

(1) This chapter is, in part, a summary of a lecture delivered before the Transvaal Philosophical Society on the 26th February, 1907.

the country have striven to depict any of the features and phases of the life of men and animals, or of the beauties and wonders of inanimate nature in this vast sub-continent.

To what is this total absence of activity in the world of letters due? In the case of the untutored savage aboriginal no answer is necessary. We have to go back thousands of years in the history of Europe and Asia to find a time when people did not think and tell tales. But in South Africa, before the settlement of 1652, everything is shrouded in darkness and hideous savagery. And the period during which the Chamber of Seventeen and the directors of the East India Company of the United Netherlands held sway at the Cape was not one conducive to enlightenment or to the fostering of the arts, least of all literature. That notable language, forming one of the finest instruments of literary expression of modern times, which the Huguenot refugees brought with them in their exile, was sternly suppressed and finally eradicated by the worthies who sat on the Council of Policy. Even the early days of the British settlement were not propitious to the spread of knowledge and of learning, or to the growth of thought. Under the rule of Lord Charles Somerset, not only was a vigorous censorship exercised over the Press, not only were the proud spirits of Pringle and Fairbairn chained, but the Literary and Scientific Society formed at Cape Town in 1824 by Benjamin Moodie, in conjunction with Thomas Pringle and the Rev. Dr. Philip, was banned as illegal, the authorities fearing that such a body would have a tendency to foster and propagate seditious sentiments. Again, the emigrant *Voor-trekkers*, who left the Cape Colony to escape the oppression of Crown Colony governors and colonial secretaries with mediæval minds, had no concern with the literary graces and the gentle arts. Their intercourse was with savage beasts and still more savage men. Their literature was the Bible, in which they found comfort, inspiration, encouragement, and the hope of a sure and just reward. And the early settlers in Albany were in a like situation. Day after day, night after night, they kept watch and ward against the intrusions and massacres of savage hordes from the Keiskama and the Pirie Bush, not knowing when they might sleep or where they might

lie down to rest, certainly not thinking of aught save the necessities of the moment. Until very recent years, the rural community has been entirely cut off from communication with the outer world. Those who are only imperfectly acquainted with the conditions of Boer life will readily realise that enlightenment was not to be looked for in a farm-house, where the simple life was practised in its most extreme form, where the daily round consisted of counting sheep, dipping lambs, and watering the "lands," varied only by an occasional hunt after baboons and porcupines, with spasmodic courtship of a neighbour's daughter and a quarterly attendance at "*Nachtmaal*." The most exciting form of amusement was the singing of psalms in an old-world metre, according to the musical time prescribed by Calvin; for Sankey and Moody's hymns, as we learn in "*Wat is een Patriot*," were forbidden as the Devil's work. It is true that occasionally a wild youth would make an alarm and excursion on the concertina or the accordeon, as marking the limit of his attainments, though in practice this function was relegated to the Hottentot "boy" in his hut. Nor were, or are, things better in the towns. The whole trend of life has been towards material things.

Without venturing, then, to assign any definite causes or reasons, we have indicated sufficient to arrive at the conclusion that the conditions, historical, racial, and intellectual, have been unfavourable to literary growth and development in Africa. Even local collections of native tales are of the most meagre description. Nor would it be possible to confine a survey of the literature of the sub-continent to South African-born writers. In the same way as Bret Harte, who caught the spirit and breathed the air of the Sierras and the Pacific slope, may be said to belong to Californian literature, so we may claim that those writers, born out of South Africa, who have lived there and have depicted the life or some of the phases of the life of its people, or some of the features of the country, with a certain degree of knowledge, sympathy, or insight not possessed by the absolute stranger, are to be classed as South African writers. No definite period of residence can be laid down as a qualification. A man need not have been very long in the country, provided that he has caught its atmosphere

and is not wholly alien to the life and thoughts of its people. There must be in his work something distinctively South African. In short, it must be of South Africa, not merely about South Africa.¹

The hundreds of volumes which have been written by passing travellers, describing life in South Africa, or its flora and fauna, or the manners and customs of the natives, are accordingly to be excluded. The travels of Spaarman and Barrow, the missionary journeys and work of Campbell, Moffat, and Livingstone, though they are of great value to the historian or the ethnologist, are not distinctively South African. Nor can the descriptions of a hunter's life by Gordon-Cumming and Selous be said to be South African any more than the globe-trotting impressions of any tourist can be said to be distinctive of and to belong to the literature of any particular country. In order that a work may be classed as belonging to the literature of South Africa, it must reproduce the local colour and atmosphere of the country, and have been written by one who was either born there or has lived in it long enough to become identified with it as an inhabitant, and has no mere surface acquaintance with its life; or it may relate to any subject, not merely local, but of general interest and application, if the writer is either a born South African or has, through residence and associations, become identified with South Africa. Thus, Paul Kruger's "Memoirs" and Christian de Wet's "Three Year's War" belong to the literature of South Africa, while the host of works written by journalists and wiseacres from everywhere, describing *ante bellum* political conditions, and the battles of the Boer War, if regarded as literary, belong to English, Dutch, French, or German literature, as the case may be.

On the other hand, we cannot exclude from consideration the folk-lore of the aboriginal inhabitants of South Africa. Collections of the kind have their value here as elsewhere, not only from a purely literary point of view, but as giving some index to the mind of the untutored savage, and the universality of certain ideas which pervade widely-scattered groups of the

(1) One fully recognises the difficulty of classing a foreign-born author as a South African writer. To take Australian literature, are Rolf Behrewood, Mrs. Campbell Praed, Lindsay Gordon, Marcus Clarke, and W. H. Timperley, Australian or English? To determine the matter merely by place of birth would be extremely arbitrary.

human race. The most important collections of South African folk-lore are "Zulu Nursery Tales," by Bishop Henry Callaway (1866), Dr. Bleek's "Reynard the Fox in South Africa, traditional tales current among the people living on the east-or, Hottentot Fables and Tales" (1864), and Mr. George McCall Theal's "Kaffir Folk-lore, or, a selection from the traditional tales current among the people living on the eastern border of the Cape Colony" (1882). Mr. Poultney Bigelow has collected some interesting examples of Kaffir folk-lore in his "White Man's Africa." Reference should also be made to Mr. Dudley Kidd's "The Essential Kaffir" and "Kaffir Socialism." Bishop Callaway has also given what appears to be a true picture of the native mind in its religious aspect and in its relation to supernatural things in his "Religious System of the Amazulu," and much light has been cast on the subject in Mr. J. Shooter's "The Kaffirs of Natal", and David Leslie's "Among the Zulus and Amatongas" (1875). From an examination of these works we find that the Hottentot fables are, in the main, objective, while the Kaffirs and Zulus are concerned mainly with their own states of feeling, and give prominence to supernatural things rather than to material objects. The Hottentot concerns himself with the life of animals. Usually he tells how the smaller creatures, such as the hyena and the jackal, attempt to practise imposition on the lion, how the lion, though he pretends to be old and dull, is never deceived. It is the same conception of life as we find in "Uncle Remus." In truth, Dr. Bleek's collection bears no very distinct resemblance to the original "Reyneke Fuchs", for although that work of Von Alkmaar's (1489) belongs to the *thier-epos*, it is in reality a satire upon the state of Germany in the middle ages. The Hottentot tales collected by Dr. Bleek have as their principal characteristic "slimness", that quality which has always appealed to the South African mind, native and Boer alike. Hottentot folk-lore is mainly concerned with things of this world. The Zulus and kaffirs, again, interest themselves chiefly in the world of spirits. Many of their tales are connected with the familiar spirit which is supposed to attend every man on his passage through life. Reference on this subject may be made to the account given by F. Speck-

mann in "Die Hermannsburg Mission in Africa" (1876). An imaginative and soulful people, the Bantus of South Africa are by no means lacking in the poetic gift. They have great powers of extemporising in metrical language on almost any subject, however trivial. The Zulus and Kaffirs are skilful at improvising strophes and couplets as an idea takes their fancy, and on such they ring the changes for an hour at a time, running through every variety of key and stone. One trusts that some day an effort will be made to collect examples of this art, which is a striking characteristic of the native mind.

But, it will be said, "Where are our South African poets of European descent?" One has to return the answer that of true native-born South African poets there are none, if we except W. R. Thomson and, perhaps, Cullen Gouldsbury. There is, indeed, one poet who has written on South African themes, and, by virtue of a lengthy residence, will go down to posterity as a representative poet of South Africa. It was in 1819 that, after an early literary career in Edinburgh, Thomas Pringle resolved to join the band of British settlers who were being sent by the Imperial Parliament to the Cape. He was an acquisition to that Colony, and will always be held in remembrance, not only as a poet, but as the first in South Africa to stand forth boldly as the champion of the freedom of the press. His poetic activity did not cease with his departure from Scotland, although he shared to the full the struggles and hardships of a pioneer in a new and wild land. From the date of his "Emigrant's Farewell" (1819) he found time, notwithstanding the distractions of his life, first as founder of a prosperous colony of farmers at Glen Lynden, and then as the editor of *The South African Journal*, and *The South African Commercial Advertiser*, and defender against Lord Charles Somerset of the freedom of the Press, to compose poems on various subjects, mainly South African, which were published in 1828 under the modest title of "Ephemerides." This collection included "Afar in the Desert," of which Coleridge said in somewhat extravagant mood: "I do not hesitate to declare it among the two or three most perfect lyrics in our language." This poem is, of course, too well known to require the doubtful compliment of quotation.

Pringle was deeply tinged with religious sentiment, and through several of his poems, such as "Afar in the Desert," "The Bechuana Bay," and "The Ghona Widow's Lullaby," there runs a strong pietistic vein. He was also what South Africans of to-day would call an extreme sentimentalist as far as the native aborigines were concerned. Indeed, his zeal on their behalf frequently outran his discretion, and he would now be regarded as an uncompromising apostle of Exeter Hall. But Pringle, a man of naturally gentle temperament, lived in the Cape Colony at a time when, as he thought, acts of injustice were perpetrated against the natives who, in his mind, were barbarously treated and in fact dealt with as slaves after their homes had been burnt and their lands devastated in the Kaffir wars. Probably he held exaggerated views. Whatever the truth of the matter may be, they exercised a great influence on his literary work. Pringle, however, was by no means always melancholy. "The Emigrant's Cabin at the Cape" is a very lively description in verse of a farmer's life. "The Lion Hunt" is composed in the same breezy, not to say exhilarating vein, and so are many of his prose sketches in his important "Narrative of a Residence in South Africa," and his "African Sketches." The complete way in which Pringle made himself a South African during his seven years' residence in the country is shown by his familiar descriptions of places and people, which have passed into household words among the farmers of the Eastern Province. Dr. Hillier says of Pringle: "The vast spaces of the veld, the silence of the solitudes, the marvellous varied and abundant animal life, the savage half-weird character of the natives, and the wild adventure of the early colonists, have been caught with a true spirit of genius. Since his day no one, unless it be Olive Schreiner, in 'The Story of an African Farm,' has so vividly painted the life and the atmosphere of that vast continent lying to the south of the Zambesi." We may add that, more recently, Rudyard Kipling, rather to be regarded as the poet of the Empire than as distinctively South African, has, in "The Seven Seas" and "The Five Nations," conveyed some intimate impressions of local life and scenery, showing that during his visits to the Cape he caught the true spirit of South African life.

Pringle's prose is nervous, lucid, and direct. His poems show that he possessed much more than fine feeling and cultivated taste. It has, however, been truly said that his non-African sonnets are mostly rather mechanical. His principal engine for attaining effect is not phraseology so much as rhyme, and this has a tendency, in places, to obscure sense. He has an extreme fondness for the style of versification which was introduced by Dryden, and refined upon by Pope. As a poet, he will live by his "Afar in the Desert" and his Kaffir sketches; and his prose work takes rank far above the productions of most of the travellers, hunters, missionaries or explorers who have dealt with South African life.

Another South African poet of considerable merit, of whose work few specimens, unfortunately, are extant, is W. R. Thomson, some of whose poems are to be found scattered about in stray collections. His poem, "Amakeya," is well known, and is expressive of the same negrophillist sentiment which pervades Pringle's poems. In 1856, when Thomson was a Cape student at the University of Utrecht, he wrote his poem, "To the Cape," with which Pringle's sonnet, "The Cape of Storms," must be contrasted. In our humble opinion, Thomson has, in this particular, attained far greater felicity of expression than Pringle. Similar sentiments find expression in the few poems which the late Judge E. B. Watermeyer has given to the world. But the characteristic of Watermeyer's verse is scholarliness rather than beauty, as might be expected of one who was so devoted a classic that he preferred to correspond with his brother in ancient Greek rather than in modern English. More sprightly, and written wholly in a spirit of levity and rollicking good humour, is the Dutch verse of F. W. Reitz and William Henry Maskew. Senator (and ex-President) Reitz has given the world a Dutch version of the more famous humorous and sentimental poems of Burns and Byron, such as "Tam O'Shanter" (hardly recognisable in the guise of "Klaas Gezwind") and "Maid of Athens." But his work is no mere translation. Rather has he taken these poems as a foundation on which to work, and invested them with Dutch or Hottentot characteristics, with the idioms and peculiar modes of thought of the "taal," which, by the way, is an excellent medium for

the expression of humorous ideas, to those who understand it. Maskew did much in the same vein, and so has the author of "Wat is een Patriot, Ou Pa?"

When we turn to prose fiction, we marvel that no local Bret Harte or Kipling has arisen to tell us tales of the reckless devil-may-care life of Kimberley and Johannesburg in their "early and palmy days", and no South African Thomas Hardy to describe, with the masterful pen of a sombre genius, the grim tragedy and the ironic humour of life as it is lived on the lone steadings and mysterious farms of the vast Karroo. No doubt South Africa has been the scene of many a novel, "best written in Piccadilly or in the Strand," and there has been a host of women writers, such as Alice Askew, F. E. Mills Young, Gertrude Page, Cynthia Stockley, Amy J. Baker, "Richard Dehan," and Dolf Wyllarde, who have purported to portray South African life. In the same way, Jules Verne's "Vanished Diamond," though it is an exciting tale of the Diamond Fields, does not belong to the country. Nor do R. M. Ballantyne's entrancing book, "The Settler and the Savage," though it is a vivid picture of the struggles and hardships of the early British settlers; and Dr. Gordon Stables' "In the Land of the Lion and the Ostrich." Certain works of Sir Rider Haggard, "Jess," "Maiwa's Revenge," "Nada the Lily," "Swallow," "Marie," "Children of the Mist," and "Finished," belong to a different category. By residence and intimate (though sometimes warped) local knowledge, Rider Haggard may be claimed as a South African writer. At the age of nineteen he was secretary to the Governor of Natal. In 1877 he was on the staff of Sir Theophilus Shepstone, familiarly known to the Boers as "Ou Stoffel Slypsteen." After participating in the fateful annexation of 1877, he was appointed Master of the High Court of the Transvaal in 1878. During his residence in the country, Rider Haggard accumulated a garner of knowledge of the ways and conditions of its life, since turned to good account in his literary productions, which, whatever be their shortcomings, are characterised by vividness, vigour, and a high degree of romantic imagination. He excels in description. His works are highly melodramatic, for he loves melodrama, and may even be called bloodthirsty. Thus,

in "Nada the Lily," he, in the guise of Chaka and other Zulus, slaughters populations wholesale. On the other hand, in "Jess," we have a moving picture of the life and mental history of a high-spirited and high-strung girl who has grown up on the lonely plains. The story is the old story, that of the right man's love for the wrong woman, of the right woman's adoration—to which in her nobility of soul she cannot give utterance—of the right man who does not respond until it is too late. But in the vivid pages of this book live and move all the varied characters, villains, fools, intriguers, traitors, brave men and curs, beautiful girls and fat old vrouws, canteen loafers and foxy Hottentots, landowners and bywoners of the Transvaal, as it was in the eventful years '80 and '81.

Rider Haggard has had a host of disciples or imitators, for it is easy to lay the scene of stirring adventures and hair-breadth escapes in South Africa. Of the writers of pure adventure stories, the best known are Ernest Glanville and Bertram Mitford. Conan Doyle's stories, "The Firm of Girdlestone" and "The Stone of Boxman's Drift," tell of South African adventures, but their author cannot be classed as a South African writer. Bertram Mitford lived for many years in this country, and his tales have the true local colour. He is mainly concerned with telling an exciting tale, and has devoted more attention to plot construction than anything else. His style is pure "journallese," but he nevertheless manages to convey a fairly true presentment of the life of Zulus, soldiers, traders, and adventurers as it is lived under the Southern Cross. "The Gun-Runner" is probably his best work, although his hero will not appeal to the sympathies of colonial readers, for that worthy is chiefly concerned with the illicit supply of arms and ammunition to Zulus. "The King's Assegai" is another stirring tale; but it is nothing more, for Bertram Mitford lacks the faculty of drawing character sketches, by no means the least important part of the novelist's function. Ernest Glanville is a South African born, educated at St. Andrew's College, Grahamstown, a youthful diamond digger at the New Rush, a war correspondent in the Zulu campaign, and a South African pressman. His best tales, probably, are "The Fossicker" and "The Kloof Bride." Glan-

ville's characters, however, though they do wonderful and brave things, are pictures rather than men. Indeed, this is a common failing of South African writers, as in the case of J. R. Couper, in his novel "Mixed Humanity." Sir Percy Fitzpatrick, it is true, in "The Outspan," Mr. W. C. Scully, Dudley Kidd, and Douglas Blackburn in "Prinsloo of Prinsloosdorp," and "Richard Hartley, Prospector," have given us some convincing pictures of South African types, white and black; but even Olive Schreiner fails in the power of moulding plastic characters. In the description of animals and bush life Sir P. Fitzpatrick's "Jock of the Bushveld" has attained a high place.

Olive Schreiner was described by the late W. T. Stead as "the only woman of genius South Africa has ever produced," and by another critic as "the most original author to whom South Africa has given birth." Whether she answers to these descriptions we will not venture to say. But she is a true daughter of the soil, filled with a love for her native land, and desirous of giving articulate expression to the aspiration for freedom of thought and action, the independent spirit born of an untrammelled and unconventional life in the open air and under the cloudless sky, which animates the true South African. The work by which she will be remembered is, of course, "The Story of an African Farm." As we have indicated, this author has no liking for tales, as such. She prefers rather to use her characters as the medium for giving expression to the tumultuous ideas that surge within her. "Should one sit down to paint the scenes among which he has grown," she says, "he will find that the facts creep in upon him. Those brilliant phases and shapes which the imagination sees in far-off lands are not for him to portray. Sadly he must squeeze the colour from his brush, and dip it into the grey pigments around him. He must paint what lies before him." One suspects that this is the reason why, in all the years since 1883, when "The Story of an African Farm" appeared, Olive Schreiner has produced so little. She appears to lack the power of plot construction, while her characters are of the phonographic order. At the same time, she is gifted with great imaginative power, and with a keen dramatic instinct. Her conception of Waldo, the lonely idealist, who grows up in the desert, surrounded only

by his sheep and the milk bushes, with the blazing sun overhead, who unaided forms his own notions of the nature of God, and man's relations to the universe, is very fine. And dramatic is the appearance, in the naked veld of Mashonaland, of Christ, when he meets with the rough Chartered Company's soldier, in "Trooper Peter Halkett of Mashonaland." This is a wholly original conception, though its force is weakened when we find that Christ, in conversation with Peter Halkett, indulges in political controversy, couched in journalistic language, with the hero. Indeed, the admixture of the phraseology of the Sermon on the Mount with the polemics of the late nineteenth century is somewhat startling.

"The Story of an African Farm" is incoherent, and one is bound to say that it is also inconsistent. In the first part we have the good, patient German overseer, who has been the faithful manager of Tant' Sannie's farm for many years, on whom there intrudes the grotesque figure of Bonaparte Blenkins, the needy adventurer, who intrigues with such good effect that the old German is curtly told to depart, and who is himself disgraced when the Boer woman discovers that he is trying to win the affections of her niece. Then Bonaparte Blenkins disappears, and we never see him again. One asks, what is the object of this episode, unless it be to give vent to the author's somewhat grotesque humour? For it has no influence on the other characters in the tale, or on the future happenings of the book. Nor is the object of the mysterious stranger's appearance to Waldo in the desert sufficiently clear. Again, the frank confession must be made that Lyndall's story is quite incomprehensible, if not unnatural. She is depicted to us as a character wholly admirable, in short, a perfect woman, gifted not merely with intellectual powers, but with a true and pure soul. Then in pursuance of her natural desire to know something of the great world, she goes to school at Cape Town. She returns, and it appears that during her absence she has met with a "misfortune," as the French novelists euphemistically term it. Subsequently, the man who has wronged her appears on the scene, and offers to make reparation by marrying her. Lyndall has no objection to marriage in the abstract. Indeed, she has partly formed an intention to marry Gregory

Rose, a doll-like effeminate fool. And of Rose she says to her lover: "If I marry him I shall shake him off my hand when it suits me. . . Would you ask me what you might and what you might not do?" Then her lover says: "Why do you wish to enter on this semblance of marriage?" "Because there is only one point on which I have a conscience. I have told you so." "Then why not marry me?" "Because if once you have me you would hold me fast. I shall never be free again." This idea of using the innocent Gregory Rose as the instrument of reparation and conformity with social laws, instead of Lyndall's real lover, is fantastic. On the one hand she looks upon marriage as an institution sufficiently holy to be necessary in the circumstances; on the other, she regards it as a form of bondage, which she consequently wishes to escape. Her action might be justified if it were the logical outcome of a theory she has formed as to the nature and necessity of the institution of marriage. But apparently she has no such theory. Her language to Waldo is not that of a woman who has been weak. Is it the language of a heartless coquette? One finds it hopeless to infer any definite purpose, any consistent idea, in her amazing welter of contradictions—unless it be to show that "woman's at best a contradiction still." Nevertheless, we come to the conclusion that with all these improbabilities there is a lot of human nature in the book, and that it is pervaded by a magnificent spirit of altruism, and that it has the possibilities of permanence is shown by the way in which the story grips you and holds you to the end.

Little need be said of this writer's other works, "Dreams," and "Dream Life and Real Life." They show that the writer is very imaginative, and is, indeed, overpowered by her imagination. These sketches easily lend themselves to parody, and they have been unmercifully dealt with by the anonymous author of "The Silver Domino." But some of them, for all that, are fine prose poems.

Two other women writers may be classed as South African. Mrs. M. Carey Hobson lived for many years on a farm in the district of Graaff-Reinet, and she has given us some vivid sketches of country life, woven round such incidents as hunt-

ing for wild bees' nests and ostrich farming. "At Home in the Transvaal," her principal work, is concerned with the same subject as "Jess," namely, the Boer War of Independence. Her other work, "The Farm in the Karroo," is an account, in narrative form, of life on a farm in the Cape Colony. Mrs. Carey Hobson is at her best in tales of pure adventure.

Another South African author of some merit is the late Mrs. Sarah Heckford, an old resident of the Transvaal, and a writer of vigorous letters to *The Times* and other English journals. Her book, "A Lady Trader in the Transvaal," gives a brisk account of the trials and hardships of an Englishwoman on her trek through the country.

And so, having done with fiction and quasi-fiction, we are led to consider what has been accomplished in the field of actual events, how the dealings of men with men have been described, what estimates have been formed of the great political and racial movements that have, unfortunately, convulsed South Africa. At the outset it may be said that there is much material, but the workers are few, and the skilled craftsmen have yet to come. Considerable industry has been manifested in the collection of data for the future writer of history. Thus the Rev. H. C. V. Leibbrandt, the venerable keeper of the Cape Archives, with great labour, in his "Precis of the Archives of the Cape of Good Hope," and his transcripts from the journals of the old Dutch Governors, opened a veritable mine of authentic information concerning the events of a bygone age, and a most important one to boot, when the Cape was but a struggling infant settlement. Professor G. E. Cory has devoted valuable research to the history of the Cape Eastern Province, the fruits whereof appear in his "Rise of South Africa." And Mr. George McCall Theal has, in the exercise of his functions as Cape historiographer, built up a monumental pile of annals of South African history.¹ It is certain that the future historian will have to go to Theal for much of his material. Theal lacks the faculty of literary expression. His principal object appears to be to tell a plain tale, omitting nothing, embellishing nothing, extenuating nothing. At the same time, he has gained a reputation, rightly or wrongly, for partisanship. His style is rather wearisome.

(1) Mr. Theal died in April, 1919.

He possesses none of that gift of rapid characterisation, that sense of the dramatic, that power of telling a tale in terse but picturesque language, of noting the action and inter-action of characters, and the relative importance of events, and of broad and just generalisation which are essential to the true historian. His defects of style are easily noticeable. Nor is he more felicitous in narrative. He jumps from subject to subject with disconcerting rapidity, and his tale consists of a tangled skein of broken threads. For all that, the study of his writings cannot be neglected. He has disinterred much that has long ago been buried, and has at least made South Africans acquainted with some of the events of their own past history. A Canadian, no son of the soil, he deserves gratitude for the untiring labour which he has expended in recording and chronicling the doings of men of the past in South Africa.

Another writer on historical subjects, Mr. Alexander Wilmot, has wielded a prolific pen. His principal work is "The History of Our Own Times in South Africa (1872-1898)," consciously or unconsciously modelled on the work of Justin McCarthy. Wilmot writes in a clear and lucid style, though he has no marked characteristics; but as a Cape politician, himself engaged in many of the transactions which he describes, he is too much of a partisan. Evidently he tries to be fair, but his predilections overmaster him. John Noble, in his "South Africa—Past and Present," wrote a clear and readable history; and "Incwadi Yami," by Dr. J. W. Matthews, is an interesting account of the early history of the Kimberley Diamond Fields.

Perhaps the writer with the best claim to rank as a historian is Duncan Campbell Francis Moodie, a master of clear and vigorous narrative, with an instinct for the dramatic and a just sense of proportion. He had seen much of South African life, and had taken part in many stirring adventures, before he wrote the work by which he is known. As far back as 1855 kept a hunting journal. In 1874 he blossomed out into poetry. he took a trip to the then unknown Waterberg, of which he Then in 1879 appeared the first volume of "The History of the Battles and Adventures of the British, the Boers and the

Zulus in Southern Africa, from the time of Pharaoh Necho to 1880." This work does for South African history what the literary productions of Francis Parkman have done for the history of Canada and the other North American Colonies. Moodie has a flowing narrative style, a love of the picturesque, with occasional "purple passages"; he gives a vigorous and inspiring description of the many battles which, alas, have been waged on South African soil, and he portrays historic characters faithfully and in their true proportions.

Other authors have written on special subjects, and their productions will be of great value to the historian who is to come. John Bird's "Annals of Natal" is an especially valuable collection, relating, in the main, to early Zulu and *Voor-trekker* history. Such works as Fanny Barkly's "Among the Boers and Basutos," Rev. Edwin Lloyd's "Three Great African Chiefs," H. A. Bryden's "The Victorian Era in South Africa," and Mrs. John Hays Hammond's "A Woman's Part in the Revolution," are interesting, and may be regarded as footnotes to history. A clear and concise narrative is that of Frank R. Cana, in "South Africa—from the Great Trek to the Union." Valuable, also, are those sketches of various phases of South African life which are now passing away, such as that contained in Bryden's "Kloof and Karroo." Some excellent works have appeared in the Dutch language, such as Gus Preller's "Piet Retief" and "Het Dagboek van Louis Trigard," Leo Fouché's "Diary of Adam Tas," the Rev. J. D. Kestell's "Through Shot and Flame," J. F. van Oordt's "Paul Kruger," and the Rev. F. Lion Cachet's "Worstelstryd der Transvalers," which recounts the War of Independence from the Boer point of view. Of considerable value, also, are (Judge) Thomas Fortescue Carter's "Narrative of the Boer War" (1883), which tells in grim language the story of Bronkhorstpruit, of Ingogo and Laing's Nek, and of the awful panic at Majuba; and the many works of that faithful servant of the London Missionary Society, the Rev. John Mackenzie, who has not only told, in interesting form, of his missionary experiences in "Ten Years North of the Orange River" (1871), and "Day Dawn in Dark Places" (1883), but has cast much light on impotrant historical transactions in his "Austral

Africa: Losing It or Ruling It" (1887). Then there is Sir Percy Fitzpatrick's "The Transvaal from Within," a plain and straightforward, if one-sided, narrative of the events preceding the Boer ultimatum of 1899.

There has been a host of theological works, among which the most noteworthy are those of the Rev. Andrew Murray, for many years the moderator of the Dutch Reformed Church, and the essays of the Rev. Ramsden Balmforth, Unitarian minister at Cape Town. His predecessor, the Rev. D. P. Faure, also published interesting essays in pamphlet form, while his autobiography, "My Life and Times," is of considerable historical interest.

To the vicissitudes of periodical literature reference has been made in the chapter on "The Press" (chap. XII). Here we need only say that some of them, the *Cape Monthly Magazine*, the *Cape Literary Annual*, the *African Monthly*, and the *State*, contained excellent stories and articles, but for one reason or other they are all of them "relics of departed worth."

Of the future of South African literature it is not possible to make any prediction. Its growth cannot depend on any concerted or organised movement, but must be a matter of inspiration, of the growth of genius or of literary aptitude—perhaps connected with the growth of population, of culture, and increasing complexity of life. It will in all probability be spontaneous, if it is to be a growth at all. But it will also depend upon effort, without which there cannot be much of permanent worth. "Meanwhile, the first condition of success is, that in striving honestly ourselves, we honestly acknowledge the striving of our neighbour; that with a will unwearied in seeking Truth, we have a sense open for it, wheresoever and howsoever it may arise."

CHAPTER XVI.

SCIENCE.

MANY PEOPLE are aware, in a vague way, that there are opportunities and material for scientific investigation in South Africa. Few, however, realise the extent of the field which is available, not merely for research along lines and with the materials which are familiar to scientists elsewhere, but for original work. In many respects, South Africa presents problems and furnishes material which have no parallel elsewhere; and, though excellent results have been achieved, there is still an infinite field of exploration left open for workers in every department of knowledge. From an anthropological point of view, the aboriginal races inhabiting the country offer problems which cannot, for lack of similar conditions, be solved or even examined as readily elsewhere. The naturalist finds himself in the presence of a fauna which in many respects is unique; and the same may be said of the botanist, when the extent and variety of the flora of the sub-continent are taken into account. The astronomer, under the southern skies, has unequalled opportunities for observation, and the meteorological conditions of the country present many peculiar features. There are diseases, both of man and beast, which present many new problems to the physician, the bacteriologist, and the veterinary expert. In no country is the work of the geologist of more practical importance.

Reference has been made to the valuable work done at the Royal Observatory at the Cape by Sir Thomas Maclear and Sir David Gill. Nor, in this connection, should mention be omitted of W. H. Finlay, formerly assistant at the Cape Observatory; Dr. A. W. Roberts, a great amateur; and Mr. R. T. A. Innes, director of the Union Observatory at Johannesburg. An early Astronomer-Royal at the Cape, Thomas Henderson, produced a catalogue of the principal southern stars

equal in accuracy to the best work of astronomers in the Northern Hemisphere, "which," according to Gill, "will in all time be regarded as the true basis of the most refined sidereal astronomy of the Southern Hemisphere." Maclear was Astronomer-Royal at the same time as Sir John Herschel lived at the Cape (1834-1838), the latter pursuing independent investigations, though in close consultation with Maclear. It was at the Cape that Herschel completed a fourteen years' telescopic survey of the whole surface of the visible heavens. Maclear, with the inadequate instruments at his disposal, was much hampered in his work. Nevertheless, he succeeded in measuring an arc of meridian—taking ten years to complete his work, "The Verification of Lacaille's Arc of Meridian." His successor, E. J. Stone, F.R.S., completed a catalogue of 10,000 southern stars, based largely on Maclear's observations; and this catalogue was continued by Gill, who won great distinction in other departments of astronomy. He determined the solar parallax by observations of Mars; instituted the system of photographing the stars for the construction of star maps, or for cataloguing stars to any required order of magnitude; proposed, organised, and completed (with Col. Sir W. G. Morris) the geodetic survey of South Africa; and, in short, established a reputation as one of the greatest astronomers the world has known.

In the field of anthropology, valuable work has been accomplished by Sir Francis Galton, A. H. Keane, and W. Hammond Tooke. Mr. L. Peringuey, of the South African Museum at Cape Town, has made researches into the history of primitive man south of the Zambesi. The antiquities of Rhodesia have been explored, described, and classified by Theodore Bent and E. N. Hall. Much valuable work in describing the manners and customs of the natives, past and present, has been done by missionaries from Arbousset, Daumas, Livingstone, and Callaway, down to the present day; and the theories and suggestions of investigators like G. W. Stow and Dr. Aurel Schultz are of great interest. In the science of philology, which has proved a useful handmaid to anthropology, work of permanent worth has been done by the Rev. W. H. I. Bleek, the Rev. C. H. Hahn, and Sir Harry Johnston. Nor have local

administrators, like Sir Godfrey Lagden, failed to contribute valuable suggestions towards the solution of the interesting problems which arise in connection with these subjects. It may be that South Africa will still see an endowment or institution specially devoted to investigations connected with Bantu and kindred anthropology, ethnology, philology, and folklore.

Most works of travel contain some reference to the geological features of South Africa; but it is principally since the discovery of the Kimberley and the Witwatersrand mines that research on the subject has been conducted along scientific lines. Before this, however, Andrew Geddes Bain, "the father of South African geology," had published his observations. The first attempt to describe the geology of the mining regions, and to furnish hints for prospectors, was that of Thomas Baines, in "The Gold Regions of South-East Africa." The interest of South Africa in fossil deposits was stimulated by the late Professor Seeley, who visited the Cape, and took away with him as a trophy an ichthyosaurus. Explorations in the Witwatersrand formation gave rise to a host of theories, and rival schools of opinion, which sometimes indulged in controversy as heated as that of the Society upon the Stanislaus. The Transvaal Geological Society was founded, and the lectures delivered by its members, as well as the publication of its *Transactions*, formed valuable contributions to the advancement of geological science. Among the better-known names of South African geologists in recent years are Mr. Gardner Williams (general manager of the De Beers Consolidated Mines), and Drs. F. H. Hatch, Molengraaff, Corstorphine, and Wagner. In the allied science of metallurgy, the most epoch-making discovery was perhaps that of the McArthur-Forrest cyanide process. Some slight reference has been made to the improvement adopted in connection with gold-mining, and it is not proposed to go into further detail here. Perhaps the most important change in the process in recent times has been that consequent upon the invention of the tube-mill.

In the vast region of zoology, there is, as we have indicated, a great field for research, and much has been made known to the world—in early days chiefly through the observations of

great hunters and explorers, like Burchell, Gordon-Cumming, Anderson, and Selous. Important works on zoology have been published by W. L. Sclater, of the South African Museum ("The Fauna of South Africa"—Mammals and Birds), H. A. Bryden ("Great and Small Game of South Africa"), and E. L. Layard ("The Birds of South Africa"), while Roland Trimen has achieved wide fame amongst scientists by his monograph on "The South African Butterflies." The scope for investigators, as far as insects alone are concerned, is indicated in the following statement of Mr. L. Peringuey: "The number of species of the insects inhabiting the South African sub-region . . . will prove to be more than 40,000, of which the *Coleoptera* alone will have more than 15,000 representatives." The marine fauna of South Africa will, apart from pure scientific interest, receive great attention in the future on account of its economic importance, so far as fishes are concerned.

The botanical field is equally rich. Professor Robert Wallace states that there is a "unique diversity of vegetable forms. Of the 200 natural orders into which, following Bentham and Hooker, the plants of the world have been divided, 142 are represented in South Africa, while Australia, which is five times the area of extra-tropical South Africa, has only 10 additional orders, or 152 in all. The number of endemic genera in South Africa is 446, while in Australia there are 520." So far as botany is concerned, the services rendered to science by Prof. P. MacOwan, formerly Curator of the Government Gardens at Cape Town, cannot be over-estimated. More recently, considerable additions to the study and knowledge of the subject have been made by Drs. Harry Bolus, R. Marloth, and S. Schonland. Investigations of considerable value have also been conducted, under the auspices of the Union Department of Agriculture, whose divisions of botany and plant pathology—apart from those devoted to entomology and veterinary research—are constantly engaged in investigations of high scientific and practical value.

Enough has been said to indicate, even from a mere cursory glance at the subject, that in the various departments of science great results have been achieved by workers in South

Africa, and that there is still ample scope for investigation. Here, at any rate, whatever may be said of literary or artistic achievement, there has been no lack of industry, of interest, or of trained ability. The performance of the past gives promise of a rich harvest in the future.

CHAPTER XVII.

MISCELLANEOUS REFLECTIONS AND FORECASTS.

ALTHOUGH, AS WE have seen, literature and science are in a comparatively early stage of development, there is every reason to anticipate that they will progress, in view of the illimitable worlds which they embrace, not only in respect of local peculiarities, developments, and opportunities, but having regard to the universality of the human mind, which, in South Africa as elsewhere, knows no bounds to its creative effort. In the realm of art, little or nothing has been done. As far as the plastic arts are concerned, they are still in their infancy, and their development must almost entirely depend upon the models and standards of older countries. The foundation of art galleries, such as have been created at Johannesburg and Cape Town (there are also small collections of some value at Durban and Maritzburg) may have a certain influence in forming public taste, and, perhaps, in inspiring local artists. These things are so much matters of inspiration and special genius, that no one can venture to suggest any plan or principle which may tend to encourage or to evoke artistic aspirations and performances. There may be efforts along the traditional lines of the art school; but purely mechanical methods will, by themselves, not produce much. Any great artistic development, whether it is to come now or in later times, must in a large measure be purely spontaneous. All that can be said is that some interest is being taken in the subject; that South Africa, especially in landscape, furnishes as rich material for the artist as may be found elsewhere; and that recently a school of young South African artists (the principal representatives of which are Hugo Naude and Volschenk) has arisen which, devoting itself in the main to landscape painting, has produced work which, if sometimes erring in matters of technique, is nevertheless creditable and indicative of future pro-

gression along right lines. In sculpture, the only work worthy of note has been done by A. von Wouw, an artist born in Holland, who has been especially successful in his busts of Dutch leaders of public opinion in South Africa, and his native (aboriginal) figures. The architecture of public buildings and other large structures has proceeded mainly along European conventional lines. Some of these buildings are highly creditable to those who planned them, but the effect of most of them is lost on account of the utter lack of imagination and taste which most of the local authorities display with regard to the planning of streets and the maintenance of a building line. In domestic architecture the main effort seems to have been to produce a welter of confused and diverse types, the general effect whereof is far from being enhanced by the almost universal use of galvanised iron for roofing purposes. In recent years there has been a considerable revival of the "old Dutch" style of architecture, which is intended to reproduce the mode of construction and interior arrangement prevailing in the early days of Dutch settlement at the Cape. The main results appear to be pretentiousness and discomfort; and many modern productions of this kind do a great injustice to the original system they are supposed to illustrate. It is, indeed, doubtful whether they illustrate or reproduce it at all—if what we read of the roomy interiors and comfortable habitations of the seventeenth and eighteenth centuries is to be believed.

Of music it is also not possible to say much. Many creditable efforts have been made to create a popular taste for music, and there are legions of music-learners, all aspiring to the possession of a "music certificate." Now and then one hears of a promising player, who is usually of Russian-Jewish or Polish-Jewish origin; or of a South African singer, none in the first rank. There are no native-born composers. All of the music of South Africa, in the true sense of the word, both as regards compositions, players, and singers, may be said to be of exotic origin.

It is not easy to make any generalisations on the subject of oratory. Those most competent to judge are agreed that, throughout the world, there are to-day not very many orators of the first rank; and it would be unfair to expect in South

Africa what is not often attainable elsewhere. Oratory must depend, in large measure, on the occasion and the inspiration which call it forth, though much is attributable to the genius and resources of the speaker. Much, also, depends upon the audience—which, in South Africa, is generally impatient of anything which it regards as impractical or “highfaluting.” The tendency is towards plain speaking, “in straight-flung words and few.” Of this plain language, though often verbose, and curiously interlarded with spiritual references, the addresses of Paul Kruger to the people and the legislature of the South African Republic afford an interesting example. His style, however, was homely and unadorned. As might perhaps have been expected, the three most distinguished public speakers in South Africa have been Irishmen—William Porter, Sir Thomas Upington, and James Weston Leonard—the last born in South Africa. With the exception of Porter, whose collected speeches have been published, they are now mere memories. Parliamentary oratory is not of a high standard, being confined in the main to short speeches without adornment, or degenerating into mere verbosity and discursiveness. The temper of the legislature is not tolerant of pure oratory, as such; though now and then there is debating on a good level of practical ability, which is welcomed as a relief from the turgid mass of flat discourse. Native speakers, in the *pitsos* and other assemblies within the territories, attain a high standard, both of picturesqueness and power, and they have a great effect on their audiences, who are keenly appreciative of rhetorical display.

In all these matters, as in those of deeper and more abiding importance, South Africa has been influenced largely by European standards and models. The people of the Union, no more than others, can escape the infiltration and working of ideas and principles of action derived from external sources. It is necessary for them, as components of a young nationality groping its way towards a more highly developed life, to learn from the example and teaching of others who are more experienced, who have attained to much that is good, and have conquered much of evil. It is in a proper discrimination, in the right selection of good and the rejection of evil, that diffi-

National differences will also play their part. Hope for the future lies in the common aspiration for the building-up of a greater and better South Africa. It will be the task of the statesman, supported by a general spirit of good will, to reconcile all the conflicting elements, and out of them to build up a people that may be worthy to endure.

SUPPLEMENTARY CHAPTER.

THE PASSING OF LOUIS BOTHA.

WHILE THESE PAGES were in the press, the overwhelming news was announced that Louis Botha, the first Prime Minister of the Union of South Africa, had died on the 27th August, 1919, at the age of fifty-seven. The time is not ripe for a complete appreciation of his career, or of the services which he rendered to his native land and to the British Empire, of which he was so distinguished a citizen. It is, however, fitting that some tribute should be paid to his memory, before the impression created by his personality, and the influence which he radiated upon the circle of those who were honoured by his friendship or acquaintance, should be dimmed by the destructive effects of time.

It is some consolation to the people among whom he lived, and for whom his life was spent to his latest breath, that he was enabled to return home after his labours at the Peace Conference, and to die amid familiar scenes, in the presence of those who were near and dear to him.

At the time of his death, Louis Botha was, by common consent, the greatest figure in South Africa, with the widest and deepest influence upon the hearts of men. To the older generation among the Boers, he represented the continuance of their historic traditions, and formed a link between the life of a past generation, trained in republican ideals, and the newer and more vigorous life of the Commonwealth in whose foundation he played a great part, if not the greatest. From his youth he was filled with the spirit of South Africa, combining in himself the dauntless courage of the pioneers of his race who had made it a habitable land, with the foresight and the wise statesmanship of the greatest among those who have been held in honour as the builders of the nations of men. Before the Anglo-Boer War, he stood out as the type of the

young South Africans who realised that with changed conditions there had arisen the necessity for a more liberal spirit and a broader outlook, which must influence the relationships of his people with the world at large, and more especially with the British Empire, with whose citizens they were brought into close and intimate contact. His life was consecrated to the advancement of his people, so that they should come to occupy a worthy place in the confraternity of nations. Though it cannot be said that the seeds of liberal policy which he sowed were without fruit, the march of events during the last decade of the nineteenth century rendered it impossible for him to deflect the current, and it was in fulfilment of his patriotic duty to the country of which he was a citizen that, in 1899, he took up arms in its defence. Before long he was summoned to lead its forces in the field, and the skill and the resolution with which he guided the comparatively small numbers under his command will long remain striking features of the military history of all times.

In 1902, after the Republics had laid down their arms, he braced himself anew to the upbuilding of his people, and to the work of rescuing them from the depths to which, irreclaimably to all appearance, they had sunk. Their national life seemed to have come to an end. His first endeavours were directed to animating them with a new spirit of hope, and to showing to themselves and the world that the elements of national character were still there, and needed only firmness, endurance, and good will in order to build up once more the fabric of a nation. None questioned his right, won on the stricken field, to lead the Dutch people of the former Republics. With his determination to revive the spirit of his own folk, there went a resolution to show to his former enemies that he was not animated by feelings of bitterness or revenge. There was much suspicion of him in those days, which lasted until after responsible government was introduced in the Transvaal in 1907. Consistently moderate in speech, he indicated that his intentions were wholly pacific, and that it was his desire to bring a new spirit of harmony into the relations between the two great sections of the white population in South Africa. He succeeded in convincing many of those who

had opposed the cause for which he fought in earlier days that he desired to co-operate with them in the task of building up a greater South Africa, freed, if possible, from the evils of racial antagonism. His constant watchwords were "conciliation" and "co-operation", and though they brought him the ill-informed sneers of irreconcilable extremists, they impressed the great mass of South Africans with the sincerity of him who uttered them, and contributed much to heal the wounds left by war and racial severance.

In these circumstances, it was only natural that Botha should have been called upon, after having secured a considerable majority at the polls, to form the first Ministry in the Transvaal after the bestowal of responsible government upon that Colony. As his colleagues he chose the most representative and able of those young South Africans who had supported him in his policy of building up a new nation, together with some of those men of British birth who had aided him in the movement to obtain self-government. Not only was his ministerial policy an enlightened one, having in view the improvement of the social condition of the people, coupled with due attention to the needs of the working classes, but during a visit to England to attend the conference of Imperial statesmen which followed shortly after his assumption of office, he showed by his utterances that he had completely identified himself with the welfare of the British Empire, and the furtherance of its great position among the nations.

His next work was to assist in the creation of the Union of South Africa. Although, in a technical sense, he did not originate the National Convention in 1908, he was one of its dominating figures, and did much, by his wise counsel, to fashion the shape which the constitution of the new Commonwealth was to assume. When the Union came into being, on the 31st May, 1910, his selection for the office of its first Prime Minister was regarded, by the mass of his fellow-countrymen, as natural and fitting.

The first years of the Union were stormy ones, and the brunt of them fell upon Louis Botha. First there was the disruption of his own party, caused by the secession of the Nationalists;

then the industrial troubles of 1913 and 1914; and then the Great War and the Rebellion in 1914. Any one of these was a burden almost too great for a man to bear, but he successfully overcome all of them, and emerged with his habitual serene and unruffled spirit. Nevertheless, the weight of them told heavily, and had its influence in the end. Not the least of his sorrows, greater even than the loss of his country's independence in 1902, was the breach with old comrades which came with the Rebellion, entailing as a consequence the fratricidal strife which followed. No sooner was this unhappy rising put down, than Botha addressed himself to the conquest of German South-West Africa. Here he was once more in his national element, displaying that skill in strategy of which he was a master, attended with the success which it deserved. Although the Great War was not yet ended, there followed three years of comparative calm in South Africa, during which Botha applied himself anew to the work of reconciling the conflicting elements in the population. Whether it will bear lasting fruits only time will shew, but for all time the merit of having shown the way must belong to Louis Botha.

Still there was no rest for him. He was summoned to attend the Peace Conference at Paris, and in the midst of his work was one of those attacked in the great outbreak of influenza which was then ravaging the world. He recovered temporarily, and was enabled to return to South Africa. There, at the centres of population, Cape Town, Kimberley, Pretoria, Johannesburg, and Bloemfontein, he was welcomed with demonstrations of enthusiasm which testified, not merely to the general appreciation of the success which had crowned his labours, but to the personal affection in which he was held by his fellow-countrymen of every class and race. But the fatigue of his reception, gratifying as the good wishes of the people were to him, of itself contributed to wear down his formerly robust constitution. Twenty years of constant labour, on the field of battle, on the political platform, in the legislature and the council chamber, had worn him out. He sank beneath the load, and died peacefully at midnight on the 27th August, 1919. Next morning, when men heard the news,

they first hid their faces, and then looked forth upon a changed world. There was a sense of desolation in every heart, and darkness brooded upon the face of South Africa.

Tall, and of commanding presence, with an eagle eye and resolute brow, it was apparent to all who saw him that Botha was a born leader of men. But there was nothing about him that could be called austere or severe. Though he could be stern enough when duty demanded it, his habitual expression was one of good-natured courtesy, and his greatest charm lay in his smile, full of kindness and a spirit of fellowship with all men. In the best sense of that much-abused term, he was a gentleman, in his geniality, his dignified bearing, his unfailing kindness, and his modesty. That modesty of his was a remarkable trait. Even where he was the leader, he tried to efface himself, not out of mock diffidence, but because of his real humility. All had ready approach to him, and to none of the many men he knew did he show any constraint. He was always ready to converse with his friends in an easy way, and to turn aside from the cares of public work to the recounting of experiences of his adventurous youth, or the discussion, in an informal manner, of contemporary events. Vividly does one remember how, sitting in the midst of a small circle before the fire on a winter evening in the Pretoria Club, he drew on the back of his hand the strategic position of Smuts in German East Africa, and the movements of the British army in France; and how, on another occasion, he found fault with the play of a partner at bridge—a game of which he was a master, as in the weightier concerns of life. When on the political platform, supporting a party candidate, he was momentarily puzzled by some question put to him by a "heckler," he turned without hesitation to those behind him, however unimportant they might be, and asked them for information on the subject. Partly out of a desire not to wound the sentiments of his own people, partly because of a strange and wholly groundless want of confidence in his own powers, he consistently refused to make any public speech in any other than the Dutch language. But in a private gathering he was able, on occasion, to make a forcible and fluent speech in English. He did not pretend to the gifts of the polished orator, and at times his delivery

was slow and halting. Often he read his speeches. Their phrasing was simple, but he had a happy faculty of crystallising his thoughts in concise terms. Many of his sayings will endure.

Of his private life, with his devoted wife and children, one cannot speak here. He will abide in the memory of all who knew him, as a man of great heart, free of all petty meanness, ever lifted up by the vision within him of the future of his country and its people. Above all, he was the friend of his fellow-citizens. No sooner did they see him, than their hearts went out to him. No formality of introduction, no gradual growth of acquaintanceship, was needed to give the assurance that here was one who loved his fellow man, who was of the same common mould, ready to share in the same common joys and sorrows—and, with it all, to shoulder gaily the burdens of others, and to make himself responsible, without fear, for the common lot.

Appendix.

Statistical Table.

Area of the Union	473,076 sq. miles.
" " " Cape Province	276,966 "
" " Natal Province	35,291 "
" " Transvaal Province	110,430 "
" " Orange Free State Province	50,389 "

Date of Discovery of the Cape by Bartholomew-Diaz	1487
" " First Dutch Settlement by Van Riebeeck	1652
" " British Occupation	1795
" " Surrender of the Cape to England	1806
" " Great Boer Trek	1836-7
" " Annexation of Natal	1843
" " Foundation of Orange Free State	1854
" " Foundation of South African Republic	1857
" " Responsible Government at the Cape	1872
" " Responsible Government in Natal	1893
" " Annexation of Boer Republics	1900
" " Responsible Government in the Transvaal	1907
" " Responsible Government in the Orange Free State	1907
" " Passing of South Africa Act	1909
" " Inauguration of the Union	1910

Population — year 1672 — Europeans, 600	Cape of Good Hope.
" " 1770 — Europeans, 10000	
" " 1806 — Europeans, 26,000	
" " 1865 — Europeans, 181,592	
" " — Natives, 314,789	
" " 1875 — Europeans, 236,783	
" " — Natives, 484,201	
" " 1891 — Europeans, 376,987	
" " — Natives, 1,150,237	
" " 1904 — Europeans, 579,741	
" " — Natives, 1,830,063	Natal.
" " 1911 — Europeans, 582,377	
" " — Natives, 1,982,588	
" " 1891 — Europeans, 46,788	
" " — Natives, 497,125	
" " 1904 — Europeans, 97,109	
" " — Natives, 1,011,645	
" " 1911 — Europeans, 98,114	
" " — Natives, 1,095,929	

Population — year	1890	— Europeans	119,128	Transvaal.
"	"	1904 — Europeans.	297,277	
"	"	" — Natives,	972,674	
"	"	1911 — Europeans.	420,562	
"	"	" — Natives,	1,265,650	
"	"	1880 — Europeans,	61,022	Orange Free State.
"	"	" — Natives,	72,496	
"	"	1890 — Europeans,	77,716	
"	"	" — Natives,	129,787	
"	"	1904 — Europeans,	142,679	
"	"	" — Natives,	244,636	
"	"	1911 — Europeans,	175,189	
"	"	" — Natives,	352,985	
"	"	1911 — Natives,	4,697,152	The Union.
"	"	" — Europeans,	1,276,242	
"	"	Total,	5,973,394	
"	"	1918 — Europeans,	1,424,690	

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