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Statement submitted by the South African Indian Congress to the Government of India Delegation sitting at the Second Round Table Conference between the Union Government and Government of India.

.....

The Honourable the Leader
and Members of the Delegation

We, the officials of the South African Indian Congress, which is constituted of the Natal Indian Congre The Transvaal Indian Congress, and the Cape Indian Congre and which represents the Indian Community of South Africa, desire to submit to you the following statement of the Indian situation in the Union at date.

In our Statement presented to the Habibullah Delegation at Capetown on the 27th December, 1926, we emphasised the omission of securing the representation of t South African Indian Congress, as the mouth piece of the Indian Community in South Africa, at the Round Table Conf ence between the two Governments. We then, as now, feel that in any discussion for an honourable and lasting sett ment of the Indian problem in the Union, Indians, whose fate and future in the Country, were the subjects of discussion at the Round Table Conference, should, as parties vitally concerned, be given representation.

As we are given to understand the procedure tha was adopted before would be followed, and that discussion would be confined between the Representatives of the two Governments, we, while regretting our exclusion to take part in the proceedings of the Conference on behalf of ou Countrymen here, desire firmly but respectfully to emphas that any conclusions arrived at between the two Governmen in the revision of the Capetown Agreement, will necessari have to be considered by the Congress.

APPENDIX "A."

TRANSVAAL.

LAW No. 3, 1885.

(As amended by Volksraad Resolutions of 1886 and 1890, and by Act 2 of 1907.)

COOLIES, ARABS AND OTHER ASIATICS.

1. This Law shall apply to the persons belonging to any of the native races of Asia, including the so-called Coolies, Arabs, Malays and Mohammedan subjects of the Turkish Dominion.

2. With regard to the persons mentioned in Article 1 the following provisions shall apply:—

(*a*) They shall not be capable of obtaining burgher rights of the South African Republic.

(*b*) They may not be owners of fixed property in the Republic except in such streets, wards and locations as the Government shall appoint for sanitary purposes as their residence.

(*d*) The Government shall have the right to appoint special streets, wards and locations as their residence. This provision shall not apply to servants living with their masters.

APPENDIX "B."

TRANSVAAL TOWNSHIPS AMENDMENT ACT.

[34 of 1908.]

9. (1) From and after the commencement of this Act the stand licence moneys payable on any stand in a Government township before the commencement of the Act shall continue to be payable, but the registered holder shall have the right subject to the provisions of this Act to obtain a freehold title thereto in manner provided by this Act.

(C).—TOWNSHIP OF VREDEDORP.

35. (1) Section 5 of the Vrededorp Stands Act, 1907, shall be and is hereby amended by the substitution of the words "fifteen pounds" for the words "forty pounds" occurring in sub-section (1) thereof.

(2) The Municipal Council of Johannesburg shall lodge with the Registrar of Deeds an approved or confirmed diagram of the Township of Vrededorp (as in the Vrededorp Stands Act, 1907, described), and the title deeds thereto in manner provided by section fifty of this Act.

(3) As soon as the provisions of sub-section (2) have been complied with, the registering officer shall issue a certificate of freehold title to a Vrededorp stand to any registered holder (as defined in the Vrededorp Stands Act, 1907) who produces to him a receipt (in the form shown in the Sixth Schedule hereto) for payment of moneys due to the said Council under the said Act as by this Act amended, and who pays for such certificate the fee of ten shillings mentioned in sub-section (2) of section sixty-four of this Act.

(4) The certificate of freehold title issued by the registering officer under this section shall be subject to the conditions prescribed by section four of the Vrededorp Stands Act, 1907, and such conditions shall be incorporated in the certificate.

(5) Whenever in the Vrededorp Stands Act, 1907, the words "Registrar of Deeds" occur, the term "registering officer" shall for the purposes of this Act be substituted therefor.

62. (2) The Governor may make, alter and rescind regulations for the purpose of fixing the terms and conditions to which the freehold title to stands or lots in each and every township shall be subject. Such regulations shall have the same force and effect as the provisions of this Act, from the date of the publication of the regulations in the *Gazette*.

CROWN GRANT.

The land hereby granted shall be subject to the provisions of the Townships Amendment Act, 1908 (Transvaal), or any amendment thereof, and shall be subject to the following conditions:

(*d*) It or any portion of it shall not be transferred, leased or in any other manner assigned or disposed of to any coloured person, and no coloured person other than the domestic servants of the registered owner or his tenant shall be permitted to reside thereon or in any other manner occupy the same. Any breach of the foregoing condition shall entitle the Government of the Union of South Africa to cancel this Grant and to resume possession of the land hereby granted without payment of any compensation in respect of buildings or structures erected on or improvements effected to the said land.

APPENDIX "C."

TRANSVAAL GOLD LAW.

(ACT 35 of 1908.)

The following are the main provisions of the Transvaal Gold Law referring to or excluding coloured persons and, therefore, to British Indians:—

"Coloured person" shall mean any African or Asiatic native or any other person who is manifestly a coloured person.

14. (1) Subject to the provisions of this Chapter, a prospecting permit shall, upon application, be issued by any Mining Commissioner, or other person, authorised thereto by the Minister, to any white person of the age of 16 years or upwards, either on his own behalf, or on behalf of another such person or persons or of an incorporated company. Every prospecting permit shall be in the form prescribed by regulation.

32. (1) Every white person of the age of sixteen years or upward, may, on payment of licence moneys in accordance with section *forty*, obtain from the Mining Commissioner a licence called a "prospecting licence" entitling the holder, during a period of one month, to peg in the manner prescribed by regulation upon such portion of a public digging as is open to pegging the number of claims authorised by the licence, but not exceeding fifty.

78. Any white person who desires to erect a dwelling or place of business on open proclaimed land may make written application to the Mining Commissioner for one or more stands on such land, submitting with the application a sketch plan, clearly indicating the site required. The Mining Commissioner may in his discretion grant or refuse the application.

79. (1) Any white person who, or an incorporated company which, on any proclaimed land (whether open or held under mining title), desires to carry on works, necessary or incidental to the mining industry.

(*a*) for the generation of light, heat and power; or

(*b*) for chemical works and the treatment of ores and by-products,

may make written application to the Mining Commissioner for a stand called "an industrial stand," submitting therewith a sketch plan clearly indicating the site required.

87. Any white person may make application in writing to the Chairman of the Board for the grant of a certificate (to apply for a licence to carry on the business of a general dealer or a kaffir eating house.—Ed. I.O.).

96. Any person who on any proclaimed land, except as provided in this Chapter, shall carry on any trade or business shall be guilty of an offence and liable.

(*a*) in the case of a first conviction to a fine not exceeding ten pounds; and

(*b*) in the case of a second or subsequent conviction to a fine not exceeding fifty pounds and to a further fine not exceeding ten pounds for every day on which after the first conviction the offence is continued or to imprisonment, without the option of a fine, for a period not exceeding six months.

97. Any person who

(*a*) carries on mining; or

(*b*) is the director or officer of a company which carries on mining; or

(*c*) is an employer of labour on behalf of a person or company which carries on mining; and is at the same time interested, directly or indirectly, in a business.

(i.) the premises of which are on the ground on which such mining is carried on; and

(ii) for which a general dealer's licence or a licence under municipal regulation is required.

shall be guilty of an offence and liable on conviction to the same penalties as are prescribed for a contravention of the last preceding section.

107. (1) The Receiver of Revenue in any district may issue to any white person, who produces and lodges with such office a certificate of fitness under the hand of the resident magistrate or assistant resident magistrate of such district a licence for such district. Such magistrate shall not issue such licence except after enquiry from the Commissioner of Police and the Mining Commissioner.

114. Any coloured person who shall sell, barter, pledge, or otherwise dispose of any unwrought precious metal, or who shall obtain by purchase, barter, or pledge, or shall be in possession of any unwrought precious metal, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years; provided that nothing in this section contained shall apply to a coloured person handling unwrought precious metal in fulfilment of any contract of service with a person excepted under sub-section (1) of section *one hundred and five*.

128. The Governor may establish and maintain in connection with an existing mine or institution, or otherwise, a State Mining School, in which instruction shall be given in occupations incidental to mining. Only white male persons of the age of fourteen years shall be admitted to such instruction, which shall only be given underground to persons of the age of sixteen years or upwards.

130. (1) Save as is provided in section *twenty-four* no right may be acquired under this Act by a coloured person; and the holder of a right acquired under Law No. 15 of 1898 or a prior law under this Act shall not transfer, or sub-let, or permit to be transferred or sub-let, any portion of such right to a coloured person, nor permit any coloured person (other than his bona fide servant) to reside on or occupy ground held under such right.

(2) Any person contravening this section shall be guilty of an offence, and liable on conviction to a fine not exceeding fifty pounds, and in the case of a continuing contravention to a fine not exceeding five pounds for every day during which such contravention is continued.

131. (1) No coloured person shall be permitted to reside on proclaimed land in districts comprised in Class A, except in bazaars, locations, mining compounds, and such other places as the Mining Commissioner may permit.

(2) Any coloured person contraventing this section shall be liable on conviction to imprisonment for a period not exeeding one month, and upon such conviction the Mining Commissioner may cause any structures occupied by or erected for the use of such coloured person to be removed.

(3) Nothing in this section shall apply tocoloured persons in the employ of a white person in so far as they live on the premises where they are so employed, nor to coloured persons who at the commencement of this Act were lawfully in occupation of premises.

(6) Any person who occupies or resides upon proclaimed land without being in possession of a licence or permission under this Act or any other law authorising him to occupy or reside on such land, shall be liable on conviction to a fine not exceeding one hundred pounds or to imprisonment without the option of a fine for a period not exceeding six months.

APPENDIX "D."

ACT No. 37 of 1919

To make further provision with reference to the prohibition of ownership of land by Asiatics and with reference to the restrictions as to the occupation of land and trading by them.

(*Assented to 21st June, 1919.*)

(*Signed by the Governor-General in English.*)

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

1. Those provisions of sections *one hundred and thirty* and *one hundred and thirty-one* of Act No. 35 of 1908 (Transvaal) which relate to the residence on or occupation of ground held under a stand licence on proclaimed land by coloured persons and any provisions similar thereto contained in the conditions of any deed of grant or freehold title in a Government Township (as defined in Act No. 34 of 1908, Transvaal) issued under the last-mentioned Act shall not apply—

(*a*) to any British Indian who on the first day of May, 1919 was, under the authority of a trading licence lawfully issued, carrying on business on proclaimed ground or on any stand or lot in such township, or to the lawful successor in title of any such Indian in respect of such business; or

(*b*) to any person *bona fide* in the employment of such a British Indian or his successor in title,

so long as such British Indian or successor in title continues so to carry on business on the same ground or stand or lot on which or on any other ground or stand or lot in the same township in which it was being carried on on the first day of May, 1919;

Provided that nothing in this section shall be construed as abrogating any exceptions contained in the said sections *one hundred and thirty* and *one hundred and thrty-one* or in the conditions aforesaid.

2. Those provisions of Law 3 of 1885 (Transvaal), and any amendments thereof heretofor enacted which prohibit a person belonging to any of the native races of Asia from being an owner of fixed property in the Transvaal subject to certain exceptions specified in such amendments shall, subject to the same exceptions, be construed also as prohibiting any registration of a mortgage over fixed property in favour of a person belonging to any of the native races of Asia, otherwise than as security for a *bona fide* loan or investment in the ordinary course of business and also prohibiting the ownership of fixed property in the Transvaal by any company or other corporate body in which one or more persons belonging to any of those races have a controlling interest and the registration of such a mortgage in favour of such a company or corporate body otherwise than as security as aforesaid:

The provisions of this section shall apply as from the first day of May, 1919, provided that in respect of any fixed property acquired by any such company or corporate body before the first day of May, 1919, the aforesaid provisions of Law No. 3 of 1885 (Transvaal) shall be construed as if this Act had not been passed. Any such company or other corporate body which may have acquired the ownership of fixed property since the first day of May, 1919, shall dispose thereof within a period of two years from the commencement of this Act, or within such further period as any superior Court having jurisdiction where the property is situate on application may allow, and on the failure of such company or other corporate body so to dispose of such property then and in that case such property shall on the petition of any member of the public be sold by order of such a Court.

3. This Act may be cited for all purposes as the Asiatics (Land and Trading) Amendment Act (Transvaal), 1919.

APPENDIX "E."

ASIATIC QUESTION IN TRANSVAAL PROVINCE.

LAW 3 OF 1885.

12. The first legislative enactment dealing with Asiatics in the Transvaal was passed by the Volksraad in the year 1885. It is known as Law 3 of 1885, and is still in force in that Province. It is based on the general principle, laid down in the Grondwet of the Transvaal from time to time, that no equality between the white and the coloured races shall be tolerated.

13. Law 3 of 1885, as originally framed and passed by the Volksraad, enacted that

"persons belonging to any of the aboriginal races of Asia, including thereunder the so-called Coolies, Arabs, Malays and Mohammedan subjects of the Turkish Empire

"(*a*) shall not acquire the rights of citizenship in the South African Republic;

"(*b*) shall not be owners of landed property in the Republic (this provision has no retroactive effect);

"(*c*) shall, as far as those who settle in the Republic with the object of trading, etc., are concerned, have to be inscribed in a register, to be specially kept for that purpose by the Landdrosts of the respective districts, according to a model to be prescribed by the Government.

Then after further providing in paragraph (*c*) for the payment of a registration fee of £25 for each person, etc., it enacted in paragraph (*d*) that

"The Government shall have the right to assign to them special streets, wards and locations for habitation."

"This provision shall not apply to those who reside with the masters in whose service they are."

14. This law appears to have been passed in consequence of an agitation which was set on foot in the South African Republic during the previous year against "the threatened invasion of Asiatics such as already has commenced at Pretoria." Memorials were presented to the Volksraad strongly urging that the influx of such Asiatics should be restricted by law.

There seems to have been some doubt in the minds of the memorialists whether such a step would not be in conflict with the provisions of Article 14 of the London Convention, which was entered into between the British and Republican Governments during the year 1884, shortly before the memorials were framed; for they freely discussed the question in one of their petitions.

15. The provisions of Article 14 of the London Convention of 1884 are to the following effect:—

"All persons, other than natives, conforming themselves to the laws of the South African Republic

"(*a*) will have full liberty, with their families, to enter, travel or reside in any part of the South African Republic;

"(*b*) will be entitled to hire or possess houses, manufactories, warehouses, shops and premises;

"(*c*) may carry on their commerce either in person, or by any agents whom they may think fit to employ;

"(*d*) will not be subject in respect of their persons or property, or in respect of their commerce or industry, to any taxes, whether general or local, other than those which are or may be imposed upon citizens of the said Republic."

16. In another petition from Pretoria the signatories alleged that "the population of the Arabians and Coolies is much increasing in this town and in this State." They then proceeded to point out the danger to the European community of allowing these Asiatics to settle in the centre of the township owing to their "neglect of sanitary measures and loathsome mode of living," and finally urged that they should be "isolated within their own locations quite separated from the white population."

17. A counter petition was also presented to the Volksraad by certain Indian merchants of a superior class (usually spoken of as "Arabs" at that time) in which they drew attention to the difference between themselves and Coolies, Chinese, etc., contradicted certain assertions made in the petitions presented by the white inhabitants, and prayed that their demands might not be acceded to.

18. Before any legislative action was taken these petitions were forwarded by the Republican Government to the Imperial Government in a letter dated 6th January, 1885, in which Her Majesty's Government were asked for their views upon the question; that is, whether the proposed legislation would be regarded as being a contravention of Article 14 of the London Convention.

Considerable correspondence ensued, from which the Republican Government concluded that the British Government had waived their right to insist upon the strict interpretation of the Convention of London.

Thereupon they proceeded to pass Law 3 of 1885 through the Volksraad in the form above set out. Later on, during the same year, protests were sent to the High Commissioner on behalf of Arab traders and merchants complaining of the operation of that law.

Further correspondence then took place in the course of which the High Commissioner pointed out that the law as passed was a breach of the understanding upon which Her Majesty's Government waived their right to insist upon the strict interpretation of the terms of the Convention of London, and added that it was expressly understood by the Secretary of State that the proposed legislation was not to apply to Arab traders or merchants, but to Indian or Chinese Coolie immigrants.

19. This version of the understanding was not accepted by the Government of the South African Republic, whose State Secretary wrote to the High Commissioner on the 6th September, 1886, expressing the regret of his Government that the provisions of Law 3 of 1885 were not quite in accordance with the views of Her Majesty's Government, and that there had been an apparent misconception as to the understanding referred to. In this letter the State Secretary observed that there also appeared to be a misconception in respect of the object with which the law was made. He then proceeded to explain and emphasize that it was necessary for sanitary reasons and in the interest of the public health; and concluded by stating that in order to let that object appear more clearly the Republican Government had asked and obtained from the Volksraad authorisation to make certain amendments to Law 3 of 1885, which he notified in detail.

20. Eventually the High Commissioner (Sir Hercules Robinson), in a letter dated the 24th September, 1886, acknowledging receipt of that letter, made the following announcement:—

> "Although the amended law is still a contravention of the 14th Article of the Convention of London, I shall not advise Her Majesty's Government to offer further opposition to it in view of your Honour's opinion that it is necessary for the protection of the public health."

Finally on the 4th November, 1886, the Secretary of State intimated that Her Majesty's Government no longer raised any objections to the legislation in regard to "Asiatic traders," having regard to the amendments which the Volksraad had introduced into the law of 1885.

21. On the 26th January, 1887, the law as amended was promulgated, and now reads as follows:—

Law No. 3 of 1885

(Relating to Coolies, Arabs and other Asiatics).

1. This law shall apply to the persons belonging to one of the native races of Asia, including the so-called Coolies, Arabs, Malays, and Mohammedan subjects of the Turkish Empire.

2. With regard to the persons mentioned in Article One the following provisions shall apply:—

   (*a*) They cannot obtain the burgher right of the South African Republic.

   (*b*) They cannot be owners of fixed property in the Republic, except only in such streets, wards and locations as the Government for purposes of sanitation shall assign to them to live in. This provision has no retrospective force.

   (*c*) (This sub-section as amended by subsequent resolutions of the Volksraad has been repealed by Act 2 of 1907.)

   (*d*) The Government shall have the right for purposes of sanitation, to assign to them certain streets, wards, and locations to live in (ter bewoning). This provision does not apply to those who live with their employers.

22. It was urged by Dr. Krause, K.C., who appeared before the Commission at Johannesburg as Counsel for some of the Indian Associations, that Law 3 of 1885 could not have been intended to apply to the better class of Indian, or so-called Arab, traders, but only to the inferior class of "coolies," whose habits were insanitary and who formed by far the largest portion of the Indian population of the Transvaal at that time. But that contention can scarcely be upheld in view of the fact that, before the law was finally amended by the Volksraad, the High Commissioner made special reference (as will be seen from paragraph 18 above) to the distinction which he understood was to be drawn between "Arab traders or merchants" and Indian or Chinese Coolie immigrants. Moreover, the Secretary of State in assenting to the law as finally amended referred to it as legislation in regard to "Asiatic traders."

It appears that in those days the Indians engaged in trade were comparatively few in number, and were confined mainly to the township of Pretoria.

23. In any event it is clear that the reasons for the enactment of Law 3 of 1885 were sanitary and not economic. While it prohibited the acquisition of fixed property by Asiatics, except in certain localities set apart for their residence, it recognised their right to settle in the Republic for the purposes of trade.

24. It has been deemed advisable for various reasons to discuss somewhat fully the negotiations and correspondence relating to Law 3 of 1885, both before and after its enactment. For it forms the basis of all subsequent legislation affecting Asiatics; while its interpretation or application has been the subject of several decisions, both in the Supreme Court of the Transvaal and of the Appellate Division of the Supreme Court of the Union.

25. There does not appear to have been any anxiety on the part of the Republican Government to enforce the law strictly or immediately. That may have been owing to some difficulty encountered in fixing the necessary locations; or possibly (as has been suggested by some witnesses) to indirect presure from the British Government who, notwithstanding their assent to the passing of the law, did not by any means regard it with favour. In this connection it may be noted that all these negotiations took place not many years after the retrocession of the Transvaal, at a time when the relations between the two Governments were of a friendly character, and there probably was no disposition on the part of the Republican Government to offend the susceptibilities of the British Government unduly.

26. At any rate it appears that Indians were permitted not only to trade but to reside outside locations. They were allowed also to own fixed property outside locations through a nominal European trustee. This practice arose from the case of an Indian firm (Mahomed Ismail & Co.) who, in March, 1888, purchased certain stands at Klerksdorp at a Government sale. When difficulties occurred regarding transfer to an Asiatic, the land was registered in the name of the Mining Commissioner, a Government officer, as trustee for the purchasers. This was done with the consent, and at the instigation, of the Government; and in subsequent cases of a similar nature other Government officers were instructed to adopt the same course.

Thereafter this system of indirect ownership of land by Asiatics became common. The practice was for a European trustee to pass a mortgage bond on the property to the full amount of the purchase price, without interest, in favour of the Indian purchaser, giving him at the same time an unrestricted power of attorney to deal with the property. By this means the provisions of the law were evaded to a very great extent, with the recognition of the Government. One witness, an attorney practising at Johannesburg, stated in evidence that he himself had at one time acted as trustee of such properties for Asiatics of the total value of a million sterling.

27. The same stratagem was resorted to in order to avoid the conditions embodied in the Townships Acts, which prohibited the alienation of stands to coloured persons in the various townships to which the Acts related. It was eventually discovered, however, that this mode of getting over the difficulty was attended with some risk. There was always a chance of the trustee being declared insolvent, in which case the property in question, being registered in his name, could be claimed by his creditors as an asset of his estate. Recourse was therefore had to another expedient after the promulgation of the Transvaal Companies Act of 1909, when Indians began to form themselves into Limited Liability Companies, which enabled them to acquire fixed property. This will be discussed more fully when the question of trading rights has been dealt with.

28. After the promulgation of Law 3 of 1885 in January, 1887, the Transvaal Government appear to have assigned locations to Asiatics in some of the towns of the Republic, and to have held the view that by that law trading, as well as residence, outside such locations was forbidden. They accordingly required certain Indian traders, claiming to be British subjects, to conduct their trade within the locations and refused them licences to do so elsewhere.

In August, 1888, a case was heard in the High Court of the Transvaal in which an Indian firm (Ismail Sulieman & Co.) applied for an order compelling the Landdrost to issue to them a licence for trading purposes in the town of Middelburg on an erf formerly occupied by them. The Landdrost had refused to do so, on the ground "that they wished to carry on business on a spot which was not situated within the location pointed out to the Indians for occupation." The Court refused the application, holding that it would be inconsistent with the spirit of Law 3 of 1885 to draw a distinction between "living" and "trading."

29. In consequence of this decision complaints were made to the British Government on behalf of Indian traders in the Republic, which led to further correspondence between the two Governments on the subject of Law 3 of 1885. The British Government stoutly maintained that it was never intended that Asiatics should be relegated to Locations, except for residential purposes and for sanitary reasons; and that Law 3 of 1885 refers only to such residence, and does not restrict Asiatics from trading anywhere as heretofore; while the Republican Government relied upon the judgment of the Court in the case of Sulieman & Co., and insisted upon their right to confine Asiatics to locations both as to trading and habitation.

The dispute continued in the form of protests and correspondence for several years, during which no very active steps appear to have been taken by the Republican Government to enforce the law against Indians, who continued to carry on business in the townships. But in September, 1893, the Volksraad passed a resolution to the effect that Law No. 3 of 1885 should be strictly applied in such manner that all Asiatics and persons falling under the law should have to confine themselves, in respect both of habitation and trade, to the locations assigned to them, with the exception of those whose leases (entered into before the locations had been assigned) had as yet not expired.

Thereupon more correspondence ensued, but, as no satisfactory settlement could be arrived at, it was eventually agreed to submit the matter to arbitration, the Chief Justice of the Orange Free State Republic (Mr. Melius De Villiers) being appointed Arbitrator.

30. The claims put forward before the Arbitrator on behalf of the British Government were:—

(*a*) That the Indian and other Asiatic traders, being British subjects, be allowed to reside in the towns of the South African Republic in some quarter ("wards and streets") which for sanitary reasons may be assigned to them; and

(*b*) That they be allowed to carry on their trade or business in shops or stores in any part of the town.

On the part of the Government of the South African Republic it was claimed:—

(*a*) That the South African Republic has full liberty to make such regulations in respect of Coolies, Arabs, Malays and Mohammedan subjects of the Turkish Empire, as it may think fit, and

(*b*) That Her Majesty's Government have no ground of objection should the Government of the South African Republic prohibit Coolies, Arabs, Malays and Mohammedan subjects of the Turkish Empire from having business premises upon any places in towns or villages other than those assigned to them by Government.

31. The Arbitrator's award, dated 2nd April, 1895, was as follows:—

(*a*) The claims of Her Majesty's Government and of the Government of the South African Republic respectively are disallowed, save and except to the extent and degree following, that is to say:—

(*b*) The South African Republic is bound and entitled in its treatment of Indian and other Asiatic traders, being British subjects, to give full force and effect to Law 3 of 1885, enacted, and in the year 1886 amended, by the Volksraad of the South African Republic, subject (in case of objections being raised by or on behalf of any such persons to any such treatment as not being in accordance with the provisions of the said law as amended) to sole and exclusive interpretation in the ordinary course by the tribunals of the country.

32. The award was accompanied by exhaustive reasons for the decision arrived at by the Arbitrator, two paragraphs of which may be here quoted. Referring presumably to the case of Sulieman & Co. above-mentioned, he observes:—

> "As regards the question whether the words 'for habitation' and 'for sanitary purposes' have reference only to dwelling places, and not to business premises, I would feel myself bound by any decision the High Court of the South African Republic may have given on the subject, were it necessary for me to give a decision thereon. It is indeed said that no actual decision on that point was given by the High Court. It is not for me to give an interpretation of the decision of the High Court, but if it be so that no such decision has actually been given, the point is one that may at any time arise, and then it will be with the tribunals of the South African Republic to give the necessary decision thereon."

33. The Arbitrator concludes by remarking with reference to the resolution of the Volksraad of the 8th September, 1893, above set out:—

> "In terms of my award Her Majesty's Government may rightly object to that resolution, and to any similar amplification by the Legislature of the South African Republic of Law No. 3 of 1885, as also to the circular of December, 1893, embodying that resolution. That resolution does not merely convey instructions to its own functionaries as to the execution of the above-mentioned law; it virtually also has the effect of establishing a legislative interpretation of that law which may or may not be in accordance with judicial decision, but which at all events the tribunals of the country will, no doubt, consider themselves bound in future to adopt and to recognise as having force of law, so long as it remains in existence."

34. In November, 1896, the Volksraad passed a resolution adopting the report of a Commission which had been appointed in August, 1895 (a few months after the publication of the award of the Arbitrator), to investigate the question of the administration of Law 3 of 1885. In that report the Commission stated that the Government entertained difficulties as to carrying into execution the provisions of the said law until the locations for Asiatics had been duly surveyed and beaconed off in all towns, and as that work, as well as the selection of suitable places, would take some time, the Government found itself compelled to suspend the operation of the law in the meantime.

The Commissioners expressed their agreement with the view of the Government as regards the desirability of applying the law simultaneously in all towns, or in any case in the main centres. They added that locations had now practically been provided for everywhere, where necessary, and were ready for occupation; and concluded by urging that Law 3 of 1885 should be "immediately applied and rigorously maintained."

They recommended, however, that an exception should be made in the cases of Asiatics who had acquired contracts of lease before 1889, who should be permitted to remain on the ground leased until the expiration of their contracts.

35. Notwithstanding this report, and the resolution of the Volksraad adopting it, no immediate steps seem to have been taken by the Government to enforce the law strictly. Indians were permitted not only to trade, but to reside outside locations. But a year or two later instructions appear to have been issued to Government officers not to issue licences to Asiatics to trade in certain towns. For in August, 1898, a test case was heard in the High Court of the Republic, in which an Indian trader named Tayob Hadji Mahomed Khan sued the Government for a declaration of rights. He prayed that certain instructions issued by the Government to the Field Cornet and Civil Commissioner of Pretoria be declared illegal. In accordance with these instructions he had been refused a licence for a shop business in Church Street, Pretoria. The Court, by a majority of two judges to one, decided to follow the previous decision in the case of Sulieman & Co., and accordingly gave judgment in favour of the Government. One of the two judges, who formed the majority, stated, however, in his judgment that in his view the Court would have decided in accordance with sound juridical principles had it acknowledged in the case of Ismail Sulieman & Co., a distinction between " residence " and " carrying on business " in a place. He considered, however, for reasons which he mentioned, that the judgment in that case was justifiable and reasonable, and he felt bound to follow it as being a decision of the full Court; but he added later:—

> " Thus, although I should probably have decided in favour of the Plaintiff, if the case were *res integra*, I am not prepared to do so under the circumstances above detailed."

It may be noted here that in Sulieman's case the matter was decided on motion, and the judgment was not a considered one.

It is not surprising, therefore, that the question was not allowed to rest there, and that, as will be seen later, it was again definitely raised in the Supreme Court after the Anglo-Boer war.

36. In November, 1898, a Government notice was issued directing that " Asiatics who are still dwelling and carrying on business in townships in conflict with the law, shall be notified to proceed to dwell and carry on business in the locations appointed for that purpose on or before the 1st January, 1899." The Landdrost or Mining Commissioner was, however, authorised to extend the time for such removal by three or six months, in his discretion, in cases of Asiatics who had been carrying on " a large business " outside locations, and would, therefore, find it difficult to transfer their business in so short a time. Moreover, such Asiatics as had entered into long leases of their premises years ago, or had obtained transfer of same, were invited to give notice thereof before 1st January, 1899, to the Landdrost or Mining Commissioner, who should report to the Government.

37. Subsequently on the 25th April, 1899, a Proclamation was issued in the name of the President of the South African Republic, placing the streets, wards and locations which had been surveyed and appointed for the use of Asiatics for business as well as residential purposes, " and which do not at present form portion of the adjoining town or stand township," under the local authority or administration of such town or stand township, " whether such be the local Landdrost, Mining Commissioner, Responsible Clerk or any Town Council or Town Administrator."

The Indian Community acting, it is said, on the advice of the British agent at Pretoria, did not comply with these notices, and no effect appears to have been given to them prior to the outbreak of the Anglo-Boer war, a few months later.

38. In 1898 also the Gold Law (No. 15 of 1898), which has since been repealed by Act No. 35 of 1908, was passed. From its provisions the following relevant clauses may be quoted:—

> Section 3 (Definitions). The term " coloured person " shall signify any African, Asiatic, Native or Coloured American person, Coolie or Chinaman.
>
> Section 59. Every white person of full age of the male sex . . . shall have the right to not more than fifty licences to dig or mine for precious metals on a public field. . .
>
> Section 92. Every white person who wishes to erect a shop or house or dwelling on a proclaimed field, but not in stand townships, shall make application to the Mining Commissioner for one or more stand licences. . . . .
>
> Section 133. No coloured person may be a licence holder, or in any way be connected with the working of the diggings, but shall be allowed only as a workman in the service of whites.

The term " stand township," a somewhat peculiar one, is defined as follows:—

> " Stand Township shall be taken to mean every area of land situated on a proclaimed diggings or on land proclaimed for the purpose of stands, which has been either wholly or in part surveyed for stands by a Government Land Surveyor, and has been proclaimed as such or been approved by the Government."

HISTORICAL.

39. The foregoing may be regarded as a summary of the legislation and negotiations relating to Asiatics in the Transvaal up to the commencement of the Boer War.

It would appear that at the time of the retrocession of the country by the British Government and the signing of the Pretoria Convention of 1881 there were no Asiatics in the Transvaal. As evidence of this, the following statement by Mr. E. F. Bourke, an old resident of Pretoria, at a National Convention *re* Asiatics held in that town in November, 1904, may be quoted:—

"When the 1881 Convention was concluded there were no Indians in the Transvaal, and there is little or no doubt that the Asiatic side of the question never presented itself to the authors of that document sitting in Pretoria; and a study of the whole of the provisions of that document clearly shows that the white races and the natives resident in the country alone were contemplated. It was only after the arrival of the first Indian traders, and after the 1884 Convention had been substituted for that of 1881, that restrictive legislation was proposed."

40. There can be no doubt that after 1884 as Indian traders continued to migrate into the Transvaal from Natal from time to time, anti-Asiatic feeling began to be aroused amongst the European inhabitants. This feeling does not appear to have been due to trade jealousy at that time. It more probably had its origin in the innate antipathy of the Dutch people, of which the population of the country was mainly composed, to anything approaching equality between the white and coloured races. The principle that no such equality shall be allowed is reiterated in the various Grondwets of the Republic.

41. Although the entry of Asiatics into the country could not be forbidden (as in the case of the neighbouring Orange Free State Republic) owing to the provisions of Article 14 of the London Convention of 1884, the policy of the Republican Government towards Asiatics was always of a restrictive character.

In pursuance of that policy they made constant and persistent efforts by means of legislative enactments and Volksraad resolutions to mitigate what they regarded as a serious evil.

These efforts were based entirely on sanitary grounds, so far as the establishment of locations was concerned.

Asiatics usually resided on their business premises, and, owing to their insanitary habits, and mode of living, were found to be objectionable to their European neighbours, and a source of danger to the public health.

42. It appears, however, that even after 1888, when the decision in Sulieman's case was given, the provisions of Law 3 of 1885 and the various resolutions of the Volksraad were carried out only partially and in a half-hearted manner. The towns in which locations were actually set apart, and so-called "Asiatic bazaars" established, were few in number; and even in those cases no serious attempts were made to enforce the removal of Asiatics from the townships.

There is possibly some foundation for the statement made by some old Transvaal residents, who appeared before the Commission, that this attitude of reluctance or neglect on the part of the Republican Government to carry out their own laws, was due to constant pressure from the British Government, whose agent at Pretoria was incessantly raising protests on behalf of the British Indians.

But, be that as it may, the fact remains that in 1899, when the war broke out, a large number of Indians were freely carrying on business, as well as living, in several of the towns in the Republic.

43. The Commission found it impossible to ascertain even approximately what the Asiatic population of the Transvaal was at the time of the outbreak of the Anglo-Boer War. It was said by Dr. Krause, in his evidence before the Select Committee of the House of Assembly, to have been about 17,000 in 1899. That was probably an extravagant estimate, but their numbers must have amounted to several thousands. They were mostly Indians, and chiefly Mohammedan traders, who had settled in the larger towns and in the various townships that had sprung up along the Witwatersrand as the goldfields developed. They generally held leases of the premises which they occupied in the townships for business as well as residential purposes; but in many cases they were permitted to acquire those premises by purchase and to own them through nominal European trustees.

POLICY OF CROWN COLONY GOVERNMENT.

44. When the war broke out a great many of these Indian traders left the country for Natal or the Cape Colony, and in some cases, no doubt, for India; but after the declaration of peace they gradually returned and resumed their trading operations.

By the Peace Preservation Ordinance which was passed after the close of the war, and the Ordinance No. 5 of 1903, residence in the Transvaal Colony was confined to those, amongst others, who were actually there, or in the Orange River Colony, when peace was signed; or who had obtained certain permits to enter the Transvaal. But the privilege was extended as a matter of equity to refugees, including Asiatics, who had left the country in consequence of the outbreak of the war.

45. Advantage was taken of this provision by many Indians who had not been previous residents in the Transvaal, and who by fraudulent means obtained admission to the country. This influx of Asiatics gave rise to some agitation on the part of Europeans, as a result of which a Government Notice (No. 356 of 1903), was issued on the 8th April to the following effect:—

> That His Excellency the Lieutenant-Governor, in Executive Council, has decided that, in the disposal of applications made by Asiatics for licences to trade, the provisions of Law 3 of 1885 (as subsequently amended) shall be enforced, with due regard to the vested interests of those Asiatics who were trading outside bazaars at the commencement of the late hostilities, and has resolved accordingly:

1. That the Government take immediate steps to have bazaars in every town set apart, in which alone Asiatics may reside and trade.
2. That no new licence to trade be granted to any Asiatic except to carry on his business in bazaars set apart for the purpose.
3. That Asiatic traders who held licences at the commencement of the late hostilities outside location or bazaars, may have their licences renewed to trade under the same conditions, such licences not to be transferable.

Further that, with regard to the residence of Asiatics which by the law above-mentioned is confined to those streets, wards and locations which may be set apart for the purpose, His Excellency has decided that an exception shall be made in favour of those whose intellectual attainments or social qualities and habits of life appear to entitle them to it.

46. This notice was regarded by the Indian community as an infringement of their trad. rights; and early in 1904 a test action was brought in the Supreme Court, which had been established in the Transvaal since the British occupation, by an Indian trader named Habib Motan against the Government, in which the long standing dispute was finally settled. The decision of the Court was as follows:—

> " Section 2 (*d*) of Law 3 of 1885, as amended by Volksraad resolution of the 12th August, 1886, does not apply to the business places, but only to the residences of Asiatics. The Government therefore has not the power, under either of those measures, to refuse to grant to Asiatics licences to trade in places outside the boundaries of the locations allotted to them for occupation."

By this judgment the two previous decisions given by the High Court of the South African Republic, before referred to, were disapproved and overruled.

The present Chief Justice of the Supreme Court of the Union of South Africa, who was then Chief Justice of the Supreme Court of the Colony of the Transvaal, remarked in the course of his judgment that " it is important to notice that neither the law of 1885 nor the resolution of 1886 contained a single line purporting in express terms to curtail the trading rights of Asiatics. The only provision made was one giving the Government the right, for sanitary purposes, to assign to them certain streets, wards and locations for residence (ter bewoning). I fail to see any ground for holding that those words, whether we take the original Dutch or the English equivalent, in any way prohibit trading outside the residential locations . . . . . It is significant that the reasons for giving the Government the right to assign locations to Asiatics were expressly stated to be sanitary reasons. It was for sanitary purposes that locations were established, and such purposes have a more obvious relation to places of residence than to places of business. The mischief purported to be aimed at was an insanitary mode of life in the midst of a European population, not an inconvenient competition with the European trader."

During the argument in that case reference was made by Counsel on both sides to the blue-books containing the award and the reasons of the Chief Justice of the Orange Free State, and the correspondence which had passed between the British and Republican Governments. As to the latter the Chief Justice observed " one thing is clear from these despatches, " and that is that the interpretation which the Transvaal authorities now seek to place upon the law is one which the Government of the South African Republic always advocated, and which the British Government consistently opposed. Under the circumstances it does strike one as remarkable that, without fresh legislation, the officials of the Crown in the Transvaal should put forward a claim which the Government of the Crown in England has always contended was illegal under the statute, and which in the past it has strenuously resisted."

47. These observations, which were made on the 11th May, 1904, are of peculiar interest, in view of the correspondence that was passing at this very time between the Transvaal authorities and the Imperial Government on the subject of proposed legislation regarding Asiatics.

On the 13th April, 1904, just four weeks before the judgment in Motan's case was delivered, Sir Arthur Lawley, Lieutenant-Governor of the Transvaal, addressed a despatch to Lord Milner, Governor of the Transvaal, for transmission to the Secretary of State for the Colonies, asking for the consent of the Imperial Government to the introduction of such legislation in the Legislative Council of the Transvaal.

This despatch, together with that of Lord Milner of the 18th April, 1904, accompanying it, and the reply of Mr. Alfred Lyttelton, Secretary of State for the Colonies, dated 20th July, 1904, are documents of the first importance in dealing with the Asiatic problem as it existed in the Transvaal shortly after the conclusion of the war. That must be our justification for making copious references to their contents.

48. The despatch of Sir Arthur Lawley is a lucid and exhaustive review of the whole subject; and it discloses a thorough acquaintance with the sentiments of the older inhabitants of the Transvaal. He mentions in the first place two incidents of recent occurrence, which had rendered the Asiatic question intensely acute. One was the outbreak of bubonic plague in the location set apart for Coolies in Johannesburg; the other had reference to a test case which was pending in the Supreme Court to decide whether under Law 3 of 1885 the Government had the power to prohibit trading and residence, except in places pointed out for that purpose. This is, no doubt, an allusion to Motan's case which was then in course of preparation.

49. He then proceeds to give an outline of the legislation, embodying the policy foreshadowed in the Government notice above referred to, which it was proposed to introduce. Its main provisions were to the following effect:

(1) That those Asiatics who satisfy the Colonial Secretary of the Colony that their mode of living is in accordance with European ideas should be allowed to live, with their servants, outside locations, but not to trade outside locations, unless they fall under (2).

(2) That those Asiatics who had established businesses outside locations before the war should not be disturbed.

(3) That with the two exceptions mentioned above all Asiatics should be required to live and trade in locations, and should be prohibited from holding land outside. This provision not to apply to land now set aside and used for religious purposes.

50. In advocating the necessity for legislation in the direction indicated, Sir Arthur Lawley emphasizes the strong public feeling upon the subject, as revealed in the course of debates on Asiatic questions in the Legislative Council, and the constant resolutions adopted by every Chamber of Commerce throughout the Transvaal. "Trade jealousy," he says, "undoubtedly exists, but it is really prompted by the instinct of self preservation in the minds of the European trading community. The problem is far reaching and does not begin and end with a shopkeeper's quarrel." He adds: "I do not seek to justify the prejudices which exist; I merely desire to set them forth. They cannot be ignored. They have got to be reckoned with."

Then, referring to the sentiments of the people, he remarks:

> "Under the old Grondwet the line was distinctly drawn between coloured and white. It is there stated, there shall be no equality between coloured and white; and though in the eye of the law they are equal, there is not in this country one man in a hundred who would agree to recognise the coloured man as capable of admission to the same social standard as the white. I do not urge that these sentiments are reasonable, but they imbue the mind of every South African, and find expression in the universal cry of 'a white man's country.' Any attempt to ignore them would be attended, I feel sure, with most deplorable results."

51. A contrast is drawn in this despatch between Johannesburg, where Indians, though numerous, had not become a very important element in the population, and remote communities like Pietersburg, in which almost the entire retail trade was in the hands of Indians.

The most serious feature about Pietersburg is said to be the increasing predominance of Indians. The total white population of the town was estimated at 1,684; while the registers of the Asiatic Department showed that there were no less than 135 Indians, almost entirely adult males, and practically all engaged in the business of storekeeping.

52. Lord Milner, in his covering letter to the Secretary of State, endorses the statements of Sir Arthur Lawley as to the extent and causes of the strong anti-Asiatic feeling among the European population, and is equally emphatic in urging the necessity for the proposed legislation.

He indicates a desire on his own part that Asiatics of a superior class should if possible be liberally treated, by giving them a special status somewhat approaching that of Europeans. Upon that point he remarks:

> "I think that to attempt to place coloured people on an equality with whites in South Africa is wholly impracticable, and that, moreover, it is in principle wrong. But I also hold that when a coloured man possesses a certain high grade of civilization he ought to obtain what I may call 'white privileges' irrespective of his colour. I have on more than one occasion given expression to these views. They are very unpopular in the Transvaal at the present time, but I do not despair of their ultimately prevailing.
>
> "For the present, however, there is no prospect whatever of their prevailing, certainly as far as Asiatics are concerned. There is, perhaps, more chance in the case of the coloured people of South African birth; and no doubt their claim is a stronger one, inasmuch as they are natives of the country, and have no choice but to live here, while the Asiatics are strangers forcing themselves upon a community reluctant to receive them."

53. Lord Milner expresses the opinion that, in the existing state of public feeling, it would be practically impossible to pass in the Legislative Council any proposal dealing with the position of Asiatics, short of the absolute exclusion of future immigrants and the relegation of the Asiatics already in the country to bazaars selected for them by the Local Authorities.

He then proceeds to say that, in the circumstances, while the Government would be justified in legislating, even contrary to public opinion, to protect the vested rights of Indians already in the country, they would not, in his judgment, be justified in regulating the Asiatic question, in so far as it is *res integra*, in a manner opposed to the views of the vast majority of the European population.

54. The Secretary of State, in replying to these two Despatches on the 20th July, 1904, traces in detail the history of the Asiatic question in the Transvaal from the date of the passing of Law 3 of 1885, including the negotiations between the two Governments and the various decisions of the Courts.

In doing so, he emphasizes that, up to the outbreak of the war, the British Government had steadily maintained, at first as a matter of right, and subsequently to the Award of 1895 by diplomatic persuasion, the interest of the British Indians resident in the Transvaal; and that the treatment of these fellow subjects formed part of the British Case against the late South African Republic.

55. At the time of writing, Mr. Lyttelton had received information of the decision of the Supreme Court in Motan's case. He points out that by that decision every Asiatic now

resident in the Transvaal is as free to carry on trade where he pleases as is a subject of English or Dutch origin; so that legislation of the kind proposed by the Transvaal Government must be in diminution of existing rights. That fact, in his opinion, much changed the aspect in which the matter must be regarded by His Majesty's Government as the trustees of Imperial interests, inluding those of Indian subjects of the Crown.

56. He draws a distinction between British Indians who may in future enter the country and those who were then resident there. With respect to the former class he recognises the strong opposition among the European population to a continued and unrestricted influx of Asiatic traders, and intimates that His Majesty's Government would give their sanction, though with great reluctance, to the immediate introduction into the Transvaal Legislative Council of a measure restricting immigration on the lines of the Cape and Natal Acts.

But as to the latter class he makes the following observations:—

"With respect to British Indians now resident in the Transvaal, who are confirmed by the decision of the Supreme Court in the rights for which His Majesty's Government have so long contended, the case is wholly different Every rational precaution to safeguard the health of the community and of the British Indians themselves must, of course, be taken, and regulations securing this end with respect to their residence, and to the general treatment of their lower classes, carefully prescribed.

"But an apprehended trade competition from the British Indians now in the country whose number is now comparatively small and will under proposed restrictions on emigrants be in a diminishing proportion, cannot be accepted as sufficient reason for the legislation proposed. His Majesty's Government have steadily declined to allow this fear to influence their views in the past. On the contrary, for many years they protested before the Empire and the civilised world against the policy and laws of the late South African Republic in relation to this subject.

"Those laws were, indeed, only partially enforced, yet His Majesty's Government is now asked, not merely to sanction their strict enforcement, but to set aside by legislation a judgment of the Supreme Court which has given to the British Indians rights for which His Majesty's Government have strenuously contended."

57. He intimates, in conclusion, therefore, that:—

"The proposed Ordinance, which will take the place of Law No. 3 of 1885, should therefore not interfere with the right of those now in the country to obtain licences to trade outside locations, but should be limited to creating the necessary machinery by means, I assume, of Municipal Regulations for placing Asiatics in locations in accordance with the law, and should provide, in the case both of present residents and of newcomers, that those required to live in locations or bazaars should be so required for sanitary reasons in each case, whilst those of a superior class should be exempted and allowed to reside anywhere. With regard to the question of the holding of land, British Indians who are entitled to reside outside locations must at least have the right to acquire property in the premises which they occupy for business purposes."

58. As regards the question whether newcomers should be compelled without exception to trade in bazaars or locations, Mr. Lyttelton points out that those who will come in under the proposed Immigration Restriction Ordinance will be few in number, and not Asiatics of a low class; in his opinion, therefore, the Ordinance should not limit their rights in respect of trade; especially in view of the absence of any legislation of the kind in the Cape Colony and Natal.

59. This despatch contains a clear and unequivocal enunciation of the policy which was consistently maintained by the Imperial Government up to that date, and which was, as is shown by subsequent correspondence, approved and followed by successive Secretaries of State. After its receipt no further steps appear to have been taken by the Crown Colony Government in the direction of the proposed legislation, and Law 3 of 1885 was allowed to remain unaltered.

60. Public feeling, however, remained unabated, and in November, 1904, the National Convention before mentioned was held at Pretoria to discuss the "Asiatic invasion." It was convened by Mr. E. F. Bourke and Mr. R. K. Loveday, members of the Legislative Council, and was attended by delegates from over thirty towns and districts of the Colony. They came from all parts of the country and many of them were undoubtedly men of standing and repute in the various communities which they represented. The Chairman was Mr. Loveday, an old and prominent resident in the Transvaal, who delivered an able and moderate address in which he reviewed the history of the whole Asiatic question. He was followed by several speakers who referred in the strongest terms to what they regarded as a serious menace to the country.

Resolutions were passed—

(1) thanking the Government of the Transvaal Colony for the sympathic attitude they had taken up in regard to the question of the Asiatic trader;

(2) affirming the principle that Asiatic Immigration should be prohibited except under restrictive legislation;

(3) urging the removal into bazaars of all Asiatic traders, with compensation for vested interests legally acquired; no further licences to be issued to Asiatics to trade outside bazaars;

(4) affirming the opinion that all Asiatics should be required to reside in bazaars or locations appointed by the Government.

The correspondence above mentioned between the Colonial Government and the Secretary of State, which had taken place a few months earlier, had presumably been published, for it was referred to and discussed at the Convention.

61. In 1906 an attempt was made to stem the tide of Asiatic immigration into the Transvaal by providing for the compulsory registration of all Asiatics and their indentification by means of finger prints. An Ordinance for that purpose was actually passed in that year by the Legislative Council, but it did not receive the assent of the Imperial Government. Its provisions were strongly opposed by the Indian community, and a deputation was sent to England to interview the Secretary of State upon the subject. As a result of their representations, Lord Elgin (then Secretary of State for the Colonies) decided that in view of that opposition and the near approach of the establishment of Responsible Government, the measure should not be proceeded with.

POLICY UNDER RESPONSIBLE GOVERNMENT.

62. In the following year, however, during the first session of Parliament under Responsible Government in the Transvaal, an Act (No. 2 of 1907) was passed which was practically a copy of the Ordinance of 1906.

In the same year another Act was passed (No. 15 of 1907) providing for restrictions on immigration into the Colony; it also provided for an education test and the establishment of an Immigration Department.

Though based on the Cape and Natal Immigration Acts, it was of a more stringent character. Access to the Transvaal, the right to which had been enjoyed by Asiatics unfettered by any condition under the régime of the late Republic, was closely regulated and controlled by that Act.

These two measures met with bitter resentment from the Indian community, and led to what is known as the "passive resistance" movement. As a result of this agitation Act No. 2 of 1907 proved a failure, and in the following year an amending Act (No. 36 of 1908) was passed, which was also unacceptable and failed to arrest the movement.

63. In 1908 two measures which materially affected the trading rights of Asiatics were passed by the Transvaal Legislature, and came into operation on the same date. They were the Townships Amendment Act, No. 34 of 1908, and the Precious and Base Metals Act, No. 35 of 1908, generally known as the Gold Law of 1908. The latter Act and certain provisions of the former Act apply to "proclaimed land," that is, to land proclaimed as a public digging. Section 60 of the Townships Act provides for the conversion of a leasehold in a Government Township on proclaimed land into a freehold, and by Section 62 the Governor is authorised to make regulations fixing the terms and conditions to which such freehold stand or lot shall be subject. One of the conditions promulgated reads as follows:—

"The land hereby granted shall be subject to the provisions of the Townships Amendment Act, 1908 (Transvaal), or any amendment thereof, and shall be subject to the following conditions:—

(*a*) It shall be subject to such town regulations, stipulations, and laws as already exist or may hereafter be in force.

(*b*) It shall be subject to all obligations and regulations which already exist or may hereafter be in force with reference to land granted on similar conditions.

(*c*) All rights to minerals, mineral products, mineral oils, metals and precious stones in or under the land shall be and are hereby reserved to the Crown.

(*d*) The land having fromerly been held as a right acquired under Law No. 15 of 1898 (Transvaal), or a prior law, the owner shall not transfer or sub-let or permit to be transferred or sub-let any portion of the land to any coloured person, nor permit any coloured person other than his *bona fide* servant to reside thereon or occupy the same.

64. Although the Gold Law of 1908 repealed the Republican Gold Law of 1898, some of the provisions of the latter, which restricted the rights of coloured persons, were submitted for interpretation by the Supreme Court of the Transvaal in 1909 in what is known as Khota's case.

Section 92 of that law enacted that

"Every white person who wishes to erect a shop or house or dwelling on a proclaimed field, but not in stand townships, shall make application to the Mining Commissioner for one or more stand licences and produce a diagram clearly indicating the locality. The Mining Commissioner shall decide whether such application shall be granted or not."

Then Section 133 provided that

"No coloured person may be a licence holder, or in any way be connected with the working of the diggings, but shall be allowed only as a workman in the service of whites."

These sections were interpreted by the Supreme Cout as follows:—

(1) The fact that Section 92 of the Gold Law of 1898 prohibited any but white persons from being the holders of stands exercising leasehold rights to such stands. coloured persons from acquiring andgranted under the section does not prevent

(2) Section 133 of the law, prohibiting coloured persons from being licence holders or from being in any way connected with the working of the diggings, refers only to such licences as diggers and claim licences, and does not prohibit such persons from holding general dealers' licences to trade on diggings.

This decision had important results; for the rights of those Asiatics, who had for many years occupied and traded on leased premises situated on proclaimed land, were thereby confirmed.

65. The provisions of the Gold Law of 1908 material to the interests of Asiatics are contained in Sections 130 and 131, which impose the following restrictions on coloured persons:—

Section 130:

(1) No right under the Act may be acquired by a coloured person except as provided in Section 24 for native locations.

(2) The holder of a right shall not transfer or sub-let any portion of such right to a coloured person, nor permit any coloured person (other than his *bona fide* servant) to reside on or occupy ground held under such right.

Section 131:

(1) In the mining districts of Witwatersrand no coloured person shall be permitted to reside on proclaimed land, except in bazaars, locations, mining compounds and such other places as the Mining Commissioner may permit; but

(3) nothing in this Section shall apply to coloured persons in the employ of a white person, in so far as they live on the premises where they are employed, or to coloured persons who at the commencement of this Act were lawfully in occupation of premises."

66. These provisions gave rise to a great deal of controversy, to which our attention was drawn by Sir Benjamin Robertson in his statement before referred to. He pointed out that on the 13th May, 1908, before the Bill was passed, the Under Secretary for the Colonies was asked in the House of Commons whether "the effect of the proposed new law will be to deprive "coloured persons, including British Indians, of the right which they now possess to trade or reside in mining districts, and compel them to remove for both trade and residence into compounds, locations and bazaars."

The matter was referred to the Transvaal Government, and the Attorney-General, Mr. Jacob de Villiers, submitted a report dated the 3rd October, 1908, the Act having been assented to by the Governor of the Transvaal on the 22nd August and promulgated on the 2nd September, 1908. The Attorney-General concludes his Report as follows:—

"Before concluding this report which, owing to the importance and difficulties of the subject, has exceeded the usual length, the position of coloured persons under the Act calls for some explanation, especially as the special disabilities and restrictions put upon these persons by the Act has necessitated its reservation for the special consideration of His Majesty.

"In every previous mineral law of the Transvaal, the right to acquire mining title or privileges incidental thereto has specially been withheld from persons who do not belong entirely to European races, and, certainly, public sentiment in this Colony would not tolerate a departure from the practice of withholding such a right from coloured persons. The Act, therefore, throughout specifically provides for the issue of prospecting permits, prospecting and diggers' licences, stand licences and other privileges to white persons only; but no right or privilege which a coloured person has at the present time is taken away by the new Act. Where, however, the existing law is not particularly clear on any matter regarding the disabilities of coloured persons under it, and the obvious intention was to impose such disabilities, the new Act endeavours to remove all possibility of controversy. The native owner and occupier of land can therefore dispose of his mineral rights, but will not be able to obtain a mining title while, under Section 24, the native chief and tribe occupying a native reserve or location will retain all the rights which he has to-day under Article 49 of Law 15 of 1898. These rights do not consist of a share in the minerals on his land but of compensation for the share he would obtain if he were a white person.

"Section 131, which, before the Bill was introduced into Parliament, formed the subject of questions in the English House of Commons, and of despatches from the Secretary of State to the Governor, has been amended in Committee so as to safeguard any rights which a coloured person may at the present time have of occupying land in mining areas. But, as a matter of sound police and sanitary legislation, the power to regulate the residence of coloured persons in the populous mining areas of the Witwatersrand is most essential. By the legislation passed under the Crown Colony Administration the residence of such persons inside municipalities is confined to the bazaars and locations set apart by the Town Councils; the coloured mine employés have always as a matter of convenience been housed in special quarters provided by their employers. But there are parts of the Witwatersrand which are not within municipalities, and it is important in the interests of public health, morality and good order that unauthorised and unsupervised congregations of coloured persons—many of them idlers and loafers—should not be allowed to exist so as to be a danger and a nuisance to the community."

67. The Colonial Secretary, in a telegram dated 11th December, 1908, noted the assurance that no right or privilege which a coloured person then had was taken away by the new Gold Law. But he was not satisfied that the new law might not "deprive those coloured persons who have not actually acquired vested rights on gold fields of power to acquire *rights which*

were open to them before"—*i.e.*, under the Gold Law of 1898; and he asked for a further explanation.

On receiving a further assurance, in the Governor's telegram dated the 17th December, 1908, that Section 130 of the new law "carries out the spirit of Article 133 of the Gold Law of 1898," the Secretary of State replied on the 28th December, 1908, that His Majesty would not be advised to exercise his power of disallowance. In conveying this intimation, he expressly noted three points:—

(1) That Section 131 (3) safeguarded any rights which coloured persons might at that time have of occupying land in mining areas;

(2) the assurance of the Attorney-General that no right or privilege, which a coloured person had at that time, was taken away;

(3) that by the use of the words "other places" in Section 131 (1), the powers vested in the Mining Commissioner enabled him in the future to exempt coloured persons, including Asiatics of superior class, from being required to live in bazaars, locations or compounds.

68. It is strongly contended, therefore, on behalf of the Government of India, that the Gold Law of 1908 was assented to on the explicit assurance that it did not deprive coloured persons, including Asiatics, of any right which they enjoyed under the Gold Law of 1898. These rights, according to the ruling in Khota's case, included:—

(1) The right to acquire and exercise leasehold rights to stands granted under Section 92 of the law of 1898;

(2) the right to hold general dealers' licences to trade on diggings.

It is further contended that the intention of the Law of 1908, as explained by the Attorney-General in his report dated 3rd October, 1908, was not to restrict Indian trading, but

(1) to continue the existing law which reserved for white persons "the right to acquire mining title or privileges incidental thereto";

(2) as a matter of sound police and sanitary legislation to regulate the residence of coloured persons in the populous mining areas of Witwatersrand, and more especially outside municipalities;

and that the restrictions on the residence of coloured persons purported to be aimed, not at Indian traders, but at "idlers and loafers"; and special powers were reserved to the Mining Commissioner to enable him to permit respectable Indians to reside outside locations.

69. There is undoubtedly great force in the contention of Sir Benjamin Robertson, and the arguments he advances in support of it. It is clear that the vested rights, which coloured persons had actually acquired on proclaimed land before the Gold Law of 1908 was passed, are protected by the last paragraph of Section 131 of that Act. But it is the wider question, whether the same protection is afforded by that section to those who had not actually acquired such rights, but had the power to acquire them, which, unfortunately, caused some misunderstanding.

70. In considering this question it must not be forgotten that the Attorney-General's Report was written six months before the judgment in Khota's case was delivered. At that time the view held by the Government was that coloured persons were prohibited by the old Gold Law of 1898 from acquiring leases of stands on proclaimed land and holding general dealers' licences to trade on diggings. That was the contention set up on their behalf by their Counsel in Khota's case in the following year. In those circumstances the Attorney-General's statement that "no right or privilege which a coloured person has at the present time is taken away by the new Act" becomes intelligible; for Section 130 of the new Act merely laid down in positive terms what, in his view, was already prohibited by implication in the repealed Act of 1898.

His further statement that Section 131 of the Act had been amended in Committee "so as to safeguard any rights which a coloured person may at the present time have of occupying land in mining areas" must clearly refer only to those coloured persons "who at the commencement of the Act were lawfully in occupation of premises"; for they are the only persons that the section does protect.

In the course of his judgment in Khota's case the Chief Justice remarked:—

> "Section 92 of the Gold Law of 1898 certainly forbids the issue of a stand licence to any but white persons; no coloured man, therefore, can hold a stand licence. But it does not say that a white man shall not let his stand to a coloured person; nor does it say that no coloured person shall occupy a stand. That being so, it seems to me that neither of those things are illegal."

Both those things are, however, now specifically made illegal, as to rights acquired in the future, by Sections 130 and 131 of the Act of 1908.

71. In 1911 a European named Tamblin was convicted by the Assistant Resident Magistrate, Krugersdorp, and sentenced to a fine of £2 or ten days' imprisonment under Section 130 of Act No. 35 of 1908 for renewing the lease of a stand to certain Asiatics, which had expired in January, 1909. On appeal the Transvaal Provincial Division of the Supreme Court held that Section 77 of Act No. 35 of 1908, which provides that all the rights and obligations attaching at the commencement of the Act to a stand outside a township and acquired under Law 15 of 1898 or a prior law should remain in force, created an exception to Section 130 of the Act and safeguarded all rights attaching to stands under any previous Gold Law. Hence, as it had been held in Khota's case that coloured persons could acquire and exercise leasehold rights to stands granted under Section 92 of Law 15 of 1898, it followed that no restriction was imposed by Act No. 35 of

1908 on the letting to Asiatics of any stand granted under the Mining Laws prior to 1908 which is situated on proclaimed land outside a township.

72. It appears that in consequence of the great dissatisfaction caused by this legislation amongst the Indian community, and the litigation to which it led, no steps were taken by the Government to enforce its provisions; and the Revenue Officers continued to issue to Indians licences to trade on premises on proclaimed land without discrimination.

But representations and complaints are said to have been made to the Government from time to time by various sections of the European population, particularly by the Municipality of Krugersdorp, where the presence of Asiatic traders was most keenly resented.

PASSIVE RESISTANCE MOVEMENT.

73. Towards the end of 1913 certain disturbances took place in Natal in connection with a strike of Indian labourers in that Province. The causes and circumstances of that agitation were investigated by a Commission, of which Sir William Solomon, K.C.S.I., K.C.M.G., was Chairman.

Various grievances were ventilated before that Commission, but the strike was found to be immediately due to dissatisfaction on the part of the leaders of the Indian community with the provisions of the Immigrants Regulation Act, 1913, which had recently been passed by the Union Parliament. Although the actual strike and the disturbances connected with it were confined to the Indian labourers in the coal areas and the sugar plantations in Natal, the agitation was carried into the Transvaal Province. It appears from the Report of the Commission that on the 1st November, 1913, a large crowd of the strikers, led by Mr. Ghandi and accompanied by their wives and children, numbering in all about 2,200, marched from the coal districts of Natal into the Transvaal, with the deliberate object of contravening the Immigrants Regulation Act, and of courting arrest and imprisonment.

After they had crossed the border, Mr. Ghandi and the other leaders were arrested and imprisoned, the rest being sent back by rail to Natal.

This was a further development of the passive resistance movement which had been initiated some years earlier. It eventually led to certain negotiations and correspondence between Mr. Ghandi and the Union Government, in connection with the status and rights of Asiatics in the Transvaal, which culminated in what is generally known as the Smuts-Ghandi Agreement.

SMUTS—GHANDI AGREEMENT.

74. That Agreement is embodied in two letters which passed between Mr. Gorges, Secretary for the Interior, and Mr. Ghandi on the 30th June, 1914. Mr. Gorges in his letter to Mr. Ghandi deals with a number of grievances and other matters which had been discussed between General Smuts (then Minister of the Interior) and Mr. Ghandi; but these need not be here referred to. It will be sufficient to quote the concluding paragraphs of Mr. Gorges' letter which are as follows:—

> " With regard to the administration of existing laws, the Minister desires me to say that it always has been, and will continue to be, the desire of the Government, to see that they are administered in a just manner with due regards to vested rights.
>
> " In conclusion General Smuts desires me to say that it is, of course, understood and he wishes no doubts on the subject to remain, that the placing of the Indians Relief Bill on the Statute Book of the Union, coupled with the fulfilment of the assurances he is giving in this letter in regard to the other matters referred to herein and touched upon at the recent interviews, will constitute a complete and final settlement of the controversy which has unfortunately existed for so long, and will be unreservedly accepted as such by the Indian community."

The following reply, which it is desirable to set out in full, was sent by Mr. Ghandi on the same day:—

> " Capetown,
> " 30th June, 1914.
>
> " Dear Mr. Gorges,
>
> " I beg to acknowledge receipt of your letter of even date herewith setting forth the substance of the interview that General Smuts was pleased, notwithstanding many other pressing calls upon his time, to grant me on Saturday last. I feel deeply grateful for the patience and courtesy which the Minister showed during the discussion of the several points submitted by me.
>
> " The passing of the Indians Relief Bill and this correspondence finally closes the passive resistance struggle which commenced in the September of 1906 and which to the Indian community cost much physical suffering and pecuniary loss and to the Government much anxious thought and consideration.
>
> " As the Minister is aware, some of my countrymen have wished me to go further. They are dissatisfied that the trade licences laws of the different Provinces, the Transvaal Gold Law, the Transvaal Townships Act, the Transvaal Law 3 of 1885, have not been altered so as to give them full rights of residence, trade and ownership of land. Some of them are dissatisfied that full inter-provincial migration is not permitted, and some are dissatisfied that on the marriage question the Relief Bill goes no further than it does. They have asked me that all the above matters might be included in the passive resistance struggle. I have been unable to comply with their wishes. Whilst, therefore, they have not been included in the programme of passive resistance, it will not be denied that some day or other these matters will require further and sympathetic consideration by the Government. Complete satisfaction cannot be expected until full civic rights have been conceded to the resident Indian population.

"I have told my countrymen that they will have to exercise patience and by all honourable means at their disposal educate public opinion so as to enable the Government of the day to go further than the present correspondence does. I shall hope that when the Europeans of South Africa fully appreciate the fact that now, as the importation of indentured labour from India is prohibited and as the Immigrants Regulation Act of last year has in practice all but stopped further free Indian immigration, and that my countrymen do not aspire to any political ambition, they, the Europeans, will see the justice and indeed the necessity of my countrymen being granted the rights I have just referred to.

"Meanwhile if the generous spirit that the Government have applied to the treatment of the problem during the past few months continues to be applied as promised in your letter in the administration of the existing laws, I am quite certain that the Indian community throughout the Union will be able to enjoy some measure of peace and never be a source of trouble to the Government.

"I am, etc.,
"(Sgd.) M. K. GHANDI."

A week later the following further letter was despatched to Mr. Gorges from Natal by Mr. Ghandi, on the eve of his departure for India:—

"Phoenix, Natal,
"7th July, 1914.

"Dear Mr. Gorges,

I have now got a moment to submit by note on the Gold Law. As you know, after maturer consideration, I refrained from pressing for the insertion of a special clause defining 'vested rights' in connection with the Gold Law and Townships Amendment Act, because I felt that any definition in the correspondence might result in restricting the future action of my countrymen. However, so far as my interpretation of 'vested rights' is concerned, I think that I should reduce it to writing. General Smuts was good enough to say that he would endeavour to protect vested rights as defined by me. The following is the definition I submitted to Sir Benjamin Robertson, who, I understood, submitted it to General Smuts. My letter to Sir Benjamin containing, among other matters, the definition is dated the 4th March, 1914: 'By vested rights I understand the right of an Indian and his successors to live and trade in the township in which he was living and trading, no matter how often he shifts his residence or business from place to place in the same township.' I am fortified in my interpretation by the answer given by Mr. Harcourt in connection with the matter, in the House of Commons, on the 27th June, 1911:—

"'Complaints against that legislation (the Gold Law and Townships Amendment Act) have been made and are now being investigated by the Government of the Union of South Africa, who have lately stated that there is no intention of interfering with any business or right to carry on business acquired and exercised by Indians prior to the date of the legislation.'

"I have also now traced the note by Mr. de Villiers which I alluded to in our conversation. It is contained in a White Paper published in London in March, 1912, and has the following:—

"'No right or privilege which a coloured person has at the present time is taken away by the new Act (Act 35 of 1908).'

And again—

"'Section 131, which before the Bill was introduced into Parliament, formed the subject of questions in the English House of Commons and of despatches from the Secretary of State to the Governor, has been amended in Committee so as to safeguard any rights which a coloured person may at the present time have of occupying land in mining areas.'

"Certainly, prior to the passing of the Gold Law, no restrictions were, to my knowledge, placed upon the movement or the trade of British Indians in the gold areas. There can therefore be no justification for any restriction now, especially in regard to those who are already settled in their respective townships.

"I am, etc.,
"(Sgd.) M. K. GHANDI."

75. The definition of the term "vested rights" as used in this correspondence has been the subject of much dispute. Before the Select Committee of the House of Assembly, Dr. Krause, on behalf of the Indian community, contended that it was not confined to rights actually acquired at that date, but included the inherent right appertaining at that time to all Asiatics, including newcomers, to lease and occupy, as well as to trade upon, stands and premises on proclaimed land; which right they were not precluded from exercising by any law then in existence.

From Mr. Ghandi's own definition, however, as given in his letter of the 7th July, 1914, it would appear that no more was intended than that the vested rights of those Indians who were then living and trading in townships, whether in contravention of the law or not, should be respected.

76. As we have seen, up to 1908 an Asiatic had the right, in accordance with judicial decisions, to hire a stand on proclaimed land from the European licensed holder of it, and to carry on business upon it. There was nothing in the Gold Law of 1908 or any other law to prevent his doing so.

Then by Section 130 of the Gold Law of 1908 Asiatics were prohibited from acquiring a lease in respect of a stand granted after promulgation of that law. Though no specific mention is made of trading rights, the effect of that section and of Section 131 is to preclude Asiatics, amongst other coloured persons, from exercising such rights by reason of their being prohibited from hiring such stands and occupying and residing on them.

The provisions of the Gold Law and Townships Act of 1908 were not strictly enforced, with the result that between 1908 and 1914 a considerable number of new businesses had been established by Indian traders in several places, in spite of the law.

These must have been the vested rights, unlawfully acquired without interference from the Government, which General Smuts and Mr. Ghandi had in mind during the negotiations.

77. About the time of the Agreement of 1914 and thereafter an effective method of evading the rigorous provisions of the two Acts above referred to was brought into operation by Asiatics by their employing the machinery of the Companies Act of 1909 (Transvaal).

No fresh legislation was introduced to meet the new situation, probably on account of the difficulties arising from the European War; or owing to a desire, as has been suggested, to place a liberal interpretation on the promise made by General Smuts to administer existing laws "in a just manner."

Eventually (as will be seen later) by Act 37 of 1919 rights which had been acquired by British Indians before 1st May, 1919, were excluded from the operation of Sections 130 and 131 of the Gold Law of 1908.

78. It appears that the terms of Mr. Ghandi's letter of the 7th July, 1914, in which he gives his definition of the term "vested rights," were not known to the general body of Indians in the country, or to the Government of India, until it was disclosed in 1919 during the proceedings of the Select Committee.

The Government of India relied upon the Report of the Attorney-General of the Transvaal, and the assurances received by the Secretary of State before assenting to the Gold Law of 1908, for their contention that no rights which Asiatics possessed at that time were taken from them by that law. They had always understood, therefore, that by "vested rights" General Smuts meant such rights as Asiatics had enjoyed before and since 1898, and still enjoyed in 1914.

Thus, from their point of view, they regarded Act 37 of 1919 as an interference with such rights; although they admit that as far as General Smuts' promise to Mr. Ghandi is concerned, it has, in view of Mr. Ghandi's own definition, been more than fulfilled by extending the protection to vested rights which had been acquired up to the 1st May, 1919.

FORMATION OF COMPANIES BY ASIATICS.

79. Before dealing with the provisions of Act 37 of 1919 it will be convenient to consider the circumstances which brought about its enactment. After the Smuts-Ghandi Agreement of 1914 the Government were in the main inclined to leave the Indian question in abeyance during the period of the European war, but the Indian traders themselves were by no means inactive. They continued to apply for, and obtained, new licences to trade, and formed private companies, with limited liability, for the purpose of acquiring land and fixed property, which individual Asiatics were debarred by Law 3 of 1885 from owning. Under the Transvaal Companies Act of 1909 only two shareholders are necessary to form a private limited liability company. According to the plan usually adopted an Indian trader, who was in occupation of a stand on which he carried on business, formed a company in which he held all the shares except a small number which were placed in the name of an Indian friend or relative. The stand and premises were then purchased from the European owner and registered in the Deeds Office in the name of the Company. By this means the Indian trader to all intents and purposes became the owner of the land. It was obviously an evasion of the provisions of Law 3 of 1885; but it was declared to be legal by the decision in the case of Reynolds *versus* Oosthuizen, which was heard before Mr. Justice Ward, in September, 1916, in the Witwatersrand Local Division of the Supreme Court at Johannesburg.

Subsequently, in the case of Krugersdorp Municipal Council *versus* Dadoo Limited, and others, which was heard before the Provincial Division of the Supreme Court at Pretoria in 1919, it was held that such a transaction was *in fraudem legis* and, therefore, invalid. This decision was, however, reversed on appeal by the Appellate Division of the Supreme Court in June, 1920. The legal position is now as laid down by Mr. Justice Ward in 1916, that there was nothing in the law to prevent such private companies, consisting entirely of Asiatic shareholders, from owning land in the Transvaal.

That holds good, however, only in regard to such companies as were registered before 1st May, 1919; for by Act 37 of 1919, the provisions of Law 3 of 1885, prohibiting the ownership of land by coloured persons, were made applicable, after that date, to companies in which coloured persons have a controlling interest.

80. It was strongly urged by Mr. Leslie Blackwell, who appeared before the Commission as Counsel for the South Africans' League, that the formation of a number of such companies by Indian traders, almost immediately after the conclusion of the Smuts-Ghandi agreement, was a flagrant violation of the terms of that compact. This was disputed by the representatives of the Indian community, who denied that there was anything in that agreement to debar them from adopting such a course. They pointed out, moreover, that similar companies had been formed before the agreement was made.

81. The following return, published in the report of the Select Commitee of the House of Assembly in 1919, shows the number of private companies registered under the Transvaal Companies Act (No. 31 of 1909) all the shareholders of which are Indians:—

Year.	Number of Companies.	Nominal Capital.
		£ s. d.
1913	3	7,500 0 0
1914	9	13,150 0 0
1915	38	84,274 0 0
1916	103	132,255 0 0
1917	91	118,229 0 0
1918	114	113,319 7 0
1919 (31.3.19)	12	10,600 12 0
Totals	370	£479,327 19 0

82. There is evidence that one Indian company (The Land and Trading Company, Ltd.) obtained transfer of a stand in the Township of Pretoria on the 19th October, 1909, soon after the passing of the Companies Act. But the above return shows that very few were registered before 1915. The marked increase after that year is said to be due to the decision of Mr. Justice Ward in 1916 in the case of Reynolds *vs.* Oosthuizen, by which the legality of the procedure was confirmed.

83. It was further pointed out by Indian witnesses, as well as by the representative of the Government of India, that, when defining "vested rights" in his letter of the 7th July, 1914, Mr. Ghandi was referring to rights in connection with the Gold Law and Townships Amendment Act only. The amendment of these two Acts was not an issue in the passive resistance movement; and they were regarded as falling within the category of existing laws which General Smuts undertook to administer "in a just manner and with due regard to vested rights."

There was, moreover, no reference in that correspondence to the question of the acquisition of land by Asiatics (either individually or by means of companies) except an allusion by Mr. Ghandi to the dissatisfaction amongst some of his countrymen that Law 3 of 1885, amongst others, had not been altered.

84. The concluding paragraph of Mr. Gorges' letter to Mr. Ghandi certainly indicates that General Smuts expected that the agreement arrived at would be regarded as a final settlement of Asiatic grievances in the Transvaal.

On the other hand, it sems equally clear that Mr. Ghandi in his reply reserved the right of his countrymen to raise at some future time the question of the amendment of the various laws which he enumerated, so as to give them full rights of residence, trade and ownership of land. And in a farewell message to his fellow-countrymen, which was circulated in the Press through Reuter's Agency, he assured them that the settlement arrived at does not preclude them from agitating "as has been made clear in my letter to the Secretary for the Interior of the 30th June," for the removal of other disabilities which the community will still suffer from under the Gold Law, Townships Act and Law 3 of 1885 of the Transvaal, and the Trade Licences laws of Natal and the Cape.

85. According to the evidence given by the leaders of the Indian community in the Transvaal, they placed the same interpretation on the Smuts-Ghandi agreement as the Government of India did. For that reason they continued to apply for new trading licences, and to acquire fresh leaseholds on proclaimed land as before. New licences were not refused to them, and they met with no interference from the Government in respect of their leaseholds, or their acquisition of land by means of private companies.

86. In the case of Krugersdorp Municipal Council *versus* Dadoo, Limited, the Appellate Division affirmed the legality of the *ownership* of fixed property by the company. The legality of the *occupation* of the land by Dadoo himself, as representative of the company, was not in question. But in the previous case of Johannesburg Municipal Council *versus* Madrassa Anjuman Islamia, which was an appeal to the same Court from the Transvaal Provincial Division in August, 1919, it was held that a company is incapable of being physically present at any place and could not "occupy" a stand; and that the stand in question, therefore, was occupied by the employees of the company within the meaning of the statutory conditions. Such occupation, the employees being all Asiatics, was accordingly declared illegal. That was a case under Section 4 of the Vrededorp Stands Act (No. 27 of 1907) which contained conditions similar to those of Section 130 of the Gold Law of 1908, prohibiting the owner of the stand from permitting an Asiatic or coloured person to reside on or occupy the stand or any part thereot. The decision is said to be under appeal to the Privy Council.

The question is, however, of little importance in present circumstances; for ownership of fixed property by such companies is now prohibited as from the 1st May, 1919; and in the case of those companies which had acquired property upon proclaimed land before that date, the Indian trader who formed the company had invariably occupied, and conducted his business upon, the stand for some time previously. Presumably, therefore, he would be protected as regards his future occupation of it in his capacity as the representative or employee of the company, by Section *one* of Act 37 of 1919.

PETITION TO PARLIAMENT—SELECT COMMITTEE—ACT 37 OF 1919.

87. Early in 1919, the war having now been concluded, the patience of the Krugersdorp Municipal Council apparently became exhausted. Finding that the Government paid no heed to their repeated requests that the continued encroachment of Asiatic traders in their Township should be arrested, they decided to "step into the breach" themselves. They accordingly applied for, and obtained, an interdict from the Supreme Court at Pretoria in January, 1919, restraining Messrs. T. W. Beckett and Company from permitting the residence of certain Indians on a stand in Krugersdorp, which had been leased by that firm to an Indian tailor, and was at the time occupied by him and several other Indians.

The application, which was based on Section 130 of the Gold Law of 1908, was not opposed by Messrs. Beckett & Co., and no notice of it was given to the Indians, who did not appear at the hearing.

This action on the part of the Krugersdorp Municipality caused great consternation amongst the Indian community on the Rand, and induced them to send a petition for relief to Parliament, which resulted in the appointment of the Select Committee during the Session of 1919.

88. The petition, which was signed by members of the Committee of the Transvaal British Indian Association, and by the Chairman of the Krugersdorp branch of that Association, was referred to the Select Committee by the House of Assembly. It complained, *inter alia*, of certain disabilities which had been imposed on the British Indian community in the Transvaal, in respect of the application of Sections 130 and 131 of the Gold Law of 1908.

At the same time the Committee were instructed to take evidence and report on the alleged evasions by Asiatics of Law 3 of 1885 of the Transvaal, by means of forming themselves into limited liability companies.

The evidence taken by the Select Committee was, together with their Report, placed at our disposal; and most of the witnesses who were examined by the Committee gave supplementary evidence before the Commission.

89. The Select Committee in their Report recommended:—

(*a*) that the vested rights of Indians who were carrying on business in proclaimed mining areas in June, 1914, should be respected.

(*b*) That the vested rights of Indians who since that date obtained trading licences and mining areas in June, 1914, should be respected;

(*c*) that Indians should have the right to transfer and make over their existing businesses to other Indians legally residing in the Transvaal;

(*d*) that steps should immediately be taken to render it impossible for any Indian or Asiatic in future to obtain a trading licence for a new business—in other words, that whilst existing rights should be recognised and protected, and where necessary validated and legalized, no further obtaining of trading licences (save and except as renewals of existing licences), or opening of new businesses by Indians or Asiatics should be allowed.

The Commitee further expressed the opinion that legislation should immediately be introduced for the purpose of amending Law 3 of 1885 in such manner as to apply the prohibition contained in that law, against the owning of fixed property by coloured persons, to companies in which Asiatics have the controlling interest; and that it be rendered impossible for prohibited individuals to acquire landed propery by means of forming and registering a limited liability company.

A draft Bill, embodying those recommendations, was attached to the Report by the Committee. That Bill, with some additions and alterations, was finally passed by the Legislature as Act No. 37 of 1919.

90. The Act contains only two Sections. The first Section reads as follows:—

Those provisions of Sections 130 and 131 of Act No. 35 of 1908 (Transvaal) which relate to the residence on, or occupation of, ground held under a stand licence on proclaimed land by coloured persons and any provisions similar thereto contained in the conditions of any deed of grant or freehold title in a Government Township (as defined in Act 34 of 1908, Transvaal) issued under the last mentioned Act shall not apply:—

(*a*) to any British Indian who on the first day of May, 1919, was, under the authority of a trading licence lawfully issued, carrying on business on proclaimed ground or on any stand or lot in such township, or to the lawful successor in title of any such Indian in respect of such business; or

(*b*) to any person *bona fide* in the employment of such a British Indian or his successor in title,

so long as such British Indian or successor in title continues so to carry on business on the same ground or stand or lot on which or on any other ground or stand or lot in the same township in which it was being carried on on the first day of May, 1919; provided that nothing in this Section shall be construed as abrogating any exceptions contained in the said Sections 130 and 131 or in the conditions aforesaid.

The second Section provides that in future the provisions of Law 3 of 1885 (Transvaal) which prohibits Asiatics from owning fixed property in the Transvaal shall be construed as also prohibiting

(*a*) any registration of a mortgage over fixed property in favour of an Asiatic, otherwise than as security for a *bona fide* loan or investment in the ordinary course of business;

(*b*) the ownership of fixed property by companies in which one or more Asiatics have a controlling interest;

(*c*) the registration of a mortgage over fixed property in favour of such a company, otherwise than as security as aforesaid.

It further enacts that the provisions of this section shall apply as from the 1st May, 1919, provided that, in respect of any fixed property acquired by any such company before that date, the aforesaid provisions of Law 3 of 1885 shall be construed as if this Act had not been passed.

That proviso left open the question, then pending the decision of the Courts, of the legality of the acquisition of fixed property hitherto by companies controlled by Asiatics.

91. This legislation gave as little satisfaction, and caused as much disquietude, amongst the Indian community in the Transvaal, as amongst their European opponents. The latter consider that it is not sufficiently drastic and makes unjustifiable concessions to Asiatics who had systematically evaded and violated the laws of the country in the past; while the former complain that, in response to their appeal to Parliament for relief from their existing disabilities, further restrictions affecting their rights have been imposed upon them.

Early in September, 1919, soon after the promulgation of the Act, a Congress was held in Pretoria "under the auspices of the Anti-Asiatic League, for the purpose of submitting resolutions upon the Asiatic menace and forming an organisation to combat it." According to the report of the proceedings, it was attended by delegates from a large number of towns and districts of the Transvaal, including representatives of 26 Municipalities, 30 Chambers of Commerce, 9 Agricultural Societies, 12 Churches and 40 Unions and other bodies. Resolutions were passed emphasizing the serious menace to the economic and social welfare of the inhabitants of the Transvaal occasioned by the continued encroachment of Asiatics, and urging the stringent application of all legal restrictions against such encroachment in the future.

At this Congress the "South Africans' League," frankly stated to be anti-Asiatic in character, was instituted and arrangements have since been made for the formation of branches of the League in almost every town in the Transvaal.

The Chairman of the League is Mr. L. J. Phillips, an attorney practising at Krugersdorp. That gentleman presided at the Congress and delivered the opening address. He was also the principal witness representing the League before the Commission. Having acted as legal adviser to the Krugersdorp Municipal Council for some years he is thoroughly conversant with the various aspects of the question. But at all the towns in the Transvaal where evidence was taken, witnesses representing branches of the League were examined. In fact, the proceedings of the Commission at times assumed the character of a contest between two opposing parties, with the supporters of the South Africans' League on one side and the leaders of the Indian community on the other. At the same time a great deal of valuable evidence was received from independent witnesses on both sides who tendered their evidence voluntarily and were not connected with any association or interest.

POSITION OF ASIATICS REGARDING OWNERSHIP OF LAND AND TRADING RIGHTS.

92. To define in exact and exhaustive terms the present position of Asiatics regarding ownership of land and trading rights in the Transvaal as laid down by legislation and decisions of the Courts is by no means easy. The following brief summary is, however, submitted for purposes of reference:—

Generally in the Province Outside Public Diggings.

(After the promulgation of Act 37 of 1919.)

(1) They cannot own fixed property anywhere in the Province, either directly or indirectly, *i.e.*, through nominal trustees or limited liability companies, except in such localities as the Government may for sanitary reasons assign to them for purposes of residence.

(2) They can acquire leasehold rights with respect to fixed property.

(3) They can obtain general dealers' licences to trade anywhere.

Inside Public Diggings Proclaimed under the Gold Laws.

(After the promulgation of Acts 34 and 35 of 1908 and Act 37 of 1919.)

(1) They cannot own fixed property, including stands inside and outside townships directly or indirectly, *i.e.*, through nominal trustees or limited liability companies, anywhere within a public digging except in such localities as the Government may for sanitary reasons assign to them for the purposes of residence.

(2) They can continue to acquire leases with respect to stands outside townships which have been granted under the Mining Laws prior to 1908.

(3) They cannot acquire leases in respect to stands outside townships granted after the Gold Law of 1908 came into force.

(4) They cannot acquire leases with respect to stands inside townships whether now held under the Gold Law title or under a title converted into freehold under the Townships Act No. 34 of 1908.

(5) They can obtain trading licences to carry on a trade on any of the stands mentioned in (2) and (6), but not in respect of (3) and (4).

(6) Under the provisions, respectively, of Section 77 and sub-section (3) of Section 131 of the Gold Law of 1908, they are safeguarded in the rights they acquired with respect to stands inside and outside townships prior to the passage of that law.

(7) Asiatics who on the 1st May, 1919, were carrying on a duly licensed business on proclaimed land, or in townships, are exempted from the above disabilities as to trade;

they, and their *bona fide* Asiatic employees, as well as their successors in title, are left undisturbed in their businesses, so long as the latter are confined to the same township in which they were being conducted at that date.

In addition to the foregoing, rights to fixed property throughout the Province which were acquired by Asiatics by means of forming companies before the 1st May, 1919, are protected and not interfered with.

ASIATIC POPULATION.

93. There seems to be a strong and widespread impression throughout the Transvaal, particularly in the country districts, that the number of Indians in the Province has greatly increased during recent years, and fears are entertained that the influx is still continuing.

But a careful consideration of the evidence tends to show that there are no solid grounds for those fears. According to available statistics and other sources of evidence the Asiatic population of the Transvaal has apparently remained more or less stationary since the Census of 1911 was taken. It certainly has not increased to an alarming extent, as is generally supposed. This would be owing partly to the fact that until comparatively recently few Indians had their wives in this country, and partly to the number of departures for India from time to time, which would counterbalance the natural increase of the population.

Further immigration of Asiatics into the Union has now been effectually stopped by the education test and other prohibitive provisions of the Immigrants Regulation Act, No. 22 of 1913, which consolidates all the Immigration Acts of the various Provinces.

96. As, however, there seems to be a great deal of misapprehension as to the actual Asiatic population of the Transvaal, it may be advisable to discuss such figures upon the subject as could be obtained.

The Census figures are:—

	Asiatic Males.	Asiatic Females.
April 17, 1904	9,799	1,522
May 7, 1911	9,018	2,054

In the Transvaal all male Asiatics over the age of sixteen must be registered, and those under that age and over eight years may be so registered. The Transvaal Asiatic Registration Certificate is a valuable document to its holder, for in terms of the law it is accepted as conclusive evidence that the lawful holder thereof is entitled to reside in the Transvaal; and it is certain that the Asiatic traders, at any rate, register practically all their children over the age of eight years in order to safeguard the rights of the latter. In fact, children are brought from India specially for that purpose and returned immediately after registration. Females are not registered.

Under this system the registrations from 1st July, 1907, to 31st December, 1919, were:—

Indians	13,182
Chinese	1,345
Japanese	3
Other Asiatic Races	94
	14,624

The Director of Census maintains a card record of migration of all persons, and the following figures relating to all Transvaal Asiatics show a yearly decrease:—

Year.	Arrivals.	Departures.	Net Decrease.
1918	594	1,019	425
1919	1,065	1,359	294

Owing to many females remaining in India, while the majority of males are in South Africa, the normal birth rate is reduced. The population is further diminished by the drift back to India. It was probably for these reasons that between the Census of 1904 and that of 1911 there was a decrease in the total male population.

From 1st July, 1907, to 7th May, 1911 (the Census date), 10,339 Asiatic males had been registered, but only 9,018 males were found when the 1911 Census was taken, showing a loss of 1,321 or roughly 12½ per cent.; and if the same percentage of loss is taken on the 14,624 registrations to 31st December, 1919, it will be seen that according to this basis of computation there cannot be more than 12,800 male Asiatics (including Chinese) entitled to be in the Transvaal, but many of these would be absent in India at any given time.

The general conclusion of the Immigration Department, with which we concur, is that the 1921 Census will show that there has been no material increase in the number of male Indians in the Transvaal since 1911.

Johannesburg.

100. The Chairman of the South Africans' League stated:—

"You have now to the best of my belief well over 4,000 Asiatic licences of various sorts in Johannesburg, that is from the hawker and pedlar up to your wholesale trader."

It is not clear whether Mr. Phillips referred to the Magisterial District of Johannesburg or confined himself to the Municipality only.

The Magisterial district of Johannesburg extends from the boundary of the Krugersdorp district on the west to the Germiston district on the east, and from the boundary of the Pretoria district on the north to the boundaries of the Heidelberg and Vereeniging districts on the south, and it includes the Municipality of Johannesburg.

The figures supplied by the Receiver of Revenue, Johannesburg, show that in 1919, 7,165 general dealers' licences were issued in that Magisterial area. Of that number, 1,430 represented Asiatic general dealers' licences, 28 hawkers' and 14 pedlars'. The 7,165 include renewals as well as new licences. In 1919 the figures were high, owing to the rush by Asiatics for new licences, in anticipation of possible alteration of the licensing law restricting their trading rights. Many of these new licences were, however, not used.

In addition to the above, the Licences Officer for the Municipality of Johannesburg issued 815 trading licences to Asiatics in 1919, viz.:—

28	Eating houses.
2	Asiatic eating houses.
1	Tea room.
1	Dairy.
49	Laundries.
7	places of public entertainment.
41	cab drivers and cartage contractors.
686	hawkers.
815	

The hawkers are mainly Indians. Approximately, therefore, about 2,000 trading licences of all classes (storekeepers and street traders) were issued in 1919 to Indians and Chinese in the Johannesburg Magisterial Area. It is therefore obvious that the statement above quoted by the Chairman of the League is an exaggeration.

Potchefstroom.

107. The representatives of the Potchefstroom Municipality stated before the Commission that in 1903 there was one Indian licence and 12 European licences, but Mr. G. M. Slade, the delegate from the Potchefstroom Municipality to the National Convention, held in Pretoria in 1904, stated:—

> "In 1894 we had in Potchefstroom 12 Asiatic licensed dealers . . . . and since the cessation of hostilities the number of licences issued to Asiatics in Potchefstroom has risen from 12 to 64 . . . . I find on inspection that we have the 64 licences, but we have in Potchefstroom and surroundings 84 stores. . . . . In addition to that we find we have the hawkers. There were on the 31st March, 1904, no less than 64 licensed dealers and 94 hawkers, in a very little rural district; a little town of such size as the ancient capital of the Transvaal—Potchefstroom. In 1903 the turnover made by Asiatic traders in Potchefstroom amounted to £94,000. During 1904 no less than 13 or 14 European stores closed down, 8 of which were taken by coolies."

On 21st April, 1920, there were, according to a return furnished by the Receiver of Revenue, 157 businesses in Potchefstroom: 107 European, 45 Indian and 5 Chinese (12 of these Indian businesses being conducted in the Asiatic Bazaar).

The Indian businesses were:—

Grocers and general dealers	36
Silk Merchant	1
Laundry	1
Butcher	1
Fruit shops	5
Barber	1
	45

Chinese hold five grocery businesses.

European businesses were:—

Grocers and general dealers	16
Produce merchants	8
Butchers	5
Barbers	3
Fruit shops	1
Bakers	3
Drapers	6
Stationery	5
Miscellaneous	60
	107

Miscellaneous include bootmakers, auctioneers, second-hand dealers, refreshment rooms, garages and businesses not generally undertaken by Asiatics.

If the statement made in 1904 is correct it is clear there has been no material increase of Asiatic licences in Potchefstroom.

GRIEVANCES AGAINST ASIATICS AND VIEWS OF COMMISSION.

114. As regards the influence of Asiatic traders upon the natives, and their familiarity with European women, the evidence was conflicting and inconclusive. General statements or suggestions were made by several witnesses, but when asked for specific instances of undue familiarity which have come under their observation, they could not supply any. A few cases were mentioned, by Ministers of Religion and others, of white women who were found married to,

or cohabiting with, Asiatics. They were women belonging to the very poor, uneducated and backward class of Europeans. But such occurrences are admittedly rare, and would probably be found as frequently amongst the coloured population of the country as amongst Asiatics. The evidence certainly did not disclose any serious grounds for the fear of miscegenation in the future which was expressed by some of the witnesses. Apart from other considerations, differences of religion would go a long way towards averting such a danger.

Several reliable witnesses who have lived for years in districts largely occupied by natives, and frequented by Indian traders, testified that they have never observed any evil influence exercised by those traders either over Europeans or natives.

CLAIMS OF ASIATICS.

115. The first and foremost grievance advanced by Indians in the Transvaal is that, though British-born subjects, they are excluded from civic and other rights and privileges which are freely accorded to aliens, who are permitted to own land, and enjoy full and unfettered rights of trading anywhere in the Province. Many of these aliens, they allege, are men of the lowest type who have emigrated to this country from the slums of Eastern and South-Eastern Europe. They maintain, therefore, that, being British subjects, they are entitled to claim at least the same rights as these aliens, who are regarded by many South Africans as less desirable citizens than Asiatics.

They demand that there should be no differentiation in the law, or its administration, as between them and Europeans; and they particularly resent the continuance of Law 3 of 1885 and the restriction on their trading rights in the future.

116. They are supported by a number of European witnesses in their claim that as traders they have in various ways greatly benefited the European community. Amongst these the following may be cited:—

(1) By penetrating outlying districts where European traders are unwilling to go, and supplying the wants of farmers and their native servants;
(2) by saving Europeans from being impoverished and thus becoming "poor whites" through the methods of business adopted by certain alien traders;
(3) by catering for the poorer class of whites, and selling the necessaries of life in small quantities and at low prices;
(4) by habitually rendering financial and other assistance to these poorer classes when that has been refused by European traders;
(5) by stimulating the trade in fruit and vegetables, the distribution of which is mainly in their hands;
(6) by giving their customers better terms and greater facilities for payment than the alien traders who are their chief rivals;
(7) by keeping down the cost of living through their keen competition.

121. The result of our visits of inspection to some of the locations or so-called bazaars at present set apart for Asiatics in the Transvaal was not such as to inspire confidence in a general policy of segregation. At Germiston Asiatics are prohibited by the terms of the titles to stands from residing or trading in the township. But the Municipality has established an Asiatic bazaar about a mile outside the town, in which there are a considerable number of Indian residents, principally hawkers, and a few shopkeepers. The business carried on is chiefly with the natives employed at the neighbouring mines and those who reside in the adjoining native location.

This bazaar appeared to be in a very neglected and insanitary condition. The Indians residing in it complained that, as regards lighting, sanitary and other arrangements, their wants receive little or no consideration from the Municipality.

These complaints were fully confirmed by our inspection, in which we were accompanied by the Town Clerk and Location Superintendent.

125. It is sometimes not sufficiently recognised that there are social grades amongst Asiatics as amongst Europeans. At Johannesburg Indian merchants appeared before the Commission, who proved by their books and Income Tax receipts that their individual incomes amounted to several thousands of pounds per annum. They conduct both wholesale and retail businesses on an extensive scale, and live in commodious and well-appointed residences in various parts of the town.

From their annual household expenditure, as shown by their books, which were carefully and accurately kept, their standard of living appears to be quite equal to that of the ordinary well-to-do classes amongst Europeans. It seems monstrous, therefore, to suggest that these men, who have by their industry and commercial ability worked themselves up to such a position, should now be forced to remove into locations.

131. The suggestion that holders of new licences should be confined to trade in locations or segregated areas outside the townships is not reasonable and does not commend itself to us. As was said by the Chief Justice in Motan's case, if the commercial dealings of the Indian trader were to be restricted to the location in which he lived, situated outside the town proper, and peopled only by men of his own race, then he might for practical purposes as well not trade at all.

That result is, however, precisely what is aimed at by some of those who are responsible for the suggestion. Several witnesses who advocated compulsory segregation, both as to trade and residence, candidly stated that they supported it only as a means to an end; that end being to drive Asiatics out of the country.

But it is reasonble that trading under new licences should be limited to such streets in the town as may be set apart specially for Asiatics, in the manner above recommended.

Some difficulty will no doubt be experienced in carrying uot these recommendations in certain centres where Indians have acquired substantial properties scattered about the town, and it would not always be as easy matter to find the necessary sites. But in large centres the grievance is not so marked as in the smaller towns, where the proportion of Asiatics to Europeans is greater. In these towns the scheme recommended should lead to a gradual improvement in respect of the more objectionble features appertaining to the presence of Asiatics.

224. It would be vain to expect that the recommendations which we have made will satisfy either the Asiatic community as a whole or their opponents amongst the European population; but it is hoped that they will meet with approval from moderate and reasonable men of both races, who are willing to be guided by a calm consideration of the facts and circumstances connected with this most difficult problem.

Repatriation being out of the question, and further immigration of Asiatics being prohibited, the serious and important problem must be faced, how to deal with those who are domiciled in the country and have the right to remain in it.

Their numbers are limited and cannot increase in any Province of the Union to any material extent, except by the normal excess of births over deaths; for by the Immigrants Regulation Act of 1913 immigration is barred not only from overseas but also from one Province to another.

The Indian community have accepted the restrictions on inter-provincial migration, and do no ask for their removal.

In the Transvaal, the evidence and statistics which have been summarised in this Report should go far to remove the misconception and allay the ill-founded alarm prevailing amongst some sections of the community regarding the "Asiatic menace."

It seems inconceivable that, in the circumstances mentioned, the few thousands of Asiatics in that Province and their descendants could ever succeed in swamping the European population, as has been so frequently and emphatically asserted.

We find ourselves wholly unable to support the policy of repression which was advocated by some of the witnesses. Indiscriminate segregation of Asiatics in locations and similar restrictive measures would result in eventually reducing them to helotry. Such measures, apart from their injustice and inhumanity, would degrade the Asiatic and react upon the European.

APPENDIX "F."

II. Applications by Europeans.

	1927.	1928.	1929.
Albertskroon	—	1	2
Albertsville	1	1	—
Auckland Park	3	3	2
Braamfontein, Old	57	44	44
Braamfontein, New	112	122	108
Bramley	2	2	2
Berea	9	7	4
Bertrams	47	40	49
Bellevue	36	40	42
Bezuidenhout Valley	49	40	41
Brixton	16	17	18
Booysens	29	28	27
Booysens Reserve	13	16	16
Burgersdorp	15	10	10
Cleveland	8	8	5
City and Suburban	154	160	152
Denver	30	25	27
Doornfontein	174	167	180
Doornfontein North	1	3	4
Fairview	57	54	56
Ferreiras	78	82	73
Forest Hill	8	8	8
Forest Town	1	1	1
Fordsburg	182	208	191
Gardens	4	2	3
George Goch (Farm Doornfontein)	4	6	5
Highlands North	2	2	3
Hill Township	1	1	1
Hospital Hill (including Hillbrow)	87	104	88
Houghton Estate	2	1	2
Jeppe	318	322	328
Johannesburg	1,971	2,054	2,068
Judith Paarl	9	10	16
Kensington	20	25	24
Kenilworth	36	34	44
Killarney	1	1	1
La Rochelle	42	37	36
Linden	2	2	2
Lorentzville	7	7	10
Marshalls	474	602	610
Malvern	57	71	77
Mayfair	77	84	109
Crown Mines	9	9	9
Langlaagte Estates	14	14	13
Martindale	4	10	19
Melville	31	26	29
Melrose	1	1	2
Newclare	3	5	3
Newlands	24	21	18
Newtown (including Municipal Market)	320	338	319
Norwood	24	25	27
Oaklands	1	1	1
Orange Grove	27	27	34
Orchards	4	4	3
Ophirton	43	35	31
Paarlshoop	8	9	8
Parkview	17	17	18
Parktown North	12	9	10
Parkwood	2	2	2
Parkhurst	3	5	4
Prospect	39	32	24
Regents Park	16	14	14
Richmond	15	14	11
Rosebank	20	18	27
Rosettenville	19	23	20
Rouxville	2	1	2
Springfield	10	11	15
Sophiatown	3	2	1
Sydenham	1	1	1
Troyeville	37	49	44
Turffontein	86	77	78
Wolhuter	22	21	21
Westdene	5	9	9
Wanderers View	3	2	3
Vrededorp	99	126	123
Yeoville	64	78	71
Totals	5,184	5,488	5,503

APPENDIX "G."

TOWNSHIPS IN THE TRANSVAAL IN WHICH ASIATIC BAZAARS HAVE BEEN ESTABLISHED AND PRESENT POSITION IN REGARD TO THE BAZAARS.

Township.	No of stands in Location.	No. of stands occupied.	Remarks.
Agatha	—	—	Closed in 1907.
Amersfoort	—	—	"
Barberton	156	23	
Belfast	50	Nil	
Benoni	245	161	
Bethal	60	2	
Bloemhof	50	14	
Boksburg	91	78	
Carolina	—	—	Closed in 1918.
Christiana	—	—	Closed in 1927.
Dullstroom	—	—	Closed in 1907.
Ermelo	90	2	
Germiston	180	105	
Greylingstad	—	—	Closed in 1907.
Haenertsburg	—	—	"
Hartingsburg	—	—	"
Heidelberg	—	—	Closed in 1918.
Johannesburg	—	—	Closed in 1904.
Joubertskroon	—	—	Closed in 1907.
Kaapsche Hoop	—	—	"
Klerksdorp	206	Nil	
Krugersdorp...	331	Nil	
Komatipoort	100	Nil	
Licthenburg	231	Nil	
Lydenburg	50	Nil	
Leydsdorp	—	—	Closed in 1907.
Middelburg	50	Nil	
Nylstroom	30	Nil	
Ottoshoop	—	—	Closed in 1907.
Pietersburg	261	Nil	
Potgietersrust	48	24	
Piet Retief	50	Nil	
Potchefstroom	96	26	Bazaar is practically full. Many stands used for coloured people, sports ground, etc., and some stands leased but not built on.
Pretoria	1,594	305	
Roos Senekal	—	—	Closed in 1907.
Rustenburg	—	—	Closed in 1928.
Schweizer Reneke	50	Nil	
Smitsdorp	—	—	Closed in 1907.
Springs	248	70	
Standerton	60	10	
Steynsdorp	—	—	Closed in 1907.
Ventersdorp	16	Nil	
Venterskroon	—	—	Closed in 1907.
Vereeniging	144	27	
Volksrust	156	Nil	
Wakkerstroom	40	Nil	
Warmbaths	—	Nil	
Witbank	40	16	
Wolmaransstad	50	Nil	
Zeerust	42	5	

The Bazaars at Benoni, Germiston, Springs, Warmbaths and Witbank were established under Transvaal Ordinance No. 17 of 1905. The other Bazaars were established by the South African Republic.

APPENDIX "H."

RETURN OF TRADING LICENCES ISSUED TO EUROPEANS AND ASIATICS IN CERTAIN MUNICIPAL AREAS IN 1918, OR EARLIEST YEAR THEREAFTER, AND IN 1929.

Municipality.	Year.	Race.	General Dealers.	Hawkers and Pedlars.	Others.	1929. General Dealers.	1929. Hawkers and Pedlars.	1929. Others.
Bethal	1918	E.	10	—	5	41	1	6
		A.	6	6	—	23	1	—
Ermelo	1919	E.	25	—	48	60	—	66
		A.	10	6	21	11	5	16
Heidelberg	1922	E.	21	8	8	43	2	63
		A.	8	5	—	31	7	17
Klerksdorp	1919	E.	46	7	38	48	6	45
		A.	18	11	12	16	13	9
Potchefstroom ...	1918	E.	173	16	—	106	25	—
		A.	47	5	—	27	4	—
Springs	1919	E.	57	3	4	192	16	19
		A.	3	6	—	21	23	—
Standerton	1926	E.	61	1	—	75	—	—
		A.	38	3	—	36	3	—
Vereeniging ...	1918	E.	13	1	13	90	1	2
		A.	15	8	2	44	6	1

It has not been possible to obtain accurate figures in respect of Johannesburg. Prior to 1926 applications for General Dealers' Licences were not dealt with by Municipalities, and Hawkers' and Pedlars' Licences for municipal areas were not issued by the Revenue Department.

PRESS COMMENTS ON THE TRANSVAAL ASIATIC BILL.

NEEDLESS HASTE.

In a leading article under the above heading the *Cape Times* writes as follows in its issue dated May 19th:—

On Friday last, Dr. Malan introduced in the House of Assembly a Bill "to amend in certain respects the law relating to occupation of certain land in the Transvaal by Asiatics and to provide for certain matters incidental thereto." Superficially the Bill has neither public interest nor national import. Yet the roots of the tangle with which it purports to deal date back to 1885; the branches it proposes to lop off sprouted in 1919; a covey of gardeners, in the form of a Select Committee, has been investigating the amorphous growth since the beginning of last February; a special emissary, Mr. J. D. Tyson, invested with the authority of Acting Agent, was sent by the Government of India to give evidence before that Committee; and the agent himself, Sir Kurma Reddi, though hardly recovered from a grave illness, hastened back to South Africa so as to be in Cape Town when the Committee's report was presented. The Bill was introduced on Friday afternoon. The report of the Select Committee on which it is based became available an hour or two later. That report contains 355 pages and 15 pages of appendices. And the second reading of the Bill has been set down for next Wednesday.

Why this haste? Parliament has already entered the last lap of the session and is straining to get through its allotted task. A week or two ago, when the Prime Minister was asked to indicate what measures should, in his view, be passed before the session ended, no mention was made of this Bill. Now it is plumped on the Order Paper, and the second reading proposed without either Parliament or the public being given time to appreciate its provisions or its implications. And that is not all. The Bill directly affects South Africa's relations with a sister State of the Commonwealth. Those relations, which had been growing more and more unhappy year after year, were stabilised on a satisfactory basis by the Cape Town Agreement of 1927. How does this Bill consort with the letter and spirit of that agreement? That, surely, is a question which should be very minutely investigated. But how can that investigation be undertaken in so short a time? Dr. Malan and the members of the Select Committee may appreciate all the ramifications of the Bill, but few members of the House can be expected to grasp all details of so complicated a measure between Friday and Wednesday. The Bill affects, probably, three-fourths of the Indian traders now established in the "Gold areas" of the Transvaal. These people are given five years in which to wind up their business and move into "defined areas," that is, locations. Admittedly, they have no right to be where they are; but the Union Government has never provided the legal machinery to remove them. On the contrary, their presence has been condoned by the issue of licences to trade. If, in short, they have been guilty of sins of commission, the Government has been guilty of sins of omission. What one party has sown, the other has fertilised. But, in the uprooting which is now proposed, one party alone is to suffer.

On that score alone there is every justification for subjecting the Bill to the most careful scrutiny. Its provisions may not be unjust; but every care should be taken to establish their justice. That care cannot be exercised in the last days of an exhausting session. The obvious course, therefore, is to hold up the Bill till next session and to allow the Government of India, in the spirit of the Cape Town Agreement, adequate time to make known its views. South Africa has nothing to lose by such delay, whereas needless haste may lay it open to the suspicion of discourtesy or even dishonesty. Delay is also counselled by what seem to be curious lapses in the drafting of the Bill. What is the exact meaning, for instance, of sub-section four of section two of Clause 7, or of sub-section one of section three of the same clause? These points might, it is true, be elucidated in committee, but the vital fact remains that, if this Bill is rushed on to the Statute Book without all its implications being appreciated and considered, South Africa may invite the charge of having gone back, between Friday and Wednesday on undertakings solemnly given, after months of negotiation, little more than two years ago. We do not think such a charge would be justified, but why give it even the semblance of justification by such unjustifiable haste?

TRANSVAAL ASIATICS.

The *Star* writes as follows in a leading article, dated May 17th:—

The Select Committee on Asiatics in the Transvaal have now published their report, and with it is published a Bill to give effect to its recommendations. The Committee have made the subject more controversial than ever. They seem to have learned nothing since 1885, and

indeed, they invoke the intentions of an Act of that year to be the guiding light of their deliberations. The new measure, whose second reading is to be taken on Wednesday, is somewhat complicated, and it inserts itself into a somewhat complicated situation. But its central feature is the proposal to segregate Transvaal Asiatics, within five years, both for trading and residential purposes. It is thus a virtual revival of the Class Areas Bill, which South Africa is pledged not to proceed with while the Cape Town Agreement remains in force. It is certainly a further evasion of the spirit of that agreement, if not a formal repudiation of its letter. It will go far to confirm the growing impression in the outside world that in all matters where colour question is involved South Africa is swayed exclusively by considerations of European convenience.

We are not now concerned to criticise the Bill in detail. What is more undesirable even than the Bill itself is the extraordinary method which the Minister threatens to follow in handling it. The Bill was first published yesterday. It is down for second reading on Wednesday next—that is to sav, on Parliament's third working day after publications. The two intervening days give no time for Press criticism or any other expressions of public opinion, and no time for representation from interested parties before the principle of the measure is settled. It "short-heads" the agent of the Government of India, Sir Kurma Reddi, who has only recently returned to South Africa, and who cannot have been fully consulted while the Bill was in preparation. Worst of all, it entirely ignores the Government of India itself. We should have thought it was a matter of ordinary inter-Imperial courtesy for the Union Government to refer a copy of such a Bill to the Indian Government for its observations before the taking of the second reading. In view of the Indian Government's position as a party to the Cape Town Agreement, we should have thought that such reference was a matter no longer of courtesy, but of obligation. However that may be, the Minister of the Interior should be aware that such precipitancy must exhibit the Governmental attitude towards the whole Asiatic question in a deplorable light.

A NEW WAY WITH ASIATICS.

In a leading article in its issue, dated May 21, *The Star* (Johannesburg) writes:—

The object of existing legislation in the Transvaal is twofold; to prevent Asiatic ownership, either direct or indirect, of fixed property, and to close certain areas to Asiatic trading. The Bill, which is to come up for its second reading to-day (unless it is withdrawn), in spite of the drafting committee's claim that it "conforms as much as possible to what might reasonably be taken as the country's accepted policy," goes beyond this in a number of important respects, the chief of which are as follows:—

The Bill

(1) Proposes the segregation of all Asiatics, both for residential and trading purposes, in specified areas within five years, all Asiatic fixed property not transferred to lawful holder to be confiscated by the State.

(2) Removes Asiatics' present rights of leasehold, under which they can lease property anywhere in the province except on proclaimed land and in certain townships having restrictive clauses.

As regards segregation, Law No. 3 of 1885, which was never fully enforced, related, so far as it dealt with residence, only to those Indians whom it was thought desirable to quarantine for reasons of public health, while general segregation by compulsion for trading purposes has never even been attempted. As Sir James Rose-Innes observed from the Bench as long ago as 1904, "the mischief purported to be aimed at was an insanitary mode of life in the midst of a European population, not an inconvenient competition with the European trader." The interference with leasehold rights seems quite new and quite without warrant. These two major blows are followed by a third, which is hardly less damaging. The Bill gives no protection to the successors in title of present owners of business or properties even when legally held or conducted: which means that they will only be realisable at bankrupt prices. Whether the Bill withdraws the protection of that kind which the Act of 1919 gave is obscure: but it may be so.

We have this position, then. The Bill introduces into Transvaal law (already, one would think, illiberal enough) new restrictive principles of the first importance. These principles will involve the economic ruin of the Asiatic trading class by two means. Asiatics will be compelled to dispose of their property to "lawful holders" (*i.e.*, Europeans) at bankrupt prices, and they will be both cut off territorially from the clientele which they have carefully built up and fostered through many years, and also prevented from substituting other customers for those they lose. This may be convenient to a few European traders into whose hands the present Asiatic turnover will gradually pass. But it cannot possibly do any good to anyone else. The termination of Asiatic business will mean unpleasant jolts for their suppliers, bankers, landlords, retail merchants, wholesale merchants, to say nothing of the large section of poorer European consumers for whom the Asiatic tradesman specially caters. Thus, to the detached observer, the Select Committee appear to be making a mountain of a molehill. Especially is this so when it is remembered how inflated are the accounts which European commercial representatives are wont to give of Asiatic "encroachment." As a fact, figures put up by

the Revenue Department show (1) that although the population of the Johannesburg magisterial area is increasing, the number of general dealers' licences issued in respect of it is dwindling; and (2) that the proportionate decrease is heavier in the case of Asiatic licences than in that of non-Asiatic licences.

It is thus extremely difficult to see the Bill in any other light but that of a gratuitous persecution of a small and, on the whole, useful section of the community. The popular impression, which a certain type of politician has been at pains to put about, that a huge and swelling volume of illegal trade is being carried on by Asiatics in the Transvaal is almost entirely false. The volume is, as far as the evidence goes, not large and not increasing; and the extent of the illegality is probably not particularly large either. Certainly some part of the intention of previous legislation has miscarried. But not, it appears, for the most part because Asiatics have infringed its provisions, but because they have managed to achieve ownership or occupation of property by methods distinct in substance and in law from what the Act prohibits, or in which the licensing authorities have acquiesced. In cases where a clear infraction can be proved, no one can object to the prescribed penalties being inflicted. Further, if there is anything to be said for the existing law, there is also something to be said for closing up loopholes which allow of its evasion. That is one thing; but it is quite another to make the occasion a pretext for novel and ruthless discriminations against a defenceless and already sufficiently downtrodden class.

The framers of the Bill, moreover, have ignored all inter-Imperial considerations, failing alike to consult the Indian Government over a clear departure from mutual engagements now in force, and to pay the least heed to the heightened embarrassment bound to be caused by their action to the Viceroy already beset with difficulties of a pressing and complex character.

Discussing the Asiatic Bill editorially, the *Diamond Fields Advertiser* states that Dr. Malan's progress had been backward. "Few men, even in politics," says the paper, "have ever so completely turned from the lilies and languors of virtue to the raptures and roses of re-action. It is hardly conceivable that the same politician who, in a moment of vision, helped to fashion the Agreement with Government of India could have become within a year or two the sponsor for the Asiatic Trading Rights Bill, a cynical misnomer for a measure which abrogates rights and contemplates confiscation. Indians in India are not so completely obsessed with their own problems as to be indifferent to this signal display in South Africa of racial ill-will, complete forgetfulness of Imperial obligations, and readiness to treat its own covenants as scraps of paper. Dr. Malan may steam-roller his Bill through Parliament, but in his heart of hearts he must know that what is morally wrong cannot be politically right.

Commenting on the Bill, *The Natal Witness* writes in its leading columns as follows:—

ASIATIC LEGISLATION.

Although Dr. Malan has postponed the Transvaal Asiatic Tenure (Amendment) Bill until next session, so drastic are its provisions that vigorous protests are again being made against it. The latest was at a meeting convened by the Colonial-born Indian Association in Johannesburg on Monday morning, when the following resolution was passed:—"That the Asiatic Bill will mean total ruination and ultimate elimination of the Indians resident in the Transvaal is clear, and this meeting feels deeply that legislation of this kind is contrary to the spirit of the round-table conference, and a direct violation of the Indo-Union Agreement, in that the principle of segregation is reintroduced in another form, namely, defined area." The fear which is evinced in this resolution is not unjustified as Dr. Malan, when he informed the House of Assembly that he intended postponing the Bill, made it clear that it would be reintroduced in an unmodified form so that any amendments proposed would have to be moved in the ordinary way in committee of the whole House. Existing legislation in the Transvaal is directed at preventing Asiatics from owning fixed property and from trading in certain defined areas. Dr. Malan's Bill goes further than this in certain respects. It proposes, for example, the segregation of Asiatics in specified areas within five years, all Asiatic fixed property not transferred to a lawful holder to be confiscated by the State. The Bill also proposes to remove the present leasehold rights of Asiatics under which they can lease property anywhere in the Transvaal, except on proclaimed land and in certain townships having restricted clauses. Further, the Bill gives no protection to the successors in title of present owners of businesses or properties, even when legally held or conducted, which means, as has been pointed out, that they will only be realisable at bankrupt prices. This fact and the segregation principle will hit with considerable force the Indian traders in the Transvaal. Not only will they be compelled to part with their property at low prices, but they will also be segregated from those people on whose custom they have built up their businesses, and upon whom they rely for a living. This must inevitably mean the ruination of the Indian trader. That some legislation is essential is admitted. The state of affairs at present is hopelessly involved. It needs to be straightened out and the legal position of the traders definitely fixed. But it must be done in the spirit in which the Cape Town Agreement was signed. On previous occasions when amending measures have been found necessary, the Government have taken fully into

consideration the safeguarding of vested interests. And those interests have been protected. The same principle should be followed by Dr. Malan. The Minister, however, did wisely in holding the Bill over till next session. It is an important and complex measure, and the recess will give Members of Parliament an opportunity to study it, and the effect it will have when law.

INDIAN OPINION COMMENTS AS FOLLOWS IN ITS ISSUE OF JUNE 6TH, 1930.

THE CALL TO ACTION.

There will be a sigh of relief at the news that the Congress delegates, backed, of course, by the influence and co-operation of Sir Kurma Reddi, have succeeded in gaining some respite, at least, from the enactment of the Transvaal Asiatic Tenure (Amendment) Bill. Experience has shown, however, that these delays are not wholly advantageous. Our people have an unhappy tendency towards allowing themselves to be lulled into a false sense of security; towards construing a temporary cessation of hostilities as a permanent peace. Excusable it may have been, but the past has undoubtedly proved it to have been unwarranted and unwise. In the present instance, there is no excuse. Dr. Malan has pledged himself to Parliament that the Bill is to be re-introduced as it stands, early next session. And Dr. Malan is a man not easily deflected from any course he makes up his mind to pursue. He will also be justified in reminding us that we have had fair warning.

Once again, therefore, we find ourselves confronted with the question that was Tolstoy's "What must we do, now?" Seemingly, the time for talking is past. We have urged, we have pleaded. We have employed reason; we have appealed to the Government's highest instincts and on the loftiest grounds. We have urged consideration of our claims in the light of equity, justice, fair play. We have gone as powerless children go to their father for help and assistance, confident in the father's righteousness, and relying upon his natural sense of duty. With what result? Our claim to be treated as children of the State is rejected; the relationship repudiated. We are not even step-children, we Asiatics with our brown bodies, albeit 80 per cent. of us are born here. Children, forsooth!

A foreign "coloured people," rather, an unwanted addition to the local black and coloured population, whose presence is resented, and who, if they cannot be "persuaded" to leave, must be kept in their place together with the aboriginal black races, must be made to live down to the Transvaal ideal of "No equality in Church or State between whites and non-whites."

Perhaps, after all it is as well so. The mother-bird turns out the fledgling from the nest only so that it shall be compelled to learn to fly. When the father refuses shelter to his son, the son learns to comport himself as a man. "Our friend, the enemy," is a phrase full of deep significance and expresses a real if somewhat subtle truth.

And so, we are thrown back upon ourselves, driven to look ourselves squarely in the face, confronted by our conscience, forced to determine not merely whether it is worth while to carry on from the point of view of emasculated opportunities to earn money or even a livelihood, but whether we can claim to retain the smallest vestige of self-respect if we continue to submit to insult upon insult directed against our ancient motherland, our pedigree and our character. For, reduced to its elements this is what it comes to. Every fresh enactment of the nature of this Bill is a reiteration of our "undesirability," a sort of rebranding of the community as "pariahs," a fresh affront to India as a nation, and to every South African of Indian decent. Nay, more, it implies that culture, ability, qualifications, are all of no account when opposed to considerations of colour and race. Robbed of the rights we are entitled to share as civilised members of the community—sacrificed to make a European (voters') holiday—confronted with the almost certain prospect of segregation, humiliated and degraded as no self-respecting people can suffer and live. "What must we do now? Tyrants forget that there are none so desperate as the victims they have despoiled to the point of having nothing more to lose. It is, perhaps, only too true that in the immediate past material riches, and concern for the loaves and fishes have occupied us more exclusively than was good for our moral health, but now that we have been forced back to normal and are able calmly to take stock of our position, to see that there is no relenting on the part of the Union Government, no hope of intercession by the Imperial Government and, making all allowances for Sir Kurma's goodwill and tireless efforts to help us, but scant power to do so in face of the forces arrayed against him, we have at long last to act, to assert our manhood, to demonstrate that we are not wholly dead to the calls of honour, dignity, self-respect; that we have not sunk so low that Indians may be spat upon again and yet again with impunity and without asserting themselves in protest. We have our weapon always at hand. It is a weapon we have used before, one that never rusts, never grows obsolete; the weapon of self-suffering, of civil disobedience. All the portents seem to point to its once more being called into action.