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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.

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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 Congress,
The Transvaal Indian Congress, and the Cape Indian Congress,
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 em-
phasised the omission of securing the representation of the
South African Indian Congress, as the mouth piece of the
Indian Community in South Africa, at the Round Table Con-
ference between the two Governments. We then, as now, feel
that in any discussion for an honourable and lasting settle-
ment of the Indian problem in the Union, Indians, whose
fate and future in the Country, were the subjects of dis-
cussion at the Round Table Conference, should, as parties
vitally concerned, be given representation.

As we are given to understand the procedure that
was adopted before would be followed, and that discussions
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 our
Countrymen here, desire firmly but respectfully to emphasise
that any conclusions arrived at between the two Government
in the revision of the Capetown Agreement, will necessarily
have to be considered by the Congress.

We gladly avail ourselves of this opportunity of submitting to the Government of India Delegation all the information we have, and at the same time bringing to the notice of the Delegation the several grievances and disabilities under which Indians labour in the Union. We take the firm view that anything short of the removal of these grievances and disabilities, the Indian Community will not feel itself happy and contented until it is freed from all differential and restrictive legislation. Their grievances are so grave, and their disabilities so burdensome, that they feel that so long as these are not removed, or relief given, their chances of becoming part of the "permanent population" and of exercising their energies to the full extent of their capacity and opportunities are, indeed, remote.

It is not our intention, nor will it serve any useful purpose to present you with a review of the Indian History in South Africa. Their immigration into this country, their contribution of labour to its success and prosperity, especially to that of Natal, their sufferings, struggles, and trials in order to maintain their self-respect and honour through series after series of differential legislation, and its concomitant results are well known to you and need no repetition.

Soon after the Agreement was published, a Conference was convened by the Congress at Johannesburg in 1927, when the conclusions arrived at were considered and the following resolution was passed :-

"That this seventh session of the South African Indian Congress in Conference assembled, hereby resolves to accept the agreement reached at the Round Table Conference between the Governments of the Union and India, recognising it as an honest attempt to find a solution to the Indian problem. The Conference while prepared to work it as such, feels, however, the necessity to criticise certain features of the Agreement, specially :-

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1. The restriction of the sales of unalienated lands in Municipalities.
2. The serious failure to restore the Municipal Franchise.
3. The failure to remove the disability under the Colour Bar Act.

This Conference further reserves to itself the right to critically examine the Liquor Bill, where it affects the Community and any draft Bill that may be brought forward to implement the Agreement."

Again at the Annual Conference held at Kimberley in January 1928, a re-affirmation of our faith in the Agreement as contained in the aforementioned resolution, was made, and assurance was given that the Congress "will stand by and will generally honour the Agreement arrived at between the Indian and Union Governments in the spirit in which it has been conceived."

We shall now deal as briefly as possible, with the position of our Community, as it stood on the eve of the consummation of the Agreement.

POPULATION:-

The Indian population of the Union according to the Census of 1921 was as follows:-

Natal.....	141,336.
Transvaal.....	13,405.
Cape.....	6,498
<u>Total</u>	<u>161,239</u>

There has been no census taken of the Indian population since 1921, but basing on the estimate figures supplied, we say that since 1911 the percentage of increase in the European population of Natal, where the bulk of the Indian population is resident has always been much higher than that of the Indians.

To justify our statement we quote the following figures:-

<u>NATAL.</u>			
1911.	133,611.	Indians including other Asiatics.	98,761. Europeans.
1921.	141,336.	Indians only.	137,417. Europeans.
1930.	159,164.	Indians including other Asiatics.(estimated)	176,061. Europeans.(estimated)

It would therefore be observed that whilst the percentage of increase in the European population for the 20 years' is 79.5, the increase in the Indian population is only 19.5. The Indian population has remained more or less stationary, and if there is an increase, that may easily be set off against the large number that has been repatriated under the Assisted Emigration Schemes.

We submit that the resident Indian population of South Africa is almost South African in character for eighty five per cent/

are born in this country and form part of the permanent population.

The following major grievances and disabilities existed in the :-

NATAL PROVINCE :-

- (1) The dispossession of Parliamentary Franchise (Vide Natal Act 8 of 1896).
- (2) The dispossession of Municipal Franchise (Vide Boroughs Ordinance 19 of 1924).
- (3) The unfair application of provisions of the Boroughs Ordinance of 1924 so as to exclude Indians from owning or occupying unalienated lands (Ordinance 19 of 1924).
- (4) The harsh, unjust and unfair administration of the Licensing Laws in Natal in relation to Indians.
- (5) The policy pursued by the Provincial Authority to retard the progress of Indian Education.
- (6) The refusal to grant permit to hold fire-arms in respect of genuine cases for self-protection.
- (7) The exclusion of Indians from the benefits of Old Age Pension.
- (8) The discrimination made against Indians as regards payment of witness fees.
- (9) Colour in Post Offices, Law Courts and other public places.

TRANSVAAL PROVINCE :-

- (1) The retention of the old Republican Law No. 3 of 1885,
 - (a) which excluded Indians from ownership of landed property "except only in such streets, ward and locations as the Government for the purpose of sanitation shall assign to them to live in."
- (2) The severe disabilities imposed upon the Indians under Sections 130 & 131 of the Gold Law (Transvaal Act 35 of 1908) and Section 62 of the Township Act as to prohibition of residence and occupation by Indians on proclaimed land.
- (3) The legal disability imposed under Act 37/19 in respect of ownership of land by Limited Liability Companies.
- (4) The limitation of Indian education to the standard of primary education.

CAPE PROVINCE :-

Differential treatment in regard to the issue of Licences to Indians in certain Areas.

The major grievances which affected Indians as a whole in the Union were :-

- (1) The harsh administration of the Immigrants Regulation Act (No.22 of 1913) in regard to:-
 - (a) movement and entry of domiciled Indians,
 - (b) procedure followed in respect of proof of domicile, and in respect of entry of wives and minor children into the Union,
 - (c) procedure followed in regard to the hearing of Appeals before the Immigrants Appeal Board,
 - (d) the exclusion of right of appeal by an aggrieved party to Supreme Courts both on facts and law.

These then were the grievances, both Provincial and Union, at the time of the Agreement.

What is the position after practically five years working of the Agreement?

In the Natal Province, as a result of investigation by a Provincial Committee into the question of Indian education, practically the whole of the Union Government subsidy, which was diverted to other channels of expenditure, was decided to be used in extending facilities for the education of Indian children, and the granting of £50,000 under the Housing Act for Indian housing scheme in and around Durban.

In other respects, with this exception, the position in the Natal Province ^{is} as it was before the Agreement.

In the Transvaal Province not only has the position of Indians been made much worse than it was before by rigorous enforcement of laws which impose special restriction on occupation and residence of Indians and incidentally on trade but also the Transvaal Asiatic Land Tenure Bill which is pending before the Parliament for consideration further threatens the existence of Indians by introducing into the

same/

same principles of segregation and other serious restriction as were contained in the Areas Reservation & Immigration & Registration (Further Provisions) Bill of 1926.

In the Cape Province, the extension of franchise to women of European descent only, not only created a colour bar against Non-European women but has doubled the European votes while leaving the Non-European votes unchanged. This has made each Indian vote only worth half its former value.

Throughout the Union Indians are subjected to the same irksome, irritating and differential treatment in regard to the subject of :-

- (a) Licence,
- (b) Immigration,
- (c) Travelling on the Railways,
- (d) Racial bar in public services such as Post Office and Railways,
Denial of economic opportunities to Indians,
the maintenance of Colour Bar and other disabilities also continue.

Having regard to the importance of the present Round Table Conference, which we understand meets to exchange views on the working of and to revise the Agreement, the South African Indian Congress convened an Emergency Conference at Johannesburg on the 31st December and 1st January 1932, at which in his address to the Conference the President of the Congress reviewed briefly the situation as it obtains at date. A copy of the address is attached to this Statement as Appendix marked "A".

This Emergency Conference after fully discussing the problems that confront the Indian Community unanimously and with one voice, passed the following resolution:-

RESOLUTION :-

That this Emergency Conference of the South African Indian Congress, representing the Indian Community in South Africa authorises the President, Joint Hon. Secretary, Joint Hon. Treasurer of the Congress, Messrs. A. Christopher, S.R. Naidoo, V.S.C. Pather, E.M. Alley, representing/

representing the Natal Indian Congress, Joosub Ebrahim Gardi, S.B. Medh, P.K. Desai, Rev. B.L.E. Sigamoney, representing the Transvaal Indian Congress, and H. Khan Gool, A. Ismail, C. Sundra Pilley and S. Dawood representing the Cape Indian Congress, as Delegates to present a Statement on matters differentially and specially affecting Indians in the Union, to the Government of India Delegation at the Round Table Conference and authorises and empowers them to press for:-

1. The complete withdrawal of the Transvaal Asiatic Land Tenure Amendment Bill.
2. The repeal of all restrictive laws which affect Indians in the Transvaal, especially Law 3 of 1885, Sections 130 and 131 of the Gold Law and Section 62 of the Townships Act (Transvaal).
3. The abandonment of the Assisted Emigration Scheme.
4. The entry into the Union of wives and minor children who are affected by decision in the case of RASHID AMOD.
5. The removal of differential treatment meted out to Condonees in regard to Immigration matters.
6. The granting of permission for the entry of wives and minor children now in India of those who have taken out Protection Certificates.
7. The repeal of provisions of Act 15 of 1931, which impose fresh limitations on the rights of Indians.
8. Increased facilities in the matter of Education, and in providing Industrial and Technical Education.
9. The liberal application of Sanitation and Housing Schemes to meet the wishes of the Indian Community.
10. The immediate fulfilment of the undertaking given in the "Licence Clause" of the Agreement, and the withdrawal of the Licensing Control Ordinance of Transvaal, which awaits the assent of the Governor-General-in-Council.
11. The removal of all restrictions and disabilities imposed on Indians in the Liquor Act.
12. Equal economic opportunities to Indians in the application of Industrial Legislation, and the removal of the Government White Labour Policy.
13. The removal of all other disabilities imposed upon and differential treatment meted out to Indians, as outlined in the Presidential Speech delivered before this Conference, especially the repeal of Indian Immigration Laws.

14. The liberal application of the 'Uplift' Clause as contained in the Agreement to give full expression to the Declaration made thereunder by the Union Government.

We propose to deal with and to furnish information on these points of grievances in their order for the earnest consideration of the Members of the Delegation.

THE TRANSVAAL INDIAN QUESTION:-

The Transvaal Province is in a peculiar position as regards Indians in relation to Cape and Natal Provinces. It therefore seems necessary, even at the risk of burdening the Statement with an outline of historical facts, to trace, as briefly as possible, the advent of Indians into this Province and the successive stages of "warfare" by legislation, and otherwise, which was conducted against their presence. This part of the Statement may be taken as especially dealing with and applicable to the situation in the Transvaal.

HISTORICAL:-

The consensus of opinion would seem to be that Indians first entered the Transvaal a short while prior to the date of the London Convention of 1881; possibly two or three years before.

The London Convention referred to extended to persons (other than natives of the land) who conformed to the laws of the Transvaal State:-

- (a) Full liberty to enter, travel or reside in any part of the Transvaal;
- (b) The right to hire or possess manufactories, warehouses, shops and premises;
- (c) Carry on trade or commerce either in person or by such agents as they may think fit to employ.

(d)

- (d) Exemption from the imposition in respect of their persons or property or their commerce or industry from any taxes whether general or local other than those imposed on Transvaal citizens.

The above liberties under the 1881 Convention justified, it is submitted, the view adopted by Indians in Natal and elsewhere that they had a legal right to enter the Transvaal and no doubt influenced those who did so enter.

REGISTRATION:-

The year 1885 saw the introduction of legislation on the part of the Transvaal Republic to compel Indians desirous of entering and residing to pay a special tax of £25. 0. 0. by virtue of which they obtained the right to enter, and travel and reside in the country.

Representations followed from the Indians of the Transvaal to the British Government, resulting in a reduction in 1886 to a tax of £3. 0. 0. in lieu of the £25. 0. 0.

In 1890 there was a decision in the Supreme Court in regard to the registration of minor Asiatics (those under 15 years of age) to the effect that such were not under the obligation to register provided they were not carrying on trade or business of their own.

It is impossible to avoid passing reference to the advancement by representatives of the British Government of the grievances of the Transvaal Indians as one of the arguments in favour of the War of 1899-1902.

The Peace Treaty of 1902 would appear to have ignored the question of Indian grievances and disabilities and to have witnessed the establishment of a special department in the New Colony for dealing with matters affecting Asiatics. Lord Milner moved by pressure, obtained the consent of the Secretary of State to the Peace Preservation Ordinance, November 1902.

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This Ordinance provided,

1. After the date of this Ordinance no person shall enter this Colony without a permit granted under the terms of this Ordinance, unless he was a resident within the Colony on the 31st May, 1902, or has since that date and before the date of this Ordinance received some formal authority from a duly constituted officer.

In 1903 Asiatics were compelled to obtain a £3.0.0. Registration Certificate and the holders of Certificates issued by the late Transvaal Republic were to exchange the latter for the former. Lord Milner urged the Community to accept the situation if only from the point of view of their self-protection. His Lordship pointed out that it would meet European prejudices and European agitation and suspicion for the Indian Community to take out Registration Certificates which, he added, would be evidence of their "right to be here and their right to come and go."

Unrest, fanned by Anti-Asiatic agitators, who represented that the Indian Community was increasing in dangerous proportions continued up to 1906 when the Legislative Council enacted a further registration measure applicable to all adult Indians.

On representations by the delegation that visited England under the leadership of Mr. Gandhi, the 1906 Ordinance was suspended, but with the granting of Responsible Government, was enacted as Act 2 of 1907.

Then followed the Passive Resistance Campaign, voluntary registration and the Validating Act of 1908.

The Registration Acts just referred to emphasised that every Certificate of Registration was to be accepted as conclusive evidence in all places that the lawful holder thereof was, notwithstanding anything in the Peace Preservation Ordinance of 1903, entitled to enter and reside in the Colony. The Act (36 of 1908) specifically provided that every person who, having been

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the lawful holder of a certificate of Registration under Act 2 of 1907 has been permitted to obtain a certificate in the form in the schedule to this Act in substitution for such amended certificate shall also be deemed to be the lawful holder of a certificate entitling him to enter and reside in the Colony.

This protective proviso in relation to holders of Registration Certificates under Act 36 of 1908 was further emphasised and repeated after the Passive Resistance movement in 1913. Section 4 (a) (b) of the Indians Relief Act provides that nothing in Section 4 (1) (a) is to be construed as abrogating or affecting any right conferred by Act 36 of 1908 of the lawful holder of a Certificate under that Act.

It will be observed that firstly the principle of differential registration has throughout been strongly opposed and resisted; that when eventually under persuasion it was acquiesced in, it took the form of voluntary registration and that such registration was accompanied by the assurance reiterated again and again that the Certificate held by the lawful holder was to be regarded as sacrosanct. Both from the point of view of the practical, as well as the sentimental, the sanctity attaching to the Registration Certificate might well have been considered inviolable. Nevertheless, by the Immigration Act of 1931, passed regardless of the protests of the Agent of the Government of India, and the Congress, any practical value attaching to such certificates has ruthlessly been taken away. Instead of these Certificates constituting, as formerly they did, the lawful holders title "to be here and to come and go," Section 2 (a) of the Law 15 of 1931 reduces them to nothing better than scraps of paper. This development is regarded by the community, not without some justification, as a grave violation of the SMUTS-GANDHI AGREEMENT. In this connection, special attention may be directed to a judgement of the Immigration Appeal Board in the matter of Daya Ratanjee of which a copy will be found in the appendix hereto marked "B".

It will be seen that a son born within the Union of Indian parents of whom the father is a duly registered resident of the Transvaal Province, both parents being resident here at that time may yet be debarred the privileges of a South African born national and deprived of the rights such a one will be entitled to claim if the parents have not been "domiciled" in the Union, that is resident therein for three continuous years at the time of the child's birth. The lawful holding of a certificate of registration has no bearing upon this question of domicile and the old Common Law definition of the terms has been artificially narrowed down by statute to the great disadvantage of the persons affected.

It should also be noted that both parents, not merely one or either of them, must have been "domiciled" for the child to be regarded as South African.

The following case in point may be found instructive as showing the difference in the situation in 1929 and 1931.

One Mr. I.B. Patel of 6, Kort Street, Johannesburg had a son born in South Africa, and the mother was not "domiciled" at the time of birth. Mr. Patel wrote to the Immigration Authorities to extend his Certificate of Identity, to which the Commissioner of Asiatics replied as follows :-

File No. 3/E/29221.

29th November, 1931
P.C.Box 244,
PRETORIA.

Mr. Ishwar Bhai Patel,
6, Kort Street,
JOHANNESBURG.

Sir,

With reference to your application for an extension of the Certificate issued to your son M.I. Patel, to enable him to proceed to India, I have to inform you that according to the existing law there is no need to apply for an extension for the boy who was born in South Africa and can return at any time on being able to prove his identity.

I have the honour to be,

Sir,

Your Obedient Servant,

Signed :- H. N. VENN,

Commissioner for Immigration and Asiatic Affairs.

The Appeal Board decision previously referred to and set out in the appendix must inevitably have very far reaching effects since there is a large number of boys born in the Union presently in India whose return, owing to the restrictions now imposed in the 1931 Act will be made impossible.

EXEMPTED INDIANS:-

The SMUTS-GANDHI AGREEMENT of 1914 included a condition that six "educated" Indians should be allowed to enter the Transvaal Province annually. Subsequently it may be noted, the proviso was extended to the Provinces of Natal and the Cape. The exempted persons were not to be required to hold Registration Certificates.

The considerations that led up to this demand by Mr. Gandhi on the one hand for the exemption of at least a handful of Indians from the racial, class and colour distinctions created by the registration law of 1908 and Immigration Law of 1913, and the acquiescence by General Smuts on the other hand, are both historically and practically interesting and important.

Both the above Statutes were resisted in turn by way of protest against the imputation they expressed of racial and national inferiority and undesirability. It was mutually appreciated that this arrangement in regard to the annual admission of a small number of exempted Indians would, at least, to some extent, remove the sting of that imputation. The exempted persons were to be protected from the racial disabilities imposed in the respective provinces of the Union upon the rank and file of their Indian populations. The class of person contemplated and in practice permitted thus to enter was what is ordinarily termed the educated class.

At the outset the exempted persons so admitted received a simple form of exemption certificate unclogged by conditions. The position occupied by the "exempted" was at least in no way inferior to that occupied by the holders of registration certificates.

After a comparatively brief period, however, conditions and provisos became inserted in the documents issued to such entrants and this in spite of strong protests on the part of the Indian Community. The comparatively recent case of MEDH versus PRINCIPAL IMMIGRATION OFFICER, A.D. 1928 page 451 decided that it is not competent in exempting a person under Section 25 (1) of Act 22 of 1913 to attach terms and conditions to such exemption and should any condition be attached to such exemption such condition will be regarded as pro non scripto.

For some time past the practice of issuing Letters of Exemption to educated entrants in terms of the Smuts-Gandhi Agreement would appear to have been discontinued. By way of substitution it is proposed that temporary permits be issued to educated entrants, such permits to be renewable annually presumably at the pleasure of the Minister. The suggestion was, of course, no new one having been advanced as far back as 1908 and rejected by the Community. Mr. Gandhi pointed out at the time that the principle involved was such that the acceptance of temporary permits in regard to exempted persons would defeat that very principle. As previously pointed out its importance lies in the recognition that the door of immigration was not to be banged, bolted and barred against Indian Immigrants on the score of their race and nationality.

The 1914 "Settlement" also laid emphasis upon the principle herein involved. This matter has been treated in detail with some elaboration with a view to impressing the Delegation to support the Indian attitude that the principle involved should not be disturbed.

EXPLANATORY - EXEMPTED INDIANS:-

In the correspondence that passed between the Indian and Colonial Offices and the Colonial Government in 1909, the Colonial Government stated that it was prepared to allow the admission of six Indians to a Province as permanent residents. The number was subsequently increased from six to ten.

Under the 1914 Settlement, provision was made for admission into the Transvaal, Cape and Natal of two classes of Indians outside of the class entitled to enter under the Statutory Laws.

CLASS A:- The small number of educated entrants previously referred to, i.e. ten per annum for each Province were to receive Letters of Exemption freeing ^{them} from the necessity of holding registration certificates. In practice these were persons selected by the respective communities of the respective provinces for their educational qualifications.

CLASS B:- Comprised temporary visitors, e.g. priests, teachers and the like whose entry and stay it was contemplated should only be temporary.

The authorities, it would now appear, propose to delete Class A and to allow the admission only of Class B. As previously indicated this change of policy is regarded by the Community as a violation of principles established at the cost of considerable sacrifice and suffering.

The proposal of the Department of Interior in regard to the entry of and domicile of educated entrants was accepted by the Congress, subject to the proposals not abrogating any of the rights conferred by the Smuts-Gandhi Agreement.

D. I. 91 FORM :-

This is a form evolved under the Regulations published
under/

under Act 22 of 1913, the object and purpose of which is to establish to the satisfaction of the Immigration authorities the relationship claimed by a man to a woman as the former's wife, and by parents to children it is sought to introduce in to the Union. The form is an administrative one and was intended to be a means for satisfying the authorities, but certainly not the sole means of or evidence in favour of one of the above claims. The Department has, however, converted this form to constitute it as the only conclusive proof and to exclude wives and children of domiciled Indians, who desire to enter the Province, unless they are protected by this Particular Form. Formerly, such women and children were allowed to enter temporarily on deposit, then frequently investigation of the claims would proceed and the D.I.91 Form might be furnished the Department at a later date, the deposits be returned and the claims of the claimants be recognised.

The importance of the departure is that the persons concerned are now generally declared prohibited immigrants in spite of other convincing evidence in the absence of this particular form, thus involving the Indians in needless expense and anxiety, and also endangering their legitimate rights.

THE QUESTION OF DOMICILE:-

The Immigration Act of 1913 as amended by Act 15 of 1931 provides that a person shall have been deemed to have had his domicile within the Union if he absents himself therefrom and does not enter the Union within three years from the date of his departure or from the commencement of the Act of 1927 whichever period may be the later and that irrespective of whether he is the holder of a Registration Certificate or a Certificate of Domicile or of any other document issued under any prior law permitting his entrance to or residence in the Union or recognising his domicile in the Union or any Province thereof.

This proviso, while appearing impartial, is in reality made to operate for the purpose of restricting a return of Asiatics. It will be seen that the Registration Certificate no longer confers the right to be here and the right to come and go. This Section should be repealed.

Numerous cases of extreme hardship have arisen through the strict application of the law as amended.

EDUCATIONAL TIME LIMIT:-

Section 30 of the Act 22 of 1913 is amended by Section 10 of 1927 Act, in which domicile is defined and it has been provided that in cases where a person proceeds abroad for a special or temporary purpose, the Minister may authorise the issue of a Certificate of Identity allowing the person concerned to return to and resume his residence in the Province named within the period specified in such certificate or any extension thereof, not exceeding ten years in all. The practice hitherto in regard to children (boys or girls) following under the Act who leave the Union for educational or other purposes, is that they have been given time for ten years under the law to remain away temporarily and continue their education, and they were permitted to return within that period and resume their domicile. Today the position has changed to the following, on account of the new interpretation of domicile.

- (a) If a boy leaves this country as soon as he is registered and obtains his Registration Certificate he must return before he is 16 years of age to take up his residence. The result of this new procedure is that no boy can complete his education. Mr. Natverlal Chunilal Patel of the firm of I.C. Ashabhai & Company, who was studying in India and he had to return in order to establish his right by leaving his studies in the High School at Dharmai, as extension of time was refused on the ground that the boy was approaching the age of 16 years.

This boy was in Standard V.

There are other instances which can be quoted, but the above is given as being a case to substantiate our contention.

- (b) If a domiciled Indian leaves for India and has a son studying in India who is under the age of 16 years and to whom a Certificate of Identity is issued prior to 1930, that Certificate is extended until the boy attained the age of 16 years, but in the meantime, if the father had lost his domicile or if the father had died the boy's Certificate of Identity is not extended and the boy has to leave his studies and establish his domicile in this land.
- (c) In special Emergency cases the Minister's special power should be sympathetically administered, but this has not been done up till now.

TRANSVAAL ASIATIC LAND TENURE BILL:-

It is no exaggeration to say that the Transvaal Asiatic Land Tenure Bill is a replica, complete in all its essentials, of the Asiatic Bill of 1926, which was withdrawn as the direct result of the Round Table Conference.

At an Emergency Conference held in Johannesburg on the 5th and 6th October, 1930, the Bill was thoroughly examined section by section, and the Conference unanimously passed the following resolution on the Bill :-

That this Emergency Conference of the South African Indian Congress held in Johannesburg on the 5th and 6th October, 1930, at which are represented the Natal Indian Congress, the Transvaal Indian Congress and Cape Indian Congress representing the Indian Community of South Africa views with grave apprehension and alarm the Transvaal Asiatic Land Tenure Bill, which it solemnly declares is wholly unacceptable to the Indian Community on the following grounds :-

- (a) That the Bill is a violation both in letter and spirit of the Capetown Agreement.
- (b) That it imposes disabilities upon Indians in regard to their trade, residence and occupation and deprives them of their vested rights in the Transvaal Province, and
- (c) That it aims at their compulsory segregation and ultimate ruination in that Province.

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This Conference, therefore, respectfully urges upon the Government to withdraw the said Bill, and to introduce necessary legislation giving relief in that Province.

That in the event of the Union Government declining to withdraw the Bill notwithstanding the protest of the Community, this Conference earnestly requests the Government of India to press for a Round Table Conference to review the situation that has arisen affecting Indians in the Transvaal. In the event of the Government of India failing to secure a Round Table Conference aforementioned, this Conference further requests it to intimate to the Union Government that diplomatic relations between the two Governments should be considered to have ceased and to withdraw its Agency in South Africa as a protest against the Bill."

The Congress has published a "Blue" book, with the text of the Bill, and comments on and objections to each clause of the Bill. The book also contains Statement of the Transvaal Indian Congress, Statement to the Select Committee on the Bill by the Acting Agent of the Government of India (Mr. J. D. Tyson), extracts from or texts of laws specially or differentially operating against Indians, quotations from Report of the Asiatic Inquiry Commission, and other valuable information. This book forms as Appendix "C" to this Statement.

As the Bill introduces the principle of segregation, confiscation of property, various kinds of restrictions and limitations, and brands the Indians as an undesirable class, and places on them a stigma of inferiority, we firmly but respectfully urge upon the Delegation to press for the complete withdrawal of the Bill.

LAW No. 3 of 1885:-

With regard to the above Law we reiterate that which we have stated on previous occasions that this Law prohibits the ownership of fixed property except in such streets, wards and locations, as the Government (namely the Republican Government) for purposes of sanitation shall assign to them to live in. This law is still in force. Its object and intentions are fully related in the report issued by the Asiatic Enquiry Commission/

Commission of 1921.

Even in Locations the occupation of land is, in practice, restricted to monthly and some cases yearly tenancy. The Locations are subject to removal to other areas or areas from time to time. The root of all the evil with regard to tenure of land goes back to Law 3 of 1885, above referred to, and nothing short of the total repeal of this Act will make the condition of holding property favourable to the Indian Community which holds domiciliary rights and which since the first Round Table Conference has been recognised as part of the permanent population. This question is further dealt with on Page 42 appendix "E" of our "Blue" book on the Asiatic Land Tenure Bill. By Act 37 of 1919 the lawful acquirement of landed properties by limited liability Companies formed by Indians under the Company Law was made unlawful, and even the right of allowing the appointment of Europeans to hold places in Trust which was a vested right enjoyed long before the Gandhi-Smuts Agreement became a settled fact, has been taken away. As the Law stands Indians cannot own places for religious or charitable purposes.

The Indian Community reiterates its protest against Sections 130 and 131 of the Gold Law of 1908 which deprive it of the right to trade, to occupy and to reside on proclaimed lands and, therefore, the Congress requests the Delegation to secure the repeal of these two sections.

TOWNSHIP AMENDMENT ACT No. 34 OF 1908:-

Section 62 of Act No.34 of 1908 authorises the Governor to make regulations fixing the terms and conditions to which Freehold Stands or Lots shall be subject. One of the conditions promulgated reads inter alia the land having been formerly 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/

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. In this case also we ask that the Delegation press for the repeal of this Section.

ASSISTED EMIGRATION SCHEME:-

We ask for the complete abandonment of the Assisted Emigration Scheme as enunciated in the Capetown Agreement of 1926 and ratified by Act 37 of 1927. The Scheme as it appears in the Agreement, no doubt, seems to be voluntary in character, but in its application an element of compulsion has been introduced with the result that a considerable number of our people, who would otherwise have stayed in this country, have left these shores.

The Assisted Emigration Scheme, to use a publisher's language, is a "revised edition" of the Repatriation Scheme. Section 6 of Act 22 of 1914 - an Act passed to give effect to the Soloman Commission of 1914, provided for the grant of a free passage from any port of South Africa, to any Indian who was desirous of returning to India. As an encouragement to leave these shores the Union Government paid each repatriate the sum of £5. Up to the end of 1919 the number of Repatriates who took advantage of this Scheme was 7,912. Then followed the Asiatic Enquiry Commission of 1919 at which Sir Benjamin Robertson and Mr. (now Sir) Geoffrey Corbett (who we are happy to find is a member of your Delegation), represented the Government of India. In their statement to the Commission the Representatives of the Government of India in plain words suggested that it was in the interests of everyone to encourage and facilitate the repatriation of those who were willing to return to India. A significant passage in the statement reads as follows:-

7It has been seen that for many years the Government of India have been compelled to recognise that it was necessary to restrict the number of Indians in South Africa in order to secure fair treatment for those who are permanently settled there." With this aspect of the question we shall deal later. The Asiatic Enquiry Commission took the cue, as it were, from the Representatives of the Government of India, and reported that the Union Government should give every encouragement to Indians to repatriate themselves. The Report was the means of increasing the bonus to £10. per head. And to give it an impetus the Government advised the Repatriates that they could - at a time when export of gold and gold ornaments was restricted - take with them as much of the gold that they possessed. This certainly did give all the encouragement that was necessary for, we find that up to the end of 1926 when the Gentlemen's Agreement was being arrived out in Cape-town, 14,307 of our people had availed themselves of this Scheme.

We now come to the time of the last Round Table Conference. The last Conference was the result of the intense agitation of the Indian Community of South Africa against the Areas Reservation & Immigration & Registration (Further Provisions) Bill which sought to seriously restrict our development in this country. The Bill was designed to bring forward the policy of segregation against the introduction of which the Indian Community of South Africa rose as one man and made a determined stand. We are grateful that the Government of India fully interpreted our views at the last Round Table Conference in regard to the policy of segregation. As a result the Areas Reservation & Immigration & Registration (Further Provisions) Bill was not proceeded with by the Union Government. But at what sacrifice? Here again it would be observed that as a consideration for the dropping of the above Bill, the Repatriation Scheme was improved upon, given a name that

The effort of the Agreement, as far as can be gauged from the working of it, is that the Bill was dropped in consideration of effecting a reduction of the Indian population of South Africa to a "manageable compass".

The rights and privileges of a section of the Indian Community were sacrificed in order that the remainder of the Indian Community may not suffer the indignities that the Bill offered and may be recognised as part of the permanent population of South Africa.

The Assisted Emigration Scheme was accepted by the Indian Community of South Africa as the means for providing assistance to those who comprised the floating population of South Africa. It was accepted in the belief that it would be helpful to those who were actually desirous of leaving for India. That we think was the intention of the Scheme. In its application the Scheme has by no means ^{been} confined to its original intention. Up to the end of November 1931 the number that availed themselves of this Scheme was about 10,000. It would be interesting to ascertain the reason why the figure during the last five years has been large. One factor that contributed to this increase is that the Bonus which was £10, under the Repatriation Scheme was increased to £20 per head under the Assisted Emigration Scheme. The increase in the Bonus meant, to many hundreds of our countrymen, the possession of a sum of money which, owing to their low earning capacity, they would never possess for many years.

Another factor, which we venture to submit was the more important, was the employment by the Department of the Interior, of Agents whose work was, as their very employment suggests, to induce people to take advantage of the Scheme.

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Various ways and methods have been adopted by these Agents to induce people to leave South Africa. Various rumours are spread amongst the poorer section of the Indian Community and these coupled with the depression and the unemployment which seem to be so noticeable amongst Indians, have contributed very largely to a considerable number of our countrymen leaving South Africa, the land of their birth and adoption, for good and never to return. We do not deny that the Assisted Emigration Scheme is an improvement on the Repatriation Scheme, a feature being the right given to the Emigrant to return within three years but after the expiry of the first year. Whilst the Scheme confers the right on the Emigrant to return, it stipulates that he can only return if accompanied by his whole family. And in consequence of this irksome stipulation and the impediments placed upon intended Emigrants in the different centres in India towards facilitating their return, the number of returned Emigrants is negligible.

We desire to emphasise that the Congress in Conference has decided not to countenance any Scheme which has for its object the sending away of the members of our Community.

The Congress firmly believes in the principle that the granting of rights and privileges to the Indian Community of South Africa must be made with no spirit of bargaining.

As illustrations, we may quote Act 22 of 1909 (Natal) which gave the right of appeal to the Supreme Court against refusal to renew a dealer's licence was passed only when the Indian Government gave a promise that indentured emigration would be permitted for another year.

Again before the Asiatic Enquiry Commission Sir Benjamin Robertson has distinctly stated that in order that those who are permanently settled in this country may receive fair treatment the number of Indians must be restricted.

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And at the last Round Table Conference the reduction of the number of the Indian population so that those who remained here may not be burdened with an irksome legislation, was agreed to.

And so it would appear that on every occasion when the rights and privileges of the resident Indian Community of South Africa were at jeopardy something had to be given away to maintain them.

The Scheme is directed in the main to a section of the Community who were brought into this Country for its development. The Province of Natal owes its prosperity to Indian labour for, it was India that supplied the Coal Mining and Sugar Industries with a constant flow of labour.

They were brought into this country where they lived for several decades. They have adopted the customs and manners of this country, they have children born here whose mode of living and outlook in life are quite different to those living in India. It is utterly impossible to expect these people to find their way back to India.

The Scheme has been characterised as inhuman for not only has it succeeded in repatriating those who were born in India but also the thousands of children who were born in South Africa. To them India is a strange country. Having been born and bred in South Africa in a western atmosphere, the South African born Indian could not, by any stretch of imagination, adapt themselves to the conditions in India.

Statistics show that the major portion of the Indian population of this country are South African born. It is believed that only fifteen per cent of persons born outside South Africa remain in the country and will in a short period die out. Is it reasonable then to apply the Assisted Emigration Scheme to a people whose home is in South Africa?

We emphasise again that the Congress resolutely asks for the abandonment of the Scheme which is against all moral laws.

No Provincial Government, in its present attitude on the Indian Question, will move the Union Government to revise the Laws. We ask that not only should there be a distinct pronouncement on this question, but the Licensing Laws should be revised as soon as possible to give effect to the Capetown Agreement.

The Licensing Officers of Boroughs and Townships have always shewn a tendency to discriminate between European and Indian Licences. Whilst the European secures his licence as a matter of course, the Indian is subjected to differential treatment. Not only is he restricted to trade in a particular area, but he is asked to comply with requirements which are not insisted upon in the case of the European. He is asked to pay his Assistants the same rate of wages as is paid to European Assistants, but he does not get the facilities for the same class of business as the European Trader. If he is expected to conform to all the requirements of the Industrial Laws, then he should be given equal opportunities to trade.

As Licensing Laws stand at present appeals to Supreme Court only lie in respect of refusal to renew an existing licence, and in Rural Areas appeals to Appeal Board lie in respect of refusal to issue a new licence on the only ground that the applicant is not a fit and proper person.

In the Boroughs, wide discretionary powers are given to Licensing Officers whose decisions on Indian applications are invariably against the Laws of equity and justice.

In the recent case of KHARWA vs. THE LADYSMITH TOWN COUNCIL where it was held that assignment of one's property does not lapse one's licence, one of the Judges pointed out that in appeals the Supreme Court could enter

The entry into the Union of Wives and children who are affected by the decision in the case of RASHID AMOD:

When Act 37 of 1927 was gazetted as a Bill clause 10 dealing with domicile agitated the minds of our people. In a Memorandum to the Minister of Interior the South African Indian Congress, on the subject of clause 10, said that :-

"With reference to Section 10 of the Bill which defined the term "domicile", we beg to submit that if it is intended that all persons, who are now absent from the Union, and who do not return within three years from the date of departure, should lose their domicile, then it would be a hardship on those who today possess either the Transvaal Registration Certificate, or Natal Domicile Certificate, and who have remained outside the Union for more than three years relying on the validity of, and the protection afforded by, these Certificates. We therefore would ask that a clause be added giving such persons sufficient time after the passing of the Bill within which to return to the Union."

The Request by the Congress was accepted by the Minister for, in his reply he said that :-

"It is not intended to apply the provision dealing with loss of domicile after three years continuous absence from the Union retrospectively, and to make this purpose quite clear the following words will be inserted in Section 10 at the Committee Stage of the Bill after the word "therefrom" or from the date of the commencement of this Act, whichever may be the later."

The Congress interpreted this assurance to mean that those who returned prior to the 5th day of July, 1930, would be treated as fully domiciled Indians. This assurance was intimated to all those affected by the Section. In pursuance of this assurance the Immigration Officers not only allowed members of our Community who had stayed overseas for a period of more than three years, but also permitted them to bring in their wives and minor children. This went on for a period until the case of RASHID AMOD was decided. In that case it was held that as he had stayed away from South Africa for a longer period than three years, the possession of a Registration Certificate/

into the merits of the case. This is a distinct advantage, as hitherto the Supreme Courts were loth to enter into the merits of Licensing Appeals unless grave irregularities, bad faith, and refusal to exercise discretion were shown.

As has been so often stated our people in this country are denied an equal opportunity to live. Indians have always been accused of undercutting the Whiteman but the fact that their respective opportunities are so unequal is always lost sight of.

The acceptance by the Indian Community of "the principle underlying the Industrial Conciliation Act (No.11 of 1924) and the Wages Act (No.27 of 1925) which enables all employees including Indians to take their places on the basis of equal pay for equal work will be adhered to," to use the actual phraseology in the Capetown Agreement, meant a sacrifice, the enormity of which can hardly be gauged. But the Indian Community accepted it in the hope that as time goes on things will so adjust themselves as to enable the Indian to take his rightful place in the industrial fabric of South Africa. What is his position since the Agreement? In every industry attempts are being made to displace Indians by Europeans. The Government is pursuing a White Labour Policy and this is being not only openly advocated but encouraged by Col. Creswell, The Minister of Labour. Do not for a moment think that the Colonel is concerned with Government services only. He goes further than that. He has insisted on all Municipalities to displace a number of Indian servants so that the European unemployed could be engaged in their places. In the Railway services the process of weeding out the Indians has been going on steadily since the Agreement. In the middle of 1927

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Certificate merely gave him the right of entry. It did not bestow on him the right of domicile. He has to remain in South Africa continuously for three years to re-earn his domicile. Since this judgment the Immigration Officers on instructions from the Commissioner for Asiatic Affairs have refused to allow the entry of wives and minor children of those who had overstayed the period of three years. The entry would only be allowed after the applicant had re-earned his domicile.

We must state with emphasis that the attitude of the Commissioner for Asiatic Affairs, fortified though he may be by the decision of RASHID AMOD'S case, is not in keeping with the assurance given the Minister in very explicit terms and the Congress understood it to mean that no matter how long a person in possession of a Registration Certificate or Domicile Certificate may be absent away from the Union, so long as he returned prior to the fifth day of July 1930, he was entitled to be placed in the same status as any ordinary domiciled person.

This method of administering Section 10 of the Act is causing considerable hardship to members of our Community for not only will they lose the right to bring their children who may attain the age of 16 years during the period of their re-earning their domicile, but the enforced separation of husbands from their wives and children is against all social rules. The Reciprocity Resolution of 1918 recognises the principle that an Indian should be allowed to lead a happy family life. The administration of Section 10 is totally against the spirit and interpretation of the Resolution.

We would ask that the assurance given by the Minister be adhered to, and that permission be given for the entry of wives and children.

there were 1,338 Indians employed on the Railways but in June 1931 there were only 804 Indians. Who knows that in another five years time the Railways will have no Indian employees. And so in every other service. The process of weeding goes on incessantly in the Government, Municipal, and private services.

In the Liquor & Catering Trades which, in so far as Natal is concerned, and the Indian's preserve, attempts are being made to replace them by European girls.

We raise no objection to the Industrial Legislations though they affect us adversely, but we do insist on our people receiving equal opportunities. We ask this question should receive the serious consideration of the Indian Delegation.

We understood, that during the existence of the Capetown Agreement no differential restrictive legislation Union, Provincial, or Municipal, would be passed against us, but alas such legislation has been passed and even before the present Parliament there is the Workmen's Compensation Act in which it is sought to lay a differential and lower scale of compensation for Asiatics.

I think I have discussed every subject in the Capetown Agreement. This analysis will show you abundantly that the Indian Community has gained very little from the Agreement. Whilst on one hand we have lost for good, thousands of our countrymen who have been repatriated under the Assisted Emigration Scheme, the Indian Community has on the other hand not benefited to the extent it had expected.

I would emphasise the fact that the time had arrived when the question of granting the franchise to our community must receive the serious attention of the Government. Although in the past we have not pressed
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The removal of Differential treatment meted out to Condonees in regard to Immigration matters.

In his letter to the South African Indian Congress on the 24th February, 1929, giving the conditions governing the Condonation Scheme, the Secretary for the Interior inter alia said "the Protection Certificate or the document he has been authorised to retain under paragraph (c) above will preserve to the holder all the rights enjoyed by him at the date of the commencement of Act 37 of 1927 viz. 5th July, 1927, and the holder will be regarded as having entered the Province concerned in terms of Section 25 of Act No. 22 of 1913, but if he has not already brought his wife and/or children to the Union, such wife and/or children will not be admitted."

This condition meant to the Indian Community that those of the illicit entrants who came forward in response to the requests of the South African Indian Congress and its affiliated Bodies, and applied for Protection Certificates, would be treated not one whit less than those who had legally entered the country. And that they would enjoy the same rights and privileges as those enjoyed by the domiciled Indians with the exception of bringing in the wives and children who were not already in the Union. The correspondence that has ensued between the Department of the Interior and the South African Indian Congress support our statement.

Since the acceptance of the Condonation Scheme, Condonees who desired to visit India were being given Certificates of Identity but lately the various Immigration Officers have stopped issuing these Certificates but instead they are issuing Special Emergency Travelling Certificates, thereby creating a distinction between the Condonee and the domiciled Indian. We must firmly state that this is totally against the condition which we have referred to above.

We need hardly emphasise that the Condonation Scheme, simple as it seems, has given the Congress considerable trouble and it was after much persuasion that our people agreed to come forward and make a clean admittance of their illicit entry. That was only made possible by our assurance that there would be no differentiation between the illicit entrant and the domiciled Indian. The issue to them of a Special Emergency Travelling Certificate leaves a stigma which they do not deserve after having come out openly and admitted their fault. They were sincere and in dealing with the Condonees we think the Union Government should give the same consideration as they do to the domiciled Indians. As we stated before, the Condonation Scheme has been the source of considerable trouble and we are of the opinion that if the Condonees are permitted to enjoy the same rights and privileges as the domiciled Indians, this chapter would be closed once and for all.

Permission for the entry of wives and minor children now in India of those who have taken out Protection Certificates:-

This is a matter which is agitating the minds of those who are affected by restrictions imposed in clause (b) of the conditions and requirements under which what is known as "Protection Certificates" were issued to Condonees in the Union.

To implement in certain respects, undertaking given in the Capetown Agreement, the Union Government, introduced a Bill in the Parliament (now known as Act 37 of 1927) Section 5 of this Act amended Section 10 of Act 22 of 1913 (the Principal Act) and gave power to Principal Immigration Officers, and to Appeal Boards, in the event of appeals to such Boards, to order the cancellation of Registration Certificate, or a Certificate of Domicile, or other document, if it is proved that such Certificate was obtained by fraudulent representations made by him or on his behalf.

The addition of this Section 5 to Section 10 of the Principal Act in no way formed part of implementing the Agreement. But further powers were sought and obtained as we understand to "round up" illicit entrants into the Union.

Representations made by the Congress and discussions held with the Honourable the Minister of Interior on the retrospective effect of Section 5 resulted in the Government offering a Scheme of Condonation "as an act of grace to mark the appointment of the Rt. Hon. V. S. Sastri, P.C. as the first Agent of the Government of India in the Union." On the one hand the Congress gave the assurance to the Minister that "it will not tolerate, as it has always done, any illicit entry of Indians into the Union." The Government, on the other hand, undertook "to refrain from the full enforcement of Section 10 of Act 22 of 1913, as amended by Section 5 of Act 37 of 1927, in the case of an Indian who proves to the satisfaction of the Minister of the Interior that he entered a Province of the Union other than the Orange Free State prior to 5th July, 1924."

Thus the Scheme of Condonation originated, and among conditions and requirements laid down to regulate the Scheme, one important prohibition was that a "Condonee was not to be permitted to claim the rights and privileges conferred by Section 5 (f) and (g) of the said Act, that is to say that if his wife and /or children have not been admitted at date hereof he will not be permitted subsequently to introduce any such persons." The Scheme, with this exception, was designed to confer rights and privileges as are enjoyed by lawfully domiciled Indians in the Union.

When the details of the Scheme were finally settled, the first Agent Mr. Sastri, and the Congress made earnest representations to the Minister to permit the entry of wives and minor children of Condonees affected by the prohibition. The Honourable the Minister promised to sympathetically consider

On the 23rd December, 1930, at the request of the Congress, Mr. H. Venn, the Commissioner for Asiatic Affairs, supplied the following figures, which we take it to be final, relating to the Scheme of Condonation.

According to the information supplied number of persons to whom Protection Certificates issued are :-

Cape	341.
Natal	596.
Transvaal.....	<u>520.</u>
	<u>1,457.</u>

Number of wives and minor children, male and female, of Condonees already in the Union or temporarily absent therefrom, is :-

	<u>Wives.</u>		<u>Male.</u>		<u>Children.</u>		<u>Female.</u>
Cape.....	154	.....	169	.....	147	.....	147
Natal.....	198	.....	318	.....	241	.....	241
Transvaal.....	131	.....	185	.....	143	.....	143
<u>Total.</u>	<u>483</u>		<u>672</u>		<u>531</u>		<u>531</u>

Number of wives and minor children, male and female, of Condonees affected by restriction is :-

	<u>Wives.</u>		<u>Male.</u>		<u>Children.</u>		<u>Female.</u>
Cape.....	176	.....	121	.....	100	.....	100
Natal.....	298	.....	304	.....	311	.....	311
Transvaal.....	322	.....	169	.....	211	.....	211
<u>Total.</u>	<u>796</u>		<u>594</u>		<u>622</u>		<u>622</u>

The figures, as given above, summarised disclose the following position :-

Protection Certificates were issued to 1,457 Condonees. Of these 661, a little less than half the number of Condonees, secured the admission of their wives and children totalling 1,686 people prior to the critical date 24th February 1928, and thus did not come within the limits of restriction as to entry.

Deduction made from the figures supplied shows that :-
796 Condonees are affected by the restriction; and the number
of their wives and minor children, who by reason of the rest-
riktion, are prohibited from entering is 2,012.

When the figures are worked out, the position in res-
pect of each Province appears to be :-

In the Cape Province:-

154 Condonees obtained admission of their wives and
Children numbering 470.

In the Natal Province:-

198 Condonees obtained admission of wives and child-
ren numbering 757, and,

In the Transvaal Province:-

322 Condonees obtained admission of wives and child-
ren numbering 459.

The restrictions when the figures are finally examined
and sifted apply to :-

	<u>Condonees.</u>		<u>Wives.</u>		<u>Male.</u>		<u>Children.</u>	<u>Female</u>
Cape.....	187	.....	176	.....	121	.....	100	
Natal.....	398	.....	298	.....	304	.....	311	
Transvaal...	389	.....	322	.....	169	.....	211	
<u>Total.</u>	<u>974</u>		<u>796</u>		<u>594</u>		<u>622</u>	

Thus then there are in the Union 974 Condonees, whose
wives and family number 2,012, who are prohibited from entering
into the Union by reason of restrictions placed on them. It is
believed that a number of Natal born Indians resident in the
Cape Province took out Condonation Certificates, and if this
number is deducted from the above the number affected will in
our opinion be found much smaller.

An examination of the figures, as given above, reveals
the position that in the Cape Province the number affected is
small but in the Natal and Transvaal Provinces the figures al-
most equal, the Natal figures showing a slight increase in the
number of people affected.

An analysis of these figures in relation to each Province has been given to show the distribution of Condonation figures, taken in each Province separately, must be regarded, considering the disparity of the population in each Province, as affording a small increase in the number of population.

We have somewhat at length dealt with the figures in order to show that the number of people affected is small to warrant the consideration of relaxing the restriction and allowing those who are affected to enter the Union. The Honourable the Minister of Interior has given a promise to consider the restriction if the number affected was small.

We desire to make the point that the Scheme of Condonation made distinction in favour of those who had brought in their wives and family, and punished those, who failed to introduce their wives and children before the critical date.

While all along the Congress has set its face against illicit entry, we feel that the inevitable separation of wife from husband due to the incidence of the Condonation Scheme, should not be allowed to continue.

INDIAN EDUCATION: INDUSTRIAL AND TECHNICAL :-

In pursuance of the "Uplift" clause in the Capetown Agreement the Natal Provincial Council instituted an enquiry into the matter of Indian Education in Natal.

The Capetown Agreement made a frank admission of the grave situation of Indian education in Natal, and the importance given to the "Uplift" clause in the Agreement was an indication that in the matter of education the Natal Provincial Council has not done its duty to the Indians. Prior to the Education Enquiry Commission there were 30,000 Indian children of school going age in Natal, and of this number only 9,900 children were in Schools. Twenty thousand Indian children were receiving no education at all. That was not all.

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The Natal Provincial Council was receiving a subsidy of £5.5.0. per child attending school, the whole of which should have been spent on ^{Indian} education. But the Council was not spending the whole amount. In the year 1926-1927, the year prior to the Education Enquiry Commission, Natal spent £28,430 out of a subsidy of £38,986, the balance having been diverted to other channels of expenditure. This method of appropriating portions of the subsidy for Indian Education had been going on for years, and as a result the number of Indian children who were being neglected by the Natal Provincial Council was abnormal. Thanks to Mr. K. P. Kichlu the Educational Expert sent out by the Government of India and Miss. Gordon, who in their memorandum presented to the Education Enquiry Commission brought to light this amazing state of affairs, an improvement has been made. In regard to education in Natal the first Agent of the Government of India the Rt. Hon. V. S. Srinivasa Sastri, P.C. has played an important part in the eye of our Community. His labours in stimulating interest in Indian education and his work at the Education Enquiry Commission were undoubtedly the means of providing better facilities for education of Indian children in Natal. The part he played in the establishment of the Sastri College which marked a new epoch in the history of Indian Education in Natal, is a living monument to his selfless sacrifice.

We admit that the Provincial Council is now spending nearly the whole of the subsidy on Indian education. From its own exchequer the Council has spent on European education no less than £561,342 over and above the subsidy it receives from the Union Government but it has contributed nothing towards Indian education. It has acted simply as an intermediary between the Central Government and the Indian Community. The subsidy since the findings of the Commission of Enquiry has been steadily increasing. In 1925-1926 the subsidy was about £27,00

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and for the year 1930-1931 it was £61,143. This steady increase was the means for providing grants-in-aid to many Schools which up till then were being carried on by private persons and organisations under difficult circumstances. This resulted in providing educational facilities for about 5,000 more children.

The method of arriving at the figure for subsidy purposes is in our opinion not the correct one. The subsidy is based on the number of children who attended the Schools the previous year. This method will not in any way assist Indian Education. If the amount of subsidy were arrived at by basing on the number of children expected to attend Schools for any current year, we are firmly of the opinion, that in a few years time the 16,000 children who are now not receiving education would be in Schools.

The difference between the subsidy given by the Union Government for European education and that given for Indian education is very large. The subsidy for the education of European children is granted at the rate of £16.7.6. in respect of Government Schools. The subsidy for Indian education is as we have stated above, granted at the rate of £5.5.0. per head. The cost of conducting the Sastri College and other few Government Schools takes a large portion of the subsidy thereby leaving a smaller sum to maintain and conduct Aided Schools, which by far outnumber the Government Schools. In 1928 there were nine Government and forty-three Aided Schools and in 1931 there were 13 Government and 65 Aided Schools. Though there has been an improvement it will be seen however that to every Government School there are five Aided Schools as compared with four or five European Government Schools to every European Aided School. Thickly populated districts in Natal, like Clairwood, Cato Manor, Sydenham, Stellawood, Fairbreeze, Tongaat, Verulam, to quote a few, are still without Government Schools. In Clairwood there are 700 children attending School

in Cato Manor over 500 children, in Fairbreeze there are over 300 children. We have urged from time to time that these large Schools should be converted into Government Schools and we again emphasise the urgent necessity for their conversion.

The Sastri College built with money contributed by members of the Indian Community forms a big charge on the subsidy. This College alone costs £18.15.5. per head. It is felt very strongly that the Union Government should subsidise the Sastri College separately.

There is an urgent necessity for the creation of new Schools to absorb the considerable number of children who are receiving no education. Most of the existing Schools are refusing to admit any further children for want of accommodation. The Carlisle Government School, The Depot Road Government School, Durban, The Clairwood Government Aided School, the Fairbreeze Government Aided School, and the Cato Manor Government Aided School are all refusing admittance. Districts such as Merebank, Dannhauser, Sea View, South Coast Junction, Pentrich, which have large Indian population require Schools.

Indian education in Natal has not progressed considerably during the term of the Capetown Agreement. Beyond placing 5,000 children in the Schools during the last five years little has been done to improve the state of affairs as they existed before the Agreement.

If the "Uplift" clause is to be given effect to then it is imperative that the Indian children should be given every opportunity and facility to educate themselves. It is wrong to ask them to conform to Western Standard of life if education which is the first essential to the attaining of such standard is denied them.

The Indian Technical Education Committee comprising Indian members formed in Durban eighteen months ago have for some time been conducting Continuation and Commercial Classes.

Adult Indians who have not had the benefit of education in their younger days are now receiving education of a nature suitable for their daily requirements. The Apprenticeship Act requires possession of Sixth Standard Certificate before any person could be apprenticed. The Continuation Classes serve that need. In 1930 over 15 Students gained their Sixth Standard Certificates.

Our Community feels the necessity for the establishment of Technical and Agricultural Classes. Recently a class for Domestic Science was formed and this has been taken up very eagerly by young Indian women. In the same way if classes were opened for agriculture, Cabinet Making, Building Carpentry, etc, hundreds of our people would take advantage of these classes. The Union Government in 1931 subsidised the Commercial Classes to the extent of £150, and for the year 1932 the subsidy has been increased to £300. We need hardly emphasise that for a population of 68,000 in and around Durban, the sum would hardly touch the fringe of the question.

It might be mentioned that the continuation Classes are staffed by Indian Teachers who beyond receiving about £25/- for their travelling expenses receive no salary. They have served in that capacity for the last eighteen months.

HOUSING AND SANITATION :-

In accordance with the last paragraph of the Upliftment Clause in the Capetown Agreement the Union Government in October 1928 carried out, through its Central Housing Board, an inspection and investigation into the housing and sanitary conditions of Indians in and around Durban.

We shall here quote four paragraphs of the Report submitted by the Housing Board, viz :-

- (10) "Whereas the Corporation has done a great deal for the better housing of Europeans in its area, little or nothing in this respect has been done for the Indian population other than for those actually in Municipal employment."
- (12) "Although there is very little land available for building purposes which is owned by the Council, several vacant pieces of ground contiguous to Indian owned properties in Wards 4 and 6 of the Borough were inspected, certain of which it appeared could suitably be utilised for housing. If the latter were put up for sale as residential sites without the restrictive condition, it would not alienate to any great extent the overcrowding problem, but it would tend to remove the sense of injustice caused by previous land sales to which reference is made in paragraph 8."
- (13) "Amongst other land inspected was the Eastern Vlei near the Umgeni River. Your Committee considers that the higher portion of this land would be suitable for building purposes and that if the Council is really desirous of doing its duty towards the Indian population it might fairly consider the question of creating houses here which could either be sold or let to Indians. It is considered that these houses could be erected in such a manner as not to spoil the amenities of the entrance to the Borough from Durban North."
- (21) "To this end and as a first step it is suggested that if the sum of £50,000 which is earmarked under the Housing Act for Indian Housing, an amount of £25,000 be made available to the Durban Council for erecting, under a Scheme to be carried out on a suitable site on the Eastern Vlei, two and three roomed cottages for letting or sale on easy terms to Indians".

The question of Indian Housing in and around Durban has been agitating the minds of the Indian Community in Durban for a long time. It has been the cause of much irritation between the Indian Community and the Durban Town Council. The Durban Land Alienation Ordinance of 1922 conferred powers on the Durban Municipality to restrict ownership or occupation of Municipal land. The Natal Indian Congress lodged strenuous objections to the passage of the Ordinance but in vain. In intimating that the Government had assented to the Ordinance the Secretary for the Interior wrote to the Natal Indian Congress thus :-

"The Government considers it reasonable that the Administrator, in giving his approval to racial restrictions introduced into land sales, should see as far as possible that Asiatics are given reasonable opportunity of acquiring adequate residential sites."

Notwithstanding this assurance out of twenty sales of Municipal lands sold in freehold since the passage of the said Ordinance only one was held without the restrictive clause. And out of twenty-four sales of Municipal lands sold in leasehold only six were without the restrictive clause. Out of these sales only in three were these restrictive clause entirely absent, and in the other three sales some of the lots were free from the clause and some subject to it. It would be seen therefore that the Durban Town Council has persistently refused to recognise the claims of the Indian Community. Schemes after Schemes for European Housing have been put forward for execution by the Durban Town Council within the Borough of Durban, but not a single scheme for the housing of Indians has been put forward. The Natal Indian Congress in its many interviews with the Durban Town Council has pointed out several sites contiguous to Indian properties, but in every case the Borough Engineer and the Estates Manager have always reported against the sale of such sites to Indians on the flimsy ground that such sites were required for public purposes or for the development of Municipal Works. Sites adjacent to the proposed Durban Indian Morning Market, The Carlisle Indian School were likewise objected to. In paragraph 13 of the Housing Board's Report given above, it would be noticed that reference is made to Eastern Vlei. Even this land has been objected to by the Durban Borough Engineer on the grounds that this land is low lying and that it would take fifteen years to raise it. It may be mentioned here that if the Eastern Vlei were required for European Housing the grounds would easily be raised within a very short period. There are over 800 acres of unalienated lands in Durban and yet a few acres could not be found for the housing of Indians.

In terms of the suggestion contained in paragraph 21 of the Report of the Housing Board the Minister of Health agreed to hand over to the Durban Municipality the sum of

£50,000 /

£50,000 under the Housing Act for Indian Housing. Fearing that it would be called upon to build houses within the boundaries of Durban, the Durban Municipality did not stir to carry out the request of the Minister. It was only a few months ago that the Minister threatened the Municipality with the withdrawal of the sum unless the housing was proceeded with. This resulted in an attempt to do something for the Indian Community. The Council has, in accordance with the suggestion of the Natal Indian Congress, agreed to lend the sum of £25,000 to the Indians owning freehold land outside the present Durban Borough Boundaries but within the boundaries of Greater Durban. The balance of £25,000 is to be used for the building of houses for Indians.

We maintain that there are sufficient land within the present boundaries of Durban, which could be used for the building of houses. The Indian Community of Durban holds more than one-sixteenth in value of the properties in that Town, they contribute their Rates and Taxes, they have contributed much to the development of Durban, and yet they are denied a few acres of land for the housing of the poorer section of their Community. The Council has big parcels of land at Cato Manor, Springfield, and Wentworth purchased with the object of creating Indian Villages. The Natal Indian Congress has consistently opposed these schemes as it is felt that the creation of an Indian Village is the thin edge of the wedge leading ultimately to the segregation of Indians.

As from the 1st of August 1932, the Durban Borough Boundaries will be extended and the Municipality will absorb the Health Board Areas of Mayville, Sydenham, Greenwood Park, South Coast Junction and Umhlatuzana. In some of these Health Board Areas the sanitary conditions of places where Indians reside are not at all desirable. In Municipalities and Health Board Areas there is a tendency to neglect the Indian/
Indian/

Indian areas. Even in Durban it was only a few years back that the Municipality turned its attention towards improving the Indian areas. Grey Street, one of the widest streets in Durban with greatly improved buildings on either side and owned by Indians, is just being hardened and asphalted. The Rates and Taxes that are being paid by our Community in Grey and the adjoining streets compare very favourably with those that are paid in respect of other important streets, like Ve Smith and Pine Streets in Durban. But it would appear that locality in which the Indian resides is the last to receive any consideration. In the Borough of Durban Indian Voters in a few Wards fortunately hold the balance of power, as it were, and this is a factor that weighs on some of the Councilors resulting in consideration being given to the Indian Ratepayers.

And so in the Health Board Areas. Indians resident in these areas have no say in the administration of the Health Boards. Members to the Board are elected by Parliamentary Voters. With the exception of Umhlatuzana and Greenwood Par Health Board Areas, Indians predominate in number in all the Health Board areas. The contribution to the general Rates is greater than that of the Europeans. Notwithstanding this disparity Indian localities have received little or no consideration in the matter of sanitary and other conveniences. Despite the fact that the Health Boards have been in existence for the last seven years many localities in which Indians reside are in the same state as they were before the Health Boards were constituted. Camp's Drift in Maritzburg and Vrededorp, Boksborg and Germistown locations in the Transvaal to mention a few instances, present pictures of the utter neglect of the Municipalities to provide proper sanitation and other conveniences. They are standing examples of the
treatment/

treatment that awaits for those who have no representation. The point that we desire to bring forth is that in about seven months time the Durban Municipality will take in the various Health Board Areas which we have referred to above. It will take in thousands of Indians who will have no votes. In the matter of the development of their areas and in the matter of sanitation they will share no less a fate than those of our compatriots who live in Camp's Drift and in the location of Vrededorp, Boksburg, and Germistown.

Our people living in the various Health Board Areas have of late shewn a desire to improve their housing conditions. Buildings of a good type are being put up in every District and there is a strong tendency to live up to the Western Standard of life. But any improvement on the part of the Indians would be of no use if the Municipalities do not help in providing proper sanitation.

We would therefore urge that in the provision of sanitation amenities and other conveniences the Municipalities should be made to show no discrimination as between the European and the Indian.

LICENCE CLAUSE OF THE AGREEMENT:-

Laws governing the issue of trade licences remain unchanged in Natal, and are as stated in the Congress Statement to the Habibullah Deputation. In the Transvaal there have been hardships imposed, not only due to the enforcement of Sections 130 and 131 in respect of trade licences, but actually a new Ordinance, known as "the licence (Control) Ordinance, was passed. This Ordinance, although passed, still awaits the assent of the Governor General. We shall deal with it later.

In/

In Natal the policy of differential treatment of Indian applications for trade licences still continue, although the licensing laws are of general application. There has been and there is a tendency, based on racial considerations, to refuse to grant trade licences in localities which are regarded exclusively as European trade 'zones'. As long as the Licensing Laws remain unaltered, and unfettered discretion is vested with Licensing Authorities, so long will there be room for perpetration of injustice to Indian trade licencees.

There is one significant fact which we would like to bring to your notice as shown in the attitude adopted by the Government of India between the years 1908 and 1909 in regard to treatment in Natal of Indian trade licencees. Due to a feeling of antipathy which resulted in refusals to renew Indian licences on flimsy grounds, representations were made by Indian traders to Authorities both in London and in India on the grave injustice that was being committed. Mr. Gokhale was at this time strenuously moving for the stoppage of indentured labour. This led to negotiations between the Government of India and the Natal Government. The Natal Government wanted the continuance of indentured labour, and the Government of India agreed to do this if the rights of Indian traders were protected. Eventually a compromise took place whereby the Natal Government agreed to give right of appeal on refusal of renewal of trade licenses, and the Government of India agreed to allow Indian Immigration to continue until 1911, when it finally stopped. Thus was Act 22/1909 originated. We have mentioned this point as showing the anxiety of the Natal Government to secure the continuous supply of indentured labour for the benefit of white Colonists, and it bargained with India by allowing the right of appeal in respect of renewals which the 1909 Act provided. Even the protection given

as to right of appeal has been narrowed down to the case of S. BHAYALA vs. ESTCOURT TOWN COUNCIL. The decision in this case laid down that the Court had no power to interfere with the discretion of the Licensing Officer, properly exercised in such renewal cases just as it had no power in the case of new licenses. Recently in the case of Kharva vs. Ladysmith Town Council, the Court held that a License does not lapse with the assignment of one's property. One of the Judges expressed the view that the Court could enter into the merits of the case. Although, on the face of it, the judgment may be regarded as an advantage, yet how far it affects the dictum laid in Bhayala's case cannot be gauged now.

The case of Gora Mahomed vs. the Durban Town Council, heard before the Supreme Court, Natal, in October 1931, marks an important event in the history of licensing cases. Gora Mahomed & Co. a firm which had been trading for forty years in West Street, Durban, was, due to change of ownership of the property, given notice to vacate the premises. They made application (which was in effect, a transfer) for a license for premises two doors below their old premises. The Supreme Court in refusing the appeal, held that the distinction between two classes of business which the Licensing Officer made in the exercise of his discretion, if he considered it desirable that it should be done in the public interests and for the purpose of preserving the amenities of the Town for the benefit of all concerned. The effect of this decision, which is detrimental to Indian trade, is that there can be no hope of an Indian acquiring fresh trading rights in West Street, because of the class of business he conducts, and the class of customers he attracts.

LICENSING CONTROL ORDINANCE (Transvaal)

THE TRANSVAAL PROVINCIAL COUNCIL has passed the Licensing Control Draft Ordinance of 1931 which has not come into force as it has not yet received the assent of the Governor-General-in-Council. This Ordinance gives the Municipalities, Health Boards, and Village Councils the right to refuse licenses without assigning any reason whatever, and also deprives Indians of the right of appeal hitherto enjoyed. It also repeals the General Dealers (Control Ordinance) of 1926, and makes drastic changes in the issue of licenses. The fear is expressed that if the Governor-General's assent to the Ordinance is obtained, a calamity awaits the Indian traders in the Transvaal. Moreover, the Ordinance is against the spirit and letter of the Cape Town Agreement.

We respectfully urge the Deputation that they should secure a veto of this Ordinance.

In Natal, and in some of the Transvaal towns, Indians were carrying on the business of flower sellers without let or hindrance. Recently in Pietermaritzburg, Johannesburg and Pretoria, restriction has been imposed on their trade and they are confined to 'defined' areas in which alone they could carry on their business. As the poorer section of Indians is engaged in this class, and derives their sole source of livelihood, this restriction hits them hard. We urge that representations be made to remove this restriction, which in effect is based on grounds of colour.

We now deal with the License Clause of the Agreement, which lays down for consideration three important points:

1. The grounds on which a licence may be refused should be laid down by Statute.
2. The reasons for which a licence is refused should be recorded.
3. There should be a right of appeal in cases of first applications and transfers, as well as in cases of renewals, to the Courts or to some other impartial tribunal.

Relying on this clause, the Congress in Conference assembled passed a resolution urging upon the Union Government that

"it may be pleased to implement the undertaking given in the Capetown Agreement to revise the existing licensing laws of the several Provinces."

To our astonishment, the Department of Interior, in a letter dated 16th March 1929, placed an interpretation on this clause to mean that the undertaking to "give all due consideration to the suggestion" was to be honoured at the time of the revision of the existing trade licensing laws, and as no suggestions had come from the various Provincial Authorities for the revision of such Laws, the time for "giving due consideration" had manifestly not arrived.

This interpretation leads to but one conclusion, namely, that the Union Government will only consider revision of the law when the Provincial Authorities ask for it. The Congress was not prepared to accept this view, and communicated to the Agent, and the Government of India, but with no result. If the view of the Union Government is correct, then the chances of the initiative being taken by the PROVINCIAL AUTHORITIES are remote, and may never come to pass. What faintest hope is there of securing the support of a Provincial Council to revise the Licensing Laws, when the Provincial Authorities, like the Transvaal Province actually enact an Ordinance curtailing the existing rights of appeal.

In the Natal Province, where licence difficulties are keenly felt by Indians, there does not appear to be any ground for hoping that the Province is ever likely to ask for a revision

of laws to embody the principles laid down in the Capetown Agreement.

There is nothing, we venture to say, in the Licence 'Clause' to support the view of the Department of the Interior the terms of this Clause are clear, that when the time arrive for the revision of trade laws, the Union Government will embody the three principles enumerated in the Agreement.

We venture to ask the Delegation that it should urge upon the Union Government that the time has arrived for the revision of the existing trade licenses, and that the Union Government should implement its undertaking without delay.

We have all along asked for that right of appeal to be given to the Supreme Court in all cases, and we urge in the revision of the Licensing Laws we should be given that right of appeal.

LIQUOR ACT :-

In 1927 a consolidated measure was introduced into Parliament, known as the Liquor Bill. Among other objectionable and discriminating features in this Bill was Clause 104, which prohibited the employment of Indians in any licensed premises—such as hotels, clubs, breweries, etc. On strong representation made by the first Agent, supported by meetings of protest held throughout the Union, on the ground that the enactment of the clause violated the letter and spirit of the Agreement, this clause was withdrawn.

Section 95 of the Liquor Act enacts that in the Province of the Transvaal

"no person shall sell or supply or deliver any liquor to Asiatics or coloured persons, and no Asiatics or coloured person shall obtain or be in possession of liquor."

Indians in the Transvaal were subjected to this restriction before the passing of the new Act, Section 102 (2) (a) enacts that

"no holder of a bottle-store liquor licence or of an on-consumption licence shall employ in, or in connection with the sale of liquor, or during the hours when liquor may be sold or supplied by him in any bar or other portion of his premises from which liquor is supplied, any person to whom individually or as a member of a class, the sale or supply of liquor is totally prohibited, whether such prohibition is general or imposed only in respect of the licence pertaining to the premises at which the employment takes place."

This section, read with section 95, through a process of interaction, brought the same effect in the Transvaal Province as was intended in clause 104, namely: prohibition of employment of Indians in licensed premises.

Under this section Indians were threatened with displacement at the end of December 1928. Representations made by the Congress, Licensed Victuallers Association, the Indo-European Council of Johannesburg and by the Agent, brought forth the reply from the Minister of Justice that the principle that "totally prohibited persons should not be employed in or in connection with the sale of liquor" was adopted by the Legislature, and therefore it was legally incompetent for him to take any action to defeat its intention.

This question of displacement of Indian Waiters, Cooks, Wine Stewards, whose sole source of livelihood was from employment in catering trades, affected at least 80 men and was discussed at the Durban Conference of 1929. The Congress, supported by the new Agent, made representations to the Acting Minister of Justice in February 1929, with the result that the Acting Minister addressed the following letter dated the 28th February 1929 to the Congress:

"With reference to the interview which a Deputation from the South African Indian Congress had with the Acting Minister on the 22nd instant, I have the honour by direction to inform you that Mr. Havenga has come to the conclusion that a good case was made out for not enforcing literally the provisions of section 102 (2) (a) of the Liquor Act, 1928, in regard to Indians who were at the commencement of the Act employed as winestewards."

"The Acting Minister therefore intends to convey to Magistrates of the Transvaal and the Orange Free State, which are the Provinces concerned, that it is not the Government's policy to prevent the employment of Asiatics who were actually employed as waiters and wine-stewards at the time when the Act came into force, and to suggest that letters of exemption be granted by them under sections 101 (3) in all cases in which it is proved to their satisfaction that the applicant was at the time, or at the commencement of the Act, employed as a waiter on on-consumption liquor premises."

While the Congress is grateful to the Minister for relaxing the restriction, it fears that the situation has not been fully met. The sting of the now deleted clause 104 is still felt in section 102 (2) (a). Moreover, whilst it gives relief, by way of yearly exemption to Indians who were in employ in the Transvaal at the commencement of the Act, the restriction is still applied to newcomers. We notice in the proposed amendments to the Liquor Act, no attempt has been made to repeal section 102 (2) (a).

We earnestly request that the Delegation will press for the repeal of this section, which entails severe hardships on a section of our community.

Equal economic opportunities to Indians, and the removal of the Government White Labour Policy:-

The clause that most vitally affects the Indian Community in the Capetown Agreement is that which deals with the Industrial Conciliation and Wages Act which read as follows:

"The principle underlying the Industrial Conciliation Act (No. 11 of 1924) and the Wages Act No. 27 of 1925 which enables all employees including Indians to take their places on the basis of equal pay for equal work will be adhered to."

The Congress/

The Congress, in accepting this clause, took a very bold step, for it felt that as there were no facilities for the banning of the Indian worker and coupled with the prejudice of the White worker against the Indian, the time had not arrived when the Indian worker could stand side by side with the European worker and demand equal pay for equal work. But it hoped, though for some years to come our people would be severely handicapped by the acceptance of the clause, the time would arrive when the Indian worker would have no impediment in the Labour market, and that the principle of equal pay for equal work would be applied to him as a matter of course.

Prior to the year 1928 all the Trade Unions in the country had only European membership. Indians were not admitted to membership. The Indian employees engaged in the Durban Liquor and Catering Trades had formed themselves into a Union and registered it. Later they applied for the registration of a Union for the whole of Natal with an open Constitution. At the same time the European Employers in the Trades formed a Union and endeavoured to have same registered. Thus ^{there} were two Unions in the same Trade applying for registration. The regulation was held up by the Registrar of Trade Unions for the reason there could not be two Unions in one Trade or Industry. Discussions then followed with the Indian and the European Employees and the Congress in which the first Agent the Rt. Hon. Mr. Sastri rendered much assistance. Where in an Industry there were European and Indian Employees it was suggested that parallel Unions should be registered. This was not accepted by the Congress. In order that Indian Labour may be organised, the Natal Indian Congress convened a Conference of all Indian Labour, and this resulted in the formation of the Natal Workers' Congress. This body then commenced organising Indian labour, and the following Unions were registered:

1. Durban Tinsmiths and Tankmakers Union.
2. Durban and District Tobacco Workers' Union.
3. Durban and District Bakers' Union.
4. Natal Liquor and Catering Trades Employees' Union.
5. Durban and District Garment Workers' Union.
6. Durban and District Amalgamated Union of Launderers and Dry Cleaners.

All these Unions have open Constitutions and accept Indian, Coloured and European membership. The Liquor and Catering Trades Employees' Union is now a joint Union which has European and Indian employees in its membership, and on the Executive both European and Indian employees sit side by side and discuss matters of mutual benefit to them. They have now an Industrial Council which determines the Wages. The same applies to the Furniture industry which has an Indian majority. In the former there is an Indian Secretary and in the latter there was an Indian Secretary until a few months ago. The Typographical Union of South Africa is the most powerful and composed exclusively of European members. For many years Indian ~~Members~~ have been tapping at its doors for admittance, but they were consistently refused admission. One beneficial effect of the Natal Workers' Congress was the throwing open of the doors of the Typographical Union to Indian members. Industrial Councils also exist in the Furniture Trades.

The one thought that was present in the minds of the Officials of the Congress was that if Indian Labour were organised to the same level as that of European labour, the Indian employee would take his rightful place in every trade and industry.

Both the Industrial Conciliation Act and the Wages Act adversely affect the Indians. Under the Industrial Conciliation Act an Industrial Council, with Employers and Employees as members may be formed, which fixes the rate of pay and the number of hours.

Although Indian employees in such an industry are subject to the terms of the same Agreement, the fact remains that the European employee is always given the preference in the matter of employment. The Wage Board determines the Rates of Wages and the number of hours in respect of industries and trades in which there are no Industrial Councils. The Wage Board bases its determination on the cost of living of the Europeans. The Determination endures so long as the Wage Board does not revise it. In Natal the Wage Board's determination is applicable to many industries which employ Indian labour, and which amongst others are :

- Bakery and Confectionery.
- Bespoke Tailoring.
- Catering (Tea Rooms, Restaurants, etc.)
- Clothing (Durban and Pietermaritzburg)
- Clothing (outside areas)
- Dyeing and Cleaning Establishments and Launderies.
- Furniture (Durban)
- Furniture (Pietermaritzburg)
- Leather.
- Sweet Manufacturing.
- Tea, Coffee and Chicory (Packing and Roasting)

Whilst the Indian community entertain no fear in regard to any Agreement that may be arrived at by any Industrial Council or to any determination made by the Wage Board, they recognise with some trepidation the White Labour Policy that is now being pursued throughout the country would be very harmful to our people. It is being openly preached by no less a person than Col. Creswell, the Minister of Labour, who was a party to the Capetown Agreement. In a speech at Durban delivered about three months ago the Minister not only advocated the White Labour Policy but also suggested to the Durban Corporation to dismiss a number of Indian employees so that room may be found for Europeans.

If such be the attitude of a Minister of the Union Government, it is needless for us to describe the attitude of private Employers of Labour.

Industries/

Industries and trades which at one time employed a good number of Indian hands are now practically shorn of Indian Labour. To quote a few:

- (a) The Lion Match Factory which at one time had 800 Indian Employees has now a small number. Many of the Indians have been replaced by European Girls.
- (b) The Catering Trade in Natal was entirely confined to Indians, but in many Hotels and Tearooms European girls and men are replacing the Indians.
- (c) In the Printing Trades the machinists were at one time Indians, but many of them have been replaced by European Girls.

In the South African Railways the elimination of the Indian has been going on consistently. In June 1927 Natal had 1,338 Indian Railway Employees, and in June 1931 there were only 804 Indians. The Heads of Department have received instructions that if an Indian leaves or dies in the service his place should be filled, not by an Indian but by an European. If these instructions are strictly carried out, as no doubt they are, in a few years' time there would be no Indian Employees on the Railways. It would, therefore, seem that the Authorities are working in a spirit which is contrary to that intended in the Clause.

As one of the results of unequal opportunities that our people suffer from, and owing to the prevailing depression, thousands of our countrymen are out of work in Natal. With the invaluable help of the present Agent of the Government of India Sir. Kurma Reddi, an Indian Unemployment Relief Fund bearing his name has been found. Relief by way of giving foodstuffs to the workless, who are in distress is being given. A similar Relief Committee, under the Congress, is working in Maritzburg.

As we have stated above, we accepted the Clause in the belief that in the fulness of time things will so adjust themselves that the Indian will take his rightful place alongside the European worker; but if no opportunities are given the Indian worker, and if all the avenues of employment are closed to

to him, how is he to be expected to conform to the Western Standard of life?

The backbone of the Indian Community is the Indian Worker and if it is desired that the community should be allowed to develop itself to its fullest opportunity and capacity then we submit with all emphasis, that he should be given every opportunity to raise himself. If the Indian worker is restricted in his development, it would be utterly futile to expect the Indian community to rise to the level of the European.

Our community, even at the risk of being placed at a disadvantage in the labour market, has accepted the principle of equal pay for equal work, and all we ask is that our community should be given equal opportunities.

Other Disabilities and grievances.

The INDIAN IMMIGRATION LAWS of NATAL are now obsolete. Indentured labour from India was stopped in 1911. Twenty years have elapsed since then. A large number of Indian Immigrants who were subject to these Laws have either been repatriated under the Repatriation and Assisted Emigration Schemes, or have died. Of the total Indian population of South Africa it is estimated that only fifteen per cent now represent the Indian Immigrants, in the course of the next decade or so South Africa will have no Indian Immigrants left. Our Congress have all along pressed for the repeal of these Laws. Under Act 15 of 1931 some of the sections of these Immigration Laws have been repealed, but there are still various other sections which are just as obsolete as those that have been repealed.

For instance, there is the question of the registration of marriages, births and deaths. Though most of the descendants of the Indian Immigrants are South African born they are still required to effect the registration of marriages, births and deaths at the Office of the Protector of Indian Immigrants.

Again/

Again, there is the question of divorces, which have still to be applied for before the Magistrate.

The most degrading provision in the Immigration Laws is that having reference to the age of contracting parties. In the case of the male the age of consent is 16 and in the case of the girl it is 13.

In these times, when social reforms are taking place in every country, we submit it is against all moral ethics for any community to be subjected to a law such as the one we have just quoted.

There is also the question of the payment of the monthly tax by the Employer in respect of Employees who are Indian Immigrants or their descendants. The tax payable is 1/3 per head. This is a medical fee and is to be used for the purpose of maintaining hospitals for indentured Indians. This system may have served its purpose when there was a regular flow of indentured labour from India, but at present except for those who are engaged in the coal mines and on the cane fields no person takes advantage of the hospitals. There are thousands of our people who are descendants of Indian Immigrants who have never at any time availed themselves of hospitals established under the Immigration Laws.

In Natal the Registrar of Deeds in respect of transfer of properties or passing of Bonds requires an Indian Transferor and Transferee Mortgagor and Mortgagee to state whether he is a Passenger Indian or an Indian Immigrant. In the case of the latter the Colonial numbers have to be given. In some cases descendants of Indian Immigrants have been described as follows:

MUNSAMY. Colonial Born Indian No. 6358/Dead/6360/— .

A more absurd and degrading requirement cannot be imagined. Even in respect of prominent and respectable Indians this requirement is insisted upon.

If/

If an Indian desires to affix his surname before his Christian name, he is precluded from doing so by the Registrar. In other words, as is the custom among Indians, the Indian Immigrant and his descendants are not permitted to have Surname before their baptismal names.

We submit, therefore, that much of this irritation and annoyance would vanish if the whole of the Immigration Laws were repealed and the people affected thereunder were brought under the general Laws of the Country.

NATAL PARLIAMENTARY FRANCHISE:-

Indians possessed the vote in Natal, but in the year 1896 (Natal Act 1896) they were dis-enfranchised.

MUNICIPAL FRANCHISE:-

Indians enjoyed franchise in Municipalities and Townships. By a process of ingenious and subtle work, they were dispossessed of this franchise. Boroughs Ordinance of 1924 lays down the disqualification that no person who is not entitled to be registered as a Parliamentary voter shall be replaced on the Municipal Roll. Indians own properties in all Municipalities of Natal. In Durban alone the value of properties owned by Indians is 1½ million pounds, and they hold one sixteenth of the total value of properties. Whilst Indians are required to pay rates and other taxation, they are denied the right to have a say in the affairs of a Municipality. Consequently Indians do not receive, much less enjoy, their just share of Municipal amenities. Roads in localities in which Indians predominate are neglected. We ask that both the Parliamentary and Municipal franchise should be restored to Indians.

Transvaal/

TRANSVAAL:-

In this Province Indians have no vote. We urge that the franchise should be extended to them.

CAPE PROVINCE:-

Indians have the vote, both Parliamentary and Municipal. The Union Act No.41/1931 extends the vote to women of European descent only, and excludes non-European women. This is a breach of the spirit of the South Africa Act, which protected the right of vote to non-Europeans, and even allowed them a seat in the Provincial Council. The value of the non-European vote is practically halved by the extension of the vote to European women, and threw the balance of the vote against the non-Europeans. This is a grave wrong, and we request that the Delegation make representations to remove this piece of injustice.

BILL to AMEND WORKMEN'S COMPENSATION ACT:-

There is a Bill before the Parliament, the effect of which is to discriminate against Indians by computing compensation, in the case of injury, on a lower basis, calculated not on the wages he receives, but on the colour of his skin. We urge that no discriminatory legislation be made affecting the rights of compensation. We have, on the basis of equal treatment in Industrial legislation, agreed to the principle of "equal pay for equal work", and there is no justification to lower the scale of compensation on the grounds of race.

COLOUR BAR IN RAILWAYS AND POST OFFICES:-

Indians have all along protested against the "colour bar" in the public services. Generally throughout the Union there is a tendency more and more to create and continue the "colour bar" in Railways and Post Offices. This is a gratuitous insult upon the self-respect of Indians. We ask that this should be removed.

TRADE RELATIONS :-

The visit of the Indian Trade Delegation to South Africa under Dr. Meek has raised the possibility of fostering trade relations between India and South Africa. The need for an Indian Trade Commissioner in South Africa is being felt very strongly. South Africa has a big market for her products in India. Already India is purchasing gold, diamonds, wattle bark coal and other commodities, and we think there is a ready market for South African fruits, maize, etc., provided the service of steamers to India is quickened.

Improved trade relations would mean a closer friendship between the two great countries and would afford mutual advantages.

We desire to urge that this question may receive your very serious consideration.

INDIAN IMMIGRATION TRUST BOARD :-

Law 20 of 1874 (Natal) created an Indian Immigration Trust Board whose duties were to undertake the receipt of all monies for purposes of Indian Immigration. The Trust Board had accumulated a fund which, after having paid out such monies as were required for the purpose of defraying and discharging and paying all expenditure connected with or incurred in the introduction of Indian Immigrants, and their return passages, and all expenses departmental and otherwise necessary in and about the reception, management, protection and return of Indian Immigrants", left a sum of £120,000 or thereabouts. This amount was no more required for the above purposes, and in consequence remained idle with the Trust Board for some years. The Minister for the Interior, under an Act of Parliament, is now utilising the resources of this Fund for the purpose of repatriating the Indians under the Assisted Emigration Scheme.

As...

As eighty five per cent of the resident Indian population of South Africa are born in this country and as Indentured Labour was stopped twenty years ago, the Congress has, we submit, a legitimate right to ask for the diversion of this large sum for the upliftment of our people. We would urge that the amount should be spent on the promotion of Indian education, there can be no better call on the fund than this.

OLD AGE PENSIONS :-

We ask that the privileges of Old Age Pensions which at present are extended to Europeans and Coloureds be extended to Indians as well. The earning capacity of the average Indian is very limited, and an average old aged Indian earns little or nothing. Our people have contributed more than their share to the development of the country, and in proportion to their resources they contribute their share of the taxes imposed. We think these factors should justify our request.

FIREARMS:-

The right to grant or refuse permits to Indians to hold firearms is vested in the Commissioner for Native Affairs in Natal. This right is invariably exercised against Indians. At each successive Conference protest was made against the discrimination made against Indians in the issue of firearms. The decision of the Commissioner is final. Genuine cases of Indians who applied for firearms for self-protection have been turned down. Indian farmers and storekeepers of substance and good character, who reside at a considerable distance from town and in inaccessible parts, require firearms for self-protection, but they are refused permission. Although the Chief of General Staff, gave the assurance in a letter that permission will be given in cases of necessity, this assurance has not been observed.

In....

In order that Indian applications are dealt with on their merits, and receive a fair hearing, we urge that there should be a right of appeal to the Supreme Court in cases of refusal.

THE "UPLIFT" CLAUSE:-

It has been said that the Capetown Agreement was conceived in a spirit of compromise. We accepted the Agreement, together with its advantages and disadvantages, in the full belief that it was an honest attempt at solving the Indian problem in the Union. In the words of Dr. Malan "the Agreement afforded an honourable and friendly understanding and a new era of peace and friendship in the true interests of both, between South Africa and India."

With this spirit pervading, the Indian Community as a permanent population of this country, accepted to conform to Western Standards of life, and agreed to the principle of "equal pay for equal work". We also agreed, in order to live a happy family life in the country to allow no children to come into the Union without being accompanied by their mothers.

Prior to this, respecting the fear of the Europeans of this country that the Indians would swamp them, we agreed to "closed door" policy, by which no further immigration from India was permitted.

While all these entailed a large measure of sacrifice on our part, we were prepared to accept, provided, in the words Mr. Gokhale, "we lived under equal laws and that the administration of these laws was just and humane."

The "Uplift" Clause assured to us the character of a Magna Charta, and was also, in our view, a guarantee that nothing would be done to impair the noble and lofty ideals of "Uplift" contained in that part of the Agreement. In other words our position in the Union would be no worse off than it was before. That by taking advantage of educational and other facilities

facilities, coupled with a better system of housing and sanitation, we would be enabled to reach the goal set forth in the "Uplift" clause.

Our expectations have fallen short of what we hoped, and what we believed would be done to "uplift" us.

There has been, at times, a better atmosphere created, and goodwill cultivated between the European and ^{the} Indian due to presence of the successive Agents, and their work here. But even with this we cannot but feel constrained to say that the intensity of agitation against Indians has in no way lessened.

The unjust administration of Licensing, Immigration and other Laws, the tendency to tighten up laws relating to trade, residence and occupation, and the attempt to segregate Indians as is evidenced in the Transvaal Asiatic Land Tenure Bill, to make the lives of Indians miserable and unbearable, and the recent enactment of a Licensing Ordinance affecting trading rights of Indians in that Province, the "White Labour Policy" are instances, out of many, of how the Authorities wanted to pursue the old policy of keeping down or getting rid of the Indians.

We have, as far as possible, given in this Statement the grievances suffered and the hardships endured under different laws and administrative acts in the Union. Nothing short of removal of these will satisfy the Indian Community.

We desire to express to you our sense of gratitude for the deep interest you are taking in our affairs, and we trust that the information we have supplied and the
views/

views we have placed before you will be of assistance to you.

We beg to remain,

Yours truly,

Souley Khatun
President.

Chayin J. R. Pather
Joint Hon. Secretaries.

Haye Samudhan
Joint Hon. Treasurers.

SOUTH AFRICAN INDIAN CONGRESS.

M. S. Pather

H. P. Pather

Jacob S. S. Gordon

P. K. Desai

Bernard L. Siganoney

S. S. S.

Ahamed Smail

R. Gool

C. S. S.

S. Dawood

7, Buitensingel,
Cape Town.
12th January 1932.

Appendix B.

P R E S I D E N T I A L A D D R E S S

delivered by Mr. Sorabjee Rustomjee, President of the South African Indian Congress at the Emergency Conference held at Johannesburg, on the 31st December 1931 and 1st January 1932.

In presiding over this Emergency Conference the twelfth Session of our Congress, I am fully conscious of the responsibilities that I have been burdened with, on this important occasion.

This Conference is a momentous one, for, assembled as we are, on the eve of the second Round Table Conference, we shall have to decide the future programme of the Congress in relation to the Capetown Agreement, and on the matters affecting Indians in South Africa.

I am extremely happy to see that the two Provinces Natal and Transvaal are so well represented and delegates even from far off Cape are present. In extending to the delegates a hearty welcome I do hope that, grave as the questions are that will be put forward before them for their decision, they will have divine guidance in all their deliberations.

Ladies and Gentlemen, once more we have amongst us, our friend, the Rev.C.F.Andrews. Mr.Andrews is one of us. South African Indian Community knew Mr.Andrews for the first time, in 1913 during the Passive Resistance struggle. Since then he has paid us many visits. In our hour of trial and tribulation we can always count upon Mr.Andrews inestimable services.

His presence in this country during the visits of both the Paddison and Habibullah Delegations, was of immense benefit to us. The achievements of his pen,

have been remarkable, in that his articles have always been the means of presenting the Indian Question from a new perspective. In the case of Mr. Andrews the often quoted adage that "the pen is mightier than the sword" cannot be truer. He has now come at a most opportune moment. Throughout the proceedings of this Conference I have no doubt, we shall have his sagacious advice, and will receive the benefit of his wide experience. On your behalf and on behalf of our Community in South Africa, I extend him a hearty welcome. May God be with him and bestow on him His Blessings.

We are very grateful as a community for the kindness of the Lord Bishop of Johannesburg and Dean Palmer for having spared time in the midst of their overwhelming duties to come to us this morning and offer us their greetings.

In a few days time the Indian Delegation will arrive in South Africa. They arrive here to revise the Capetown Agreement that was consummated five years ago. They are charged with a duty made very difficult by the Transvaal Asiatic Land Tenure Bill which will be one of the chief items for discussion at the Round Table Conference.

The Delegation is a strong and distinguished one, and comprises representatives of every shade of public opinion in India.

Sir Fazli Hussain, The Leader of the Government of India Delegation, as a member of the Executive Council of the Viceroy is immediately in charge of the affairs of the Indians Overseas. His department has made a special study of our peculiar difficulties in this country, he therefore comes not as a complete stranger but as one who is acquainted with the Indian Question in South Africa.

Mrs. Sarojini Naidu was here in 1924 when our Community was faced with the Class Areas Bill. With an indomitable courage for which she is noted she fought our cause admirably. Her visit was during a period when South Africa was seething with an atmosphere that made our lives in this country miserable. With the knowledge that our cause was righteous, she won her way through South Africa.

It was she who was the first to suggest that a Round Table Conference between India and South Africa should be held and while she was at the Cape with our Congress representatives she saw with the dissolution of the Smuts Government the fall of the Class Areas Bill.

She comes as the Representative of the people of India and as the Ambassador of a great nation.

She has suffered in prison and out of prison for the freedom of India and has proved to the World as late Valliama in her Passive Resistance Struggle that our women when the hour comes suffer and even face death.

Her distinguished services as President of the South African Indian Congress and her invaluable help and assistance in India to the Congress Deputation are fresh in our minds. Our cause will no doubt be strengthened by her being on the Delegation.

We are grateful that Mr. Sastri in spite of his failing health comes to revise the Agreement, in the creation of which he played a prominent part. He laboured amongst us for the space of eighteen months as the first Agent of the Government of India. His personality and his oratory brought about a better understanding between the European and the Indian Communities.

His stay was all but short among us, and his worth and work in this country brought a chorus of approval.

Sir. Geoffrey Corbett comes to us as no stranger. He has come again and again as a representative of the Government of India and we appreciate all the more as he comes though in failing health to help to build up a greater understanding between the Europeans and Indians.

Sir. D'Arcy Lindsay leader of the European Mercantile Community in India brings the goodwill of his community to help in the difficult work of the Delegation. During his last visit he endeared himself to us.

Our one great regret is that Sir. Phiroze Sethna who did such inestimable service at the last Round Table Conference has been prevented from coming as a delegate owing to the illness of his wife.

Mr. Bajpai will be here again as Secretary to the Delegation. By his tact, ability and knowledge of the South African Indian Question he won golden opinions. He, too, comes to continue the work of the Habibullah Delegation. He will undoubtedly be the moving spirit.

I have not purposely referred earlier to Sir. Kurma as a member of the Fazli Hussain Delegation, not because he was the least but because he is much more to us as he has been with us for the last three years. You will remember that during his term of office, for months he lay between life and death and how as an invalid he went to India. The moment he felt that he was recovering, his sense of duty brought him back to us. His knowledge of the intricacies of the Transvaal Land Tenure Bill which will be the principal topic for discussion at the Round Table Conference, is deep and wide. He has spared no pains to obtain first hand knowledge on this and other matters, which, we are confident he will bring to bear upon the deliberations of the Conference.

V63:45 (Y73P15)

I shall come to the subject for which we have all assembled here.

It was in this Golden City that in the middle of March 1927 we assembled in an Annual Conference to express our views in regard to the Capetown Agreement. After mature deliberations we accepted the Agreement arrived at between the Union and the Indian Governments, as being an honest attempt to find a solution to the Indian problem.

It will not be out of place to quote portions of Dr. Malan's speech to the House of Assembly when he rose to make a statement on the conclusions arrived at which resulted in the Capetown Agreement. He said that "Through-out the Conference there was remarkable absence of the spirit of bargaining, and the decisions taken were arrived at solely and wholeheartedly with a view to comprehensive, effective, and peaceful settlement."

Again he said "I feel assured that both this House and the people of South Africa will join in the fervent hope that the reward of their labours will be the inauguration of a new era of peace and friendship in the true interests of both, between our country and the country which they serve."

The Press of South Africa and of India hailed the Agreement as an honourable settlement, and we as a community most vitally concerned were asked to co-operate with the Union Government and to give it a fair trial.

In the spirit in which the Agreement was conceived we accepted it. It marked a new era in our history and we had hoped that the Government which had up till then treated members of our community as aliens, would, as it had assured in the Agreement treat us as part of the permanent population of South Africa.

The step we had then taken was undoubtedly a wise one in all these circumstances, but subsequent events have proved that our trust in the Union Government was placed all too soon.

How much the Indian Community of South Africa has gained and how much it has lost will be seen from an analysis of the terms of the Agreement which I shall make later.

Fifteen months ago we met in an Emergency Conference in this Hall for the purpose of considering the Transvaal Asiatic Land Tenure Bill that faced our countrymen in this Province. The Bill was so drastic in character that if it had become law it would have reduced our people to a state of helotry.

The Capetown Agreement was the vindication of the strenuous fight that the Indian community of South Africa put up against the Areas Reservation & Immigration & Registration (Further Provisions) Bill. It put a stop to the policy of segregation. as Dr. Malan had assured the House of Assembly we had expected that the consummation of the Capetown Agreement as he had stated would be the "inauguration of a new era of peace and friendship." That was not to be, for the self same Minister, to our surprise introduced the Transvaal Asiatic Land Tenure Bill, the provisions of which were even more drastic than those of the Asiatic Bill.

I do not desire to go into the details of the Bill. Suffice it to say that no civilized people with a vestige of self respect in them would ever accept it. To me it is inconceivable that a Minister who figured so prominently in the shaping of an Agreement that brought peace to the European and Indian communities, could sponsor a Bill which was not only the negation
of the/

of the elementary rights of a section of the people of South Africa but also a violation both in spirit and in letter of the Agreement to which he so solemnly subscribed.

Our people in the Transvaal have created vested rights which the Bill does not respect. In order that these vested rights may be protected so that our people in the Transvaal may enjoy the same rights and privileges as our people in the other Provinces. Your Congress in its statement to the Habibullah Delegation asked for the repeal of the Laws that specially affected them.

The Capetown Agreement laid down that Indians in the Union who were prepared to conform to Western Standard of life, would not only be enabled but encouraged to do so. How the Union Government expects our people in the Transvaal to conform to Western Standard of life when they are restricted on all sides from developing to the full extent of their capacity passes my comprehension.

We will accept no Bill, that forces, any feeling of an inferiority complex, on our people, and we will therefore press for the complete withdrawal of the Bill.

I am not unmindful of the seriousness of the statement I make, but I am fully aware of the determination of our people in the Transvaal, Mahatma Gandhi has made them what they are today. Courage they have in plenty. The Passive Resistance Struggle in the Transvaal is still fresh in our minds and needs no reminding. In the struggle our people in the Transvaal rose as one man for the maintenance of their legitimate rights. I have no doubt that in their struggle against

the/

the Transvaal Asiatic Land Tenure Bill they would be no less in their determination to maintain their rights. No matter what the sacrifice, we may be called upon to make, we will not rest content until the Bill is completely withdrawn.

In regard to the Liquor Act, Section 102 (2) (a) of that Act creates a hardship on a section of our people in the Transvaal. You will no doubt remember that Section 104 which would have wrought havoc among our people was dropped. The Agent of the Government of India and your Officials have left no stone unturned to bring to the notice of the Minister that Section 102 (2) (a) meant the virtual displacement of a number of Indians engaged in the Liquor & Catering Trades. Whilst the Congress with the aid of the Agent has been successful in securing exemption certificates for those already engaged in the trades, they are by no means safe. They comprise a section which has no other means of livelihood and to deprive them of this is a grievous wrong which should be righted.

The subject of Condonation has given us many anxious moments. It was at the Kimberley Conference that your Congress after having heard the Right Hon. Srinivasa Sastri very fully on the question, accepted the Condonation Scheme. In accepting it we fully believed in the sincerity of the Union Government. We were assured that our people taking out the Protection Certificates issued under the Scheme would enjoy the same rights and privileges as the domiciled Indian. There was to be no differentiation between the domiciled Indian and a Condonee, except in the matter of the introduction of his wife and minor children which was left in abeyance. Fortified as we were with the assurance we asked our people to take out these Certificates.

Administratively the Condonees are receiving differential treatment in that they are receiving Emergency Certificates instead of Identity Certificates, totally against the assurances given by the Minister.

Again on the question of wives and minor children of Condonees, we were assured by the Minister that if the number affected was not large he would favourably consider the question of permitting them to bring their wives and children. The number affected is not large and it would be a magnanimous act on the part of the Minister if he were to allow the Condonees to bring their wives and children. The Capetown Agreement gives due consideration to Paragraph 3 of the Reciprocity Resolution of the Imperial Conference, and if the Condonee is expected to lead a happy family life he should be entitled to bring his wife and children.

The Immigration Laws of the country in their application to Indians have always been a source of legitimate complaint. Innumerable instances can be quoted where our people have not received that treatment which as citizens of South Africa they are entitled to. Various sections of the Immigration Laws are not only adversely interpreted but applied in such a manner so as to operate harshly against our people.

In regard to Domicile, that when the Immigrants Regulation Amendment Act of 1927 was before Parliament, the then Secretary for the Interior in a letter dated 29th. April 1927 in reply to the representations of Congress stated that "It is not intended to apply the provision dealing with loss of domicile after three years continuous absence from the Union retrospectively, and to make this purpose quite clear the following words will be inserted in Section 10 at the Committee Stage of the

Bill/

Bill after the word therefrom "or from the date of the commencement of this Act whichever may be the later." Since Rashid's case the Immigration Authorities hold that a person in possession of a Domicile or Registration Certificate who returned to the Union in terms of the 1927 Act after a long absence had lost his domicile and therefore had to remain three years in the country to re-acquire his domicile which would thereafter enable him to bring his wife and minor children into the country. Is this not contrary to the above undertaking?

The arbitrary powers given to the Minister to deport any person who commits any scheduled crime or offence are very wide. Although of a general character the section is very stringently applied to the Indian. Deportation orders are being made against Indians who have committed minor offences such as common theft. This is a question that should receive our serious consideration, for, under the existing section no Indian born elsewhere than in South Africa is safe.

Much of the Indian Immigration Laws of Natal is still on the Statute Book. Immigration was stopped in 1911 and we think twenty years is a sufficiently long period to allow these Laws to be repealed. The 1/3d Tax which an employer has to pay to the Indian Immigration Trust Board in respect of every Indian Employee whether he be an Indian Immigrant or the descendant of an Indian Immigrant is a stigma on the South African born Indian whose mode of living and his outlook in life are quite different to those of his forbears. Eighty-five per cent of the Indian population are South African born and in a few years time the India born Indian would die out. Why then is the necessity for the Indian Immigration Laws?

LL.

I shall now engage your attention to an analysis of the Capetown Agreement for the revision of which the Round Table Conference will sit at Capetown on the 12th January.

In regard to the scheme of Assisted Emigration, although Dr. Malan in his statement to the House of Assembly assured the House that throughout the proceedings of the last Round Table Conference the spirit of bargaining was absent, there is no doubt that as a consideration of the Asiatic Bill being dropped a scheme, the desired effect of which was to reduce the Indian population to an "irreducible minimum," was brought forward. Was this not bargaining? The scheme on the face of it appeared to be an improvement on the then existing Repatriation Scheme. It gave them a right of re-entry within the last two years of the three year period in the old scheme.

The scheme as enunciated in the Capetown Agreement is clear in its terms that no compulsion was to be employed by the Government. The pressure that is being brought to bear upon the poorer section of our Community coupled with the prevalent unemployment and depression and the White Labour Policy of the Government has been the means of sending thousands who on arrival in India are stranded and virtually lost. It touches a section who through no fault of their own were encouraged to come to this country and contributed to its wealth and prosperity. I have no hesitation in condemning the scheme and to state that the Congress will not be a party to the bartering away of the rights of the poor for the benefit of the rich.

I would here mention the selfless task of Swami Bawani Dayal who after investigation into the condition of the repatriates in India, has proved the scheme a failure because the repatriate cannot be absorbed in the life of India and therefore left stranded. To him our thanks are due.

Our hopes and aspirations were centred in the "Uplift" clause of the Capetown Agreement. It recognised the grave situation of Indian Education in Natal. The appointment of the Education Enquiry Commission by the Natal Provincial Council resulted in the whole of the subsidy of £5.5.0. being spent on Indian Education. For the year 1926-1927 out of the total subsidy of £38,986 the Natal Provincial Council spent only £28,430. Since the findings of the Commission practically the whole of the subsidy is being spent on Indian Education. The fact that the estimate for 1931-1932 is £65,838 is undoubtedly an improvement on the amount spent in the year 1926-1927. But the extraordinary difference in the amount of subsidy between the European and Indian child still remains. Whilst the subsidy for the European child is £16.7.6. the subsidy for the Indian child is £5.5.0. Furthermore, Whilst the Province of Natal during the last two years has spent no less than £491,000 from its exchequer over and above the Government subsidy on the education of the European children it has contributed, much less spent, not a penny on Indian education. The total number of Indian children of school going age is 35,000 and of this number only 15,814 are actually in schools. It would be apparent therefore that about 19,000 children of school going age are receiving no education. It must be admitted however, there are now over 5,000 more children in Schools than there were in 1928. We ask for increased facilities/

facilities for the large number of the Indian children who are remaining illiterate. The Natal Provincial Government has not done its duty to the Indian Community despite the fact that in proportion to their earning capacity our people contribute their share of taxation to the Province.

If the Indian Community is expected to attain Western Standard of life as foreshadowed in the Capetown Agreement, then the first essential would be the education of its children. Educate them and then enjoin them to adopt the Western Standard. In making provisions for the raising of the general standard of education of our children the Union Government has lagged behind, and has done very little to justify its undertaking in this direction.

The Licensing Laws of the Country are still a source of irritation to our Community.

The concluding clause of the Capetown Agreement provides for the revision of the Licensing Laws. Even after the lapse of five years no attempt has been made to revise such Laws. When Congress made representations to the Union Government for the revision of the Laws they were informed that the initiative had to come from the Provincial Government.

The Union Government has sought to put an entirely new interpretation on the clause dealing with the revision of the Licensing Laws from that placed by the Indian Community. The Government of India were informed of the attitude adopted by the Union Government on this subject, but has given no reply to the representations made by Congress. It would seem that unless the matter is made clear with the clause dealing with the revision of the Licensing Laws it would remain a dead letter. No

for that which we enjoyed in Natal and consider to be our legitimate right as citizens of South Africa, we feel that both parliamentary and municipal franchise should in the case of Natal be now restored and extended to the Transvaal. That the universally accepted maxim, "No taxation without representation" well and truly applied to us for no individual who is called upon to bear equally the burden of taxation should be deprived of the means whereby his voice could be heard in the administration of the country to which he belongs.

We would also call attention to the very serious fact that when the European Women were enfranchised in the Cape Province with no compensating franchise even for educated Non-Europeans, the political stratagem at once halved the value of every educated Indian vote in the Cape Province. We would call the attention of the Fazli Hussain Delegation to this extreme injustice which has taken place since the Agreement was signed.

I should like the Conference to consider the advisability of urging upon the Indian Delegation the question of improving trade relations between India and South Africa by the appointment of an Indian Trade Commissioner. We had hoped that as a result of the visit of the Indian Trade Delegation, headed by Dr. Meek, that a Trade Commissioner would have been appointed before now. For we feel that there are great possibilities for the development of Trade between this Country and India. As it is India buys South African Gold, Coal, Wattle Bark and other commodities. If for instance, instead of ships between these countries touching East African Ports, it were arranged to run regular and periodical boats direct to India, a ready market, I am sure, will be found for perishables, particularly South African fruit.

One other matter and I shall conclude. In this country since the time of Mahatma Gandhi was our accredited leader, we have always represented the common cause of Indians. We may be Muslims, Hindus, Christians and Parsees in our homes or places of worship but outside those we have always remained Indians. You have no doubt heard that in Durban a few Indian Merchants gathered at a private residence and formed an Indian Chamber of Commerce. I would have refrained from mentioning this, but for the fact that the so called Chamber has been formed not for the purpose of protecting the business interests of the Merchants but it has been formed primarily for the purpose of securing preferential treatment and political rights for Indian Merchants. I am reliably informed that a statement has been prepared on these lines and is to be submitted to the Government of India Delegation. I cannot for a moment conceive how any Indian with any sense of responsibility and self respect can come forward with a suggestion that he should receive preferential treatment just because he happens to be, for the time being, slightly better off financially than his Indian brother and the possessor of a Trade Licence. It is sheer stupidity to assume the role of superiority on the ground of commercial standing, and though I know that the statement of this Chamber of Commerce will be consigned to its proper place, I do feel that the time has arrived when the Community should show in no unmistakable terms, its strong disapproval of their foolish action.

Let us warn them that our Community is watching them, and any false step that they may take will have disastrous effects on them.

Deputations may come and deputations may go and they will act as our advocates and what they do will affect us, but it is for us to say what shall and what shall not be done in our name for we have to live and die in this country, for are we not already over eighty-five per cent of us, children of this country. We will get what we deserve. If we are prepared to suffer as we suffered in the days of Passive Resistance we shall now as then maintain our self respect not only as Indians but as South African Nationals and I have no doubt that you will not fail when the hour comes.

.....

APPENDIX "B".

A P P E A L

DAYA RATANJEE.

J U D G M E N T.

The appellant is an Indian born in South Africa on the 9th September, 1914. At the time of his birth his father was domiciled in the Transvaal and his mother had been here for about two years and two months - she having entered the Transvaal on the 13th July, 1912.

The appellant was restricted by the Immigration Officer in terms of section 4(1) (a) and (b) of Act No.22 of 1913 as amended for the following reasons:-

- "1. He is an Asiatic and falls under the Minister's pronouncement of the 31st January, 1931.
2. He is unable, by reason of deficient education, to read and write any European language.
3. He has not proved to my satisfaction that he falls in the class exempted by section 5(e) of Act No.22 of 1913, as amended by Section 3 of Act No.22 of 1914, and Section 4 of Act 37 of 1927.
4. He does not fall under the class exempted by Section 5(f) of Act No.22 of 1913, as he left for India about 1915 and only returned to the Transvaal on the 17th June, 1931".

Against this restriction this appeal has been brought and as the appellant relies for the purposes of his case on Section 5(e) of Act 22 of 1913 as amended it will only be necessary to consider the appeal on that ground.

Section 5(e) provides inter alia that where a person born in any place after the commencement of the Act which is the 1st August, 1913, and his parents were at the time of his birth domiciled in any part of the Union he shall not be a prohibited immigrant for the

purposes/

purposes of the Act.

As "domicile" has been given a special definition in Section 30 of the Act that definition must be applied in interpreting the term where it is referred to in Section 5(e). Now "domicile" in the said Act means continuous lawful residence for a period of three years.

For the appellant to succeed he must show that both his parents were domiciled in the Union at the time of his birth and this he has failed to do as his mother had admittedly only been in the Union for about two years and two months when he was born.

Mr. Ritch for the appellant contended that inasmuch as appellant's father had a domicile the mother must be taken to have a domicile also. With this contention the board cannot agree, and the Appeal is dismissed subject to points of law either of the parties may wish to state for the Supreme Court's decision.

Pretoria,

8th August, 1931.

THE ASIATIC LAND TENURE (AMENDMENT) BILL

COMMONLY KNOWN AS

THE TRANSVAAL ASIATIC BILL 1930.

*A Brief Survey of the Bill with statements
and extracts on the subject in relation to
Indian rights to trade, occupation and
residence in the Transvaal Province.*

Published by the authority of the Executive of

**The South African Indian
Congress.**

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PREFACE.

Like the poor, the Indian problem in South Africa is ever with us. The European side of the problem has been, and seemingly still is, how to devise means either to get rid of the Indian altogether, or failing that, how most effectively to bring him into line, in the matter of treatment, with the other coloured peoples of the Union. The Indian side of the problem has been, and is to-day even more pressingly so, how to resist encroachments upon the elementary rights of Indians lawfully domiciled in the Union, and to avoid their threatened degradation to the wholly negative status of the native or the scarcely less lowly position allocated to the so-called Cape-coloured community. Regarded impartially, the problem will be found to be largely psychological, presenting a by no means uninteresting illustration of what is somewhat loosely termed colour prejudice. It is no exaggeration to say that *qua* South Africa generally, colour is synonymous with differential treatment.

While it is true that in the Cape Province time and certain other factors have worn such artificial distinctions comparatively thin, that very fact has contributed to their reinforcement in other provinces of the Union with a view to arrest the evil, as it is regarded, and to ensure that, in the words of the "Grondwet" of the late Transvaal Republic: "There shall be no equality in Church or State between white and non-white." Economic and political traditions and interests doubtless play a not unimportant part in the creation of this attitude, but making the most liberal allowances for these, one is confronted with an antagonism on the ground of colour *per se*, that would appear to be so deep-seated as to amount to an obsession and to over-sweep the restraints equity and ethics might reasonably be expected to impose.

The conviction with which one is confronted at every turn is that the function and destiny of the non-white is rightly considered to be, and to continue to be, that of hewer of wood and drawer of water for his natural, *i.e.*, white overlords. As long as the black or brown man accepted the position and continued to fulfil his allotted part, he was "desirable." So soon as, in defiance of the theories held regarding his true function, his latent capabilities began to take expression and he to threaten an inconvenient competition, he was found to be "undesirable," and segregation was advocated as a necessary step for the protection and preservation of the white civilisation he presumed to "menace." For example, the contract-bound mine native, or farm native, is so extremely desirable that labour agents have grown wealthy on the premiums paid by employers for collecting and supplying him. His undesirability synchronises with the expression by him or any desire to be his own master or master of his fate. The indentured Indians imported by the ship-load from India were most "desirable" as long as they aspired to nothing more ambitious than to furnish cheap and profitable labour for the sugar plantations and collieries of Natal. The position might be expressed fairly and concisely in terms of Kipling's "East is East and West is West." White is White and Black is Black and never the twain shall meet "the words on terms of equality of opportunity" being understood albeit unexpressed. Similarly, "desirability" *qua* the non-white equals doing the white man's bidding; "undesirability" poaching on his preserves. In short, prevailing policies are directed to his perpetual helotage, and in the pursuance of these policies segregation perforce occupies a place in the very forefront, and that, because segregation best expresses in tangible manner the refutation of any pretensions the non-white might entertain to equality of opportunity.

The foregoing should help to remove the difficulty so often experienced in arriving at any reasonable understanding of the antagonism with which the comparatively small and harmless British Indian community has been persistently confronted.

From a careful perusal of the compilation now presented it will be obvious that South Africa has—except in the case of Natal when in search of indentured labour—been legislatively occupied for some 50 years past in restricting Indian immigration, on the one hand, and on the other, in endeavouring to limit as narrowly as possible the field of activity of Indians whose right to enter South Africa's territories could not be disputed.

The Immigration Law of 1913 having for all practical purposes effectively bolted and barred the Union's gates against further Asiatic immigration, intensive effort will be found to have been focussed upon devising ways and means of counteracting what it has become the fashion to term "Indian penetration" on the part of those whose presence had to be suffered. Expressed in plain language, "penetration" means poaching on Europeans' preserves. Not only is the physical contact or even proximity of the Indian "undesirable," but that undesirability extends to, and becomes accentuated wherever the Indian is found in competition with the European, either in trade or as a would-be property owner. Whenever and wherever this has happened his peculiarities of colour and race have been recalled in order to justify the "spoiling of the Egyptian." Reference to the lengthy catalogue and character of anti-Asiatic statutory enactments of the past fifty years will demonstrate how at every turn his aspirations and efforts towards expansion and self-improvement have been countered with legislative restrictions. It would be more than surprising had he not exercised his ingenuity to discover loopholes in the strict letter

of the law and having done so to evade its spirit. For this, too, he has, of course, met with condemnation and abuse. Forgetful of the natural instinct towards freedom and the urge inherent in all to self-liberation from artificial and arbitrary restraints, his persecutors have held the Indian up to obloquy as a trickster incapable of good faith.

In the fifty years' campaign, in which he has been engaged in sheer self-defence, the Indians' part may not inaptly be likened to an endless fight on retreat. In it, as the field of operations, the Transvaal looms largest and darkest. In the days of the Transvaal Republic, when segregation was first mooted, the relatively insignificant Indian population was yet able successfully to invoke the intervention of the British Government for its protection against differential treatment. Read to-day, when Boer whips have been replaced by Dominion scorpions, the righteously indignant protestations of Lord Lansdowne and other scarcely less important statesmen uttered on the eve of the Boer War cannot fail to furnish food for serious reflection.

From 1902, the year the Boer War ended, to date, the history of the Indian in the Transvaal, as Crown Colony, under Responsible Government, and finally under Dominion Government, may briefly be summed up as a continuous course of degradation. Peace was scarcely proclaimed when he was compelled to register and to carry registration certificates of identity under the Asiatic registration law, Law 3 of 1885 meanwhile being deliberately retained on the Statute book, thereby maintaining the restrictions upon residence or ownership of fixed property outside of locations specially set apart for him.

The Gold Law and Township Amendment Acts of 1908 excluded him, as a coloured person, from sharing the rights enjoyed by those unaffected by the colour taint on proclaimed gold-bearing areas of which, of course, the Rand is the most important. 1919 saw Indian limited liability companies deprived of the right of holding fixed property in their corporate names; 1930 sees him confronted with the Asiatic Land Tenure (Amendment) Bill presently under discussion, and which if enacted unquestionably spells his virtual extinction. In the above reference, specific mention has been made only of what may be termed the outstanding milestones. Many lesser ones, each embodying some additional form of Statutory disability, may be found, leaving but few gaps in the period from 1902 to 1930. Hitherto Indian trading rights, although often threatened, and not infrequently obliquely or covertly assailed, have been safe from direct frontal attack. Occupied, mainly with trade, the Indian community of the Transvaal has been prone to make the best of their disabilities and to suffer with patience the indignities imposed upon them, so long as they were left in peace to carry on their business. The proposed enactment is, not without justification, regarded by them as an attempt to despoil them of their last remaining assets, and by segregating them for purposes of trade as well as residence to effectuate their complete and final ruin.

L. W. RITCH.

Johannesburg,

8th September, 1930.

INTRODUCTION.

In this booklet are published the speech of the Minister of Interior (Dr. Malan) when he moved the appointment of a Select Committee to inquire into the trading rights of Indians in the Transvaal Province, a statement submitted by the Transvaal Indian Congress, as also an important Memorandum submitted on behalf of the Government of India, a text of the Bill and comments on and criticisms of its different provisions, together with extracts and others bearing on the Indian question in the Transvaal Province. All these, it is hoped, will enable the readers to form a just appreciation of the grave crisis that is now facing the Indian community in that Province.

The material published in this book will, it is hoped, give an insight into the inner history of the Transvaal Indians, and the nature of disabilities imposed upon them from time to time since the year 1885.

The present Bill deals with and seriously restricts the rights of Indians to trade, occupy and reside in the Transvaal Province. The Bill, as will be seen, is of a complicated and far-reaching nature. It was introduced at the tail end of the sitting of the Parliament in June, 1930, and the community has been fortunate enough to secure its postponement until the next session of the Parliament, which will meet at Cape Town in the month of January, 1931. The Minister in charge of the Bill (Dr. Malan) is reported to have stated that he was determined to push the Bill through without any modifications.

The provision of the Bill are unwarranted, drastic and unmerciful in their application. Among the objectionable features of the Bill, which safeguards rights up to a certain point, and that, too, in a lukewarm manner, are to be found the re-introduction of a policy of residential and commercial segregation on the same line, in effect, as that contained in the Class Areas Bill of 1926, which was withdrawn as the result of the Cape Town Agreement, confiscation of properties, which are stated to have been illegally acquired since the passing of the Act No. 37 of 1919, the assigning of "defined" areas—in other words, "locations" to Indians, and branding them as an undesirable class and placing upon them a racial stigma of the worst kind. On the subject of segregation, apart from anything else, it is interesting to note what the Asiatic Inquiry Commission, which visited every important centre in South Africa in the year 1921, and which took exhaustive evidence, said. It observed, giving emphasis to the point as affecting Transvaal, as follows:—"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." Yet what the Bill proposes is in direct contradiction to the finding of this Commission. The main object of the Bill, it seems, is to place the Indian in degradation and reduce him to serfdom and servitude.

Indians have no vote in the Transvaal. Their population is limited and is gradually diminishing. Immigration is barred from overseas and inter-provincial migration is prohibited. But nevertheless they are subject to same laws as are applicable generally in regard to payment of standard wages in trade and industries, trade licences, income tax and other forms of taxation. He is not exempt from the general laws of the country as an Indian, although, because of the fact that he is an Indian, disabilities upon disabilities are heaped upon him, under the weight of which he groans. In plain terms the present Bill, if its implications are carefully studied, grossly and unjustly embodies principles and policies to deprive the Indian of his livelihood, ruin his long-established trade, drive him out in the long run to locations to lead a slum life. Mr. Jooste, Mayor of Klerksdorp, giving evidence before the Select Committee on this point, said: "We feel that we must give them some place away from the Europeans where they will have their little village to live in and enjoy the usual amenities of life." But if one has to please Mr. Jooste and see some good points in his suggestion, the question is asked: Are there areas to which Indians can be assigned? The reply to this is clear from the evidence given by Mr. Stewart, the Registrar of Mining Titles and Rand Townships, who is an authority on the subject. He says, "There are no townships in the proclaimed areas where Asiatics are free from impediments as to occupation and ownership because there is always a restriction in the title. . . . I know of no case of a township on a public digging with no restriction in the title." In this he is supported by Mr. MacWilliam, who appeared as counsel for the Municipality of Johannesburg before the Committee. Mr. MacWilliam says, "All the available townships in or near Johannesburg are barred against them (*i.e.*, Indians) by some legal restriction or other."

Indians in South Africa have accepted the Agreement in the full belief and hope that in fulness of time their conditions will be bettered and that they will be given every opportunity to uplift themselves and to take their rightful place with the other sections of the community of South Africa in the development and progress of the country. This belief induced them to show their preparedness as permanent population of South Africa to conform to Western standards of life. The present Bill, as far as the Transvaal Indians are concerned, cannot by any stretch of imagination be said to be in keeping with the letter and spirit of the Cape Town Agreement.

If Indians are to receive bare elementary justice to follow an honest livelihood and to act up to the ideals set before them by the Cape Town Agreement, then there is no alternative but to withdraw the Bill and remove the disabilities imposed upon the Indians. The spirit of the Cape Town Agreement demands it.

A. CHRISTOPHER,
President, South African Indian Congress.

Durban,
8th September, 1930.

DR. MALAN, THE MINISTER OF THE INTERIOR, SPOKE
AS FOLLOWS IN MOVING FOR THE APPOINTMENT
OF A SELECT COMMITTEE.

That a select committee be appointed to enquire into and report upon:—

- (1) The position created by the judgments regarding the residence on or occupation of fixed property by Indians or other persons belonging to the native races of Asia on proclaimed ground in the Transvaal, viz.: (a) The North Eastern Districts Association (Proprietary), Limited, *versus* the Norwood Land and Investment Co., Ltd.; (b) the Turf Stores (Proprietary), Limited, *versus* the Municipal Council of Johannesburg; and (c) Franz Koltsch *versus* Max Pietsch and B. B. Dabhelia.
- (2) The position created by the judgment in the case of the Town Council of Springs *versus* Fakir Moosa and Moosa Essop Sidat relative to the meaning and legal effect of Proclamation No. 190 of 1911, issued under the provisions of Act No. 35 of 1908 (Transvaal).
- (3) In how far the intentions of Parliament, as indicated in Act No. 37 of 1919, are being given effect to, and whether, and if so, to what extent, an amendment of that Act is desirable.
- (4) Any other matters cognate to those referred to in paragraphs (1), (2) and (3) above, which the committee considers it desirable to enquire into and report upon;

the committee to have power to take evidence and call for papers, and to propose such legislation to the House as it may deem fit.

The circumstances which have given rise to the introduction of this motion are more or less well known to hon. members. For the last 18 months or so there has existed in connection with Indian trading rights on the Witwatersrand a state of confusion. At present, as the result of various judgments of the Supreme Court, there are between 300 and 400 Asiatics who occupy stands on the Witwatersrand and areas on proclaimed ground illegally, and are actually exercising trading licences illegally. As a result of that state of confusion, the licensing authorities have been in a state of uncertainty, and at the beginning of this year held up the issue and the renewal of trading licences to all those Asiatics concerned. Further, we find that the police authorities, in the expectation that something will be done to remove this uncertainty, are staying their hand. In addition to that, we find that the Government has all along been losing revenue because of these licence fees not having been paid. The motion, which I hope will be accepted, proposes to put an end to that uncertainty and that illegality. Closely allied to the problem I have described are two other problems: first of all, the problem in connection with Asiatic trading licences in the Township of Springs, where we find there has been a judgment of the Court as a result of which the protection which the inhabitants of Springs always thought they possessed against the influx of Asiatics has been taken away, and the appointment of this committee to go also into that matter is to take away the uncertainty and alarm which at present exists in that township. Then, further, in the terms of reference, I have included the question of the evasion of the law of 1919 with regard to land ownership on the part of Asiatics. There was the Norwood judgment. Norwood is so-called private township, and the land which was originally private property was given out as a township, the condition being laid down by the original owner that no coloured persons should occupy any of the plots or hold any trading licence. There was no authority which considered it its duty to see that this condition was enforced; in course of time Asiatics encroached on this township, and when the matter was brought before the Court we have the judgment that Asiatics in fairly large numbers were occupying stands and trading illegally in that township. Further, we had the so-called Braamfontein judgment. The Norwood case and the Braamfontein case are essentially the same; the only difference is that Braamfontein was originally Crown lands, a Government township, while Norwood was originally private property. Further, we find that the position generally on the Rand in other areas was most unsatisfactory. From time to time legislation was passed, first by the Transvaal Republic, afterwards under the Crown Colony Government, and later again by the Union Government, where, under the gold laws, provisions for the alienation of land were laid down more or less in the same way as they were laid down in regard to Norwood and Braamfontein, namely, that coloured persons could not occupy or trade on proclaimed land. These laws were evaded from time to time, and from time to time when legislation was passed by Parliament, vested interests, as they existed at that time, where there had been illegal occupation, were protected. The position now, as the result of the judgments of the Supreme Court during the last eighteen months, is that between three and four hundred Asiatics are occupying land illegally, and exercising trading rights illegally, on the Witwatersrand. To make the position more intricate and difficult, another difficulty has arisen, and that is the position of the licensing authorities in connection with this matter. The Johannesburg Municipality took this matter up. They wanted to know whether it was their duty to refuse trading licences to applicants whom

they know are occupying stands illegally, or whether they should not do so. They referred the matter to their legal advisers, who advised them that it was not only their right to refuse trading licences under such circumstances, but it was their duty to do so. The matter was referred by the Johannesburg Town Council to the Government. I referred the matter to our own law advisers, and the result was that in their opinion the municipality had no right to refuse any of the licences on the ground that stands were being occupied illegally by the applicants. Fortunately, this matter, where the lawyers differed from each other, was the subject of another judgment by the Supreme Court of the Witwatersrand. Judgment was given in the so-called Turffontein case to the effect that municipalities, even if aware that applicants occupy stands illegally, had no right under the Licensing Ordinance of the Transvaal to refuse licences. That is the position on the Witwatersrand to-day. There is no authority charged with the duty of enforcing the existing laws, and, according to the judgment of the Courts, the local authority has got no right to refuse a licence on the ground that a particular stand is occupied illegally. The select committee which I propose must go into this matter and report to Parliament, and propose legislation to remedy this state of affairs. The other problem, which is allied to the one I have just described, is that of Springs. In former legislation passed in this House in connection with licences, it was generally taken that Springs was a proclaimed area in the same sense as the rest of the Witwatersrand, and that the protection given to the rest of the Rand in regard to Asiatic immigration was afforded to Springs. Recently a case was brought before the Supreme Court, and then it transpired that Springs was really a township which was created under the Crown Lands Disposal Ordinance of 1904, and that it became proclaimed land under the gold law only in 1911. When a case was brought before the Supreme Court to object to certain Asiatics who had occupied plots in the Springs area, the Court held that the proclamation of the gold law in 1911 in the area of Springs did not affect the occupation and trading rights of Asiatics which existed before that time. That means that the township of Springs is not at all protected in the same way that the rest of the Witwatersrand is, so far as proclaimed ground is concerned. I propose that the select committee shall also go into this matter, and, if possible, carry out the intention of Parliament with regard to this proclaimed land at Springs. The third problem is the conditions which exist to-day under the Act of 1919. Act 27 of 1919 was passed by Parliament to prevent Asiatics evading in a certain particular way, or in all possible ways, the old Transvaal law with regard to land ownership. Under the Act of 1885 no Asiatics were allowed to own land in the Transvaal. That law was evaded. Asiatics formed companies and purchased land, and it was found by the Court that they could do so legally. It was an evasion, but it was possible under the law which existed. That loophole was, according to the opinion of the House at that time, stopped, but in the Transvaal there is a very general feeling that there are still loopholes in that Act and that Asiatics are still on a very large scale evading that Act. I propose to refer this matter to the select committee to decide what steps shall be taken to make the law effective and carry out the intention of Parliament. The second confusion which I describe here and which I hope the select committee will put an end to, affects not only Asiatics, but Europeans. In dealing with this question I suggest Parliament should follow the example which was set by the House in 1919 under similar circumstances, when the matter was dealt with not actually by direct legislation, but by a select committee report, and the legislation thereby suggested to the House.

STATEMENT SUBMITTED BY THE TRANSVAAL INDIAN CONGRESS TO THE SELECT COMMITTEE.

When moving the appointment of this Select Committee, the Honourable the Minister (and Chairman of this Committee) is reported to have observed that during the last eighteen months there had existed a state of confusion on the Rand in regard to Indian trading rights and to have added that there were between three hundred and four hundred on the Rand illegally occupying stands on proclaimed land, and illegally exercising trade thereon. The Transvaal Indian Congress has endeavoured to obtain detailed information on this point, and have furnished me with the following statistics:—

Wholesale merchants.—(a) There are about 36 wholesale merchants. These are established in the city proper, and have been in business continuously from 10 to 40 years. They represent an aggregate capital of £3,000,000, invested in stock and in addition to outstandings. In most instances they have carried on the premises occupied by them from the beginning of their establishment. They pay import duties on considerable purchases from Overseas running into big figures and, in addition, are extensive and valued customers of local European houses.

Wages paid assistants aggregate approximately £1,600 a month, are regulated and conform to the requirements of law. One, at least, such wholesale house, Messrs. Teikamdass Brothers, employs a fairly large European staff under European supervision, including six commercial travellers.

Retail general dealers.—(b) Within the city and including the suburban areas, about 800. Capital invested approximately, £320,000. With perhaps the exception of the small number of Oriental silk merchants located in the city proper, the Indian general dealers carrying on business in suburban areas cater principally for the working class trade and, it is generally conceded, serve an extensive and appreciated need. They are admittedly accommodating, helpful to the poorer section of the community in times of stress and of unemployment and meet the demand of the public that frequently has to purchase in extremely modest quantities and for very little money. This class of trader constitutes a not inconsiderable proportion of customers upon whom the European wholesale houses rely for their turnover. In issuing certificates for licences the Johannesburg Municipal Council has been careful to consider the class of neighbourhood for which Indian applicants apply and in practice to endeavour to restrict the granting of new applications to areas known to be chiefly non-European areas or those occupied by the poorer sections of the European community.

Reef and other portions of the proclaimed area.—(c) The figures furnished in respect of this field are approximately as follows:—Springs, 16; Brakpan, nil; Benoni, nil; Boksburg, 1; Boksburg North, 1; Germiston, nil. Between Springs and Johannesburg (e.g., Denver, Cleveland, etc.): Langlaagte, 6; Maraisburg, 3; Roodepoort, 22; Krugersdorp, 24; Randfontein, nil. From as far back as 1886 the principle that in regard to trading rights and privileges, the Indian trader must be held to enjoy similar opportunities to those enjoyed by traders generally has in practice been recognized. The Townships Amendment Act and the Gold Law of 1908, it is true, by implication may be construed as having deprived them of that right over the area affected. Nevertheless, up to June, 1919, that is the enactment of the Asiatic Land and Trading Amendment Transvaal Act, the Indian trading community was still uninterfered with and carried on their businesses without let or hindrance. The net result of the last-mentioned statute, read in conjunction with Acts 34 and 35 of 1908, were summarized in the report of the Asiatic Inquiry Commission of 1921 in the following terms:—

Outside of public diggings proclaimed under the Gold Laws.—(1) They cannot own fixed property anywhere in the province, either directly or indirectly, i.e., through nominal trustees or limited liability companies, excepting 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 purpose 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 seventy-seven and

sub-section (3) of section one hundred and thirty-one of the Gold Law of 1908, they are safeguarded in the rights they acquire with respect to stands inside and outside townships prior to the passage of that law. (7) British Indians who, on the 1st of May, 1919, were carrying on a duly-licensed business on proclaimed land, or in townships, are exempted from the above disabilities as to trade and residence; they and their *bona fide* Asiatic employees, as well as their successor 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.

The provisions of section two of 37 of 1919 in regard to the registration of mortgages in favour of Asiatics have been strictly observed and enforced. In the very few cases where any such mortgage has been registered at all, sworn affidavits have been required by, and furnished to, the Registrar of Deeds. The provision of the same section regarding the ownership of fixed property by any company or other corporate body in which one or more Asiatics have a controlling interest has likewise been observed and enforced.

It is respectfully urged that any consideration it is proposed to give to suggestions for amending Act 37 of 1919 should not exclude the following submissions respectfully advanced in regard to the Gold Law of 1908. Act 35 of 1908 is entitled:—"An Act to consolidate and amend the law relating to Prospecting and Mining for Precious Metals and Base Metals and to provide for matters incidental thereto." Reference to the text of the marginal "sub-headings" disclose that: "Section one hundred and thirty (1) purports to embody the prohibition against the acquisition of rights under this Act by coloured persons" and section one hundred and thirty-one is intended to impose "restriction on residence of coloured persons on proclaimed land in districts of Class A excepting bazaars, etc.," and saving to those then in lawful occupation the rights then already acquired. It is not proposed to embark upon a judicial examination of, or disquisition upon, every possible construction that the ingenuity of the lawyer might perhaps discover in an endeavour to show that the rights it was designed to withhold from coloured persons did not include the hitherto recognized rights of Indians to trade as theretofore, outside of the bazaars and locations to which for purposes of residence, only, the law had relegated them. It is significant, however, that where trading is specifically referred to in the statute in question, it is so done in Chapter X, under the heading of "Stands outside townships" and in respect of "Trading Stands," *i.e.*, certain sites upon ground held under mining title to be selected by the Board referred to in the Act, *i.e.*, the sites of which are now known as Concession Stores. Such stands may be allocated to Europeans only. Only by attaching a most extensive and comprehensive meaning to the word "right" occurring in section one hundred and thirty can the rights of Indians to trade, *e.g.*, in Market Street, Johannesburg, as theretofore enjoyed by them, be regarded as thenceforth taken away and lost. It is also to be observed that for at least ten years, the Indian trading community in question were apparently allowed to carry on and to expand their business and to increase their obligations without any suggestion of illegality in connection with this statute.

To put it no higher, the Gold Law of 1908, if its correct interpretation be that for purposes of trade as well as of residence, Indian occupation of areas such as Market Street, Johannesburg, is made illegal, was allowed to lie inactive, and the Indian traders lulled into a false sense of security. That position continued to obtain up to 1919, in which year, following the recommendations of the Rooth Commission, Act 37 of 1919 was passed. Now, after an interval of another ten years—the ten years' cycle strike one as remarkable by way of coincidence—our unfortunate people are once more having their position brought into review. We rather welcome the event, and for the reason that we think the time has arrived for a complete and very radical reconsideration of the whole matter. To employ a term the Great War brought into considerable vogue, this Indian question calls for reorientation. It will be recalled that we have to go back to 1885—to ancient history—to find the first chapter in the long story of statutory disabilities imposed upon the Indians of this Province. That, gentlemen, is nearly 50 years ago. Law 3 of 1885 speaks of "Coolies," a class of immigrant very popular in those days on the sugar plantations of Natal, and one it was perhaps anticipated might filter across into the Republic. The terms "Coolie" and "Arab" were very loosely used and not always accurately applied in those old days. It may, also, not be incorrect to say that ideas concerning India and Indians were somewhat narrower and less informed than they have since become. Be that as it may, it will also be recalled that the statutory restrictions actually imposed did not go beyond restriction upon residence and, that, as explained in the published communications that have since become history, for sanitary reasons.

A lot of water, and may we add, of blood, has flowed since those days. We think we may, without offence, claim that our outlooks have expanded, that barriers have crumbled away, that many of our old time prejudices and fears were bogies that had no life save what we ourselves imparted to them, that our warring jealousies and rivalries, when allowed expression, discovered to us that we had but injured and destroyed an integral portion of the larger organism of which we, too, were part—in short, that the interdependence existing, the action and interaction obtaining between the constituent parts of the organism we call humanity was wider, more vital than we had suspected, that differences hitherto regarded as antagonistic and even irreconcilable were more truly complementary each of the other. The human family paid a high price, in travail and in treasure, to learn this lesson; perchance it has not yet even been learnt and assimilated as it deserves to have been. It may have compelled our assent as a general proposition, viewed broadly and without our own immediate domestic field of vision, but as applied to the latter, are we not perhaps missing the forest for the trees? Perchance, a bit out of focus? Only the very

uninformed can fail to appreciate the complexity of these problems, and the difficulties with which you gentlemen, whose high privilege it is to be entrusted with their solution, are confronted. We are anxious to make it clear that we are not oblivious of the various cross currents to be navigated and conflicting interests to be reconciled and of your sincere desire to fulfil these difficult tasks faithfully and conscientiously. We ask your consideration of the following facts:—Of the Union's Indian population approximately 80 per cent. is of South African birth. In the ordinary course of nature, another ten or fifteen years should find no more of the Indian born Indians—the "old style Indians" left. Absence from the Union for more than three years means loss of domicile, whereby even holders of registration certificates may not return. Indians domiciled within the Union who have contracted forms of marriage with women in South Africa, may not bring their wives or children from overseas. There are about 12 schools, either Government or State-aided, in which Indian children receive education on European lines with the ultimately inevitable—if gradual—consequences. Already, India is little more than a name to quite an appreciable proportion of the Indian younger generation.

We would further venture to observe that the year 1914 saw the vital question of further Indian immigration settled, and the fears entertained on that score set at rest. We may perhaps also be permitted to recall the assurance then given us that the Indian population within the Union would be treated sympathetically and favourably, an assurance restated in the more recent Cape Town agreement. It will also be recalled that the protests against the Class Areas Bill were largely founded upon the objection that in practice it would amount to nothing short of segregation and would deprive the Indian resident population of fair and reasonable opportunities for growth and expansion to which they were morally and justly entitled. We feel that a strict enforcement of the law as it stands, *i.e.*, Laws 34 and 35 of 1908 (as now construed), even as qualified by the Act of 1919, will leave us in no better plight than that with which we were threatened by the Class Areas Bill.

We have, we hope, made clear that the charge of "alien" is no longer reasonably tenable. Children of the soil, whatever their antecedents, cannot be "aliens" in the land of their birth. Nor can one fail to be struck by the Europeanization, especially in Natal, of the South African born and South African bred and educated majority; of the outstanding adaptability they have evidenced; of their ability to surmount the disadvantages under which they have had to make progress; of their fitness to play a useful and honourable part in the future history of the land of their birth and adoption; of their keen and intelligent interest in its problems. *Pari passu* with the disposal of that charge goes, in our respectful view, that other charge of undesirability. We have ventured to point out that within a decade or two at most, our Indian element will all have become children of the soil—South African in the widest sense. All indications point to their forging ahead the most rapidly. Except by means that are unthinkable, their extinction, their elimination, is impossible. Nor is a policy of segregation based upon racial or colour considerations any more practicable. Ghetto prisoners sooner or later burst their bonds, and Ghettos give up, not only their dead but their living also; and while dead pasts may bury their dead, the ghosts of bad pasts have been observed to haunt the posterity of those who saw no further than their own day. To what end, then, is our plea directed? To the end that you be pleased to abandon the old narrow view for the broad view. To consider whether in this year of grace, in 1930, the time has not arrived for a thorough overhauling of the old ideas and preconceptions concerning this "Indian question." To ask yourselves whether the deductions expressed in such disabling legislation as, for example, Law 3 of 1885, Laws 34 and 35 of 1908 are not, to-day at least, based upon premises that are at variance with Truth, Justice and Wisdom?

You will be urged by representatives of various interests and by others moved by race and colour prejudice to tighten still further the restrictive bonds upon Indian activity and growth. You will be told that the Indian has defied the law as it stands both in regard to trading and land-holding, and that he has broken through the limitations the law imposed upon him against encroachment upon European preserves. We do not doubt that figures can be prepared and arguments adduced to make out some sort of a case on such lines. But, again, we appeal to you to lift this question from off the narrow, petty sectional platform on to a higher plane; to view it in its larger truer perspective; to regard it with far-seeing eye of imagination, to look ahead, to build for the to-morrow, not only for to-day. We ask you to consider the lessons of history and to say whether a dominant section has ever succeeded in subjecting a sometime servient section to permanent helotage? We ask you to remember that the inherent impulses towards freedom and natural expansion have always resulted in the bursting of such bonds, of the disappearance of these artificial restrictions. How should it be otherwise? Is life not ever breaking down the walls of environment? Is it a matter for surprise that a class whose natural and healthy energies are suppressed by artificial restrictions, should seek by ingenious devices, to find loopholes and vents through which to overcome them? Legislation may properly be directed to the eradication of pests; towards suppression and correction of crime and immorality. Are we a pest? Are we criminals? Does our standard of morality suffer by comparison? We are human, sharing perhaps with other classes the defects of our qualities, but comparisons do not leave us at a disadvantage. We are of the same Aryan stock. We show a record of past high performance. With reasonable encouragement and fair play we claim to be capable of much valuable contribution to human endeavour and human progress to-day and in the future. Only through the eye of prejudice and narrow self interest are we seen to be the undesirable thing you are urged to regard us and treat us as being. One clause—the most important in our respectful opinion—of the Cape Town agreement reads as follows:—

*“ Upliftment of the Indian community.—*The Union Government firmly believe in and adhere to the principle that it is the duty of every civilised Government to devise ways and means and to take all possible steps for the uplifting of every section of their permanent population to the full extent of their capacity and opportunities and accept the view that in that in the provision of educational and other facilities the considerable number of Indians who will remain part of permanent population should not be allowed to lag behind other sections of the people.”

That clause records the solemn adoption of a principle; the committal of the Union Government to a solemn duty to an obligation, you will readily admit, it were shameful to dishonour. We urge that every argument, however specious or plausible, be jettisoned and relentlessly rejected if it be found, in however small a degree, to be in conflict with the principle of that agreement. We respectfully submit that we are now, at least, morally entitled to claim a repeal of the laws under which we still stand branded with the stigma of undesirability. We ask you to resist any pressure to recommend the extension of existing restrictions to areas such as Springs to which, according to the ruling of the judiciary they do not apply. We confidently submit that you will refuse to be party or privy to the imposition upon us of additional disabilities, but, on the other hand, that you will be convinced that justice and equity impel you to recommend the removal of our existing burdens.

**STATEMENT TO THE SELECT COMMITTEE BY THE
ACTING AGENT OF THE GOVERNMENT OF INDIA
(Mr. J. D. TYSON).**

Mr. John Dawson Tyson (Indian Civil Service), Acting Agent of the Government of India, in South Africa, examined.

1. *By the Chairman*: As it has been decided to hear my evidence after the conclusion of the evidence of the other witnesses, members will expect me to refer to all matters of importance that have arisen and naturally the statement I have prepared is rather lengthy on that account. Members of the Committee will notice that at the commencement of my statement there is a short summary of the contents with the numbers of the paragraphs indicated. I will now read the statement I have prepared. It is as follows:—

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I am grateful to you, Mr. Chairman, and to the members of the Select Committee, for allowing me and, before my arrival here, Mr. Baring, to be present at the sittings of the Committee and for permitting me now to attend and make a statement. The office of Agent of the Government of India in South Africa was created for the express purpose of securing continuous and effective co-operation between the two Governments, and it is the wish of the Government of India, as it is my own, that, while I am acting as their Agent here, I should assist, not only the Union Government, but also this Select Committee to the best of my power. It is in this spirit that I offer and ask you to receive this statement.

2. Before coming to the terms of the Committee's Reference I should like to make a few general observations on the subject of trading by Indians in the Transvaal with a view to bringing into their true perspective the problems before the Committee. As an index of the dimensions of the problem I would draw the attention of the Committee to the fact that the entire Indian population of the Transvaal falls short by several thousands of the increase of "whites" in Johannesburg alone during the inter-censal period 1921-1926: the census of 1926 showed that there were 18,905 more "whites" in Johannesburg than there had been five years before: the census of 1921 (the last Asiatic census here) showed that there were only 13,405 Indians in the entire Province of the Transvaal.

3. Writing before the census of 1921 the Asiatic Inquiry Commission, in paragraph 93 of their Report, state: "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." It will be recalled that the members of the Commission, in paragraph 96, computed that "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." In that number there may be 600 Chinese males of eight years and over. As the Committee used, as their basis of reckoning, registrations under the Transvaal Act 2 of 1907 (which provides for compulsory registration of males over sixteen years of age and voluntary registration for males over eight years of age) they must be held to have contemplated a figure of 12,800 males of eight years and

over, of whom "many" might at any given time be absent in India. In that number there may be 600 Chinese males of eight years and over. It was with this figure in mind that the Commission, in paragraph 224 of their Report, remarked: "In the Transvaal, the evidence and statistics which have been summarized 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." The Census of 1921 amply justified the Commission in these findings, since it disclosed a figure of 11,056 Asiatic males of all ages, of whom only 9,359 were Indians, actually in the Transvaal. My point is that this very strong evidence of the Lange Commission that there was no fear of an influx is more than borne out by the census.

4. The figures of "Asiatics" and "whites" (and of Indians so far as they can be extracted from those of "Asiatics") in the Transvaal are summarized below:—

CENSUS FIGURES.				
<i>Census.</i>		<i>"Asiatics."</i>	<i>Indian.</i>	<i>European.</i>
1904 ...	...	11,321	—	297,277
1911 ...	...	11,072	10,048	420,562
1921 ...	...	15,991	13,405	543,485
1926 ...	...	—	—	608,622

The 10,048 Indians enumerated in 1911 comprised 8,050 males and 1,998 females: the figure 13,405 in 1921 comprised 9,359 males and 4,046 females.

5. Turning from the Provincial figures to those of individual towns, it may surprise the Committee to learn that whereas the European population of "Johannesburg and Suburbs" (a phrase used by the Census Department) rose from 151,836 in 1921 to 170,741 at the census of 1926, an increase of over 12 per cent. in five years, the Asiatic population of Johannesburg had increased by under 37 per cent. in the thirty-four years prior to the census of 1921. The special "Asiatic" census of Johannesburg, held in 1896 by the Republican Government, showed a figure of 4,556 Asiatics, of whom 3,890 were males and 666 females. The census figures for 1921 show, for Johannesburg and suburbs, an "Asiatic" population of 6,229—an increase of only 1,673 since 1896. The figures both for 1896 and 1921 include Chinese.

6. A table showing the number of Europeans and Asiatics in the principal towns of the Province at the time of the 1921 census forms Annexure No. 1 to this Statement. It will be seen that, except Johannesburg and Pretoria, the Indian population is absolutely and relatively insignificant. For the twenty urban areas cited there are 59.6 Asiatics per thousand Europeans: for the rest of the Province, the figure sinks to 27.7 Asiatics per thousand Europeans.

7. In considering these figures the Committee will no doubt remember that the influx of new Indian immigrants to South Africa from India, and to the Transvaal from other provinces of the Union, has been virtually closed by the Union Immigrants' Regulation Act (No. 22 of 1913): that the provisions of that Act regulating the introduction of minor children from India have been stiffened by the amending legislation of 1927, whereby, as settled at the Capetown Conference, such children can no longer be introduced if the mother remains in India: and that in 1928 the Union Government received from the Indian community an undertaking that illicit entry of Indians into the Union would be discountenanced by the South African Indians themselves. Conditions would, therefore, seem to militate even more strongly now than they did at the time of the Asiatic Inquiry Commission against the risk of an Indian "influx" into the Transvaal.

8. It is also pertinent to point out that the old criticism of the Transvaal Indians, that they maintained one home in South Africa and another in India, no longer holds good. In 1911, according to the figures of the Census Department, only 30.5 per cent. of the Indians in the Province were born in South Africa: by 1921 the proportion had risen to 43.6 per cent. I am dealing now only with the Transvaal. If I was to refer to the South African figure the percentage would be much higher. That was nine years ago, and there can be little doubt that the process will for the future be quickened by the provisions of the Act of 1927 restricting the entry of minor children whose mothers remain in India. These provisions will in the long run tend both to reduce the number of minor children introduced and to increase the proportion of Indians whose family life is altogether passed in South Africa. In other words, the Transvaal Indians, whose fate is to a great extent in the hands of this Select Committee, are largely and increasingly a South African community—a community in respect of which the Union Government stated in the Agreement of 1927 that they firmly believed in and adhered to "the principle that it is the duty of every civilised Government to devise ways and means and to take all possible steps for the uplifting of every section of their permanent population to the full extent of their capacity and opportunities, and accept the view that in the provision of educational and other facilities the considerable number of Indians who remain part of the permanent population should not be allowed to lag behind other sections of the people."

9. If the Indian does not keep pace with the Transvaal European in mere numbers—and on that point I may remark that apart from immigrants there will always be an influx of Europeans into the Transvaal from other Provinces quite apart from the natural increase. The

figures I give in paragraph 4 of my statement show how the European population is going up by leaps and bounds—it is also true that, with one important exception, he hardly competes with him economically. Annexure No. 2 to this statement shows the occupations of Europeans and Indians in the Transvaal as disclosed by the census of 1921. From this table it is clear that the Indian seriously competes with the European in one field alone—that covered by the head “Commercial.” The Indian community in the Transvaal is definitely a trading community. Ruin their trade and you ruin the Transvaal Indian community completely and irremediably.

10. The Indian trader in the Transvaal has not shown much enterprise in going outside a well-defined range of business. He specialises in groceries, soft goods and the distribution of fruit and vegetables. In these lines he has generations of training behind him, and it is generally admitted that he shows special aptitude for them. To the rural community he has a peculiar economic value in that, being content with a small turn-over, he can afford to establish small stores in isolated districts where the custom would not support a white man: he is also more accommodating in his dealings with the farmer than are his rivals of other races, giving longer credit in times of scarcity, and regarding trade as an end in itself and not as a means of foreclosing on his customer's land. In the Transvaal he cannot take possession of the land, but I do not think Indian traders in other parts of the Union have shown any tendency to foreclose on their customer's land. In the large towns, while scarcely competing at all with the better class of European shop, the Indian store, it is submitted, is a real boon to the poorer class of housewife among the Europeans, to the Indian, the coloured man and the native. The Indian vegetable-dealer performs a service alike to the European householder to whose door he brings his produce and to the European market-gardener for whom he plays the part of a distributor. If the Indian dealer did not fill a want among the poorer elements of the European community, the prejudice which his colour excites would long ago have ensured his elimination. We find, on the contrary, that such attempts at a boycott as have been made have invariably broken down.

11. The comparative success which, in spite of many disabilities, the Indian trader often achieves is sometimes attributed to what is called “unfair competition.” To a rival trader any successful competition is liable to appear “unfair,” but competition is not of itself an evil. I am sorry to have to utter that platitude, but in view of the evidence given by some witnesses it is necessary. If it be true that by cutting down overhead charges the Indian is able to undersell his white competitor, the result, as has been pointed out to the Committee, is the purveying of the necessaries of life at a price which enables the poorer “whites” to maintain a Western standard of living. And if the competition is in fact unfair, it must not be forgotten that the enactment of the Industrial Conciliation Act of 1924 and of the Wages Act of 1925 have given Government a power which they have not been slow to use for the check of such evils as the underpaying of assistants. A recent recommendation of the Wages Board, accepted by Government and given the force of law in a large number of urban areas throughout the Union, fixes wage *minima* for shop assistants at what Indians regard as a “European level.” “Living-in” by assistants in stores can also, if found objectionable, be prevented by legislation applying to all races. So far as the complaint goes that the Indian occupies poor premises, where this is a fact (and it is not universally so) the poverty of the premises reacts, as Sir Benjamin Robertson pointed out, on the class of custom attracted: moreover, the fault here lies less with the Indian himself than with the legal system which denies him security in the site on which his premises are erected. If you do not let the Indian own the site on which he carries on business, or if his lease is to be a precarious matter, you cannot expect him to put up a Woolworth Building.

12. Apart from the merits and demerits of the Indian trader, there is the question whether as a fact he is encroaching even in this, his one large sphere of activity in the Transvaal. In view of the fantastic statements commonly made regarding the numerical strength and the “infiltration” of the Indian trading community, it will be as well at the outset to emphasize the fact that the whole number of Indians, male and female, engaged in “commercial” pursuits in the Transvaal in 1921 was 4,324 (see Annexure No. 2). This number includes hawkers and pedlars, of whom there were 686 in Johannesburg alone, and hundreds of assistants in shops. It covers cases also where there are several partners in respect of one shop.

13. It is not known whether any figures have been submitted to the Committee to show that in the Province as a whole or in any particular areas Indian traders are increasing in numbers. (This was written by me a few days ago and since then some figures have been supplied to the Committee. I would like to refer to them at the end of my statement.) No considerable increase in the Province as a whole would seem to be possible, since the rise in the census figures for Indians in the period 1911-1921, small as it is, is largely accounted for by the increase under the head of females—either by birth in the Transvaal or by introduction from elsewhere as wives. Even if there were no other factors at work any considerable expansion of Indian trade would be hampered by lack of an adequate supply of Indian assistants. The issue of new licences has been since 1926 controlled, under the Transvaal General Dealers' (Control) Ordinance, by bodies not notable for their partiality to the Asiatic applicant. The Indian has been hampered again, by the restrictions imposed by the Gold Law, the Townships Act and the anti-Asiatic clauses in the leases of private townships. With all these disadvantages it is not surprising to find that comparative figures, so far as they are available, show a diminution rather than an increase in the number of Indians trading in the Province.

14. It has not been possible in the course of a stay of under three weeks in the Union to collect comprehensive figures to show, for the Province as a whole, whether or not the Indian is supplanting the European as a trader. As was remarked by Sir Benjamin Robertson in 1921: “Even if the number of shops were known, it would convey no idea of the volume of trade,” and he went on to point out that many Indian shops are “petty concerns.” Figures showing the volume of trade as between Indian and European firms are not available, and all that has been

possible in the time is to obtain up-to-date figures, for purposes of comparison, where previous figures were available from sources like the Report of the Asiatic Inquiry Commission, or where statements have already been made to the Committee. Apart from this, no attempt has been made to select special areas or townships for investigation. What I mean to convey is, that in the few figures I have submitted I have not gone round to places like Balfour. I understand that in Balfour, since the General Dealers' Control Ordinance came into force, they have got rid of every Indian shop. Balfour does not figure in my list. What I did was to look through the Report of the Asiatic Inquiry Commission, and to take the figures in that, which I assumed to be authentic figures; and then certain figures were mentioned by witnesses, and I tried to get comparative figures. The Committee had the figures before it from the municipal witnesses and those figures were from places that made the position very bad from the point of view of Asiatic encroachment, and they are not the places I would have looked to if I had been wishing to make out the other side of the case. I took these figures from the report of the Asiatic Inquiry Commission and also the figures obtained from the Revenue Department. I have not put up special figures to support the case one way or the other.

15. Taking first, as a basis, the figures of general dealers' licences, and bringing up to date the figures for four magisterial districts in which Indian competition is said to be severe, we have the following table:—

<i>Magisterial Area.</i>	GENERAL DEALERS' LICENCES.		
	Licences held by "Asiatics."		
	1920.	1923.	1929.
Krugersdorp	139	115	83
Potchefstroom	99	78	35
Volksrust	25	19	22
Zeerust	54	47	65
	317	259	210

These figures speak for themselves. (Those for 1920 and 1923 were supplied to Sir George Paddison's Deputation in 1926: those for 1929 have been supplied by the Revenue Department). The position as between "Asiatic" and European holders of General Dealers' licences in these areas in 1929 appears from the following figures (obtained through the Revenue Department):—

GENERAL DEALERS' LICENCES.
1929.

	Magisterial Area.		Municipal Area.	
	"Asiatics."	Europeans.	"Asiatics."	Europeans.
Krugersdorp	88	437	39	182
Potchefstroom	35	139	27	106
Volksrust	22	48	14	42
Zeerust	65	58	15	22
	210	682	95	352

Figures obtained through the Revenue Department show that in the municipal area of Vereeniging there were 45 general dealers' licences in the hands of "Asiatics" in 1919: the number at present is 40 according to Mr. Leslie. Figures supplied by the Revenue Department in respect of Klerksdorp municipal area are as follows:—

		1919.	1929.
Indian		18	16
European		46	47

It is difficult to see why such figures should cause alarm.

16. It has been alleged that in Ventersdorp, Rustenburg, Standerton and Ermelo, Europeans are being "exterminated" as traders. So far as can be gathered from the Revenue Department's figures of general dealers' licences issued, the European is holding his own in these districts, with the exception of Standerton.

GENERAL DEALERS' LICENCES.

Municipal Area (Year).	Figures for 1919 (or earliest subsequent figures available in Revenue Department).		Figures for 1929 (supplied by Revenue Department).	
	European.	Indian.	European.	Indian.
Ventersdorp (1926)	99	48	119	49
Rustenburg (year not given)	141	90	108	59
Standerton (1921)	81	35	82	64
Ermelo (1919)	66	17	89	30

17. The figures for the Magisterial District of Johannesburg are of special importance for the purposes of the Committee. The figures for 1919 in respect of this area are quoted in paragraph 100 of the Asiatic Inquiry Commission's Report. Allowing for a re-classification of licences since the date of that Report (butchers and fresh produce dealers, whose licences were apparently included in the total figures of "general dealers' licences" in 1919, are now separately classified) it will be found from the table given below that, while the population of the Johannesburg area is increasing the number of licences in existence is decreasing: but the decrease is more marked in the case of "Asiatic" licences than in the case of non-Asiatic licences. Licences held by Asiatics (of whom about three-quarters are said to be Indians) have fallen by 336, or 23.5 per cent., as against a decrease of 946, or 16.5 per cent. for non-Asiatics. The figures for 1928 have been obtained through the Revenue Department, and it may be added that the year 1928 has been selected as being the last year during which applications for certificates were generally adjudicated upon by the municipal authorities in Johannesburg. It is understood that the magisterial area of Johannesburg—to which these figures refer—has remained unaltered in extent during the period in question. Some figures have been put up by the City Council people themselves and with regard to those I would only say they were given for the last three years, and I think they are figures for applications for licences. It will be difficult to compare them with my figures because figures for applications for licences do not mean the number of people to whom licences have been granted. One remembers that evidence was given before the Asiatic Inquiry Commission to the effect that European applications were granted as a matter of course, but Indian applications were refused as a matter of course, if for new licences. That evidence referred to the position in Durban, but the position is much the same in Johannesburg.

FIGURES OF GENERAL DEALERS' LICENCES IN THE MAGISTERIAL DISTRICT OF JOHANNESBURG.

1919.	1928.		
Figures supplied by Receiver of Revenue to Asiatic Inquiry Commission.	(Figures supplied by Receiver of Revenue.)		
	G.D. Licences	5,052	
	*Butchers	481	
	*Fr. Pr. Dealers	350	
Total Number of General Dealers' licences issued ...	Total	5,883	
	"Asiatics"		
	G.D. Licences	915	
	*Butchers	77	
	*Fr. Pr. Dealers	102	
General Dealers' Licences issued to "Asiatics" ...		1,094	Decrease, 336 or 23.5%
G.D. Licences held by non-Asiatics	Licences held by non-Asiatics	4,789	Decrease, 946 or 16.5%

*The figures for butchers and fresh produce dealers refer only to cases where such licences are held apart from General Dealers' licences.

The Receiver of Revenue computes that the figures for "Asiatics" in this list refer to Indians to the extent of about three-quarters. In addition it may be mentioned that, according to figures for the same area supplied by the Receiver of Revenue, there were 686 licensed Indian hawkers and pedlars in 1919, against 685 in 1928.

18. All the foregoing figures refer to general dealers only: it is as general dealers and, where the businesses are separately conducted, as fresh produce dealers that Indians compete most keenly with traders of other races. Thus, out of 45 Indian businesses of all kinds carried on in Potchefstroom in 1920, 36 were general dealers: and though on the same date there were only 16 European general dealers in Potchefstroom, there were 107 European businesses altogether, including produce merchants, butchers, barbers, bakers, drapers, and 60 classed as "miscellaneous," of which the Asiatic Inquiry Commission stated (paragraph 107) that they included "bootmakers, auctioneers, second-hand dealers, refreshment rooms, garages, and businesses not generally undertaken by Asiatics." The point is strikingly illustrated in the figures of shops given in paragraph 19 below. Moreover a mere enumeration of the licences issued may convey an exaggerated impression of the number of businesses actually involved. In many cases all the partners in an Indian business are holders of trading licences in respect of the same shop. Indians sometimes go over to India, and it suits them that the other partner should have a licence, so that he can carry on in his business. Licences are sometimes taken out and not utilized. Thus, the forty general dealers' licences held by Asiatics in Vereeniging municipal area at present represent, according to the Receiver of Revenue, only 21 general dealers' shops. Similarly 16 general dealers' licences in the Klerksdorp municipal area represent 12 general dealers' shops: while at Krugersdorp the 35 general dealers' licences held by Indians represent only 21 shops and 4 tables in the Market Square: there are, it is understood, two more shops which have no licence as yet and do not, therefore, affect the case.

19. The Asiatic Inquiry Commission were at pains to count the Indian shops in certain townships. I would remind members that this Commission went round and counted the shops because of the inflated figures put up by local authorities. The Commission's report on this matter, which I hope all members will read, said: "The figures supplied by the Chamber of Commerce are inflated and unreliable." Corresponding figures for 1930 have been obtained through the Revenue authorities. The figures for Krugersdorp, Luipaardsvllei and Burghershooop were obtained by personal inspection by Mr. Baring.

INDIAN SHOPS IN CERTAIN MUNICIPAL AREAS.

	1920.			1930.		
	General Dealers.	Other Shops.	Total.	General Dealers.	Other Shops.	Total.
Middelburg	23	6	29	25	4	29
Pietersburg	—	—	33	35	2	37
Potchefstroom	36	9	45	25	2	27
Volksrust	—	—	14	13	2	15
Zeerust	7	4	11	15	—	15
Krugersdorp and Luipaardsvlei ...	—	11				
Burghershooop and District ...	—	13				
		—	24			23

The Chief Sanitary Inspector of Roodepoort has also supplied figures for the municipal area of Roodepoort from which it appears that there were 26 Indian shops there in 1920 and that there are only 22 now. The figures, including those of Roodepoort, show that the 182 Indian shops in these municipal areas in 1920 had been reduced to 168 by the year 1930. The table given above also illustrates the point already made that it is as a general dealer that the Indian trader mostly earns his livelihood in the Transvaal.

20. It has been the object of the foregoing paragraphs to show that the Indian, whose presence in the Province as a trader was recognized by the imposition of a registration fee as long ago as Law 3 of 1885, supplies a public need by catering for the poorer classes and races, who profit by the very element of competition in respect of which the Indian is sometimes taken to task. An attempt has been made, also, to show that, apart from "personal service" and similar occupations which are generally deemed unsuitable for Europeans in the Transvaal, trading is practically the only sphere of Indian activity, and that, even in this sphere—or rather, in the limited part of it that he has invaded—he is, to put it at the lowest, not shown to be encroaching on his European rivals. Apart from the aspect of mere numbers and of commercial rivalry, however, there has of late been a disposition to talk of the Indian in the Transvaal as a social menace. Politically dangerous he cannot be: he has neither the Parliamentary nor the municipal franchise in the Transvaal.

21. The outcry against the Indian socially derives little support from the available statistics either of population or of crime. (Refer to Annexure 1.) Comparative figures for 20 urban areas containing 2,000 Europeans and over, at the census of 1921 (Annexure No. 1), show how trifling, compared with the number of Europeans, is the number of Indians in each. The total, also, of 12,167 Indians of all ages is insignificant when compared with the figure of 306,512 Europeans in the urban areas named: it amounts to one Indian for every 25 Europeans. The disparity for the rest of the Province is even more marked: 3,824 Indians to 136,973 Europeans, or one Indian to nearly 36 Europeans. If 170,000 Europeans in India can maintain their own standards of civilization amid a population of nearly 320,000,000, it seems grotesque to suggest that the existence of 13,000 voteless Indians can be a menace to the civilization and standards of living of 600,000 Europeans in the Transvaal.

22. The figures of "serious crime" in the Union do not suggest that the South African Indians are a peculiarly undesirable element in the population. Convictions of "serious crimes" (per 10,000 of the population) in the years 1923-1925, the latest years for which these figures are available, were as follows:—

CONVICTIONS OF SERIOUS CRIMES.

	1923.	1924.	1925.
Europeans	16·57	15·35	14·94
"Asiatics"	16·01	20·07	22·54
Bantus	27·24	33·47	31·88
Other Coloured	57·01	68·19	66·68

To enable the Committee to understand precisely what is covered by these figures, details of the convictions for 1923 are given in Annexure No. 3 to this Statement. Out of 7,865 convictions for "serious crime" in the Union that year, only 271 were in respect of "Asiatic" offenders: in this connection it should not be overlooked that these figures refer to the whole Union, including the large Asiatic labouring population in Natal.

23. On this subject of the "social menace" of the Indian trader, the Asiatic Inquiry Commission (Report, paragraph 114) said: "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."

24. Objection is sometimes raised to the employment in Indian stores of European female assistants. The number of such stores is small. The desirability of such employment may be a matter for argument, but from the fact that no specific charges of undue familiarity have been brought to notice it is a fair inference that in the few businesses staffed in this manner grounds for complaint have not arisen. It is inconceivable that, had there been grounds for complaint, race feeling in the Transvaal would have let the matter pass unnoticed.

25. In the paragraph quoted above (23), the Commission were concerned with the social effects resulting from the presence of Indians as traders among the white and native communities. It seems, however, to be very generally admitted that the Transvaal Indian does not seek—as the phrase is—"to penetrate into European quarters," except with a view to trading there. If he seeks to live in Norwood, it is in order the better to watch the goods in his shop there and not with a view to entering into the social life of the Europeans in that township. In the course of a stay of over two years in South Africa no case ever came to my notice of a Transvaal Indian thrusting his society upon his European neighbours. The Johannesburg Indians are not found in Yeoville or Parktown. My own experience is that from the social point of view the Transvaal Indian is content with the society of his own community. On the rare occasions when he has social relations with Europeans—as, for example, at meetings of the Johannesburg Indo-European Council—nothing but good has resulted.

26. It has been deemed necessary to make these introductory observations because, though the Committee's reference is closely drawn, the discussions have ranged further afield and have amounted at times to a general indictment of the Indian trader. Remedies have been propounded—such as universal trading and residential segregation of the Indian throughout the Province, which go far beyond the symptoms for which the Committee has been invited to prescribe. An attempt has, therefore, here been made to show that even in this wider sphere no case has been made out for far-reaching and drastic legislation. *A fortiori* in the narrower field of the terms of reference, it is submitted, no menace to the general welfare has been disclosed: The Committee are faced with problems of undoubted difficulty, but they are problems which call for dispassionate deliberation and cautious legislation rather than for the sweeping interference with elementary private rights which some of the witnesses have demanded.

27. The first paragraph of the terms of reference of the Select Committee bears on the position created by three recent judgments regarding Indian residence on, or occupation of, fixed property in the Transvaal. The first of these is the case North Eastern Districts Association (Proprietary), Limited, *vs.* the Norwood Land and Investment Co., Ltd. The township of Norwood is a private township, not on proclaimed land. It is one of a large number of similar townships, in and around Johannesburg, in which the residence on, or occupation of, fixed property by Asiatics, except in the capacity of "servants," is precluded by the terms of the freehold title on which the lots are held. It was decided by the Court that the term "servant" in this connection meant a domestic or menial servant, and did not cover the case of a "managing director" of a company or a manager of a business. The "physical presence" of these Asiatics was held to be "occupation," and, as they were not "servants" within the meaning of the restrictive clause, such occupation was against the terms of title. As a natural result of this decision, it would appear that there are no Asiatic traders left in Norwood, except one who has raised a defence that his 20 years' occupation should operate to deprive those who seek to eject him of their right to enforce the terms of the title. This case is *sub judice*—North Eastern Districts Association *vs.* Surkey.

28. It is clear that, subject to the decision of the Courts in cases such as that last cited—a decision which would be governed by the circumstances of each particular case—those who object to the presence of Asiatics in townships where the title contains an "anti-Asiatic" restrictive clause have only to go to Court to secure the ejectment of the Asiatic. There seems to be an impression abroad that Asiatics, besides having an "unlimited fund of money" to draw upon, combine themselves together to fight these cases, and it has often been suggested that you may get eight people allowing themselves to be ejected so as to exhaust the funds of the society ejecting them in order that the ninth may remain. The suggestion that in the Norwood case the defendant allowed himself to be turned out and did not raise a defence in order that that defence might be reserved for the subsequent case really puts more on the self-sacrifice of the defendant than common sense would seem to justify. The latter would not appear to have any remedy unless he can make good a defence such as that which has been raised in the case of North Eastern Districts Association *vs.* Surkey. While on the one hand there would not appear to be, from the

point of view of those who object to the Asiatic, any need for further legislation to secure the result desired, on the other there would appear to be no remedy for the Asiatic who has sought to occupy fixed property in defiance of the terms of the title. If, however, in any such case it should be held by the Courts that long and undisputed tenure, or other circumstances, entitle the Asiatic to remain in occupation of fixed property in such townships, it is respectfully urged that no case has been made out, or appears, for legislating to deprive him of the fruits of such a decision. In short, the enforcement of restrictions in private titles should be left to be decided by the Courts on the initiative of private parties: no case has been made out for intervention by the State either to give statutory force to these covenants or to take the initiative in enforcing them whether directly or indirectly. For example, it is unnecessary, it is submitted, in respect of private townships, to place any statutory bar on, or to set up any special machinery to prevent, the acquisition of trading licences by persons who *prima facie* are not entitled to occupy sites in such townships. The other lot-holders in such townships have the remedy in their own hands: they have merely to bring an action to enforce the terms of the title deed. By succeeding on this issue they render trading by the other party on that site impossible. Therefore I suggest that if it were thought necessary for the future to make necessary some sort of certificate that the man is entitled to occupy the premises in respect of which he seeks a licence—to make that a *sine qua non* for an Asiatic getting a licence on “proclaimed” land—land where there are statutory restrictions—there is no need to apply that to these private townships at all. The people have the remedy in their own hands, and the Norwood case shows that as soon as they bring a suit for ejectment they can turn the whole lot out.

29. The second judgment—in the case of the Turf Stores (Proprietary), Limited, *vs.* Municipal Council of Johannesburg—decided that a certificate for a trading licence cannot under the Transvaal General Dealers (Control) Ordinance be refused merely on the ground that, independently of the character of the applicant or the nature of his business, he is a member of a class (or race), which class (or race) is objectionable. This forms one of a number of decisions affecting the powers of “local authorities or boards” to refuse licence certificates under that Ordinance and, as the point has been the subject of much discussion before the Select Committee, it will perhaps be permissible to treat of it more widely than the somewhat restricted extent of the decision in the Turf Stores case would otherwise justify.

30. In this connection it may be recalled that the situation which led to the appointment of this Committee was precipitated by the action of the municipal authorities of Johannesburg in deciding in January, 1929, to reserve orders on applications from Asiatics for licence certificates until it should be decided whether or not a “local authority” or “board” is entitled or bound, in considering applications under the Ordinance, to take into consideration the title of the applicant to occupy the site in respect of which he seeks for a licence. It is unnecessary to discuss how far the Indian community are justified in regarding this action on the part of the municipal authorities as an attempt to usurp the functions of the Union Government and, through the medium of a Provincial Trading Ordinance, to enforce laws against the occupation of land which successive Governments in power in the Transvaal down to the present Union Government have refrained from enforcing—to do, in fact, what the Union Government legislated to avoid in 1919. The whole question of the future enforcement of the Gold Law and of the protection of interests which have grown up in contravention of that law since 1919 is raised by paragraph 3 of the Terms of Reference and will be discussed in its proper place. Assuming, however, as most of the evidence given before the Committee assumes, that the view may prevail that for the future the Gold Law is to be strictly enforced except as against those who may now secure protection and their successors in title it would follow that, for the future, it is undesirable that Government or local bodies should countenance illegal occupation by granting licences or licence certificates to persons who are prohibited by statute from occupying the premises in respect of which the licence is sought.

I would draw a distinction between the private township and the case where the restriction is statutory. You already have such a distinction in section one of Act 37 of 1919, which refers only to areas where restrictions are statutory.

31. Whether or not “local authorities” or “boards” have the power under the General Dealers (Control) Ordinance to take into consideration the title of the applicant for a certificate to occupy the premises in respect of which he seeks a licence is a point which has not yet been determined by the Courts. In your speech, Mr. Chairman, in moving in the House for the appointment of this Select Committee, I think you said the point had been decided adversely to the opinion of the Johannesburg City Council. Neither the City Council nor we have been able to find authority for that. I am not certain whether there has been a misunderstanding in regard to the judgment of Mr. Justice Krause in the Springs case. He held that the Town Council of Springs could not eject Moosa and Sidat under section one hundred and thirty-one of the Gold Law for reasons given. What he held was that the Municipality had no *locus standi* to move in that matter: but that was not a case under the General Dealers (Control) Ordinance. It is, however, a proposition which will hardly be contested by the “local authorities” or “boards” themselves that they are, by reason of their composition and other circumstances, quite unsuited to decide the complicated matters of law and fact which must be determined in a question of title. It is hardly necessary to emphasize this further than to remark that in such matters finality is often attained only by a decision of the Appellate Division of the Supreme Court. If in the future matters of title are to be taken into consideration when application is made for trade licence certificates the “local authority” or “board” is, it is submitted, emphatically not the forum before which the question of title should be investigated.

32. Three other proposals, not involving adjudication by “local authorities” on the complicated matter of title, have been placed before the Committee. The first is that a Register should be compiled and maintained, showing the names of those members of what may be called

the "restricted classes," who have received protection in respect of their premises or townships: such a register would have to be kept open for the registration in due course of successors in title. Applicants for trading licences in areas in respect of which restrictions on Asiatic occupation exist would have to show either that they did not fall within the class restricted or, alternatively, that, though falling in such a class, they were, by virtue of registration, entitled to occupy. This proposal seems open to the objection, in the first place, that it "begs the question" (often a very difficult one, as the Springs case has shown) whether or not a particular area is subject to restrictions. A further objection would seem to be that the registering authority would immediately be involved in the adjudication of a mass of claims for registration: many of these would be complex and the proposal would, accordingly, either lead to heavy litigation or, if the registering authority's decision were to be declared final, would substitute departmental interpretation of the law for the judicial interpretation to which the applicant is at present entitled.

33. This last objection—a very serious one from the point of view of the Indian—would apply with equal force to the proposal that, without the interposition of the process of registration, the certificate of an official—the Registrar of Mining Titles, the Registrar of Deeds, or the Commissioner for Asiatic Affairs—to the effect that the applicant was entitled to occupy the premises in respect of which a certificate was sought, should be produced by the applicant either to the "local authority" or to the Revenue authority as a condition precedent to the issue to him of a certificate or licence in respect of premises in an area where restrictions obtained. In so far as the refusal of any such departmental "imprimatur" was to be regarded as "final," this proposal would be a distinct invasion of the right at present possessed, and much prized by the Indian, of having his case decided in the last resort by the Courts of the land.

It would be a pity to grudge the Indian his right of appeal to the Courts. The Indian feels he gets fair play in the Courts, and I do not know why certain witnesses who have appeared before the Committee seem to grudge the Indians recourse to the Courts, unless it is because the Indian gets fair play and sometimes wins his case. After all, to the trader his business is his livelihood, and if you restrict him and refuse him his licence, more especially if he has an established business, he must go to the Court and fight his case, otherwise his livelihood goes. The Indian pays for the upkeep of the Courts among other things.

34. Fairer and more likely to commend itself to the Indian community is a proposal, the broad effect of which is understood to be that where there appeared to a "local authority" or "board" reason to believe that an applicant for a licence certificate would be prohibited by statute from occupying the premises in respect of which the certificate was sought, the certificate-issuing body should refer such matter of title to the local magistrate to be heard as an ordinary civil case under the ordinary procedure and subject to a right of appeal. This proposal would, at all events, safeguard the Indian's right of recourse to the Courts; it would at the same time, ensure that licences were not for the future issued to persons restricted by statute from occupying the premises concerned.

35. Assuming that, whatever the procedure to be adopted, the question of title, if it is to be raised in connection with licensing matters, will be reserved for decision by the Courts, there would seem to be no reason for interference with the General Dealers (Control) Ordinance in any of the ways suggested by municipal witnesses. It is felt by the Indian community that the Ordinance in its existing form already places enormous powers in the hands of the classes from whom the Indian's trade rivals are drawn, and the community contend that the decisions in numerous cases show how it is sought even now to twist the Ordinance into an engine of oppression against them. Justification for this point of view will be found if the judgments in any of the following cases are studied:—Turf Stores, Proprietary, Limited, *vs.* Municipal Council of Johannesburg; Dungalshi Morajee *vs.* Zoutpansberg Rural Licensing Board (1927); and Moosa and Sidat *vs.* Town Council of Springs, under the Transvaal General Dealers (Control) Ordinance—not the case under section *one hundred and thirty-one* of the Gold Law. The position in Springs is rather interesting. The first case was one in which the Town Council of Springs applied to eject Moosa and Sidat from occupation of Erf No. 66, I think a residential site, under the Gold Law. That case was decided against the Town Council of Springs by Mr. Justice Krause, and he was upheld by the Appellate Division, and that case is one of the terms of reference of this Committee. Subsequent to that—in fact, on winning that case—Moosa and Sidat applied for a trading licence for another erf in Springs, and in that case the trading licence was immediately refused, and they had resort to the Court, and the judgment given in this case is the judgment I refer to in this paragraph of my statement; it was given by Mr. Justice Feetham. Having been unsuccessful, the Town Council proceeded on a Volksraad resolution and tried to deal with these people criminally. They prosecuted the European who had let the premises, and they won the case in the Magistrates' Court, but were upset on appeal by Mr. Justice Greenberg. So there are actually three Springs cases, and really four judgments, if you count the two judgments in the Gold Law case. Attention is particularly invited to the two appellate judgments in the Turf Stores case which forms one of the terms of reference of the Committee. The comments of the learned judges on the evidence and on the attitude of the municipal licensing committee are illuminating. Mr. Millin, in his evidence, gave extracts from these judgments, and they are very illuminating.

36. The grounds upon which a certificate can be refused are laid down in section *six* of the Ordinance; they will be found to be very wide, and to take notice of the character of the applicant, the nature of his proposed business and the condition and position of the premises

in respect of which the licence is sought. Any widening of these terms would, it is submitted, entail a risk of opening the door still further to that race discrimination which the Indian has only too much reason to fear at the hands of local bodies. With respect, for example, to the specific proposal that the statutory grounds for refusal should be widened to admit of the consideration by local bodies of the question whether there are not already enough businesses of any particular kind existing in the area concerned, it is submitted that the control of competition in the interests of existing businesses is no matter for a municipal body, and that the introduction of this principle would open the door to most undesirable practices and accusations. Incidentally, any broadening of the grounds of refusal in this sense would involve an abandonment of the principle laid down in the case of *Dungarshi Morajee vs. Zoutpansberg Rural Licensing Board*, quoted above, which was decided on that very point.

37. In particular, Indians would press that the very limited recourse to the Courts of Law, which they already enjoy under the Ordinance, should not be abrogated or further restricted—as for example, by permitting the importation, into the decision of licensing applications, of the personal knowledge of the members of the Licensing Court otherwise than as evidence offered subject to the usual rights of cross-examination. Already under sections *ten* and *eleven* of the Ordinance the right of appeal is confined to cases in which the renewal of an existing licence is refused: where an application in respect of a fresh licence is refused, the applicant has no remedy unless the local authority goes outside the grounds of refusal permitted by the Ordinance or commits some fundamental error of procedure. It is therefore essential, if justice is to be done and the Ordinance is to be administered in the spirit as well as in the letter, that the Appellate Courts should not be hampered in their task of determining that the ostensible reasons for refusal are the real questions, and that the reasons are such as are permitted by the Ordinance. It cannot be the desire of the Committee to deprive the Indian of even this small recourse to the Courts. The Indian has no vote—no say in the government or administration either of the country as a whole or of his particular locality. “You cannot,” as Mr. Sastri said in a speech at Krugersdorp, “you cannot wish to have anyone so much under your control that you will be able to oppress him in the first instance and then deny him a remedy.” If you deny the Indian recourse to the Courts of the land, you leave him at the mercy of his competitors.

38. The Committee will recall that under the Cape Town Agreement the Union Government undertook that—

“(4) When the time for the revision of the existing trade licensing laws arrives, the Union Government will give all due consideration to the suggestions made by the Government of India Delegation that the discretionary powers of local authorities might reasonably be limited in the following ways:—

- (1) The grounds on which a licence may be refused should be laid down by statute.
- (2) The reasons for which a licence is refused should be recorded.
- (3) There should be a right of appeal in cases of first applications and transfers, as well as in cases of renewals, to the Courts or to some other impartial tribunal.”

Nos. (1) and (2) are already embodied in the Transvaal law.

The object of the Government of India Delegation in making these suggestions was solely to ensure the administration of the licensing laws in a spirit of even-handed justice and freedom from racialism. It may be that public opinion is not yet ripe for a consideration of this matter, and that it would be idle to expect that the suggestions of the Government of India Delegation would yet commend themselves to the Legislature. It is, however, permissible to hope that the Committee will not prejudge the inquiry foreshadowed by this undertaking nor, by now recommending legislation at variance with these ideals, render the latter more difficult of open-minded consideration when the licensing laws in due course come before Parliament.

39. Item 3 of the first paragraph of the Terms of Reference is the judgment in the case *Franz Koltch vs. Max Pietsch and B. B. Dabhelia*. Though strictly speaking this case decided no point of law (the issue being simply a question of costs), it is understood that the judgment has been included in the terms of reference with a view to raising before the Committee the whole question of occupation of premises contrary to statutory restrictions contained in sections *one hundred and thirty* and *one hundred and thirty-one* of the Gold Law of 1908 (Transvaal Act No. 35 of 1908) and in similar provisions contained in conditions of deeds of grant or freehold titles in Government townships issued under Transvaal Act No. 34 of 1908. Though this is a matter quite distinct from the ownership of fixed property by Indians in the Transvaal, the subjects are connected by virtue of the fact that both are treated of in Act 37 of 1919, which forms the subject matter of paragraph (3) of the Committee's terms of reference. The two subjects will, therefore, be more conveniently dealt with under the head of that paragraph of the Reference.

40. Paragraph (2) of the Terms of Reference deals with the position created by the judgment in the case of the Town Council of Springs *vs. Fakir Moosa and Moosa Essop Sidat*. The facts of the case are fully stated in the judgment: its effect was to declare that in the circumstances in which the town of Springs was proclaimed the terms of section *one hundred and thirty-one* (1) of the Gold Law of 1908 (Act 35 of 1908) have no application and that Indians and other “coloured persons” are, therefore, entitled to reside on or occupy stands there.

41. This matter can be very shortly disposed of. There is here no question of breach or evasion of the law. The judgment clearly states that in spite of the proclamation of July, 1911, "section *one hundred and thirty-one* (1) of the Gold Law does not apply." It follows as a result that the respondents in that case, Moosa and Sidat, have committed neither an offence nor a tort by occupying Erf No. 66 in 1927 and residing there since. And as their action has been, according to the judgment, perfectly in accord with both the letter and the intention of the Act under which proclamation took place, there can be, it is most earnestly submitted, no question of any possible restrictive legislation being given retrospective effect as against them. The same would apply to other Indians residing on or occupying premises in the area to which the judgment refers.

42. But, it is submitted, there is no case for any such restrictive legislation at all. In the course of an elaborate judgment his Lordship, the Acting Chief Justice, not only came to a considered conclusion that section *one hundred and thirty-one* of the Gold Law does not, as a matter of fact, apply to the town of Springs, but gave the fullest reasons for holding that this view correctly interpreted the intention of the Legislature in respect of section *fifty-two* of the Act. "The fact is that land proclaimed under section *fifty-two* stands in a peculiar position and was not intended by Parliament to be hit by all the provisions of the Gold Law with reference to proclaimed land. Land proclaimed under that section is land *sui generis* with a long history of its own. It differs *toto coelo* from ordinary land which, from virgin veld, is converted into proclaimed land. General provisions in the Gold Law of 1908 *prima facie* refer only to ordinary proclaimed land." His Lordship then cites some of these "general provisions" and continues: "For these reasons I have come to the conclusion that section *one hundred and thirty-one* (1) has reference to proclaimed land not falling under section *fifty-two*, and was never intended to apply to land proclaimed under section *fifty-two*." In other words, it was not a case of oversight that the "general provisions" of the Act (section *one hundred and thirty-one* among them) were not applied to this "improved" land as they were applied to virgin veld where, at the time of proclamation, there could be but few surface rights to protect. Springs was laid out as a town in 1904 and not proclaimed until 1911: by the latter date, many surface rights must have been in existence. The position then is, that Indians enjoy in regard to Springs a right which the Legislature, according to the judgment, intended them to enjoy: the introduction of legislation designed to impose new restrictions upon Indians in an area in which they are lawfully established, clearly stands upon a very different footing from the enactment of legislation whose object is to enforce existing restrictions.

43. The third paragraph of the Terms of Reference (working of Act 37 of 1919) opens the whole question of the rights of Indians to own and to occupy fixed property in the Transvaal. Speaking very broadly and allowing for exceptions and reservations due to legislation and to decisions of the Courts, the position is that ownership of fixed property by Indians has been prohibited in the Transvaal since the law of 1885, ownership even by indirect means being sought to be prohibited by the second section of Act 37 of 1919. Occupation of fixed property by Indians both for residence and for trading is still legal in the province as a whole, but has been restricted in various localities either by the terms of the title deed in private townships or, since 1908, by statutory restrictions in certain areas proclaimed as public diggings and certain townships where leasehold rights can be under statute converted into freehold. In those areas to which statutory restrictions apply, Act 37 of 1919 purports to give a measure of protection to Indians trading under licences lawfully acquired by the 1st May, 1919. It may be remarked that the Indian's right to trade in the Transvaal was recognized by the imposition of a tax on Indian traders in the original law 3 of 1885: and his right to obtain a trading licence anywhere in the Transvaal was recognized in Motan's case in 1904, a decision the effect of which has been modified only to the extent that local bodies have certain powers to refuse licences on general (not race) grounds, under the General Dealers (Control) Ordinance of 1926, and that in respect of areas in which the Indian is, by virtue of private covenants or of statutory restrictions, prohibited from occupying sites, his right to hold a trading licence is of no avail.

44. The legal history of this question is long and not free from difficulties. It is set out in historical form in the Report of the Asiatic Inquiry Commission of 1921 in paragraphs 12 to 92, to which the attention of the Select Committee is respectfully invited. The importance of this narrative from the point of view of the present inquiry lies in the fact, therein made evident, that no Government in power in the Transvaal has as a matter of fact ever enforced segregation laws against Indians in respect of residential occupation, still less in respect of occupation for trade. The Republican Government wished to read Law 3 of 1885 as empowering it to put Indian traders into locations for purposes of trade, as well as of residence. This was resisted on the ground that the law envisaged segregation for residential purposes only and then only for sanitary reasons. Though the Transvaal Government won its points in Tayob Hadji's case in 1897, no effective action was taken to enforce this interpretation of the law before its reversal in the case of Habib Motan, in 1904, in which it was held that "Law 3 of 1885 does not apply to the business places, but only to the residences of Asiatics. The Government, therefore, has not the power under that law to refuse to grant to Asiatics licences to trade in places outside the boundaries of the location allotted to them for occupation." In the Khotas' case in 1909 even sections *ninety-two* and *one hundred and thirty-three* of the old Transvaal Gold Law of 1898 were interpreted as entitling Asiatics (a) to obtain leases, though not, of course, freehold rights, for stands created under that Gold Law; and (b) to exercise the right to hold general dealers' licences (as opposed to mining licences) on diggings. The legislation of 1908 (the Townships Amendment Act No. 34 and the Gold Law No. 35 of that year) were the first laws which imposed restrictions on Asiatic occupation for trading in areas proclaimed as public diggings. These two Acts were passed under Responsible Government. It may be mentioned in passing that assent to the first of these two Acts was given only after an assurance that, in the interest of coloured persons affected, conversion from leasehold

to freehold (the latter being subject to a clause restrictive of occupation by "coloured persons") should not be obligatory; and that assent to the Gold Law was also given on the understanding, which subsequently proved to be unfounded, that no restriction on occupation by "coloured" persons was imposed by the new law which had not been imposed by the Gold Law of 1898. (The nature of the misunderstanding is set out in paragraphs 66-70 of the Asiatic Inquiry Commission's Report. Even after the legislation of 1908 no active steps were taken to enforce the restrictions then imposed, and in 1919 "vested rights" acquired up to that date were recognized and protected by Act 37, though the further recommendation of the Select Committee of that year that no new businesses should be permitted or new licences issued was not put into force. As will presently be shown, interests unprotected by the Act of 1919 have been permitted to grow up since that date, while Indians who were protected by that Act have for a variety of reasons lost that protection through continuing to trade and to receive trading licences.

45. Now as regards ownership of fixed property, the Indian community have never acquiesced in or ceased to protest against the restrictions of Law 3 of 1885. The attitude of the Government of India on this point, prior to the enactment of Act 37 of 1919, was made clear in the memorandum presented by Lord Sinha to the Imperial War Conference of 1918, of which paragraph 3 reads as follows:—

"The following would appear to be some of the principal grievances of South African Indians:—

(3) *The Ownership of Land.*—Unlike their compatriots in Natal and at the Cape, Transvaal Indians, under the old Republican Law 3 of 1885, remain under the disability that they are denied the right to own fixed property, *i.e.*, from having the legal ownership registered in their own names. The system of indirect ownership, in other words, nominal European ownership, originally suggested by the Republican Government themselves, prevailed until quite recently, and is still occasionally adopted. The process is roundabout, cumbrous, and expensive, but the facts are notorious, and the circumstances are legally recognised by the Courts.

Since about the year 1914, the practice has grown up of forming and registering, under the Transvaal Companies Act, 1909, small private companies, with limited liability, whose members are all Indians (frequently an Indian and his wife), and possessing an independent legal persona for the purpose, amongst other things, of acquiring fixed property. All these transactions have recently received judicial recognition. It is said that attempts are now being made by interested parties to deprive Indians of this right of indirect ownership of fixed property. Recently, a question was put on the subject in Parliament, and the Government spokesman replied that it was intended to examine into the question when the new companies law was under consideration. Advantage has frequently been taken by Indians of these indirect, but quite legal, methods to open businesses in townships whose private regulations prohibit the sale of stands to Indians, which, in themselves, are intended indirectly to compel Indians to reside and trade in special locations, which, again, would mean financial ruin to most of them, and against which attempt the Indian community has fought since long before the Boer War.

On the contrary, the prohibition against Indian ownership of fixed or landed property should be repealed by Parliament, on the grounds that it tends to foster insincerity on all sides, to deprive Indians of some of the elementary rights and responsibilities of citizenship, which are not denied, even to the aboriginal natives and other non-Asiatic coloured people of the Province, and which are possessed by their compatriots in the coast Provinces, and especially in Natal, where the bulk of the Indian population of the Union is to be found. Transvaal Indians ought not to be compelled to regard themselves as possessing an inferior status, in this respect, to their compatriots resident in the coast Provinces, and such a statute as Law 3 of 1885 is an anachronism and opposed to the spirit of modern legislation."

It was felt that, when immigration to South Africa and inter-provincial migration within South Africa had been all but closed, the Indian, having no voice in the political or municipal administration of the country, should, as a taxpayer, not be denied the other elementary rights of citizenship. The point might be still further pressed in view of the undertakings of the Union Government in the Cape Town Agreement with regard to the upliftment of that part of the Indian population which will remain to form part of the permanent population of the Union. It is arguable, for example, that the erection of premises worthy of a decent citizen in a self-respecting township can hardly be expected, unless that citizen is entitled to own the site on which his premises are to be situated.

46. The view of the Government of India therefore is and must be that, if the Indian is to become a good and self-respecting citizen of the Transvaal, these restrictive laws against a class which is more and more becoming an element of the permanent population, will eventually have to be reconsidered. To these ideals, both the Government of India and the Indians in the Transvaal must cling. At the same time, of course, the Government of India realise that as late as 1919, rather than reversing the policy of 1885, you have enforced it by the Act of 1919, and that makes it difficult for you to go back on your declared policy and that is why I use the words "to these ideals." We cannot claim immediate assent to them but we feel you cannot expect the Indian to become a really decent citizen in the full sense until you allow him to own land, or at least, the site on which his store is erected. It would, however, be idle to ignore the fact that the bulk of the evidence given before the Select Committee has been based on the assumption that these laws are for the time being to remain and that the problem at the moment is rather how far they are or could be made, effective. If this

view should prevail, it is reasonable to ask in the first place that any measures which may be devised for the purpose of rendering section *two* of Act 37 of 1919 more effective with regard to the prevention of indirect ownership of fixed property by Asiatics shall be scrutinised from the point of view that they should not infringe the elementary rights of the individual or of the limited company more than is absolutely necessary for the attainment of the object of the legislation, viz., the prevention of the ownership of fixed property by Asiatics directly or indirectly. In the second place, with regard to interests already in existence—land held either through a trustee or by means of a limited company—the former, holding through a trustee, is not and never has been illegal: if it is now to be made illegal, existing interests should be protected. As regards companies, the holding of land by Indian limited liability companies was in no way restricted by the law until the Act of 1919. In Dadu's case, decided under the law as it obtained prior to that statute, it was pointed out by the learned Chief Justice that "parties may genuinely arrange their transactions so as to remain outside" the provisions of statute; "such a procedure is, in the nature of things, perfectly legitimate." Dadu, it was held, had "managed to evade the restrictions of the statute . . . not by taking advantage of a mere technicality, but by doing something different in law and in substance from what the statute prohibited and he is entitled to the advantage of that position." It has been urged in the evidence before the Select Committee that even since the statute of 1919 land-owning companies have been formed which are in some manner controlled by Indians. If there has been illegality, if the statute has been broken, the law must take its course. The attitude of the Government of India in this regard is clear. If the Statute of 1919 has been broken the law must take its course. The intention of Act 37 of 1919 was perfectly manifest, and if you get a decision in the Courts that that Statute has been transgressed then so much the worse for the persons who have transgressed it. It would appear, however, that in many cases the methods by which these companies have been formed and carried on do not constitute an infringement of the Act of 1919, otherwise proceedings would have been taken. It is a well-established principle, especially with regard to laws restrictive of the ordinary rights of citizenship, that the law allows what it does not prohibit; and as was said in Dadu's case, "It is a wholesome rule of our law which requires a strict construction to be placed upon statutory provisions which interfere with the elementary rights." If Indians have, even after the Act of 1919, formed companies to own land in a manner which does not constitute an infringement of that statute, proved in the Courts to be an infringement, it would seem to be only fair and just and in accordance with practice the world over, that such companies, having been formed on a basis which was not at the time illegal, should be protected in any further restrictive legislation. Our feeling is that if you fill up the loopholes for the future you should not give it in any sense retrospective effect as against those who have acted within the law.

47. The last two paragraphs dealt with ownership of fixed property by Indians, which is, generally speaking, prohibited throughout the Province. There remains the question of their occupation of fixed property, which, generally speaking, is permissible but is restricted in certain areas either by statute or by conditions in title deeds. This subject is raised under the third item of paragraph (1) of the Terms of Reference, but was there held over for discussion under the head of Act 37 of 1919.

48. Up to 1908, as is pointed out in paragraph 76 of the Asiatic Inquiry Commission's Report, Asiatics had the right, according to legal decisions, to hire stands on proclaimed land and to carry on business on them. Section *one hundred and thirty* of the Gold Law of that year prohibited Asiatics from acquiring leases in respect of stands granted after the promulgation of that law: and though no mention was made of "trading rights," the effect of sections *one hundred and thirty* and *one hundred and thirty-one* is to preclude Asiatics from exercising their trading rights by reason of their being prohibited from hiring or occupying such stands. The provisions of the Gold Law and of the Townships Act have never been strictly enforced, and by 1919 a considerable volume of business had grown up on sites which Asiatics were not entitled to occupy. Such rights as existed on the 1st May, 1919, were recognised and validated both for the holders and for their successors in title, by section *one* of Act 37 of that year; since that date, again, a further growth of "occupation" contrary to the restrictions of the 1908 legislation has been tolerated and countenanced. It has been "tolerated" by Government by neglect to apply the sanctions which are specifically provided in sub-section (ii) of section *one hundred and thirty* and sub-section (ii) of section *one hundred and thirty-one* of Act 35 of 1908, and the more general sanction which is apparently provided by section *ninety-six* of that Act. The Johannesburg witnesses seem to have overlooked the provisions of sub-section (2) of section *one hundred and thirty* of the Gold Law (prohibition against acquisition of rights by coloured persons), where it says: "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." Then sub-section (2) of section *one hundred and thirty-one* (Restriction on residence of coloured persons on proclaimed land in districts of Class A)—and Class A includes Johannesburg—provides: "Any coloured person contravening this section shall be liable on conviction to imprisonment for a period not exceeding 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." I am not making any complaint that the Government have not prosecuted these wretched people; I am only showing that the Mining Commissioner's Department are the villains of the piece. It has been "countenanced" both by Government and by municipalities—by Government by the issue to Indians unprotected by the Act of 1919 of trading licences and by the acceptance from them of licence fees, in the teeth of the recommendations of the Select Committee of 1919 in paragraph 21 of their Report; and by municipalities by the issue to such Indians of trade licence certificates from the date on which the Transvaal General Dealers (Control) Ordinance came into force, though, as regards municipal authorities it is only fair to add that it is doubtful how far they had any right to refuse such certificates on grounds arising from the Gold Law.

49. Evidence has been led before the Committee as to the way in which these further interests have arisen, outside the protection afforded by the Act of 1919. It will be recalled that that Act protected an Indian trader or his successor in title only so long as the business was carried on in the township in which it was being carried on in 1919. The area falling for licensing purposes under the jurisdiction of the Johannesburg City Council comprises a very large number of "townships"—at one street corner three townships may meet, while it is common for one side of a street to be in a different township from the other side of the same street. When, therefore, an Indian is forced, perhaps by the termination of his lease or the raising of the rent, to vacate the premises in which he was protected by the Act of 1919, it may often happen that by taking premises across the street he forfeits the protection which he previously enjoyed under the Act. The licensing authority is the same, but the "township" is different. In other cases the protection has lapsed because the trading has not been "continuous"—owing to bankruptcy or, more usually, absence. There have also been new businesses. It is hardly possible to give the Committee any figures to show how far existing businesses are protected by the Act of 1919: in many cases even if the facts were available it would be a matter of law whether the protection of the Act could be invoked. It is, however, only fair to give the Committee such figures as have been obtained by personal inquiry. The results of personal interrogation by Mr. Baring at 201 shops inside and outside of Johannesburg gave the following result, assuming that the answers given by the shop owners were correct and that they have been correctly interpreted in terms of the Act.

	In Johan-		Total.
	burg.	Outside.	
Licences still protected	40	32	72
Unprotected Licences	92	29	121
Doubtful	4	4	8
	<u>136</u>	<u>65</u>	<u>201</u>

It should be added that the shops were taken at random and just "as they came." No attempt was made to select shops from any point of view. Beyond this it is difficult to say how far the results so obtained are typical of the position in the Province generally. We put these figures forward in a genuine attempt to help you to understand the position. We took 200 shops simply at random. I would not care to hazard a figure as to how many shops there are in Johannesburg.

50. Sufficient has, perhaps, been said to show that if the view is now to prevail that, contrary to the apparent policy of Government hitherto obtaining, the laws of 1908 should henceforth be rigidly enforced, there is a large number of Indian traders who will be faced with ruin, unless a generous measure of protection is given to interests which have grown up since 1919. Not only would the enforcement of these laws against all who cannot claim protection under the Act of 1919 spell ruin for the traders themselves, but it would prejudicially affect interests of all kinds in the areas concerned. Landlords who have leased premises to Indians, wholesale dealers who have supplied them with stocks, banks and financial houses, would inevitably be involved. In the 201 shops visited by Mr. Baring, the figures of stock alone (not counting value of premises, value of goodwill, actual turnover of business) were as shown in the following table:—

		STOCK CARRIED.			
Shops carrying stock:—		Under £500.	£500- £1,000.	£1,000- £5,000.	Over £5,000.
Johannesburg*	... ..	21	21	26	15
Roo-de-poort	... ..	9	5	8	—
Krugersdorp	... ..	7	5	4	3
Nigel	... ..	3	—	5	—
Springs	... ..	5	—	5	—
Germiston	... ..	—	1	3	—

*Table contains figures for only 83 shops in Johannesburg, as fruit shops with a running stock have been omitted.

51. The connection between Indian shops and European wholesale dealers may be gauged by the figures shown in the table below—figures obtained in the same shop-to-shop visitation:

		PERCENTAGE OF STOCK OBTAINED FROM EUROPEAN FIRMS.			
		Under 50%.	50%-90%.	Over 90%.	
Roo-de-poort	... ..	—	12	10	22 shops
Krugersdorp	... ..	—	12	7	19
Nigel	... ..	—	6	2	8
Springs	... ..	—	7	4	11
Germiston	... ..	—	3	2	5
		<u>—</u>	<u>40</u>	<u>25</u>	<u>65 shops</u>
Johannesburg	... ..	15	26	91	132 shops

If these two hundred shops are typical of the thousand Asiatic shops in Johannesburg and the hundreds along the Reef, it is clear that the closing down of sixty per cent. of them would lead to much dislocation of business and to financial embarrassment for those with whom the Indian traders have business connections. As for the traders themselves, there are not even locations to which they could go and it is difficult to see how the creation of a class of pauper Indians (inside or outside of locations) can benefit any section of the population. Finally, the compulsory liquidation of so many businesses and the eviction of so many families would irretrievably prejudice that spirit of goodwill in which alone it is possible for an inter-dominion understanding like the Cape Town Agreement to bear fruit.

52. In all the circumstances it is submitted that, if it should be decided for the future to enforce the legislation of 1908 so far as occupation by Indians is concerned, an unanswerable case exists for protecting those interests which the humane administration of the law has allowed to develop since 1919. It is submitted that now, just as in 1919, such protection should extend also to the successors in title of the present business men, and for the same reasons as were then adopted. Any narrower measure of protection would prejudice the disposal of businesses at the death or retirement of the present owners. The proposal that protection should be given for a period of years only is open to the same objection—that no business so circumstanced could be disposed of by its present owner. One of the objections to a rigorous enforcement of the law with effect from the year 1919 is that the eviction of a large number of Indian merchants now in occupation of premises in contravention of the Act of that year, would create a considerable pauper class in the Rand area. The same objection would apply to any gradual reduction of the businesses at present unprotected by the Act—the same result would ensue though its operation would be more gradual. It is, in any case, submitted that the fixing of a time limit would involve, if justice were to be done, the separate examination of every individual case; if this were left to local authorities, it would open the door to favouritism and other undesirable practices, especially if the local authority were given power to reduce the number of existing licences periodically and to decide which licences should be extinguished from time to time.

53. If then there is a case for protection of interests which have grown up since 1919—a case based on hardship to those who might be evicted, harm to others interested, the blame which Government and municipal authorities must share for countenancing the growth of these interests by the grant of licences and certificates, and the certainty of dissipating the atmosphere of inter-dominion understanding engendered by the Cape Town Agreement—there can, on the other side, be no real danger in granting such protection. It has already been shown that the number of Indian traders has not, so far as figures are available, increased; nor is there any risk of the process of condonation having to be undertaken, as has been suggested, ten years hence and periodically thereafter. The need for condonation arises now only if the law is going to be enforced for the future; if the law is enforced for the future, there will be nothing hereafter to condone.

54. It has transpired in evidence that, through the use of the phrase "Government township" in section one of Act 37 of 1919, Indian traders in semi-Government townships like Roodepoort, Ferreira, Fordsburg and Luipaardsvlei (to name only a few) are deprived of the protection apparently intended by the Act. It is submitted that advantage may be taken of any further regularisation of interests to secure for these Indians also a protection to which, no less than those in Government townships, they have a claim.

55. The last paragraph of the terms of reference provides for matters arising out of the other paragraphs. An allusion may suitably be made here to one matter on which, though it hardly arises directly from the Committee's reference, the Committee has heard evidence. Demands have been made by witnesses from various parts of the Province that municipal bodies, even on unproclaimed land, should be given powers to allot areas (apparently to be located as a rule outside township limits) which the Indians shall be compelled to occupy both for residence and for trade.

56. It need hardly be pointed out that, so far as concerns segregation for residential purposes, Law 3 of 1885, which was never enforced, referred to those only whom it was necessary to segregate for sanitary reasons; while as regards trade, though the effect of the legislation of 1908 is to close certain areas to Indian occupation, compulsory segregation of the Indian for trading purposes would be a new departure in the law of the Transvaal. The point was decided as long ago as 1904 in the case of Habib Motan in which, speaking of Law 3 of 1885, Sir James Rose-Innes remarked that "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 Asiatic Inquiry Commission in paragraph 125 of their Report say: "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." This refers to residential segregation. So far as commercial segregation goes, it was pointed out by the Chief Justice in the case of

Habib Motan, cited above, that if the commercial dealings of the Indian trader were to be restricted to the location in which he lived situated (as, for example, at Springs) 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. I understand that the Indians who live in the location in Nigel are not allowed to be visited by even their brothers or relatives from the town for any purpose, let alone trade, without the production of a pass. It should not be forgotten that trading in his present limited sphere is virtually the only occupation followed by the Indian in the Transvaal, and that his compulsory diversion to industry would be a hardship on him and a source of offence to those already employed in the industries concerned.

57. The question of segregation was examined by the Lange Commission in 1921: after visiting some of the existing locations in the Transvaal, to which they applied the adjectives "very neglected and insanitary" (Boksburg and Germiston), "appalling" (Vrededorp) and where they "found the inhabitants crowded and huddled together in small hovels amidst indescribable filth and leading a most insanitary mode of life," the Commission remarked that the result of their inspection "was not such as to inspire confidence in a general policy of segregation" (paragraph 121 *et seq.*). In fact, "any attempt to enforce compulsory segregation would result in failure and lead to a resurgence of the passive resistance movement." In paragraph 224 the Commission remarked, "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." Segregation was again examined by a Select Committee on the Areas Reservation Bill of 1926. As a result of that Committee's deliberations the Cape Town Conference met and segregation was abandoned. It is impossible to reconcile the proposal that Asiatics should be segregated with the spirit of the Cape Town Agreement, the "upliftment" portion of which envisages the raising to "Western standards of life" of domiciled Indians who are prepared to conform thereto. It is to be remembered that the Indian has no municipal vote—no power to influence municipal administration. It follows that, for all that the Indian could do to prevent it, the pressure which now impels municipal authorities to demand the establishment of Indian locations would almost certainly compel those authorities to neglect them when established. I do not mean to imply that the neglect would be intentional, but when it came to spending money on Asiatic locations, what town councillor is going to support that? Much could be said on this subject of segregation—on the horror and shame which the mere proposal excites among Indians in this country and among all classes and races in India. If the argument is pressed no further in this statement it is because the proposal hardly arises out of the terms of reference: the topic would not have been mentioned but for the fact that from the municipalities themselves a demand has been made.

58. For the same reason, namely, that the Terms of Reference do not appear to call for it, it has not been thought necessary to deal with other proposals threatening the Indian's present right to lease (though not to own) fixed property anywhere in the Province except on "proclaimed land" and in townships which have contractual restrictions. The proposal to define "fixed property" so as to include in that term leases for a term exceeding ten years would seem to be an interference with the Indian's present rights in the matter of leasehold for which no warrant or justification has been given.

59. In conclusion, I would earnestly request the Committee, in considering the difficult questions before them, to bear constantly in mind two things. The first is that from the early days of the present century the Indian in this country and the Indian Government have been on the defensive. Indians here have acquiesced in, and the Indian Government have agreed to, measures of restriction in one direction and another with one object in view always—to secure fair treatment for the Indians already here. These are the very words used by Lord Elgin when, as Secretary of State for the Colonies in 1906, he urged upon the Secretary of State for India acceptance of Lord Selborne's proposals for the restriction of Indian immigration into the Transvaal. It was in this way that the Government and people of India reconciled themselves to the Union Immigrants Restriction Act of 1913. Speaking of this Act at the Imperial War Conference of 1917 General Smuts, on behalf of South Africa, said "The fear which formerly obsessed the settlers there has been removed: the great principle of restricting immigration for which they have contended is on our Statute Book with the consent of the Indian population in South Africa and the Indian authorities in India and, that being so, I think that the door is open now for a peaceful and statesmanlike solution of all the minor administrative troubles which occurred and will occur from time to time." The restrictions on land ownership by Indians in the Transvaal were specifically mentioned in Lord Sinha's Memorandum, presented to the Imperial Conference of 1918—the year of Reciprocity Resolution. In accepting the Reciprocity Resolution on behalf of South Africa Mr. Burton said, "As far as we are concerned in South Africa, we are in agreement with this Resolution, and also with the proposal referring the Memorandum to the consideration of our Government and we will give it the most sympathetic consideration we can, certainly." Understandings and undertakings of this kind—the whole history of the existing restrictions on Indians—entitle the Indian community to look for consideration at your hands. Your responsibility with regard to them is, I would most earnestly submit, greater, not less, because they have no vote. A people disfranchised must be your special care.

60. The second point is that in the Cape Town Agreement the Union Government "recognise that Indians domiciled in the Union, who are prepared to conform to Western

standards of life, should be enabled to do so." To evict them from their places of business, to restrict them in their facilities for trade, to drive them into locations far removed from the white population—these are not the methods by which the Indians in your midst can be brought up decent, self-respecting citizens. These are the methods by which a pauper population is created. Not to depress the Indian, but to raise him to your own standard of living, is the surest safeguard of that standard. In Part iii of the Agreement the Union Government declare their firm belief in, and adherence to, "the principle that it is the duty of every civilised Government to devise ways and means, and to take all possible steps for the uplifting of every section of their permanent population to the full extent of their capacity and opportunities, and accept the view that in the provision of educational and other facilities the considerable number of Indians who remain part of the permanent population should not be allowed to lag behind other sections of the people." It is realised both by the Indians in South Africa and by the Government of India, that it is difficult for a popularly elected Government to take, or for individual members to propose, action in advance of public opinion. Progress may at first be slow: a pre-requisite of change in a democratic country like South Africa is that public opinion must back the reforms and approve the ameliorative proposals: and public opinion has to be educated to these high ideals. It is reasonable to hope that the elected leaders of the people will guide them to an appreciation of the ideals enshrined in the Agreement; it is reasonable also to ask that, in the meantime, nothing be counselled or done to impair the better feeling engendered by the Agreement, to render harder of attainment the ideals which it enunciates, or to deprive South African Indians of the hope that, by the exercise of patience and self-restraint, they will, in time to come, qualify themselves in the eyes of the dominant race to receive in greater measure that share in the elementary rights of citizenship to which South African birth and domicile to an increasing extent entitles them.

Annexure No. 1.

TRANSVAAL.

PRINCIPAL TOWNS (including suburbs). Classified according to the number of European inhabitants.

Censuses 1921 and 1926 (South Africa Year Book No. 9, 1926-27).

	Census of 1921.		Census of 1926.
	"Asiatics."*	Europeans	Europeans.
Johannesburg and suburbs	6,229	151,836	170,741
Pretoria and suburbs	1,757	45,361	54,326
Germiston and suburbs	486	18,477	19,495
Benoni	570	14,483	14,899
Krugersdorp	328	13,439	14,524
Boksburg	620	12,416	12,144
Potchefstroom	224	8,189	9,336
Brakpan	39	7,108	8,450
Roodepoort	283	7,140	7,217
Springs	207	4,488	5,363
Klerksdorp	201	3,121	3,391
Pietersburg	183	2,452	2,958
Standerton and suburbs	171	2,562	2,832
Witbank and suburbs	66	1,919	2,696
Middelburg (T.)	158	2,705	2,600
Vereeniging	177	1,843	2,463
Ermelo	118	2,716	2,390
Volksrust	102	2,218	2,374
Rustenburg	137	1,734	2,259
Bloemhof	111	2,305	2,090
Totals	12,167	306,512	342,548
Provincial Totals	15,991	543,485	608,622
Total for townships enumerated above	12,167	306,512	342,548
Total for areas outside these townships	3,824	236,973	266,074

In the townships named there were 39.6 Asiatics per 1,000 Europeans in 1921.
The proportion outside the townships was 16.1 Asiatics to 1,000 Europeans.

*NOTE.—These are figures for all Asiatics, not for Indians alone.

Annexure No. 2.

OCCUPATIONS OF PERSONS OF 15 YEARS AND OVER IN TRANSVAAL (CENSUS OF 1921).

(Official Year Book of the Union of South Africa No. 10, 1927-28, page 889-890.)

	Europeans.		Indians.	
	Male.	Female.	Male.	Female.
Fishing and Agriculture	48,102	1,253	284	7
Mining	16,826	33	—	—
Industrial	37,909	2,841	518	8
Transport and Communication	9,141	625	58	—
Commercial	28,770	8,519	4,269	55
Public Administration and Defence	8,639	1,531	9	—
Professional	6,209	4,827	57	—
Personal Service	3,308	4,116	—	—
Independent	1,975	1,098	—	—
Dependent	118,001	229,529	—	—
Indefinite	5,508	4,725	120	4
Non-Productive	—	—	1,458	2,003

NOTE.—The table given above is compiled from two tables in the Year Book which give the occupations in respect of Europeans and Indians separately. The heads "personal service," "independent" and "dependent" are omitted from the Indian list, while the head "non-productive" does not figure in the European list.

Annexure No. 3.

(i) ASIATIC CRIME IN THE UNION—1923.

Offence.	Union Convictions 1923.	Offence.	Union Convictions 1923.
Abortion	—	Bught fororward	88
Arson	3	Murder attempted	—
Assault Indecent	4	Public Violence	29
Assault on Police	2	Rape	2
Assault with Intent	35	Rape attempted	3
Bestiality	1	Receiving Stolen Property	14
Bigamy	1	Sedition	—
Coining	—	Sodomy	—
Concealment of Births... ..	—	Theft—	—
Defilement of Girls	9	Motor and Cycle	10
Diamond Laws	7	Common (exceeding £50 in value)	5
Extortion	3	By Conversion and Embezzlement	6
Forgery	12	By Fraud and False Pretences	36
Gold Buying, Selling and Possession of	7	Housebreaking by Day	12
Homicide Culpable	1	Housebreaking by Night	38
Immorality Law	3	By Pocket Picking	10
Infanticide	—	Produce	—
Murder	—	Stock	7
	88	By Violence (robbery)	11
		Treason	—
		Total Serious Crime	271

I should like, if I may, just to supplement this statement very briefly and to mention four additional points. A difficulty that seems to have arisen before the Select Committee is about the Cape Town Agreement. As I understand the Cape Town Agreement it really boils down to this, that the Government of India agreed to help the Union Government over the Indian population question of this country in two ways, namely, by co-operating in assisted emigration and by additional restriction on the immigration of minor sons and children. On the other side, the Union Government agreed to regard the residuum as a permanent element in the population and to treat them as such. Now, it is quite evident that there was no promise on

the part of the Union Government in the Agreement to repeal any specific laws affecting Indians. There was never any suggestion, either, that existing laws should be permitted to be violated with impunity. The idea rather was that, as the question became less and less pressing—the so-called “Indian question”—it might be possible for the Union Government to see what could be done to relax existing restrictions. Upliftment of the Indian population was to take the place of repression. It is recognised in the Agreement itself that it will be difficult for the Union Government to take action which is considerably in advance of public opinion, but we do ask, and I think it is reasonable to ask, that there should be no further restrictive legislation. Now as regards specific laws, I was not at the Cape Town Conference, but it is difficult to see how Act 37 of 1919 could have been considered from the point of view of evasion of section *two*, as regards companies, or from the point of view of continued residence on restricted areas—on “proclaimed land.” To take the second point first, so far as occupation on proclaimed land goes, the Government of India were unaware that it was still going on—that the protection of Act 37 of 1919 was no longer effective—until the matter was brought to their notice either in January, 1928, when the Johannesburg Municipality first contemplated action, or in January, 1929, by Mr. Sastri, the then Agent-General of the Government of India, in South Africa. I remember that when this matter first came up, the answer he made was “There is no difficulty, surely? You have the Act of 1919 and you are protected.” The Government of India rely on us for their information. As far as section *two* of Act 37 of 1919 goes, the Government of India were unaware, until they saw the terms of reference of this Committee, that there was any violation of the Company Law as laid down in the 1919 Act. It is rather interesting to note that the Municipal Council of Johannesburg considered the question of occupation in 1928. In the application of one, Ah Song, for a licence they definitely considered this question whether they should take into consideration under the General Dealers Control Ordinance the right of the person to occupy the premises in respect of which he sought a licence, and they decided in that case that, though they thought they had the right, they would not do so. The Committee resolved in that case that “having considered the application . . . while it considers that it is entitled to have regard to the provisions of the restrictions in the title of the property in respect of which the application is made, is of opinion that the interpretation and the application of this restriction fall within the functions of the Government and should be dealt with by the Government in connection with the issue of any licences authorized by a certificate granted by the municipality. This application is granted.” They raised the point stated in paragraph 28 of my statement and they then took the view that it was for the Government to enforce its laws. On the second point some doubt has been thrown on the figures of Asiatic general dealers in 1919. It has been suggested that the figures for 1919 were swollen by a large number of applications put in with a view to forestalling possible restrictive legislation. But the figures quoted by Mr. Venn the other day show that taking the years 1919 and 1920 in the areas which are quoted in that list, some of which appear to be municipal areas and others magisterial areas, there was in those years actually a rise in the number of holders of general dealers’ licences in 1920 as against 1919. I went through that list, and I noticed that the 1919 figures contained four areas for which no figure is given in 1920, and the 1920 figures contain six areas in respect of which no figures are given for 1919. Eliminating those 10 areas and taking the remaining 31 which are common to both lists, actually there were 1,724 general dealers’ licences in 1919, and 1,989 in 1920. It is impossible to say in respect of any particular area whether the 1919 figures were increased by an unusual rush of people who wished to be on the safe side. Obviously it is not generally so. As a matter of fact, with regard to the places I have quoted, it is not so—with one important exception, and that exception, unfortunately, is Johannesburg. In Johannesburg it does appear from the figures Mr. Venn has quoted that a lot of people in Johannesburg may have applied for licences and not exercised them in 1920. The figures of general dealers in his list dropped in 1920 to nearly one-half what they were in 1919. To that extent the figure 1,430 in paragraph 17 of my statement has some doubt thrown upon it, but I understand the Select Committee are having full figures put up from the year 1918 onwards, and I welcome the collection of statistics which will throw a true light on the matter. We have been unable in the time available to get them ourselves. It takes a long time to collect these figures from the Revenue Department. I hope the figures will also show how European licences have fluctuated, and that there will be a differentiation between general dealers and others. If it is furnished only in respect of general dealers I would call attention to the state of affairs described by the Asiatic Enquiry Commission as existing in Potchefstroom in 1920, namely, that there were 36 Indian general dealers’ licences and only 16 European general dealers’ licences, but that there were only 45 Indian businesses as against 107 European businesses. Then, again, general dealers’ licences do not necessarily mean a corresponding number of shops. Another point was raised—about British Indians. Act 37 of 1919 refers to “British Indians.” “British Indians” in India, I think, would apply to Indians who were subjects of the Government of India direct and not subjects of Indian States. But outside India, the subjects of Indian States are regarded as British protected, and, as a matter of fact, in all Dominions and Colonies, so far as we have been able to discover, equality is accorded to them in practice along with people who may be correctly described as British Indians. The Government of India regulate foreign and Imperial relations for the whole of India, and Indian States have no separate international status; their subjects, therefore, cannot be treated on any separate international basis. Members will be aware that the Government of India Delegations to Geneva have on more than one occasion been led by rulers of Indian States. I think that very clearly shows how the States are connected with British India. My information is that, judgment or no judgment, the Department has never in the past differentiated—and we would very much deprecate any differentiation in the future—between Indians who happen to be subjects of an Indian State and those directly under the Government of India.

The last point I want to make is with regard to the question of Indian traders being forced into other spheres of life. I do not know whether members realize the extent to which in India, even among Mohammedans, occupations are hereditary. You get hereditary potters, hereditary water carriers, and these hereditary traders. When I was in Delhi recently I saw people who were hereditary well-jumpers! For 300 years it has been from father to son, the practice of these people to jump down a very deep well. The Mogul Emperors used to sit in Court at the side of the well and watch these men flash down into the water. The skill lay in the man dropping straight down into the well. I merely mention that as an example to show that the people we are dealing with cannot easily be driven from their particular trades into other avocations. Not only does this apply to Hindus only: even Mohammedans are traders by birth and descent. These people have come to this country to trade and they have a special aptitude for it; if any intervened in other fields of industry it would be equally resented. In some cases they cannot enter into other trades because they are debarred from getting technical education. In any case why should the Government dictate to them what they should do. Surely some choice should be allowed to these people. I think that a lawyer would be much aggrieved if the Government or some municipal authority stepped in and informed him that he would in future have to be a bricklayer.

Chairman: You have finished your statement, I take it, Mr. Tyson?—Might I just make one small addition to what I said yesterday, before we begin with questions? Certain figures were put up yesterday; I have not seen them, but they were put up in a statement which was read out, giving us, as far as I can gather, the figures of general dealers' licences for Asiatics from 1918 to 1925. I have not seen them all; I have seen the figures for 1919 and 1920, and I only refer to the thing at all because it shows some of the pitfalls which we have to expect in dealing with figures of this kind. Here is a list of figures put up in perfect good faith by the Department, purporting, apparently, to give the totals of general dealers' licences for a whole series of years. The only figure I have seen in detail—those for 1919 and 1920—are really, when you look into them, very fallacious. Now the figures for 1919 and 1920 refer to 41 different areas, and the first point which I would make is that from figures which we have received from the Receiver of Revenue and which are in my statement, it is quite clear that some of these refer to municipal areas and some to magisterial areas. Therefore, when you come to consider the totals at the bottom of the page, they are somewhat misleading. You cannot total up figures of general dealers' licences unless the areas right through are either magisterial or municipal. In the 1920 figures I find four magisterial areas and one municipal. In the 1919 figures, which are given to compare with 1920, the Vereening figure is municipal. My second point is that the 1919 figures refer to 35 areas. The 1920 figures refer to 37 areas. That being so, you cannot compare the two totals. And it is worse than that:—In the 1919 figures there are four areas which are not at all included in the 1920 figures; and in the 1920 figures there are six areas which are not at all included in the 1919 figures. And then, to go a little further, the total figure of general dealers' licences for 1919, that is for the 31 areas which are common to the 1919 and 1920 lists and also for the four areas which only appear in the 1919 list, is 1,750. Now the Asiatic Inquiry Commission report found in 1919 from the Receiver of Revenue in Johannesburg there were 1,430 licences held by Asiatics in Johannesburg alone. That is in the magisterial area of Johannesburg. If you deduct that from 1,750 it does not leave very many for the rest of the Province. Now, in 1920, if you will turn to page 5 of my statement, you will find that in the magisterial areas of Krugersdorp, Potchefstroom, Volksrust and Zeerust there were 317 licences held by Asiatics. Assuming the same figure for 1919, that would cover your 1,750 alone. However, I only make this point because I would beseech members of the Committee when they get figures to see that they are comparing the same thing; to see that they are comparing magisterial areas with magisterial areas and municipal areas with municipal areas and not a mixture of the two. I say that these are figures that are put up by the Department in perfect good faith, and yet, when you look into them, you find that they are not really comparable; I do hope that when the figures are put up which are sent for by the Select Committee, they will be scrutinised from this point of view which I have placed before you, and that the Select Committee will also bear this in mind, as I said yesterday, that general dealers are only a part of business activity. Most of the Indians are general dealers, but you must not forget that other branches are open to Europeans which are not open to Indians, or if open, they are not very much entered by them.

EXTRACTS FROM EVIDENCE GIVEN BY THE REGISTRAR
OF MINING TITLES AND RAND TOWNSHIPS REGIS-
TRAR BEFORE THE SELECT COMMITTEE.

" In this case (*Dadoo Ltd. and Others vs. Krugersdorp Municipality, 1920*), it was decided that ownership by a company consisting of Asiatics was not in substance ownership by its Asiatic Shareholders. Further, it was there held that a company is a distinct persona in law from the shareholders who compose it."

" In view of the many decisions of the Superior Courts on this aspect of the question, it is still legally permissible for European nominees or trustees to hold immovable property of every description on behalf of Asiatic principals, and if Parliament had intended to put a stop to this, it has failed to make the necessary provision in any law."

" In a later case (*Mahomed vs. Suratee Mahomedan Estate, 1926*) it was shown that there is nothing unlawful in a European Trustee holding a stand for an Asiatic.

Never in any law has it been enacted, to my knowledge, that Asiatics should have no right to obtain invading licences. They can and do obtain such licences to-day."

" There are no townships in the proclaimed areas where Asiatics are free from impediments as to occupation and ownership because there is always a restriction in the title I know of no case of a township on a public digging with no restriction in the title."

" I am acquainted with the case of *Motan vs. the Transvaal Government*, where it was held that no machinery exists to force Asiatics to go into the locations."

BILL

To amend in certain respects the law relating to occupation of certain land in the Province of the Transvaal by Asiatics and to provide for matters incidental thereto.

(INTRODUCED BY THE MINISTER OF THE INTERIOR.)

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:—

SECTIONS OF THE BILL.

CLAUSE 1.

Section *one hundred and thirty* of the Precious and Base Metals Act, 1908 (Transvaal) (hereinafter referred to as the Gold Law) is hereby amended by the addition of the following words at the end of sub-section (1) thereof: "and no coloured person other than such bona fide servant may reside on or occupy any such ground."

CLAUSE 2.

Section *one hundred and thirty-one* of the Gold Law is hereby amended—

- (a) by the deletion of the words "be permitted to" in sub-section (1).

SECTION 2 (b)—

By the deletion of the words "proclaimed land" in sub-section (1) and the substitution thereof of the words "or occupy any land, which has been or purports to have been proclaimed a public digging under any provision whatsoever of this Act or Law No. 15 of 1898, or of a prior law, and which has not been lawfully de-proclaimed, whatever its situation, the nature of its tenure, the nature and extent of any rights in regard thereto under this Act or any other law, or the condition of its surface may be, or may have been on the date of such proclamation.

SECTION 3.

The provisions of sections *one* and *two* shall be construed as having come into operation on the first day of May, 1930: Provided that any coloured person who was lawfully residing on, or occupying any ground or land referred to in either of those sections immediately prior to the date when its provisions became or are, in terms of this section, deemed to have become applicable to such ground or land, shall be entitled to continue such residence or occupation, subject to compliance with the requirements of any other law.

COMMENTS THEREON.

Section 130 of the Gold Law, Transvaal Act No. 35 of 1908, prohibited the occupation and residence of a coloured person, other than bona fide servants, on proclaimed areas, and a person transferring, or sub-letting, or permitting occupation or residence by a coloured person, is liable to be punished. The amendment proposed not only makes the occupation of proclaimed areas by a coloured person illegal but a punishable offence.

The effect of section 130 of the existing Gold Law is that it prohibits the holder of a right acquired under any law over proclaimed areas from transferring or sub-letting to or permitting occupation or residence by a coloured person, other than a bona fide servant, and makes it a punishable offence, but the amendment proposed alters the present state of the law, and lays down that the coloured person illegally occupying, as well as the person permitting occupation, is made liable to the penalties provided under section 130 (2) of the Gold Law.

The existing state of position under clause 131 (1) of the Gold Law is that it only prohibits residence, but not occupation of proclaimed land by coloured persons, but the amendment proposed expressly prohibits occupation as well for any purpose, thus imposing further restrictions of a grave character.

Section 2 (b) creates a new position by bringing within the provisions of the Gold Law, townships such as Springs, where Asiatics possessed incontestable rights to reside and occupy. In point of fact, the Gold Law had no application whatsoever to townships as Springs. Recently the question of residence by Asiatics on a certain stand at Springs, who were sought to be ejected under section 131 (1) of the Gold Law, was tested in the Appellate Division of the Supreme Court of South Africa, and the Chief Justice decided in favour of the Asiatics by observing that land proclaimed under section 52 stood in a peculiar position and was not intended by Parliament to be hit by the provisions of the Gold Law in its application to proclaimed land. In order to nullify the effect of this judgment, a new sub-section has been introduced so as to make the provisions of the Gold Law applicable to townships such as Springs. Although the amendment safeguards the existing interests of Asiatics, it totally excludes any fresh rights, which were open to them, being acquired.

This is yet another example of rigorous action proposed to be adopted to deprive Indians of rights, though very limited, open to them.

The purport of this section is, as is clear from its provisions, that the amendment in clauses 1 and 2 shall be construed as having come into force on 1st May, 1930. This is to give effect to rights declared to have been lawfully acquired by the recent decision of the Appellate Court, and will apply to Springs and such-like places. Whilst safeguarding existing rights in this respect, it restricts any fresh rights of similar nature in future. It will be noticed that no provision is made for the transference of such rights to successors or heirs of present holders.

SUPPLEMENTARY COMMENTS ON THE BILL

(following comments on p.p. 32-38).

On CLAUSE 3.

It seems illogical that in 1919 protection, including "the lawful successors in title," was given to Indians in illegal occupation of their stands, while in 1930 only life protection is given to Springs Indians, who were in perfectly legal occupation of their stands.—See Appellate Division in judgment quoted above.

In fact, the Asiatics in Springs will thus be in one respect even worse off than those in other towns on proclaimed land, for the heirs and transferees of those continuously in Springs since 1919 will not enjoy the protection of the 1919 Act. Therefore if the Bill is not amended Indian trade in Springs will be extinguished with the passing away of the present holders of licences.

On CLAUSE 4 (1).

The Committee in paragraph 10 of their report justify this legislation on the plea that without it the value of property would depreciate on the deproclamation of the land on which such property was situated. The argument is weak, since the European property owners must be taken to have been aware of the possibility of deproclamation at the time of their purchase of property in question. The section cannot be based on the principle that coloured persons should not live in mining areas, since the deproclamation of an area means that area has ceased to have any connection with mines. It can, therefore, only be based on the general ground that Indians should not live in European areas, an idea which, if pressed to its conclusion, would mean general segregation, such as was proposed in 1926.

CLAUSE 5 (5).

It is clear from the above quotation and from quotations given on page 31 from the evidence of the representatives of Johannesburg City Council that in view of the provisions of sub-clause (5) of this clause, European opinion will make it impossible to define an "exempted area" anywhere within the towns as they exist at present. No machinery is provided for inducing the Europeans now residing in areas which might be considered for definition as suitable for Asiatic occupation to sell or, if they should sell, to ensure that they sell "on reasonable terms" as mentioned at the end of paragraph 5 of the Committee's Report. Therefore it seems that this clause must result in the creation of extra urban locations, into which some 75 per cent. of the existing Indian traders on the Rand will be compelled to go. The compulsion is not direct, but it is none-the-less strong for being indirect, since the only alternative left to these traders would be to move to the country districts where they would have little chance of making a livelihood. The right given to acquire ownership of land in the new so-called "exempted areas" will thus amount to nothing more than the existing right to own land in Asiatic bazaars and locations under Act 18 of 1913. There is no half-way house between full protection of existing rights and the creation of extra-urban locations, since Indian areas inside towns cannot be created by the stroke of the pen, but can only grow up gradually as has occurred in some Natal towns.

On CLAUSE 6 (3), line 28, after British Indian, add:
"protected by section 1 of this Act,"

and add at the end:

"provided he or his successor do not move to another township."

On CLAUSE 7.

NEW CLAUSE 2 (1).

Add: "This clause adds an entirely new restriction in regard to long leases." Previously only ownership was forbidden.

On NEW CLAUSE 2 (4).

Add: This protection, however, does not extend beyond the lifetime of the European trustee or nominee now holding the land.

On NEW CLAUSE 4.

Add: "It further seriously affects the rights of an Asiatic over property which he legally acquired through a company before May 1st, 1919, Act, and in the ownership of which he is protected by section 2, Act 37 of 1919. For according to this clause he will in the future be unable to transfer his shares in such a company to another Asiatic except by inheritance. Further, this protection does not extend to Asiatic companies (mentioned in new clause 3 (i) (ii) which hold shares in private companies holding fixed property."

On CLAUSE 7 (1) (2).

Add: "This and following clause introduce a new restrictive principle in regard to occupation by prohibiting it on the ground that the land is owned by certain kinds of companies."

On CLAUSE 9.

Add: "As this clause stands, complicated questions in regard to the right to occupy will be decided by Municipal councillors, who have no legal training and who depend on the votes of the trade rivals of voteless Indians, or who may themselves be the Indians' trade rivals. The quotations given on page 31 show that the representatives of the Johannesburg City Council themselves realised the disadvantages of such an arrangement."

N.B.—There are several serious omissions in the Bill. One of these was mentioned by the Registrar of Mining Titles and Rand Townships at page 58 of the Minutes of Evidence. An Indian in legal occupation of a stand is usually liable to ejection under two heads, either under the Gold Law of 1908 or in accordance with an anti-Asiatic clause in the title deed of the stand in question. Under section 1, Act 37 of 1919, an Indian lawfully trading on May 1st, 1919, is protected against the operation of both kinds of restriction if he is in a Government Township. There are, however, many semi-Government Townships (e.g., Fordsburg, Roodepoort and City and Suburban). These are not mentioned in the section, but in most instances they have anti-Asiatic clauses in the title deeds of all their stands. Therefore the provisions of the title deeds (though not of the Gold Law) could still be enforced against an Indian who in a Government Township could be protected therefrom. The distinction has nothing to be said in its favour, and the Registrar of Mining Titles and Rand Townships suggested its removal by the substitution in section 1, Act 37 of 1919, of the comprehensive term "stand township" for "Government Township." This has not been done.

No provision has been made for the acquiring of property for the building of mosques, temples, schools or libraries, this in spite of the representative of the South African Moslem Conference admitting in evidence that abuse of such a concession might be well guarded against by the limiting of the amount of ground so acquired, which could be let to earn income for the upkeep of the religious or charitable institution in question.

SECTION 4 (1).

If any land which was at any time subject to the provisions of section *one hundred and thirty* or *one hundred and thirty-one* of the Gold Law, has before the first day of May, 1930, ceased to be a public digging it shall, nevertheless continue to be subject to those provisions of that section, or any amendment thereof, as if it were still a public digging, as long as it is situate within the area of jurisdiction of any municipal council or village council or health committee: Provided that any coloured person who was, on the first day of May, 1930, lawfully residing upon or occupying such land, shall be entitled to continue such residence or occupation subject to compliance with the requirements of any other law.

SECTION 4 (2).

Any land which was, at any time subject to any provisions of section *one hundred and thirty* or section *one hundred and thirty-one* of the Gold Law, or any amendment thereof, shall, subject to any provisions of Act No. 18 of 1913 or of this Act which may be applicable thereto, remain subject to the provisions of the said section *one hundred and thirty* or *one hundred and thirty-one* even if it ceases to be a public digging, as long as it is situate within the area of jurisdiction of any municipal council or village council or health committee.

SECTION 5 (1).

Within one year after the commencement of this Act every municipal council or village board within whose area of jurisdiction Asiatics reside and within which area is included any ground or land referred to in section *one hundred and thirty* or *one hundred and thirty-one* of the Gold Law, or any amendment thereof, shall, subject to any law relating to the laying out of townships, define an area or areas within its area of jurisdiction, for the accommodation of Asiatics and indicate in respect of any such area whether any Asiatic may reside but may not carry on business therein, or whether he may carry on business but may not reside therein, or whether he may both reside and carry on business therein.

SECTION 5 (2).

If the area or areas so defined are, in the opinion of the Minister of the Interior, after consultation with the Minister of Mines and Industries, suitable and of sufficient extent for the purpose indicated as aforesaid, to meet the reasonable residential and business requirements of all Asiatics residing or carrying on business in the area of jurisdiction of such council or board, he shall, subject to any law relating to the laying out of townships, by notice in the *Gazette*, define such area or areas as an exempted area or areas and indicate in such notice in respect of every such area, in accordance with the indication of such council or board, whether an Asiatic may reside therein but may not carry on business therein, or whether he may carry on business therein but may not reside therein, or whether he may both reside and carry on business therein.

SECTION 5 (3).

Any Asiatic may thereupon, notwithstanding the provisions of any other law, acquire the ownership of or any other real right in or a lease or other right of occupation of any land in any such area and may reside or carry on business thereon or permit any other Asiatic to reside or carry on business thereon, in accordance with such indication, subject to compliance with any law relating to residence or to any such business.

This sub-section provides that, although a proclaimed area in which coloured persons are prohibited from occupying ceases to be a public digging before the 1st May, 1930, it will nevertheless be considered as a proclaimed area as long as it is situate within the area of jurisdiction of any municipal council, village council, or health committee. It only protects the rights of coloured persons as to residence and occupation, lawfully acquired, up to 1st May, 1930, but this protection does not extend to their heirs and successors.

This sub-section enacts that even before or after 1st May, 1930, a proclaimed area, although it ceases to be a public digging, shall continue to remain a proclaimed area as long as it is situate within the jurisdiction of any municipal council, village council or health committee. The effect of these two sub-sections is to eternally exclude coloured persons from exercising their rights to occupy and reside on deproclaimed land, which they will be entitled to where the land is deproclaimed after the mining is worked out or closed. This will undoubtedly create new disabilities on coloured persons, and will exclude them from rights which they hitherto possessed. As for instance, if all the mines in the city of Johannesburg are worked out at some distant date, it will have to be deproclaimed, in which case coloured persons will have the right to reside and occupy deproclaimed areas. In order to prevent this, these sub-sections have been introduced.

This section contains five sub-clauses, all of which introduce new principles vitally affecting the Indian community throughout the Transvaal Province.

Sub-section (1) casts a duty upon every municipal council or village board to define area or areas within its jurisdiction for Asiatic occupation or residence, or for both and for trading purposes within one year of the passing of this Bill.

Sub-section (2) lays down that the Minister should be satisfied as to the suitability and extent of such exempted areas, wherein Asiatics may reside, but may not carry on business or may carry on business, but may reside or may do both.

Sub-section (3) empowers Asiatics to acquire ownership of fixed property in such defined areas.

SECTION 5 (4).

If any such council or board fails to define in accordance with the provisions of sub-section (1) an area which is or areas which are, in the opinion of the Minister of the Interior, suitable and of sufficient extent to meet all reasonable residential and business requirements of all Asiatics residing or carrying on business in the area of jurisdiction of such council or board, the Minister of the Interior shall, subject to any law relating to the laying out of townships, after consultation with the Minister of Mines and Industries, and with such council or board as soon as may be, by notice in the *Gazette* define an area or areas within such area of jurisdiction as an exempted area or areas and indicate in such notice in respect of every such area whether an Asiatic may reside therein, but may not carry on business therein, or whether he may carry on business but may not reside therein, or whether he may both reside and carry on business therein, and the provisions of sub-section (3) shall thereupon apply in respect of any such area.

SECTION 5 (5).

No land may be included in an exempted area in terms of this section if the title deed of that land contains any servitude or condition prohibiting its transfer to or occupation by an Asiatic, unless the owner of every piece of land in whose favour such servitude or condition is intended to operate, signifies his consent in writing to such inclusion.

Sub-section (4) lays down that if any council or board fails to define such areas in terms of sub-section (1) then the Minister shall define such areas.

Section 5 lays down that no land, the title deeds of which contain a clause prohibiting Asiatic occupation, may be included in an exempted area, unless the owner consents in writing.

Section 5 deals a death blow to the existence of the Indian community in the Transvaal. It introduces the principle of compulsory segregation against which even the Lange Commission of 1919 registered its disapproval. It is a revival of the principle contained in the Class Areas Bill, which was dropped as a result of the Round Table Conference between the Union Government and the Government of India. The provisions of this clause spell ruination to the thousands of Indians, who will be virtually driven out of the Province. Even if the Bill as it stands became law, as the powers of defining areas are in the first instance given to the municipalities and village councils, failing which, to the Minister, Indians besides having no say in the matter, will be left to the mercy of the municipalities and the Minister, and there is no means of redress in the event of harsh administration of this provision of the Bill. Moreover, Mr. D. J. Stewart, Registrar of Mining Titles and Rand Township Registrar, in a striking passage in his evidence before the Select Committee, made it abundantly clear as to the impracticability of making the section a workable one. He states "there are no Townships in the proclaimed areas where Asiatics are free from impediments as to occupation and ownership because there is always a restriction in the title . . . I know of no case of a Township on a public digging with no restriction in the title." It is a direct violation of the Cape Town Agreement, both in letter and in spirit.

SECTION 6.

Section one of the Asiatic (Land and Trading) Amendment (Transvaal) Act (Act No. 37 of 1919), is hereby amended—

Section 6 has four sub-clauses and amends Act 37 of 1919.

(a) by the deletion of the expressions "British Indian" and "Indian" wherever they occur and the substitution thereof of the words "coloured person";

Clause A substitutes the term "British Indians" for coloured persons. This change is made in order to include Indians from Native States of India as well.

(b) by the addition of the following new sub-sections (2) and (3), the existing section, as hereby amended, becoming sub-section (1).

(2) The provisions of sub-section (1) shall not exempt any coloured person from any provision of the said section *one hundred and thirty* and *one hundred and thirty-one*, or any amendment thereof, in respect of any number of pieces of land in any township in excess of the number of pieces of land on which he resided or which he occupied in such township on the first day of May, 1919, or in respect of any area in such township in excess of the area on which he resided or which he occupied in such township on the said date.

Clause B introduces amendment to the principal Act by providing that persons protected shall not occupy a greater number of stands or a greater extent of ground than was occupied on 1st May, 1919.

(3) If any coloured person was, on the first day of May, 1930, residing upon or occupying any land and such residence or occupation was by virtue of any provision of the said section *one hundred and thirty* or *one hundred and thirty-one* or of this section unlawful, such coloured person may, subject to compliance with the requirements of any other law, nevertheless continue such residence or occupation till the thirtieth day of April, 1935: Provided that he has, before the first day of September, 1930, furnished the Minister of the Interior with a written notice, specifying the land which he unlawfully resides upon or occupies, the nature of such residence or occupation and the period during which he resided on or occupied such land and such other particulars in regard to such land, residence or occupation as the Minister may require him to furnish.

Clause 3 declares that persons who have entered upon occupation or residence in contravention of the Gold Law after the 1st May, 1919, will be given five years' grace from 1st May, 1930, to vacate their stands, provided notice has been given in a prescribed form. But persons failing to give notice will lose the grace given them.

The effect of this section is to impose further restrictions upon Indians. It is necessary to explain briefly Act 37 of 1919 in order to understand the implications of this new section of the Bill. British Indians who on the 1st May, 1919, were carrying on a duly licensed business on proclaimed land or in townships, their successors in title, as well as their bona fide servants, were exempted from the Gold Law, and were permitted to reside on and occupy proclaimed land in the same township. The amendment proposes to restrict the scope of the law by laying down that persons so protected shall not hold any land or area in excess of that held by him on 1st May, 1919. In other words it means that if a person occupied on 1st May, 1919, Stand X, and, say in 1920, occupied Stand Y, which is an extension, in the same township, the protection given to him applies to Stand X only, and his extension to Y will be declared illegal. This is clearly defeating the decision of the Court of Law, which interpreting the Act 37 of 1919, said that a British Indian is in exactly the same position as any other person in the municipality, and just as if he were not a coloured person, in other words, just as if he were a European, who had all the rights under the Gold Law (*The Krugersdorp Municipality vs. Dadoo, Ltd, 1920*).

Again the clause, if passed, would lead to some absurdities. Take for instance, A occupies Stand No. 1 in 1919, of an area of 100 square yards, and later he shifts to another stand, No. 2, of an area of 120 square yards, he would be, in terms of this clause, deprived of the extra 20 square yards. What is allowed by Act of 1919 is not only snatched away, but no protection is given to vested interests acquired under that law.

This will affect not only the Indian traders, but also others, such as artisans, hawkers, waiters, book-keepers, who will be forced to give up their residence or occupation of stands, and go into locations, which are intended to be created under the provisions of the Bill.

SECTION 7.

Section two of Act No. 37 of 1919 is hereby repealed and the following new sections *two, three, four five, six, seven, eight, nine, ten and eleven* substituted therefor, the existing section *three* becoming section *twelve*.

2. (1) The expression "fixed property" in Law No. 3 of 1885 (Transvaal) and in this Act shall be construed as meaning any real right in immovable property in the Province of the Transvaal outside an area assigned for the occupation of Asiatics under paragraph (b) of article two of the said Law, as an exempted area in terms of the Transvaal Asiatic Tenure (Amendment) Act, 1930, other than a mortgage bond over immovable property securing a bona fide loan granted in the ordinary course of business, for an amount which either alone or together with any other mortgage bond having priority over the first-mentioned mortgage bond, does not exceed one-half of the value of such property as at the time of the registration of such mortgage and shall include any lease of immovable property for a period of ten years or longer or any lease which empowers the lessee to renew it for any period or periods which, together with the period of the original lease, equal or exceed a period of ten years.

2. (2) No Asiatic Company shall hold any fixed property.

Section 2 of Act of 1919 is repealed and new sections, numbering 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, are substituted.

This section defines the expression "fixed property" as meaning any real right in immovable property, mala fide mortgages, and leases of 10 years and over, other than land set apart in locations for sanitary purposes by Government under paragraph of Article 2 of Law 3 of 1885. The effect of this section is to prohibit ownership of land anywhere excepting in locations set apart, and areas defined in Clause 5 of the Bill.

This section prohibits any Asiatic Company from holding fixed property. Prior to the passing of Act 37 of 1919, ownership of property was acquired by forming companies or corporate bodies, and this was held to be legal. But section 2 of Act 37 of 1919, prohibited the ownership of fixed property by companies and the holding of bonds otherwise than as security for a bona fide loan or investment in the ordinary course of business to companies in which Asiatics have a controlling interest. After 1st May, 1919, Indian companies in which Europeans held majority of shares acquired ownership of several properties. These transactions are not protected by the proposed Bill. It may, however, be stated here that Companies formed in this way were registered by the State, which was the test that there was no legal prohibition against such transactions.

2. (3) The provisions of sub-sections (1) and (2) shall not apply in respect of any fixed property which, on the first day of May, 1930, stood lawfully registered in any deeds registry in favour of—

- (a) any Asiatic, as long as that fixed property is held by him or by any other Asiatic who inherited it from an Asiatic; or
- (b) an Asiatic company while held by such company.

2. (4) No person shall hold any fixed property on behalf of or in the interest of an Asiatic or Asiatic company, and any person who purports or agrees to hold any fixed property on behalf of or in the interest of an Asiatic or Asiatic company shall be guilty of an offence: Provided that the provisions of this sub-section shall not apply in respect of any fixed property held immediately prior to the fifteenth day of May, 1930, by any person on behalf or in the interest of an Asiatic or an Asiatic company, while so held by such person.

2. (5) Any fixed property registered in any deeds registry in favour of any Asiatic or Asiatic company which such Asiatic or company is debarred from holding by virtue of the provisions of Law No. 3 of 1885 (Transvaal) or of this Act, shall become the property of the State and any person other than the registrar of deeds or registrar of mining titles or any of their subordinate officers, who is in any way instrumental in effecting any such registration, in favour of an Asiatic or in favour of a company which is, on the date of such registration, an Asiatic company, shall be guilty of an offence: Provided that if any such Asiatic or company purports to transfer such property to a person who may lawfully hold it, the rights of the State under this sub-section in respect of such property, shall terminate on the expiration of one year after the registration of such transfer in a deeds registry.

2. (6) Any condition or provision inserted after the fifteenth day of May, 1930, in any document whatever purporting to empower any Asiatic or Asiatic company to exercise any influence upon the transfer of fixed property shall be void.

3. (1) Whenever any private company holds any fixed property, any share in or debenture of such company held by or pledged to—

- (i) an Asiatic; or
- (ii) an Asiatic company; or
- (iii) any person on behalf or in the interest of an Asiatic or an Asiatic company,

shall be forfeited to the State.

3. (2) It shall be the duty of the secretary and of every director of any company referred to in sub-section (1), which holds any fixed property, to notify the registrar of companies whenever any Asiatic or Asiatic company or any other person on behalf or in the interest of an Asiatic or Asiatic company holds any share in or debenture of such first-mentioned company.

3. (3) Any secretary and director who fails to comply with the requirements of sub-section (2) shall be guilty of an offence unless he proves that he was ignorant of the fact which it was his duty, in terms of sub-section (2), to convey to the registrar of companies and that he could not reasonably have ascertained that fact.

4. The provisions of section *three* shall not affect any share in or debenture of any company which was, on the first day of May, 1930, held by an Asiatic and not transferred by him since that date or by any other Asiatic who inherited it from an Asiatic: Provided that such company did not after the said date acquire any fixed property.

This section protects fixed properties of Asiatics in whose name they stood lawfully registered as at 1st May, 1930. The section is not clear as to whether right to transfer land so held to other Asiatics during the lifetime of the holder exists, as to whether the protection is limited to inheritances that took place before 1st May, 1930, or as to whether the protection is extended to future inheritors.

This section introduces a new disability and sweep-away existing rights in relation to holding of properties in trust by Europeans for Indians. Europeans held properties for Indians since Law 3 of 1885 was enacted, and this was held to be valid by the Supreme Court (see case of *Khamissa vs. Mohamed*, 1913, T.P.D., 597). The present provision of the Bill makes it illegal and a punishable offence for a person to hold fixed property on behalf of or in the interest of an Asiatic, but protects properties so held prior to 15th May, 1930.

The effect of this section is that it gives powers to the State to confiscate any fixed property which an Asiatic or Asiatic Company is debarred from holding by Law 3 of 1885, or by Act 37 of 1919, and subjects to penal offence any person (other than proper officers) who is instrumental in effecting registration of such properties in favour of an Asiatic or Asiatic company. An Asiatic or Asiatic company will have to transfer the property to a person who may lawfully hold it, and the rights of the State to confiscate the property are to terminate at the end of one year after the registration of such transfer. This section, it seems, has been framed in order to confiscate properties owned by limited companies formed after 1st May, 1919, which are stated to have been illegally formed. Even if companies were found to have been illegally formed to acquire property no provision is made to give an Asiatic company time within which to dispose of its property, and the State would have the right to confiscate without giving an opportunity to the Asiatic concerned. This confiscation carries with it no compensation, and the section, it seems, has a retrospective effect in that it brings within its purview properties acquired contrary to Law 3 of 1885, or Act 37 of 1919. Evidently it is intended to test the legality of properties owned in this way and to confiscate them if they are declared to have been illegally acquired.

The effect of this sub-section is to make void any condition inserted after 15th May, 1930, in any deed of transfer giving power to an Asiatic or Asiatic company to exercise any influence over the transfer. This is to prohibit any conditional transfer on the part of an Asiatic over a property which he may transfer to Europeans, and over which he may desire to exercise control.

The provisions of this section are self-evident. It prohibits Asiatic, or Asiatic company or any person on his or its behalf from holding any share, or debentures in any private company holding fixed property, and the penalties are confiscation by the State. Secretary and Director of such companies, failing notification, are liable to be punished. This section is intended to tighten up the existing laws, even to the extent of debarring Indians from holding legitimately shares or debentures in companies which may, besides other activities, hold fixed property. This is a further example of unjust restrictions placed upon Indians.

This section protects from the operation of section 3 an Asiatic who held shares or debentures in any company, or other Asiatic who inherited the same from an Asiatic as at 1st May, 1930, with the condition that such company shall not after that date acquire fixed property. It only protects individuals and not companies, or individuals who hold properties in trust on behalf of Indians. The protection given is to be withdrawn upon such companies acquiring fixed property after 1st May, 1930.

5. (1) The secretary of any company a share wherein or a debenture whereof has been forfeited to the State in terms of section *three* shall make such entries in any register, book or document under the control of such company and issue such documents as the registrar of companies may direct for the purpose of giving effect to such forfeiture.

(2) Whenever any such secretary fails to comply with any direction given to him by the registrar of companies in terms of sub-section (1), such secretary shall be guilty of an offence.

6. Whenever it has been proved in any proceeding under this Act, whether civil or criminal, that an Asiatic holds any share in or debenture of any company or that any other person holds any such share or debenture on behalf or in the interest of an Asiatic, such company shall be deemed to be an Asiatic company, unless the contrary is proved.

7. (1) No foreign company (as defined in section *two hundred and twenty-nine* of the Companies Act, 1926 (Act No. 46 of 1926)), shall acquire any fixed property or shall be capable of holding any fixed property acquired after the first day of May, 1930, unless it has a place of business in the Union and has complied with the requirements of section *two hundred and one* of the said Act.

(2) No Asiatic may occupy any land (other than land situate in an area wherein an Asiatic may hold immovable property) if such land is held by any foreign company or by any company in which a foreign company holds a controlling interest or if any such company holds any real rights in respect of such land other than a mortgage bond referred to in sub-section (1) of section *two* or if any such company holds in respect of such land a lease referred to in that sub-section, provided that the provisions of this sub-section shall not apply to any Asiatic who is the bona fide servant of any person in lawful occupation of such land. Any Asiatic contravening this sub-section shall be guilty of an offence.

8. If any company which has issued any shares or share warrants or debentures entitling the bearer thereof to any rights in regard thereto, holds any land (other than land situate in an area wherein an Asiatic may hold immovable property) or a real right in respect of such land other than a mortgage bond referred to in sub-section (1) of section *two* or holds in respect of such land a lease referred to in that sub-section no Asiatic shall occupy such land (except as a bona fide servant of any person in lawful occupation thereof) and if any Asiatic occupies any such land in contravention of this sub-section he shall be guilty of an offence and if such occupation was permitted or could have been prevented by such company, the secretary and every director thereof shall likewise be guilty of an offence.

9. (1) Any authority entrusted by law with the issue of any certificate which any person desiring to take out a licence to carry on any business or trade in the province of Transvaal is required to produce before such licence may lawfully be issued to him, shall, subject to the provisions of sub-section (3) of section *one*, not issue any such certificate to any person applying therefor unless such person proves that the proposed holder of such licence and the person who will be in actual control of the business or trade to be licensed, are not Asiatics, or if they are Asiatics, that they may lawfully carry on the business or trade for which a licence is desired on the premises whereon such business or trade is to be carried on.

(2) Any person whatever may, within two months after the issue of any such certificates by any such authority, and any applicant for such a certificate whose application therefor has been refused, may, within two months after such refusal, appeal against the decision of such authority to the magistrate of the district wherein the business or trade in question is to be carried on and such magistrate may cancel such certificate and any licence issued on the strength thereof or may issue such certificate in lieu of such authority. The decision of the magistrate on any such appeal shall be subject to an appeal to the Transvaal Provincial Division of the Supreme Court, as if it were a civil judgment of a magistrate's court.

This casts a duty upon the secretary of a company to give effect to forfeiture of shares and debentures in the manner required by registrar of companies, and failure to do so makes him liable to an offence.

This section requires no explanation, but it remains to be pointed out that section 3 gives ample powers for the forfeiture of shares or debentures in any private company which holds fixed property. The intention is to confiscate landed property as well, in terms of section 5.

This section lays down that no foreign company shall acquire fixed property unless it complies with the Companies Act in certain respects. It further lays down that no Asiatic may occupy land held by a foreign company (other than in a defined area) unless he is a bona fide servant of a person in lawful occupation of such land. There may be cases where Indians are in occupation of land not covered by Gold Law, or the Townships Act, or by any restrictions in private title deeds, yet no protection is given to such cases. This is another typical example of deprivation of existing rights, with no safeguard to protect vested interests.

This section prohibits an Asiatic from occupying land held by a company, which has issued bearer shares or debentures entitling the bearers thereof to any rights in regard to such land, and makes him liable to punishment for any contravention. Secretary and every director of company permitting such occupation are to be guilty of an offence. No protection is given to existing cases which come under this head, and vested interests are completely swept overboard.

This section gives authority to local authority to refuse the issue of certificate to Asiatic to trade unless such Asiatic, and the person who will be in actual control of the business, prove that they are lawfully entitled to carry on the business on the premises whereon such business or trade is to be carried on.

This clause gives the applicant in case of refusal to issue a certificate to trade to him or any other person the right of appeal to a magistrate against the decision of a local authority, and thereafter to the Transvaal Provincial Division of the Supreme Court.

The effect of this section is to create new disabilities in regard to Indian trading. The section makes far-reaching and drastic changes in the practice which grew round the existing legislation. Hitherto right from the time of the interpretation of the existing position of the law in the case of Habib Molan (1904), the Courts held that nowhere in the law there was a prohibition against Indian trade, but the restriction was in regard to his residence only for sanitary reasons.

According to this section the onus of proof is wrongly thrown upon the applicant applying for a certificate to trade whether in the prohibited area or not to show that he is lawfully entitled to trade in the locality in which he proposes to carry on business. The right of appeal from the decision of a local authority is given to the Provincial Division only, and not to the Appellate Court. No proper procedure is laid down in the carrying out of the provisions of this section. As the Bill at present stands, excepting in the cases of trade lawfully protected, no Indian is able to occupy, and much less trade, in prohibited area. Indian traders will, therefore, be driven to defined areas, or areas allotted to them, either for the purposes of trade, residence, or both. Moreover, vested interests acquired by Indian traders, other than protected cases, are not protected, and if the Bill is passed in its present form, Indian trade will be ruined beyond redemption. The right to transfer business to a person or to other premises, even if it be in the same township, is not given.

The Capetown Agreement distinctly recognised the grave disabilities, legislative as well as administrative, imposed on Indian trade throughout South Africa, and laid down the formula that when the time for the revision of the existing trade licensing laws arrives, the discretionary powers of local authorities might be reasonably limited in the following ways:—

1. The grounds on which a licence may be refused should be laid down by statute.
2. The reasons for which a licence is refused should be recorded.
3. There should be a right of appeal in cases of first applications and transfers as well as in cases of renewals to the Courts or to some other important tribunal.

To those who are conversant with the rigid administration of the existing licensing laws as a whole in South Africa, in which racial prejudice plays no mean part, it is clear from the principle laid down in the formula in the Capetown Agreement that the present plight of Indian traders was recognised to the extent of assuring them that the level of the existing legislation was to be raised above race prejudice, and that Indians were vouchsafed to receive justice and fair play. The present Bill directly contradicts this principle and nullifies the intention contained in the Agreement and scraps it in this respect.

This section prescribes penalties for offences committed under this Bill.

10. Any person who commits an offence under or contravenes any provision of this Act shall, on conviction, be liable to a fine not exceeding fifty pounds or in default of payment of such fine, to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine or to both such fine and such imprisonment.

11. "Asiatic" means any Turk and any member of a race or tribe whose national home is Asia, but shall not include any member of the Jewish or the Syrian race or a male person belonging to the race or class known as the Cape Malays;

"Asiatic company" means any company wherein a controlling interest is held by an Asiatic;

"coloured person" has the meaning assigned to that expression in section three of Act No. 35 of 1908 (Transvaal);

"controlling interest" in relation to any company means a majority of the shares or shares representing more than half the share capital or shares of a value in excess of half the aggregate value of all the shares in such company or shares entitling the holders thereof to a majority or preponderance of votes, or debentures for an amount in excess of half the share capital of such company or the power to exercise any control whatsoever over the activities or assets of such company;

"deeds registry" includes the mining titles office;

"licence" includes any renewal thereof.

8. Section one of Act No. 12 of 1924 is hereby amended by—

- (a) The insertion of the word "male" after the word "Malay";
- (b) the deletion of the words "section two" and the substitution therefor of the words "any provision."

9. This Act may be cited as the Transvaal Asiatic Tenure (Amendment) Act, 1930.

In this section are given definitions. It will be noticed that "controlling interest" is defined for the first time. At present it is quite legal for a company to invest voting power in the hands of a person who may hold shares in the minority.

The effect of this amendment is to prohibit a female Malay from acquiring landed property. Malays were bracketed with coloured persons, and were subject to the same restrictions as to occupation and residence of land. The Courts in 1924 laid down that a Malay was not an Asiatic. In an amending Act Malays were exempted from the operation of Anti-Asiatic laws. The amendment now made is to prevent few cases of Indians, who marry or have Malay girls as wives from acquiring land in the names of their wives.

This gives the short title of the Bill.

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 contravening this section shall be liable on conviction to imprisonment for a period not exceeding 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 to coloured 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 thirty-one* or in the conditions aforesaid.

2. Those provisions of Law 3 of 1885 (Transvaal), and any amendments thereof heretofore 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 pressure 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 trading 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, including 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 sympathetic 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 identification 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 formerly 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 Court 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 and granted 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 employes 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 Committee 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. Gandhi 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. Gandhi 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. Gandhi 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 seems equally clear that Mr. Gandhi 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 thereof. 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 Committee 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 property 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
	<hr/>
	14,624
	<hr/>

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.
<hr/>
815
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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
									<hr/>
									45
									<hr/>

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
									<hr/>
									107
									<hr/>

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 reasonable 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 out 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 objectionable 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 not 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
Bezuidehouth 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
Turfontein	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	
Liothenburg	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.	Hawkers and Pedlars.	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 Hawkerc' 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 say, on Parliament's third working day after publication. 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 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.