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LONDON COMMITTEE'S REPRESENTATION

THE Assistant Hon. Secretary of the South Africa British Indian Committee, London, has addressed the following communication, dated the 27th February, 1913, to the Under Secretary of State for the Colonies:—

I am directed by the South Africa British Indian Committee to address you once more on the subject of the position of the Indian settlers in South Africa.

2. My Committee are sincerely grateful to His Majesty's Government for the encouragement they gave to the Hon. Mr. G. K. Gokhale in the matter of his recent visit to South Africa, and to the Union Government for the cordiality and hospitality which they extended to him. My Committee have been resting in the hope that this memorable visit, paid under such favourable auspices, might prove to be the turning point in the history of what my Committee fully admit to be a most painful and difficult question.

3. They are, therefore, emboldened to place certain aspects of the problem before His Majesty's Government, tending to show that the Union Government are not doing everything that might be done to remove causes of friction and misunderstanding, and that the resident Indian community are not without justification for their belief that the old policy of harassment and exclusion, to which allusion was made in the India Office Memorandum, presented to the Imperial Conference in 1911, has not yet been definitely abandoned.

4. Whilst they have before them a number of matters demanding investigation and redress, my Committee do not propose to burden the Right Hon. The Secretary of State with an enumeration of these, but to request the earnest consideration of His Majesty's Government of the two subjects of the Natal Licensing Laws and Immigration administration generally.

5. As to the first, I enclose herewith copy of a report from *INDIAN OPINION* of November 16th last, marked "A," relating to the case of Mr. M. A. Goga, of Ladysmith.

6. I enclose herewith, further, copy of a report from *INDIAN OPINION* of December 14th last, marked "B," relating to the same case. My Committee are informed that the licence has not yet been granted, and that Mr. Goga's son was born in Natal.

7. Mr. Amod Bhyat, the leading Indian merchant of Maritzburg, had the renewal of his licence for 1913 refused by the Licensing Officer on the ground that he had committed a breach of a certain unimportant municipal regulation. Upon appeal to the Town Council an order was made for the granting of the licence. My Committee are at a loss to know why, in the first instance, the licence was refused.

8. Both Messrs. Goga and Bhyat are wealthy men, and can, perhaps, afford the expense of costly litigation ;

but my Committee desire to emphasize the hardship to poorer traders, whose whole material welfare often depends upon the goodwill of an official employed by their European trade rivals, and whose credit suffers because of the uncertainty of their tenure of licensing rights.

9. I enclose herewith, further, copy of a report, appearing in the *Natal Press*, marked "C," referring to the Financial Relations Bill, now before the Union Parliament, together with a copy marked "D," of the comments of *INDIAN OPINION* thereon. My Committee feel that the fears expressed therein are well-grounded, and respectfully invite His Majesty's Government to make urgent inquiries into this matter, with a special view to ascertaining how far the measure is calculated to prejudice Indian trading rights in the Transvaal, where licences are issued upon demand to registered Indians by the Union Government.

10. The subject of Immigration administration may be dealt with (a) as regards new immigrants claiming to enter the Coast Provinces under the existing laws, by passing the education tests, and (b) as regards resident Indians and their families.

11. As to the first, the attention of my Committee has been called to the following case, where a distinct injury seems to have been done to the immigrants.

12. Messrs. Maganlal Patel and Parshottam Patel, alumni of the Baroda and Fergusson Colleges of the Bombay Presidency, and undergraduates of the Bombay University, who arrived at Durban by the s.s. *Palamcottla* on September 4th last, applied to enter Natal by virtue of their educational qualifications, and were required to submit to a test by the Acting Chief Immigration Officer, who expressed himself as dissatisfied with it, and who forwarded it to the Minister of the Interior, from whom a notification was received, stating that they had failed to satisfy him. They were accordingly deported.

13. On the facts they could not, obviously, have been deficient in a knowledge of the English language, and my Committee are assured by Mr. H. S. L. Polak, the delegate of the South African Indians to India, who returned to Durban by the same steamer, that, at his request on board, and without any prompting or reference, they had written excellent English essays on different subjects, of a character calling for considerable variety of expression. It would thus appear that the severity of the education test had been arbitrarily increased, without notification to the Indian community, who were thus deprived of the presence of two gentlemen well qualified to be of substantial service to them.

14. My Committee desire to point out that this case is, in their opinion, a violation of the condition laid down by His Majesty's Government, in the dispatch of October 7th, 1910, wherein they declared that they would not be satisfied with any settlement of the

Transvaal Indian trouble that disturbed the rights of Indians in the Coast Provinces.

15. As to the position of resident Indians and their families, my Committee respectfully refer His Majesty's Government once more to the recent decisions of the Transvaal division of the Supreme Court of South Africa, on the subject of plural marriages, which are being followed and enforced, not only in the Transvaal, but also by the immigration officials of the Natal Province as is manifest from a perusal of a circular issued by the Natal Immigration Department, a copy whereof is attached hereto, marked "E," together with a copy of the judgment (carrying far-reaching consequences) of the Transvaal Division of the Supreme Court, in the appeal of Sukina vs. Rex, marked "F."

16. The contention of the Union Government that polygamous marriages are not recognised in South Africa, and which my Committee has contested in previous correspondence, is shown to be incorrect by a reference to Act 2 of 1907, Natal, sections 6 and 7, copy of which is enclosed herewith, marked "G." It is plain that both the Parliament and Courts of South Africa have cognizance of certain polygamous marriages contracted by Indians, and my Committee respectfully submit that other sections of the Indian community should not be placed in a worse position, in such matters, than the indentured and ex-indentured Indians of Natal and their immediate descendants, and that every effort should be made to prevent the demoralisation of the Indian community, arising out of an attempt to reverse the past policy of the various Provinces of the Union, recognising the validity of polygamous marriages and the legitimacy of their offspring.

17. I enclose herewith a copy of a letter, marked "H," addressed by Mr. Anthony Timothy, a Natal-born Indian, to the *Natal Mercury*, during August last, which speaks for itself.

18. The enclosure marked "I" is a copy of a telegraphic summary, dated August 27th, of a case of extreme hardship, under the Cape Immigration Law, where the appellants were deprived of their rights because of the unauthorised and illegal intervention of the Natal Immigration Officer, who has no lawful power to interfere in the case of immigrants to, or residents of the Cape Province.

19. The enclosure marked "J" is a copy of a letter, dated August 28th, by Mr. F. A. Laughton, K.C., to the *Natal Mercury*, together with that paper's comments thereon, marked "K," and they show how, on two occasions, the Natal Immigration Officer arbitrarily and illegally prevented the return of an Indian resident of the Cape Province to his home there.

20. The next enclosure marked "L" is a copy of a telegraphic summary of a judgment of the Cape Division of the Supreme Court, in the matter of Natha Ooka, in which the administration of the Law is severely criticised.

21. The enclosure marked "M" is a copy of an editorial of the *Natal Mercury*, last September, criticising the administration of the Natal Immigration Law.

22. Enclosure "N" is a copy of correspondence between Mr. C. B. Mehta, a well-known resident of Durban, and the Acting Chief Immigration Officer, in which, by implication, the latter casts the most offensive reflection upon Mr. Mehta's domestic honour and personal integrity.

23. Enclosure "O" is a copy of remarks made by the Hon. Sir James Rose-Innes, Acting Chief Justice of South Africa, on the administration of the Immigration Laws of the different Provinces of the Union, together with the remarks thereon of the *Transvaal Leader* and the *Star*.

24. The enclosure marked "P" is a letter addressed to the Union Government by the Chairman of the Transvaal British Indian Association, covering an affidavit making most serious allegations regarding the attitude of the Transvaal and Natal Immigration

authorities towards the Transvaal residents. Had not the steamer proceeded to a Cape port, the applicants, whose claims to enter the Transvaal were subsequently admitted, would have been sent back to India.

25. The enclosure marked "Q" is a copy of a judgment of the Natal Division of the Supreme Court, showing how the Natal Immigration Department have attempted to prevent the return to South Africa of an ex-indentured Indian, with 17 years' residence in Natal to his credit, and who had regularly paid the £3 annual licence.

26. The enclosure marked "R" is a copy of a letter addressed by Mr. H. S. L. Polak to the Secretary for the Interior towards the end of December, regarding the cases of Messrs. Bhawani and Devi Dayal and their wives. The next enclosure, marked "S," is a copy of a statement telegraphed to INDIAN OPINION by its special correspondent at Volksrust, and confirmed by Mr. Polak, giving further details of these cases, together with a copy marked "T," of a representation to the Minister of the Interior by the Chairman of the Transvaal British Indian Association.

27. In the enclosure marked "U" you will find a copy of an extract of a letter to the *Natal Mercury*, by Mr. H. S. L. Polak, regarding the remarkable case of Mr. K. T. Gajjar, of the Cape Colony, together with a copy marked "V" of the *Natal Mercury's* comments thereon.

28. The enclosure marked "W" is a copy of an extract from INDIAN OPINION of the 11th January, relating to the cases of Messrs. Agjee and Ameappen, together with a copy marked "X" of correspondence thereon between the Hon. Mr. Gokhale Committee and the Government.

29. In referring to these cases, my Committee are well aware that in some of them substantial justice has eventually been done, but they beg leave to point out that justice has only been done to those who had the means to secure it, and that, too, in spite of seemingly calculated obstruction on the part of local authorities or even of the Union Government, who do not appear to have taken any notice of repeated complaints and representations, made to them by one or other of the Indian public bodies in South Africa, for redress, where it was manifestly possible for the Government to afford relief.

30. The cumulative effect of the evidence herein submitted, unfortunately leaves but little room for doubt that the policy of obstruction is not due to the idiosyncrasies of individual officers, but that it is part of a deliberate plan to make the position of even established Indian residents intolerable, and to prevent others, in India, from returning to their homes in South Africa. On no other hypothesis does it seem possible for my Committee to explain why even the very strong comments of the Supreme Court Judges regarding harassment, and the results of such cases as those of the Dayal Brothers fail to ameliorate the harsh administration which the cases recited above indubitably prove.

31. My Committee feel that the Union Government have committed a breach of faith with His Majesty's Government, having regard to the terms of the despatch of October 7th, and of the Memorandum above referred to, and also with the Hon. Mr. Gokhale, who, my Committee are reliably informed, received an assurance from the Minister whom he interviewed last November, that the administration of the Immigration Laws of South Africa would be rendered more humane.

32. My Committee feel obliged to remind His Majesty's Government of the enormous expense imposed upon Indian residents returning to South Africa from India, who are thus forced to maintain their right of entry in the face of determined opposition on the part of officials who are evidently acting on instructions from the departmental head. My Committee are informed, for example, that Messrs. Bhawani and Devi Dayal have had to expend nearly £100, besides lodging security of an additional £100 before they could secure the registration to which they were entitled by

law, an expense incurred through no fault of their own, but because of the careless misapprehension of their claims by the Transvaal Registration Officer, and the grossly obstructive attitude adopted by the Natal Immigration Officer. The claims in support of which overwhelming evidence was produced, have now, it is true, been admitted, but the process of securing recognition of them has proved nearly ruinous. Moreover, although the Transvaal authorities are satisfied with the evidence of marriage produced by Mr. Bhawani Dayal, the Natal Officer refuses to permit his wife to enter Natal, on the ground that Mr. Dayal has not complied with the terms of the offensive circular (see enclosure marked "E") although he has produced a certificate of marriage from the magistrate of his district in Behar. Similar expenses have been incurred in the case of Mr. Agjee, above referred to, in order to prevent the deportation of his wife to India. Similar cases are those of Messrs. Essa Moosa and Adam Moosa, who have had to apply to the Courts for interdicts to prevent the deportation of their wives, and such cases occur with the arrival of almost every steamer. It appears to be assumed as a matter of course by the officials that Indians have suddenly developed the propensity of introducing into South Africa as their wives women who are, in fact, not their wives, and that the certificates to the contrary of Magistrates in India are worthless documents, because they do not support the official theory.

33. My Committee respectfully venture to remind His Majesty's Government of the following significant passage in the above-mentioned Memorandum.

"It is hoped that, when the Union has satisfied itself that safeguards against unlimited Asiatic Immigration have been provided, it will be possible to treat the resident Indians fairly. Any system of generous treatment must be held to involve . . . a determination not to utilise Immigration laws to banish lawful residents by means of legal quibbles or to break up domiciled families."

34. In the face of the fact quoted in the preceding paragraphs of this letter, it cannot, in the view of my Committee, be contended with any show of reason that anything like unlimited Asiatic immigration is at all possible.

35. My Committee, therefore, think that the moment has arrived when His Majesty's Government may fairly remind the Union Ministers of the suggestions which they have made to them from time to time and of their own explicit undertakings, and may call their attention to the serious embarrassment which the Imperial Government is likely to incur from growing discontent and irritation in India, if the hopes raised by Mr. Gokhale's reception in South Africa are not fulfilled within a brief measure of time.

Dr. Alfred Russel Wallace, the Grand Old Man of Science, has just celebrated his 90th birthday, and is still full of vitality and ideas for the betterment of the world. "I have been meditating upon the condition of human progress, and I have taken a general survey of all history, from those wonderful new discoveries in Egypt, going back seven thousand years, to the present day," he said to the *Daily News*. "I have come to the general conclusion that there has been no advance, either in intellect or in morals, from the days of the earliest Egyptians and Syrians down to the keel-laying of the latest Dreadnought. Through all those thousands of years morals and intellect have been stationary. There has been, of course, an immense accumulation of knowledge, but for all that we are no cleverer than the ancients. If Newton and Darwin had been born in the times of the Egyptians they could not have done more than the Egyptians did; the builders of the Pyramids were every whit as good mathematicians as Newton."

From the Editor's Chair

THE IMMIGRATION BILL

THIS Bill will be read a second time on the 24th instant when we shall learn more about it than we do from merely reading it. In order, however, to understand and appreciate its deadly effect on the Asiatic communities of South Africa, it is necessary to go back to what is somewhat ancient history. Those who have felt interested in the Indian struggle in this land, will recall how strenuously the Government tried, by giving a forced interpretation to Act 2 of 1907 and Act 36 of 1908, to prevent from entering or re-entering the Transvaal a certain considerable class of minor children of lawfully resident Indians. If they had succeeded in their attempt, a large portion of the resident Indian population of the Transvaal would have been obliged to leave the Transvaal and face ruin. Happily, this attempt was frustrated by the public-spirited action of the late Mr. Chhotabhai who, at great cost, took his son's case to the Appellate Court and won it. Indians have, ever since, watched every new move of the Government with the greatest suspicion. The most recent events have but confirmed the suspicion. Their circulars about wives and children mark the second big attempt to reduce the number of the resident population. The Bill now before Parliament seeks legislative sanction for this policy. And every one of its restrictive clauses has to be studied in the light of this bitter experience. For it should be remembered that the Bill is not wanted for meeting any difficulty of European immigration. It has been brought forward principally, if not solely, to satisfy the passive resisters and to carry out the compact entered into between the Imperial Government and the local Government about the Indian settlement. And yet, instead of carrying out the spirit and the letter of it, and instead of liberalising the existing laws where they tell harshly against the resident Asiatic population, the Bill represents a deliberate policy of ridding South Africa of its resident Asiatic population. That is how General Botha's statement, that there was every desire, on the part of his Government, to treat the resident Asiatics with justice and liberality, is to be interpreted.

LORD AMPHILL'S COMMITTEE

THE representation, made by Lord Amphill's Committee, to the Secretary of State for the Colonies is a weighty and exhaustive document. It enables one to study, in a connected and compact form, the march of events in South Africa regarding Indian matters. The Committee has shown clearly how the cases cited by it evidence a policy, on the part of the Union Government, of exterminating the resident Indian population. The administration of the Immigration Laws of South Africa makes Indian residence in it more and more difficult. And the Licensing Law of Natal, at any rate, steps in where the Immigration Laws fail to compass our ruin. The Committee's letter will be a difficult document for the local Government to answer.

There is one point made by the Committee which will come as a surprise both to the Imperial and the Local Governments. The latter have so often stated that South African law does not recognise polygamy. But the Committee has been able to show that it has been recognised even as late as 1907 and that, too, by a statute. Sections 6 and 7 of Act 2, 1907 of Natal provide:—

Sec. 6.—The provisions of Section 68 of the Indian Immigration Law, 1891, shall as regards Indian Immigrants arriving in the Colony after the commencement of this act, apply to all marriages shown in the certified copies of their marriage register, notwithstanding that any such marriage may be a polygamous marriage.

Sec. 7.—The Protector of Indian Immigrants may, on the application of any Indian Immigrants men and women, who shall have arrived in the Colony prior to the commencement of this Act, and who shall produce certified copies of their marriage registers, and shall show that they are the persons therein referred to, register such marriage, notwithstanding that any such marriage may have been a polygamous marriage or that the man may have been married in this Colony under the provisions of the said law to any other Indian woman.

It is true that it was inconvenient for the then Government not to recognise polygamy, because indentured Indians were wanted by an influential class. It is now inconvenient to recognise it for free Indian settlers because they are intruders. It will be interesting to know how the local Government deal with the dilemma.

NATAL INDIANS, BEWARE!

THE Government Notice, published elsewhere, regarding the issue of certificates for the protection of those who may wish temporarily to absent themselves from the Province is a veritable death-trap into which we hope not a single Indian will be caught. The Notice seeks to do what the Natal Immigration Act provides no warrant for. It is a bare-faced attempt to bring the Natal Law into harmony with the Cape Law, even in advance of the new Immigration Bill. It will be seen from the Notice that an Indian who takes out the certificate provided for therein will have only one year in which to return if he wishes to escape the ordeal of a re-examination. This certificate carries with it a fee of £1 and, as the document has to be surrendered immediately after use, every absence from Natal means not only a fresh inquiry but a fresh imposition of £1. So that, if a business man has to leave Natal, say, for the Cape four times a year and wishes to arm himself with these tickets-of-leave, he must pay £4 for them. This is a monstrous impost. And the method that has been devised to fine poor people is wicked. It is the duty of Indians to send a strong protest against this the latest attempt of the Government to harrass us into leaving the country.

MR. GOGA'S APPEAL.

MR. M. A. GOGA, of Ladysmith, who has been showing admirable zeal in his attempt to seek justice, has again beaten the Ladysmith Licensing Board and the Supreme Court. It will be remembered that when Mr. Goga renewed his attempt to secure his licence, the Board upheld the decision of the Licensing Officer, who had refused to grant him a licence. It will be remembered, too, that on this occasion, the European objectors, who mustered so strongly at the hearing of the first application and who had to pay Mr. Goga's costs when he first approached the Supreme Court, were conspicuous by their absence. It seems that the Board acted in a most arbitrary manner in declining to give reasons for its decision as to why Mr. Goga was considered to be an unfit person to hold a licence. On this ground of irregularity, Mr. Goga appealed to the Supreme Court, which has quashed the proceedings of the Board. We congratulate Mr. Goga on his partial success. We consider it a partial success because Mr. Goga is not yet out of the wood. The granting of the licence still vests with the Ladysmith Council. The case is on all fours with that of Somnath Maharaj vs. the Durban Corporation in which even costs were granted against the Corporation. In the end, however, in that case, Somnath Maharaj had to remain without a licence, and we doubt not that, if the Ladysmith Board can devise a method whereby it could perpetrate a legal injustice, it would not hesitate to do so. Mr. Goga has, therefore, yet an uphill fight before him. He ought to receive the moral support of the community, even as the Ladysmith Board has the support of its constituents in its wicked war against Mr. Goga. Men like Mr. Goga, who have funds at their disposal, may succeed in the end, but these cases just show how

bad the licensing law of Natal is and how cruelly it is administered. All but the wealthiest Indian traders must ultimately suffer extinction, unless measures are taken and persisted in by the various public bodies to arrest the progress of this war of extermination of Indian trade.

The New Immigration Bill

The *Natal Mercury*, in the course of a leading article, says:—

The condition of legislative deadlock at Capetown leaves very little chance of a Bill which has already been fought over and eventually shelved for two sessions running being placed on the Statute Book this year. It is obvious that the Government's single intention now is to get Supply through and then prorogue, and . . . it may be taken as fairly certain that immigration will not provide a feature of Parliament's work this term. The present Bill, contentious enough in its previous forms, has received accretions which do not impart to the measure any fresh recommendations. Two clauses alone are sufficient to condemn it in the eyes of all who desire to see a just, adequate, and liberal immigration scheme for the Union. The fundamental denial of everything upon which a proper immigration system should be founded lies at the outset in the definition of a prohibited immigrant. . . . Taking the Bill altogether, even with its erection of a system of appeal boards as a substitute for the right of judicial appeal it strikes us very forcibly that the measure will not help much towards the establishment of an immigration system free from the "Little Tin Tsars" to which Mr. Merriman referred last year, or suppression on the part of higher quarters in the Union autocracy.

The "Mercury" Interviews Mr. Polak

The Immigration Bill is exciting much concern among the local Asiatic community (says the *Natal Mercury*). Mr. Polak, interviewed by its representative, declared that the measure was most seriously regarded by the Asiatics throughout South Africa.

"I have had the opportunity," Mr. Polak said, "of consulting Mr. Gandhi regarding the Bill, and the conclusion that we have arrived at is that it is entirely unacceptable to Indians in its present form. The measure is open to the most serious objection from the Indian standpoint. It is not only framed to prevent further Indian immigration—this is amply effected by existing legislation, as the Indian community has only too good reason to know—but it seems to be expressly designed to extinguish as speedily as possible the lawfully resident Indian population. Passive resisters will object to it with all the energy at their command, because it does not fulfil the terms of the provisional settlement that has obtained during the last two years."

"What is the view of the Indians?"

"They feel that the Bill, contrary to what was a *sine qua non* of that settlement, disturbs many existing rights, whilst Indians all over South Africa will resent the measure because it deprives them of rights of long standing. Existing legislation in the various Provinces is repealed, without any safeguards being inserted for the preservation of rights already acquired. For example, section 3 takes away the jurisdiction of the Courts, except as to questions of domicile. But this does not mean the statutory domicile provided by the Natal laws, which now disappears, but the common law domicile, which is often extremely difficult to prove."

"What special rights are affected, Mr. Polak?"

"In the present form of the Bill it undoubtedly appears to jeopardise the residential rights of thousands of Indian residents of many years' standing. The proviso to section 5 goes far to annul the validity of Transvaal registration certificates, which, when issued, were accepted by the Indian community on the

assurance that they conferred permanent rights of residence; and the domicile certificates of Natal will not be worth the paper they are written on. It is provided that all domiciliary rights are lost by persons who are absent from South Africa for more than three years, no matter what the cause may be. Last year's measure contained no such provision, in accordance with the Government's undertaking, and its inclusion this year points to a clear breach of faith. The first clause of sub-section 1 of section 4 seems to take away the rights of educated Indians who have already passed the Natal or Cape tests, whilst it contemplates prohibition of entry into the Free State, even of those who succeed in passing the education test of the Bill. Sub-section 3 materially restricts the rights of Natal and Cape Indians to re-enter the Union at any port by which they may at present re-enter."

"Are Asiatics generally affected throughout the Union?"

"The Bill does not appear to protect the rights of Cape and Transvaal educated Indians to enter Natal under the existing laws or those of Transvaal and Natal educated Indians or of Colonial-born Indians to enter the Cape. Immigration Officers, whom it is notoriously difficult to satisfy as to the most elementary facts by evidence acceptable in any Court of law, have to be satisfied on the education test, and not the Minister. The wives and minor children of educated entrants under the Bill are not protected, and the method of entry into the Free State still appears to imply a racial bar, which, of course, would render the measure unacceptable. Lastly, no provision is made for remedying the terrible position created by the Searle judgment, which invalidates non-Christian Indian religious marriages, and recognised as valid by the Privy Council, and which bastardises the children of those marriages. This judgment has shaken African Indian society to its foundations, and its annulment is vitally necessary for the preservation of the integrity of the Indian community. I am certain that unless the Government make material alterations in the Bill there will be a revival of passive resistance, and I cannot say that it will be confined to the Transvaal. Mr. Gandhi is at present in telegraphic communication with the Government on the subject, with a view to avoid the necessity of renewing a bitter struggle."

The interview with Mr. Polak, says the *Mercury*, affords further reason for considering the Immigration Bill to be an undesirable one to place upon the Statute Book. The prospect, which Mr. Polak clearly indicates, of the Indians opposing themselves against the Bill by a renewal of the passive resistance with which they defeated the Registration Laws in the Transvaal four years ago, is sufficient to raise a good deal of hesitancy in contemplating a repetition of that encounter. Mr. Polak knows his subject, and there is no reason for doubting that the Bill possesses the characters he ascribes to it of oppression and bad faith with regard to the Asiatics. It was a distinct undertaking that three years' residence in the country should entitle Indians to statutory domicile, but in place of this the Bill sets up a common law domicile, which is notoriously one of the most difficult matters of proof in a Court of Law. The Bill, as Mr. Polak declares, appears undoubtedly to jeopardise the residential rights of thousands of Indians of many years' standing, and in view of the explicit assurance given by the Government, both to the Imperial authorities and to Mr. Gokhale during his recent visit, that the Asiatic settlement should be one of *bona fide* justice, with a cessation of the equivocation of the past, the Bill, in the form in which it has been prepared, has the appearance of a thoroughly dishonest transaction. The Indians would be entirely justified in resisting it, but perhaps, after all, it will be quite safe to leave the measure for other agencies to dispose of. The Immigration Bills of 1911 and 1912 had to be abandoned by the Government, largely on account of the attitude of the Free State, which

resolutely refused to allow the right of any Asiatic to entrance into the Province. The Bill proposed the admittance into the Union of a limited number of Asiatics, stated by Mr. Smuts not to exceed 12 every year, and, as this was a Union matter, their rights of residence or acquirement of domicile could carry with it no territorial restriction. The Free State members would consent to nothing of the kind, however, and though in the present Bill a modification has been included which appears to be intended to placate them, the general circumstances surrounding the Free State in politics are of a kind which makes the prospect scarcely inviting for a measure which has excited so much hostility on the part of that Province for the last three years.

"Times of Natal"

In the course of its comments in a leading article on this Bill, after quoting the clause which takes away the Supreme Court's jurisdiction, the *Times of Natal* says:—

Here is a highly contentious point. To some the clause may possibly recall, by suggestion, the famous battle which was waged between President Kruger, on the one hand, and Chief Justice Kotze and some of his brother Judges, on the other, in the matter of the testing right of the Transvaal Volksraad. Others will doubtless contend that, in the case of immigration, officials should, in the nature of things, be entrusted with more power. The question of domicile, it will be noted, is the only exception. In all other cases "the Minister, a Board, an immigration officer, or a master" is constituted Cæsar, and from Cæsar there is no appeal. We await with interest the arguments that will be adduced in favour of the retention of this clause—or this clause as it is worked at present. The proposed Bill gives the Minister power, in special cases, to vary or modify any decision by a Board which would involve the removal of the applicant; and there is another clause which enables him, at his discretion, to grant a temporary permit to any prohibited immigrant to enter and reside within the borders of our country. Yet another clause is also indulgent towards the Minister. "An immigrant may be prohibited who is deemed by the Minister on economic grounds or on account of standard or habits of life to be unsuited to the requirements of the Union or any particular Province thereof." Unusually large powers are vested by the proposed Bill in the hands of one man, and the general principle is not in harmony with the sense and spirit of South Africans whether their mother-tongue be English or Dutch.

Correspondence with the Government

The Chairman of the British Indian Association has received the following letter, dated the 5th instant, from the Secretary for the Interior:—

"I am directed to acknowledge the receipt of your telegram of the 2nd instant, on the subject of the recent judgment given by Mr. Justice Searle in the Cape Provincial Division of the Supreme Court.

"The Minister of the Interior is at a loss to understand why this decision of the Court as to the law has caused your Association to pass resolutions couched in the terms adopted by your meeting on the 30th ultimo, as the legal position must, he feels sure, have been perfectly well known in the Indian community, especially amongst those members thereof who belong to the legal profession, and as the attitude of the Immigration Department towards these cases has been made perfectly clear on numerous occasions.

"Although aware of the strict-legal position, the Government has never in the past applied, nor does it intend in future, to apply, the law in a harsh or arbitrary manner. Immigration officers have discretion to allow any Asiatic who is legally resident here to bring his wife into South Africa whether she be married according to Mahomedan or according to other tenets,

so long as clear proof exists that she is his wife, and that he has no other in South Africa, and these officers have been informed that it is not the Minister's intention that this recent judgment should in any way interfere with the practice hitherto adopted."

Mr. Cachalia replied, on the 14th instant, as follows:—

"I have the honour to acknowledge the receipt of your letter of the 5th instant, in reply to my telegram of the 2nd instant, regarding the recent judgment given by Mr. Justice Searle.

"I am to submit that it had never, before the judgment of Mr. Justice Searle, become clear to the community that non-Christian marriages not registered in South Africa would not be recognised by the South African Courts. Mr. Justice Wessels' judgment delivered sometime ago, went perilously near such a pronouncement, but his judgment turned rather upon the legality or otherwise of bigamous marriages than upon the validity of marriages celebrated according to the rites of the various great Indian faiths. As the Honourable the Minister will have noticed, Mr. Justice Searle's decision was not based upon any precedent; but was an original pronouncement upon the Marriage Law, the case before him having been considered a test-case.

"Moreover, up to now, Hindu, Mahomedan and Parsee marriages have not been questioned, and the Masters of the several Divisions have recognised them. But, since the judgment referred to, the Master of the Natal Provincial Division, my Association understands, has questioned the validity of a Mahomedan marriage in connection with the succession of the widow of a deceased Mahomedan to his estate.

"My Association is grateful to the Government for giving the assurance that it is not their intention to apply the law in a harsh or arbitrary manner, but, in view of the judgment in question, I hope that the Government will understand the attitude of the community represented by the meeting in considering the assurance as not sufficiently meeting the requirements of the situation. In the eye of the law now, Indian wives of non-Christian persuasion are not wives but concubines. I feel sure that the Government will appreciate the position of the community if it resents, as it does resent, such a humiliating reduction of the status of Indian wives and, as has been already pointed out, the legal consequences of the judgment, which, it is apprehended, it is not within the power of the Government by administrative action to remedy, are serious enough to warrant an alteration of the law.

"My Association, therefore, ventures to hope that the Government will be graciously pleased to give due consideration to the feelings of the Indian community in the matter, and take the opportunity that the introduction of the new Immigration Bill offers to remedy the evil created by the unexpected judgment of Justice Searle."

A New Encroachment

The following Government Notice, dated the 9th instant, appears in the *Union Gazette*:—

It is hereby notified for general information that His Excellency the Governor-General-in-Council has approved of the following regulation framed under the provisions of section *thirty-six* of Act No. 30 of 1903 (Natal) and section *four* of Act No. 3 of 1906 (Natal): "For the convenience of persons lawfully resident in the Province of Natal who desire to leave that Province temporarily with the intention of returning, certificates to facilitate the identification of such persons may be issued, in form prescribed by the Minister, in the discretion of the Chief Immigration Officer at Durban. Each such certificate shall be issued subject to the condition that it shall be surrendered to the Immigration Authorities on the return of the person in whose

favour it was completed, and that it shall exempt the person named therein from the requirement of further examination under the Immigration Laws for a period of one year only from the date of issue thereof.

"A fee of one pound sterling shall be payable in respect of each such certificate."

Mr. Goga's Appeal

At the Supreme Court on the 11th instant, before the Full Bench, there was an appeal from a decision of the Licensing Board of Ladysmith, the appellants being M. A. and A. M. Goga. Mr. Janion appeared for the appellants, but the Board was not represented.

The Board had refused the licence on the ground that young Goga was not a fit and proper person to be licensed.

Mr. Janion argued that there was nothing on the record to show that he was not a fit person to be licensed. The Board had given no reasons for its judgment. Therefore the judgment of the Board should be set aside, and the appellants should get their costs, although the Board was not represented, because the Board's proceedings were irregular.

The Court quashed the decision of the Licensing Board, and held that the Court was entitled to have the reasons from the Board as they might disclose irregularities. With regard to the question of costs, they had already reserved it in another case, and the question would be reserved until they had had the advantage of getting the debate in the case in which it was to be expressly argued.—*Times of Natal*.

News in Brief

Mr. Cachalia has sent a long wire to the Government, setting forth the objections of the community to the new Immigration Bill.

The Pretoria Tamils have, under the chairmanship of Mr. Padiachy, passed a resolution, supporting the action of the Johannesburg mass meeting on the marriage question.

The Minister of the Interior, on Monday afternoon, in the House of Assembly, brought up the Immigration Restriction Bill, which was read a first time, and the second reading set down for April 24.

On the 12th instant, Mr. Veeramuthu, an old staunch Passive Resister, left Johannesburg for India, at the request of his father. He is a fine type of Passive Resister and was the late Nagappan's companion. He has been five times to gaol, and once deported. There were almost fifty friends, including Mr. Cachalia and Miss Schlesin, to see him off.

Mr. Boydell, M.L.A., speaking in the House of Assembly on Monday, suggested that a tax should be placed on the sugar planters in order to pay the expenses of the Indians who desire to return to India.

The California State Assembly has passed a Bill by 58 votes to 15 prohibiting aliens from owning land in that State. The measure has evoked great resentment in Japan, where numerous meetings of protest have been held, and the Japanese Government has made remonstrations at Washington on the matter.—*Reuter*.

The number of Asiatic trading licences in the Transvaal Province was 3,935 in 1912, compared with 3,915 in 1911 (says the *Times of Natal*). The number of Asiatic licence-holders in Natal was returned at 987 as at June 30th, 1910; that number has, it is believed, been reduced since, but no later official return has been made. In the O.F.S. Indians may not obtain licences. In the Cape no Central register of licences issued to Indians is kept