

# Indian Opinion

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## THE LATE MR. JOSEPH J. DOKE

A MEMOIR (specially written for "Indian Opinion.")

**M**R. DOKE is no more! The thought is terrible. He who was seen only the other day by a host of friends, when he set out on his journey to the North-western border of Rhodesia, close to the Congo Border, full of hope and buoyancy, has gone to his reward. And he quitted this mortal frame without any of his relations by his side. Even his son Clement, who accompanied him, was sent home. But, in a death like this, is summed up Mr. Doke's life. He claimed no exclusive relationship with anybody. To him every human being was truly a friend and brother. He, therefore, died surrounded by newly-made friends. His life preached the gospel of work. He died in harness, doing his duty. His life preached love to his fellowmen. He died whilst finding further fields for his loving activity. And as he loved, so is his death to-day mourned by not only his European Congregation, not only by Englishmen, but also by many of his Native, Chinese and Indian friends. In a place where even men of religion are not free from the local prejudice against colour, Mr. Doke was among the few who know no distinction of race, colour or creed. Though dead, Mr. Doke lives through his work of love and charity in the hearts of all who had the privilege of coming in contact with him.

Mr. Doke's energy was inexhaustible. He was a man of many activities. In his own department—that of preaching—he was eloquent and earnest. He said nothing he did not mean. He advised no rules of conduct for which he was not himself prepared to die. His preaching, therefore, was effective. He was an able writer. He wrote a memoir of his own grandfather. He contributed to magazines. He wrote "An Indian Patriot in South Africa"—a popular history of the story of Indian passive resistance. Lord Ampt-hill wrote a very flattering introduction to it. To Mr. Doke it was purely a labour of love. He believed in the Indian cause and the book was one of the many ways in which he helped it. Only a short time ago was published his book "The Secret City"—a romance of the Karoo. It is a wonderful piece of imaginative work. The book has already passed through the second edition and has been translated into Dutch. He was so impressed with the Indian campaign of passive resistance that he was engaged in writing an elaborate treatise on passive resistance as a rule of conduct. For writing it, he had specially studied a number of books bearing on the subject.

He was an artist of no mean order. Some of his paintings are worth treasuring. His irrepressible humour can be traced in many cartoons he drew for a New Zealand paper.

Mr. Doke had a frail body but a mind of adamant. His jaws showed the determination of the owner? He feared no man because he feared God so. He

believed in his own religion with a burning passion but he respected all the other great faiths of the world. He detested lip Christianity but he considered that final salvation was possible only through heart Christianity.

His special work for Indians during practically the whole of his stay in Johannesburg is too well known to the readers to need recapitulation here. But it is not known to many that he came to the Indian cause uninvited. He was ever a seeker, ever a friend of the weak and oppressed. As soon, therefore, as he came to Johannesburg, he set about finding out the problems that engaged people's attention. He found the Indian problem to be one of them, and immediately sought out the leaders, learnt the position from them, studied the other side of the question and, finding the Indian cause to be wholly just, allied himself to it with a rare zeal and devotion. He risked loss of popularity among his congregation. But that was no deterrent to him. When the Editor of this journal was in India, Mr. Doke's was the guiding hand, and never did a week pass during a period of nearly six months, but Mr. Doke sent his ably-written and well-informed leading articles. He guided, too, the deliberations of the British Indian Association, jointly with Mr. Kallenbach, at a most critical period of its history. When he went to America in connection with his Church, a grateful community held a banquet in Mr. Doke's honour at which Mr. Hosken presided. Mr. Doke's words then uttered still ring in the ears of those who heard him. It may truly be said of Mr. Doke that he lived well and he died well. He is mourned by many more than the members of his family, and may that thought comfort and sustain them in a loss which is just as much that of those who had learnt to love Mr. Doke as of the members of his family.

The late Rev. Joseph J. Doke was born at Chudleigh, Devonshire, on the 5th November, 1861. He was the younger by some two and a half years of a family of two. His father was the Baptist Minister of Chudleigh. His brother, the late Mr. William H. Doke, died as a missionary at the end of 1882, on African soil.

The late Rev. Doke had very little schooling, owing to delicate health. At the age of 16 he lost his mother. At the age of 17, on the resignation of his father from the pastorate, he became Pastor. At the age of 20 he came to South Africa, where he was in Capetown for a short time. Later, he was sent by the South African Baptist Union to open up a new cause in Great Reinet. Here he met and married Miss Biggs, in 1886. Shortly after, he returned to Chudleigh. From Chudleigh Mr. Doke was called to the pastorate of the City Road Baptist Church, Bristol, where, with the exception of a visit to Egypt, Palestine and India, he remained until 1894. In 1894, Mr. Doke removed

with his family to New Zealand. Here he was Minister of the Oxford Terrace Baptist Church, Christchurch for a period of seven and a half years, returning to England in 1902. In addition to the duties connected with his pastorate, Mr. Doke conducted a class for Chinese, which was greatly appreciated and which is still being continued by his successors.)

(Towards the end of 1903, Mr. Doke received a call to the Grahamstown Baptist Church, and took up his work in South Africa again. After four years in Grahamstown, he came to the Rand as Minister of the Central Baptist Church. He remained Minister of this Church until his death. All his life, more especially since the death of his brother, Mr. Doke's ambition was for missionary work, but owing to his health and family circumstances, the way was not clear, until, just at the end of his life, it seemed to open up. Together with his son, Clement, he decided to visit a lonely mission station in North-Western Rhodesia close to the Congo Border, and on the end July they set out on this trip, which was to take about six weeks. Mr. Doke was also entrusted by the South African Baptist Mission Society to visit a mission station near Umtali, they taking advantage of his being in Rhodesia to secure particulars which they wanted. Mr. Doke enjoyed the trip to the 'Ndlia District immensely, and maintained good health throughout. He suffered, however, from foot-soreness—the distance to be traversed was some 350 miles—and he travelled most of the way by "machilla"—a hammock blung on a pole and carried by two natives—but despite this he was in the best of spirits and had the greatest hope for the success of his mission. Through an interpreter, he spoke at numerous villages, and he did a great deal of writing and took many photographs with a view to lecturing on his return. On the 4th August, Broken Hill was reached, and on the 7th August, Mr. Doke parted from his son at Bulawayo, the latter being called home by business duties. Mr. Doke then proceeded to Umtali, after a few days waiting at Bulawayo, reaching the end of his train journey on the morning of the 9th instant. Here the Rev. Woodhouse met him and the greater part of the day was spent in the discussion of missionary matters. In the afternoon the party proceeded to the residence of Mr. Webber—a friend—just outside the town, where, owing to Mr. Doke's feeling too unwell, they remained for the night. The next morning, Mr. Doke was up before sunrise, feeling very ill, and all thought of going to the mission station then was abandoned. Mr. Doke complained of severe pains in the back and had to take to his bed again. The usual remedies for fever were applied, but, as there seemed to be no temperature, it was concluded that the malady was not fever, and a doctor was sent for, who at once ordered him to the Umtali Hospital, whither he was conveyed by "machilla." Here he was under the best doctors and nursing supervision possible. (On the 12th a telegram was sent to Mr. Doke's family, saying that he had a slight attack of pleurisy, but that there was nothing serious and no one was to come. On Friday evening, the 15th, a further telegram was received by Mrs. Doke saying that Mr. Doke was seriously ill with enteric. Mrs. Doke at once made preparations to leave by Saturday night's train, but on the morning of that day a telegram was received that Mr. Doke had passed away at 7 o'clock the previous evening. Owing to the great distance, the remains were not conveyed to Johannesburg, but the funeral took place at Umtali at four o'clock on Sunday last, a service being held at the Baptist Church, Johannesburg, at the same hour.)

(During his sojourn on the Rand, Mr. Doke was prominently connected with many religious organisations.

Besides the widow, the deceased has left three sons: Willy, Clement, and Comber, and one daughter, Olive. The eldest boy, Willy, is training in America as a medical missionary.)

## Indian Sympathisers

A largely attended and representative meeting of British Indians was held on Sunday afternoon, in the West End Hall, Johannesburg, under the auspices of the British Indian Association, Mr. A. M. Cachalia, the Chairman of the Association, presiding. The following resolution was passed, all present standing.

"This Mass Meeting of British Indians places on record its deep sense of irreparable loss in the death of Mr. Doke, and tenders to Mrs. Doke and family its respectful sympathy, and prays that God may comfort and sustain them in their great sorrow."

Later in the afternoon meetings were held of the Tamil Benefit Society and the Patidar Association, when resolutions in similar terms were passed.

Numerous telegrams were sent from Natal to Mrs. Doke, among them being those from Mr. Dawad Mahomed, The Zoroastrian Anjuman, The Anjuman Islam, Mr. Parsee Rustomji, Mrs. Polak, The Brahman Mandal, The Kathiawad Arya Mandal, Colonial-born Indian Association, Shri Hindi Jigyasa Sabha, Labour of Love Society (Sydenham), and (Mr. Gandhi.) Mr. Gandhi left Durban last evening to attend the memorial service that is being held on Sunday in Johannesburg at Mr. Doke's chapel.

## Indian Marriages

We reported last week the first case of an Indian marriage arising under the new Act. The case was concluded on the 18th instant before the Appeal Board whose judgment is reported by the *Mercury* as follows:—

That the new Immigration Restriction Act is bristling with difficulties is getting plainer as the work of the Appeal Board proceeds. Yesterday the Board had again under consideration the appeal on behalf of an Indian woman named Kulsam Bibi, who had been refused admission on the ground that she was not the wife, in a monogamous marriage as contemplated by the Act, of one Mahboob Khan, an Indian domiciled in Natal. Briefly the facts were that, in 1902, Mahboob Khan, having previously lived in Natal, returned to India in 1902, and was married according to Mohammedan rights to the woman in question. He returned to Natal, and in 1904 and onwards was alleged to have cohabited with another Indian woman by whom he had two children.

Mr. Eugene Renaud, in support of the appeal, held that under Sub-Section "G" of the Act the appellant was entitled to admission. That sub-section provided that a "wife" or child under 16 years of any person domiciled in any Province, including the wife or child of a lawfully monogamous marriage duly celebrated according to the rights of any religious faith, were exempt.

After argument, Mr. Renaud in addressing the Board said, that Sub-Section "G" referred to was put in the Act, at the instigation of the Indian community, by the late Mr. Sauer. It was a matter of great moment to many people in the country. In view of the absence of a definition of "monogamous" marriage he held that the woman was entitled to admission.

Mr. Darby, immigration officer, claimed that the woman was not the wife of Mahboob Khan by monogamous marriage, and said that the immigration authorities had an affidavit sworn to in 1910, in which the said Mahboob Khan was married according to Indian rites to the woman he was alleged to have cohabited with in Natal. The Indian marriages in this country were not registered, otherwise the certificate would be produced. In any case, if the woman concerned in the alleged second marriage came to Natal the immigration authorities would have considerable difficulty in keeping her out if such a proceeding

were necessary or desirable. He held that the marriage in India was not monogamous as contemplated by the Act.

The President (Mr. Percy Binns, K.C.) said the point raised in the case was of the greatest moment to the Indian community in South Africa. The Court had before them the judgment of Mr. Justice Searle, which was given under the old law, in which the word "wife" was mentioned without any qualification at all. He (Mr. Binns) might say that in their interpretation of the word "monogamous," that Court was not unanimous. The word had been discussed, cases had been referred to, and dictionaries looked up in order to get at the exact meaning of the word, as far as that case was concerned. The Court, however, was in sympathy with any man who was separated from his partner. But the proceedings were not a matter of sympathy; the Court had to carry out the law. It had occurred to the Court that, in view of the possibility of many similar cases arising in the future, it was desirable that the Court should exercise the power vested in it by Sub-Section 2 of Section 3 of the Act. That sub-section empowered the Board to reserve for decision by the Superior Court any question of law. The Board, in view of the momentous character involved in the present case, had resolved to exercise that power so that as speedily as possible a case should be submitted to a Superior Court in order that an authoritative pronouncement might be given. The Court proposed to submit a case to a Superior Court in the following terms—which, of course, might be modified: (1) That Mahboob Khan and Kulsan Bibi were duly married in India according to Mohammedan law by a priest of that religion, and that the marriage was of such a character as was, and is, recognised as legal and a valid marriage in India; (2) Upon the evidence the Board is satisfied that the woman Kulsan Bibi is the only lawful living wife of Mahboob, and that her marriage to him was contracted when he was a widower, he having previously married only one wife, who at the time of the second marriage was deceased, and that he has not since gone through a ceremony of marriage purporting to be legal with any other woman. That Khan did, in 1904, enter into union with another woman in Natal, but the said union was not registered or performed before anyone authorised to celebrate a marriage; (3) That it was admitted in evidence that, under the law of India under which the marriage with Kulsan Bibi was performed, it was lawful for a man to have as many as four wives, and that the man Khan under the law in India could have had another three wives. On behalf of the Immigration Department it is argued that the mere fact that the marriage was celebrated under a law which allowed four wives, the marriage of Mahboob with Kulsan Bibi was not monogamous. On behalf of the appellant, it is contended that Khan, having only one lawful wife living at the present time, is married to Kulsan Bibi, and that the marriage is not polygamous, but monogamous.

The President, in conclusion said the Court was anxious to do everything in its power to make the proceedings as full as possible, even though some of the evidence, as he remarked in the course of the hearing, might be romantic. The Court was most anxious to get an authoritative pronouncement by a superior Court. Such a pronouncement would not only help the Court but also the immigration authorities. He wished to impress upon those concerned that it would greatly expedite matters if the parties coming before the Court would bring before it duly authenticated certificates from the proper authorities in India.

The Chhotabhai case, which we have briefly reported already, was heard on the 19th instant. After taking the evidence of six witnesses the Court adjourned further hearing to the 26th instant.

## From the Editor's Chair

### THE LATE MR. DOKE

IN the death of Mr. Joseph J. Doka, the Indian community of South Africa has lost one of its truest friends. This is not the place to recount Mr. Doka's general public work, great and substantial as it was. But, paying our humble tribute to the memory of the deceased, we cannot help contemplating Mr. Doka's noble work for us. When Mr. Doka came to the cause, he threw himself into it heart and soul and never relaxed his efforts in our behalf. It was usual with Mr. Doka to gain complete mastery over the subject he handled. He, therefore, became one of the best informed men on the subject in South Africa. He loved passive resisters as they were his own congregation. The poorest Indian had free access to this pious Englishman. His pen and his eloquence were continually used by him during the troublous times through which the community has passed. He missed no opportunity of visiting passive resistance prisoners in gaol. And at a critical period in the history of the community and this journal, he magnanimously and at no small inconvenience to himself, took charge of our editorial department, and those who came in contact with him during that period know how cautious, how painstaking, how gentle and how forbearing he was. It is such a noble soul whose withdrawal from this transitory world we, the Indian community, mourn in common with his family and his congregation. We tender our respectful sympathy to Mrs. Doka and family.

### CASES UNDER THE NEW ACT

THE cases that have been heard during the past week by the Appeal Board constituted under the Immigration Regulation Act are of the greatest importance to the Indian community throughout South Africa. At the outset we cannot help remarking upon the hostile spirit that has actuated the Government in compelling the intending immigrants to seek the protection of the Appeal Board. We entirely absolve the immigration officials from any charge of over-zeal or officiousness. It is quite clear that the Government have instructed the officials to reject every immigrant whom they possibly could. By doing so the Government evidently imagine that they will frighten the poor Indians out of the country. Then only the few who can afford the luxury of an appeal will have to be dealt with by them. The trap is cleverly laid, but it may happen that the trappers themselves may fall into it. The poor, on due occasions, have a way of asserting themselves which is not always open to the rich who value wealth before honour.

The case of Indian marriage has been referred to the Supreme Court. It is contended, on behalf of the Government, that a marriage solemnised under a law which permits polygamy is not a monogamous marriage. The facts are not in dispute. It seems to us that this objection on the part of the Government is a wilful breach of promise. Mr. Fischer said, in one of his letters to Mr. Gandhi, that the Government did not wish to prevent the entry of one wife to one Indian, irrespective of the fact whether the husband had only one living wife in India or more. In this case the person seeking entry is the only wife of the husband.

The other cases involve the difficult question of domicile. Here again the facts are admitted. All the men produced certificates of domicile. But it is contended on behalf of the Government that the men have lost, under the New Act, their right of domicile by reason of long absence. Even if the Act bears that interpretation the situation is intolerable and unacceptable.

able. This is another wilful attack on vested rights. Hitherto these certificates, if they were honestly obtained, as they are admitted to have been in these cases, have formed, in the words of Lord Milner, uttered in respect of another set of Indian certificates, "an indefeasible title to residence, the right to absent oneself and the right to come and go." If these rights are now declared lost, the loss will be due to the new Act. Whatever, therefore, may be the interpretation placed upon the term "domicile" by the Supreme Court, Indians are bound to fight to the bitter end alike for the honour of their womanhood and for the assertion of their right of re-entry by reason of previous long residence in South Africa.

## A. Marriage Licence

The following is the full text of the judgment of Mr. Justice Gardiner, in the application of Bhogwan Bhika and Munchi, Indians. The Chief Magistrate of Durban (Mr. P. Binns, K.C.) had refused to grant a special licence for the marriage of the applicants on the ground that Munchi was a prohibited immigrant.

Mr. Justice Gardiner said: This is an application upon notice given to the Acting Chief Magistrate of Durban for an order directing him to issue to the applicants a special licence for the solemnisation of marriage in terms of Section 1 of Law 7, of 1889.

It is alleged that the applicants were married in India in 1895, according to Hindu rites, the male applicant being then 12 years of age, and the female about two. In 1896 the male, Bhika, came to Natal as a passenger Indian, and acquired a domicile here. In 1912 he returned to India, and in June, 1913, he came back to Natal with the female applicant, Munchi. The Immigration Officer allowed Bhika to land, but refused permission to Munchi to enter the Province, on the ground that she was a prohibited immigrant, and that he was not satisfied that she was the legal wife of Bhika. She then obtained an order of Court restraining the Immigration Officer until further order from deporting her, and under this order she has landed. As the so-called marriage in India is one which would not be recognised by the laws of this Province, the applicants desired to be married here according to the civil rites, and they applied to the respondent for a special licence. The Chief Magistrate had refused to issue this on the ground that the woman was a prohibited immigrant, and this decision his *locum tenens* was not prepared to override.

Application was first made to me *ex parte* and I directed that notice should be given to the Acting Chief Magistrate. It is to be regretted, however, that when the matter came on for hearing, after notice had been given, there was no appearance for the respondent, and consequently, the Court has not had the advantage of knowing the grounds in law on which the Magistrate based his decision, or of hearing any argument in support thereof.

Law 7 of 1889, "to regulate the issue of licences for the solemnisation of marriages," sets forth in Section 1, that "the Resident Magistrate of every division is hereby authorised, subject to the provisions of this law, to grant special licences within the Colony." It will be noted that the word used is "authorised," and the first question that occurred to me was whether a discretionary power only was conferred upon the Magistrate, or whether with the power there was coupled a duty to exercise the power in proper cases. Upon this point counsel for the applicants had apparently not come prepared with argument. The word "authorised," like the words "it shall be lawful," confers a faculty or power, and does not of itself do more than confer a faculty or power. "But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the

person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so" (per Lord Cairns, L.C. in *Julius v. Bishop of Oxford* L.R., 5 A.C., at p. 223). And, quoting from the judgment of Lord Selborne in the same case (at p. 235), "The question whether a judge, or a public officer, to whom a power is given by such words is bound to use it upon any particular section, or in any particular manner, be solved *aliunde*, and, in general, it is to be solved from the context, from the particular provisions, or from the general scope and objects, of the enactment conferring the power."

Now it seems to me that the object of Law 7 of 1889, was to facilitate marriage, and that by it machinery was provided more convenient for intending spouses than that provided by Law 2 of 1876, for carrying out the principle of the common law which favours marriage. This object would be partially defeated, if a magistrate could, where there was no legal impediment to the marriage, refuse to issue a licence. And the context shows, to my mind, that not only was there a power conferred upon the magistrate, but that with the power was coupled a duty. Under Section 5, the magistrate was authorised to put certain questions to intending spouses, and the section went on to state that "he may refuse to grant such licence unless satisfactory answers shall be given." There would be no need for the last part of Section 5 if it was intended, by the use of the word "authorised" in Section 1, that he should have an absolute discretion. It seems to me, too, that the form of licence given in Schedule 1, points to a limitation of his discretion. The form commences: "It having been made to appear that there does not exist any legal impediment to A.B..... and C.D..... being joined together in wedlock; licence is hereby given," etc. In my opinion, the magistrate has to determine whether there exists any legal impediment to the marriage, but that when the intending spouses have complied with the requirements of the Act, and the magistrate has satisfied himself that there exists no legal impediment to the marriage, he has no discretion, but must issue the licence.

I come now to consider whether there is any legal impediment to the marriage of the applicants. The magistrate has refused to issue the licence because one of the parties is a prohibited immigrant. In my opinion that constitutes no legal impediment. There is nothing in the Act which requires that an applicant for a licence should be domiciled in the Province, or even resident for any period here. A mere temporary sojourner may obtain a licence. It may be said in support of the Magistrate's view that the form of licence describes the parties as "A.B..... in the division of....." and "C.D..... of..... in the division of....." But I think that this is sufficiently complied with if an applicant is for the time being in one of the divisions of this Province. A licence cannot legally be granted to authorise the marriage of a person who is not in this Province, for such person could not make a declaration before a magistrate or some justice of the peace in terms of Section 3. But as long as each of the intending spouses can appear before a magistrate or justice of the peace, to make the necessary declaration, there is no need for any residence. If any other construction were adopted, it might be very difficult for a seafaring man, such as an officer on a steamer visiting Durban, to marry someone in this Province. He could not be married after banns, unless he were in a position to avail himself of the recent Act 20 of 1913, and he could not obtain a special licence, because he would not be resident here. It is true that the applicant Munchi is only here until the Court may otherwise order, and that it may subsequently be made to appear that when she arrived she had no right to enter this Province, but as she is physically here I cannot regard her, for the purposes of this application, as in theory still in India, or on the high seas.

But, although I hold that the Magistrate's reason for refusing to issue the licence was wrong, I am not in a position to direct that he should now issue it. Unfortunately, the applicants did not appear in person before the Magistrate to make their declarations, nor did they tender to him declarations made before a justice of the peace. They confined themselves to writing, through their attorney, to the Magistrate, asking him if he would issue a licence. For all I know, either of the parties may be married already, or they may be within the prohibited degree of relationship, and it is impossible for me to say that there is no legal impediment to their marriage. The parties have not complied with the requirements of Section 3 of the Act, and consequently it would be illegal for the Magistrate, without anything further being done, to issue a licence, and I cannot order him to do an illegal act. But though the parties have failed to comply with the provisions of the Act, their failure has been due to the intimation their solicitor received from the Magistrate, that he would not issue a licence, because one of the parties was a prohibited immigrant. I shall, therefore, not content myself with making no order upon the present application. I think the best course to follow will be to direct the Chief Magistrate, or his *locum tenens*, to receive such declarations made under Section 3 of Law 7 of 1889, as the applicants may tender to him, and to determine upon application being made to him for a special licence whether there exists any legal impediment to the marriage of the applicants. An order will accordingly issue in these terms. If the applicants comply with the requirements of Law 7 of 1889, and the Magistrate decides that there is no legal impediment to the marriage, he will doubtless, in view of this judgment, issue a licence. But as the applicants have not yet taken the proper steps to apply for a licence, I am not disposed to make any order in anticipation of what the Magistrate's decision may be, on questions which have not yet been submitted to him.

## Narayansamy-Nagappan Memorial

The Secretary of the Indian Women's Association advises us that the memorial for the late passive resisters, Narayansamy and Nagappan, is to take the shape of scholarships, tenable at least for four years, at the rate of £15 per year, for education in India of South Africa-born Tamil youths. The conditions attached to these scholarships are that the scholars should be over the age of 12 years and up to or under 18 years; secondly their qualification should be tested by a Committee to be appointed by the Indian Women's Association; thirdly the scholar or scholars that might be selected by the Committee shall remain during their educational course in India under the guidance of those whom the Committee may appoint, and that any independent action on the part of the scholar shall forthwith disentitle him to any payment after the exercise of such independence. The fare for the outward and return passage shall be paid out of the Memorial Fund. The scholars shall be selected out of the children of parents who are unable to find the expenses of the education in India of their children. The character of the children will be the final test. The number of scholarships will be announced in due course. Application should be made, with full particulars, to the Secretary of the Indian Women's Association, Box 6522, Johannesburg, on or before the 31st day of August next. Parents are requested to supply all the particulars available regarding the boys whose names they wish to submit as Narayansamy and Nagappan scholars.

## What is Domicile?

The cases that were adjourned by the Appeal Board appointed under the Immigrants Regulation Act and which we reported last week came up before the Board again on Thursday, the 14th instant and after. We take the following condensed report from the *Mercury*.

The President replied to certain points raised at the last sitting by Mr. Goulding. These were: (1) That the action of the Minister in declaring all Asiatic persons to be prohibited immigrants was *ultra vires*; and (2) that an immigrant having produced a certificate of domicile, the onus of proof that such immigrant was not domiciled in Natal rested with the immigration authorities. On the first point, the President said, it was unnecessary to give a decision at the present time, and on the second held that it was desirable that Mr. Goulding should lead his evidence.

The appeal of Sama Bhana was then resumed, Mr. Goulding appearing for the appellant. This was an appeal against the decision of the Immigration Officer, Mr. A. G. Soutter, who had declared the appellant a prohibited immigrant on the ground that he was a person contemplated by sub-Section "A" of Section 4 of the Immigration Regulation Act, 1913; and further, that he was a prohibited immigrant in terms of sub-Section 1 (b) of Section 5 of the same Act.

It appeared from the evidence that the appellant came to Natal, in 1896, and worked as a bricklayer, etc. He left the Union in 1909, and recently returned from India, where his wife had always resided.

Mr. Goulding contended that by virtue of the certificate of domicile issued prior to his departure for India the appellant was entitled to land, as that was evidence of domicile.

Mr. Soutter maintained that the certificate issued to the appellant was a certificate issued to a person who proved to the satisfaction of the Immigration Officer that he had been formerly domiciled in Natal. On the question of domicile he held there was no mention in the section relating thereto of "former" domicile. By domicile was meant present permanent abode, and inasmuch as the appellant had absented himself from Natal for three-and-a-half years, he had made his home outside the Union. As a matter of fact, the appellant had abandoned his domicile, and was therefore a prohibited immigrant.

The case was adjourned *sine die*; as also was the appeal of one Daya Ratanjee, for whom Mr. Laughton, K.C., appeared. In this case the appellant had left South Africa some seven years ago, taking with him £200 to India. His wife resided there, and the appellant had no property in Natal.

The Court then adjourned.

Upon the Court resuming the next day, Mr. Goulding argued that the Immigration authorities had in 1909 decided that the appellant was domiciled in the Province of Natal, and that he had been granted a certificate to this effect.

The evidence showed that the appellant left Natal in 1910, and remained in India until the beginning of last month. During the time that he was in India he lived on moneys which he had saved during his residence in Natal. He was a married man, and went to India with the alleged object of bringing his wife back to Natal. His original intention was to remain away for six months only, but owing to the illness of his wife he remained away for over three years. The immigration officer in charge of the case refused the appellant the right to land on the ground that his remaining away from the Province for over three years was in itself evidence of his intention of abandoning any domicile he might have acquired in Natal, and further held that he was a prohibited immigrant, in view of the instruction contained in a letter written by the Minister, to the effect that under the provisions of the law he (the Minister) declared all Asiatic persons prohibited

immigrants, as for economic reasons they were unsuited to the requirements of the Union.

The legal ground raised by Mr. Goulding at the previous hearing, that the Minister's letter and proclamation were *ultra vires* was not decided by the Board, but after hearing counsel for the appellant, and the reply of the Immigration Officer, the Board held that the applicant was entitled to admission into the Province, and ordered that the decree of prohibition should be withdrawn.

The President complimented Mr. Soutter, the immigration officer, on the way he had conducted the case. The case was the first that had been decided in Natal under the new Immigration Law, which came into force on the 1st instant.

### Further Cases

Several more cases were heard on Tuesday, the 19th instant, of which the *Mercury* reports as under:—

Further questions of moment to the Indian community were brought before the Immigration Restriction Appeal Board and the Court decided for a second time to state a case for decision of a Superior Court.

The matter which led up to this decision was an appeal by one Daya Rabangee who, after receiving a certificate of domicile under the old Act, left for India, where he remained for some seven years. He was refused admission by the immigration authorities on the ground that he had abandoned domicile.

Mr. Laughton K.C., for the appellant, held that a certificate of domicile issued under Act 30 of 1903, entitled the holder to enter and leave Natal at will, and Act 24 of 1913, did not do away with that right. If the new Act were retrospective that would be clearly set out. He maintained that the Act was not retrospective, and therefore the appellant had a right of admission. The Court upheld the decision of the immigration officer, but, on the application of Mr. Laughton, agreed to state a case for decision by a Superior Court.

Other cases on the same lines were also before the Court, the next appeal considered being that of Alli Asmal Dabua. The appellant was a free Indian 31 years of age. He first came to South Africa and landed in Durban in 1896. He proceeded to Ladysmith and worked as a fruit hawker there. He remained in Ladysmith for 13 years. He was married when a child in India according to Mahomedan rights, and in 1908 he left Natal for India, where he remained for 12 years. He returned recently to Natal, leaving his wife and two children.

Mr. Driver, for the appellant, rose the same arguments as put forward by Mr. Laughton in the preceding case. The appellant had never abandoned his domicile, and went to India for a special purpose, namely, to see his wife.

Mr. Soutter, immigration officer, contended that the appellant by remaining away for so long a time had lost his domicile, and was not entitled to return according to the definition of domicile as laid down in the act.

The court reserved judgment.

The appeal of Takam Valabh, an Indian sweet-maker, followed. The appellant came to Natal in 1896 and received a certificate of domicile in 1907, when he left for India, taking £85 with him, and leaving no property or vested interests in this country. As in the cases above referred to the immigration authorities claimed that the appellant had abandoned his domicile within the meaning of the Act.

Mr. Sullivan appeared for the appellant.

The court reserved judgment.

On resumption of the sitting in the afternoon the appeal of Kaloo Sheik Hoosen, for whom Mr. R. L. Goulding (C. P. Robinson and Goulding) was heard.

After hearing the addresses of counsel, and the reply of the Immigration Officer, the Board unanimously upheld the appeal and allowed the appellant to land in Natal free from all restriction.

The next case was that of Ratanjee Bhoola. Evidence was led by Mr. Goulding for the appellant, and

after the evidence was taken on the application of the Immigration Officer his cross-examination was ordered to stand over until the next sitting of the Board.

The next case was that of Khana Kuera. Evidence was taken, and the matter adjourned to the next sitting of the Board in order that the passenger list of those who sailed by the S.S. *Palamotta* in October, 1912, could be produced. Mr. Goulding appeared for the appellant.

The next appeal was that of Jamal Valli, who was examined at length and cross-examined by the Immigration Officer, and at the conclusion of the examination the matter was ordered to stand over pending the decision in other matters where there were similar circumstances. Mr. Goulding appeared for the appellant.

The last case on the present list was that of Bhika Mukan, for whom Mr. Goulding also appeared. After hearing the evidence of the appellant and perusing the documents filed with the Immigration Officer, the Board unanimously upheld the appeal, and allowed the appellant to land in this Province.

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With reference to our editorial note on "An Effect of the New Act" we understand that the Registrar of Asiatics has no knowledge of any such case as we have referred to. This is so far consoling. We are making further enquiries regarding the matter.

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Large numbers of Indian Moslems set out annually on a voyage to Mecca with insufficient money, and trust to chance for a return passage (says the *Yorkshire Daily Observer*). Every year thousands of these pilgrims are stranded at Jeddah at the end of the pilgrimage, and every year hundreds of them die there. The matter has been brought to the notice of the Indian Government on several occasions, but nothing has been done in the way of effective supervision of the traffic. Now, however, the Turkish Government have sent an urgent message to Sir Edward Grey requesting the British Government to take such steps as will bring this scandal to an end.

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"Did the morals of civilised man keep pace with the strides he has made in science and art, that is, become as perfect, then we might with pride consider ourselves an ideal example to set before the blacks, in whom we profess to take such an interest, but as civilised man is most addicted to the immoral, we had best leave the black to where they belong, viz. nature."—Mr. John Shepstone, C.M.G., in the *Times of Natal*.

## Notice

Attention is called to the provisions of the Natal Ordinance, No. 5 of 1913, promulgated in the Provincial *Gazette* of the 3rd July, 1913, which requires dealers in manufactured produce of the Union of South Africa to take out the annual licence prescribed under the Licence and Stamp Act (Natal) No. 43 of 1898.

The Ordinance will come into operation as from the 1st September, 1913, and application should be made for the issue of licences to the Receivers of Revenue in Pietermaritzburg and Durban and to the Magistrates in other Divisions of the Province.

G. T. PLOWMAN,

Pietermaritzburg,

Provincial Secretary:

11th August 1913.