

Indian Opinion

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THE RESISTERS AT VOLKSRUST

WE reported last week that the Passive Resisters were told that they would be deported on receipt of warrants from Pretoria. Fuller details that have come to hand show that the spokesman was summoned before the Immigration Officer on Thursday last and told that he had received instructions from Pretoria to submit to the party for filling in forms prescribed under the Act. The spokesman regretted that the party could not comply with the request. Would they submit to the test? The spokesman said they could not do that either.

"Then" said the Officer "you are all prohibited immigrants." And so saying he handed the usual notices for all, informing them of his decision and saying that they could appeal against his decision to the Appeal Board within 3 days. The spokesman said the party did not want to appeal at all. The officer then said that, in that event, he would deport them all upon receipt of warrants. Thereupon the spokesman urged that they should all be taken in custody, as they did not wish to remain free and not proceed with their journey. But the officer said he could not take them in custody. The next day the party informed the officer that, unless they were kept under custody, they would proceed to Johannesburg.

"Then," said the officer, "I shall have to stop you, but I will not imprison you." Thereupon the following letter was addressed to the officer, signed by the spokesman:—

"My fellow passive resisters and I have been stopped by you from continuing our journey to Johannesburg since Tuesday last, the 16th instant. I told you then that, if you wished to detain or arrest us, you could do so only by keeping us in prison, as we did not desire to remain in Volksrust with friends, however insistent they might be to accommodate us. But you told us that you had not sufficient room at the Police Station for such a large company as ours and that, therefore, you would rather that we remained out, pending receipt of instructions from the Government. We have waited, it would be admitted, long enough to enable you to receive your instructions.

"On my telling you, on Friday, that, if you could not keep us under custody, the party would consider itself free to proceed to Johannesburg, you informed me that you would prevent it from so doing and that yet you could not keep us in custody until you had heard from the Government.

"I beg, therefore, now to inform you that, unless you take charge of the party, we shall entrain for Johannesburg on Monday, by the Kaffir mail, and if you offer physical resistance at the time, as passive resisters, we can only yield to it for the time being. But, if you set us free afterwards and do not hold us bodily, we shall seek some other means of continuing our forward journey."

Later wires received from Volksrust show that the delivery of the notice acted like a charm. The whole party was deported on Monday, at 10 a.m., to the Natal border. Deportation merely consists in pushing the deportees beyond a line midway in a shallow stream. As soon as the party was deported and the back of the deporting officer was hardly turned, they re-crossed and were arrested. They were straightway taken to the Charge Office.

An Inspired Article

The following article, "by a special correspondent" from Pretoria, dated the 17th instant, appeared in the *Natal Mercury* of Saturday last. The writer is evidently someone in close touch with the Government:—

The threatened revival of passive resistance on the part of the British Indians will not take place for want of reasonable concessions offered or carried out by the Government. In fact, so much was arranged between the two parties that the points on which rupture has finally occurred seem comparatively unimportant.

These points were two—those of the inter-Provincial movement of South African-born Indians, and the status of wives belonging to domiciled Indians. The difficulty as to the latter arose out of the Searle judgment, wherein it was laid down that a woman, whether a sole wife or not, who was married under rites which recognised polygamy, or were part of a polygamous system, was before the law of this country no wife. Consequently domiciled Indians, if they bring to the ports of this country any wife made so under a polygamous sanction, cannot claim that the Immigration Officer shall permit her to land.

The Marriage Difficulty

This ruling of the Court seems harsh, but it is noteworthy that it merely defines the status of the polygamous wife, while leaving the question of administrative action open. According to the law of the Union (said Mr. Justice Searle) she is no wife, and the husband, so-called, can not demand her admittance as such. But it is not laid down that the Immigration Officer is bound to send her back. He simply has the right to do so if he chooses, notwithstanding the law that permits the privilege of entrance to the wives of domiciled Indians. The case being as stated, the Government have instructed their immigration officers to grant entrance to any woman representing herself as the wife of a domiciled Indian, and so acknowledged by him, provided there exists no reason to suppose that he has any other wife in this country.

Practical Relief Offered

But the Government, I understand, have gone further. In order that the Indian womanhood of South

Africa may be spared degradation in the eyes of the law to a state of concubinage, the Government have offered to Hindu Indians the same relief which, by an Order in Council of Queen Victoria, was made available for Mohammedans—they may have their own marriage officers of their own faith, and the marriages performed by these when registered will count as valid under the law of the Union. This concession has never been availed of by the Malays of the Cape, who, I am informed, have a superstitious objection to the registration of marriages; they dislike any record other than the testimony of living witnesses. What the precise objection of the Hindu Indians is I do not know, but it seems they have some peculiar scruple, in deference to which it is demanded by Mr Gandhi and his friends that the Government shall actually introduce a Bill modifying the system of Christian monogamy, which is the basis of our Marriage Law, and give a direct and complete recognition to polygamous unions. That we shall tolerate a system which has proved a curse in every country that practises it is apparently not enough: we are asked to give it equal place of honour and of right on the pages of our law book with that which we accord to the union of one woman with one man. Because our Government refuses, there is to be revival of "passive resistance." Fixing on it the stigma of persecution, and investing the Indians with the aureole of martyrs, besides which hints are incidentally thrown out of trouble in India, and consequently serious embarrassment to the Imperial Government.

Inter-Provincial Movement

The other point on which rupture took place related, I am informed, to the inter-Provincial movement of Indians. Previous to the passing of the Immigration Bill of last session, the Cape and Natal were open fields to the entrance of domiciled Indians, whereas an examination has now to be passed. Mr Gandhi states, so far with perfect correctness, that the new law takes away a right which was formerly enjoyed. But the test imposed is of the lightest—lighter considerably than an Englishman coming direct from England may be required to satisfy at the ports of either of these Provinces. All that is asked of the domiciled Indian is that he shall correctly write out his application to enter in any European language which he knows. He must be very destitute of the education which is necessary in an English-speaking country if such a requirement beats him. An Indian who is to that extent illiterate can hardly complain if his South African residence is limited by law to the Province in which he happens to be domiciled, and if other Provinces decline to receive him. Having heard the debates in the Assembly on this question, I feel, however, by no means sure that any test would have been insisted on, at any rate at the Cape border, had it not been that Mr Meyler and some of his Natal friends revealed too plainly the reason for which they wished that there should be no test. The pressure of the Indian population in Natal was such, they said, as to be a menace to that Province, and they begged of the Cape to relieve the situation by accepting a big overflow into its own area. When once the case was put in that light, my own wonder was that the panic-struck representatives were content with the putting up of a barrier no stiffer nor higher than that which I have described. Therefore, while Mr Gandhi truthfully says that the Act of last session takes away a pre-existing right, the new restriction which it imposes on inter-Provincial movement is not such as to affect any domiciled Indian who could reasonably claim that his removal to another Province would constitute a desirable addition to its population. And if the law takes away, or rather circumscribes, a previous right, it entirely removes that racial discrimination against the Indian as such which Mr Gandhi used to describe as the great blot in the old legislation of the Transvaal, and which he and his gave us to understand was the real cause of their afore-time passive resistance. Mr Cachalia asserts in his

letter of the 12th inst. to the Minister of the Interior that the racial bar disfigures the present Immigration Act; but he indicates no place in that Act where one may find it. There is a racial bar up to a point, but it is not in the Act; it is in the administration, where the Government removed it on the definite request of the passive resisters.

Difficulties Resolved

There were two other points on which the negotiations between the Government and the British Indians turned, but they call for little comment, seeing that an agreement was arrived at in regard to them. Both sides were at one on the definition of the word "domicile," the Government assenting to Mr Gandhi's view that the years in which the £3 tax was paid by Natal Indians should not be deemed years of "conditional" residence, but should count for the purposes of domicile. The Natal law as to the years during which an Indian has only a conditional right of residence—for instance, that he fulfils an indentureship—cannot be reckoned for the purposes above-named. There was the difficulty in the case of the highly-educated Indians to be admitted from time to time under special permit that the law of the Free State required them to sign a declaration on its border (should they desire to cross over), under which they engaged themselves not to embark in any trade. This difficulty is got over by adding the declaration to the form which they sign on landing from the ship, and thus, if they choose to pass into or through the Free State, their journey is not obstructed.

An Objectionable Tax

In Mr Cachalia's letter a sense of quarrel is found in the £3 poll-tax, to which ex-indentured Indians and their children above 16 are liable in Natal. This tax, it may be stated, the Natal Administration does not collect with any great strictness, but still the persons described are liable. They cannot, however, be deported for non-payment, nor is there any other penalty directly attached to the omission as such. What happens in practice is that they receive a fine of 15s. or £1 as "a contempt" if they ignore this order of the Court directing them to pay. Without doubt a tax of £3 operates oppressively as imposed on the bulk of the Indian women, and for that reason the Government is not collecting it from women. There exists less reason to protest against it in the case of the men who have greater earning power. Both the men and the women, when they contracted their indentures, signed an undertaking to pay the tax after their term expired at the price of their remaining in South Africa should they not choose to return to their country of origin. The liability of the children to pay the tax on becoming 16 years is, from a constitutional point of view, not a pleasant thing to contemplate. One does not like to think that a human being by the mere fact of having been born on British soil is doomed on reaching a certain age to the alternatives of exile or slavery—that he must either leave his fatherland or indenture himself as the goods and chattels of an employer. Mr Gandhi justifiably protests against a tax with such an incidence—the more so because Mr Gokhale was given to understand by the Government during his visit of nearly a year ago, that it would probably be removed. As a matter of fact the Government did introduce a Bill exempting the women, but it got slaughtered at the session's end along with other less praiseworthy measures. This £3 tax, in most aspects of it, would be better swept away; it brings in little revenue, it is doubtful if it causes many coolies to re-indenture, and it certainly is inimical in spirit to the free genius of the Empire.

The Right Policy for the Indians

But there is this to be added: The abolition of the £3 tax was no part of the compact between the Government and the British Indians in 1911, on the ground of which the latter desisted from passive resistance. If they are sane men their wise course is to accept the

concessions and the relief which the Government and the new Act offer them, submitting, as an off-set thereto, to the small limitation now imposed on their former but little used right of inter-Provincial movement. Considering how alien they are to us in speech, blood, religion, and type of civilisation, and the economic danger to our own race that their presence spells, the new Act makes some substantial concessions. For the rest, as Mr. Gokhale suggested, they are entitled to expect the gradual amelioration of their legal status, including the abolition of the £3 tax. It might be possible, for instance, to extend the policy of the Natives' Land Act, and to mark off for them a portion of the country large enough for their numbers, in which they might acquire fixed property and enjoy a large measure of self-government. But such amelioration will quicker come through a sustained attitude of respectful petition and remonstrance combined with entire obedience to the laws.

Mr. Gandhi's Reply

To this Mr. Gandhi sent the following reply to the *Mercury*—

There is evidence, in the special article from Pretoria on the Indian position which you published in your issue of Saturday last, that its writer has been "in the know." It will, therefore, be accepted by the public as a weighty pronouncement on behalf of the Government. You will, therefore, perhaps permit me to correct some of its most glaring errors.

The writer contends that two of the four things in dispute were granted by the Government. This is only partly true. The Free State difficulty is that of the legal racial bar. The last telegram from General Smuts lends colour to the suggestion that the difficulty is removed. But, in reality, it is not. What is required is an admission in the same way in which it was made about the point raised regarding the right of ex-indentured Indians, that the new Act does not in law require any declaration not required from any other immigrant, from an Indian who may, under the Act, enter the Free State. This is quite different from saying that such declaration will only be taken upon an Indian entering the Union. The point is that, so far as immigration only is concerned, an Indian should be able to enter on the same terms as an European. Administrative differentiation there undoubtedly will be. But that will regulate the number of entrants, not the legal mode of entry. The point is somewhat technical from the nature of the case. The struggle has been directed hitherto towards guarding against a fundamental change in the British constitution which is based upon the *theory* of equality. The letter of the Indian contention was granted in 1910 after four years' continuous suffering on the part of my countrymen. But the spirit of it is missed, even now, in the new Act by reason of the ambiguous Free State clause.

The second difficulty not solved is the marriage question. Your correspondent asserts that I have asked for legal recognition of polygamy and, therefore, a subversion of the marriage law of the country which is based on the Christian doctrine. A glance at the correspondence between the Government and myself, published in *INDIAN OPINION* (13th September) will show that I have not asked for any such thing. I have asked that the legality of marriages of Indians celebrated in South Africa should be recognised in the same way as those celebrated in India will be under the new Act. I directed attention to the flaw in the wording of the marriage clause in the new Act and showed two ways of dealing with it, *i.e.*, either by slightly amending the new Act or by similarly amending the marriage laws of the Union without in any way interfering with the monogamous nature of marriages. The writer has raised the question of the meaning of "monogamous marriage." The point will be soon decided by the Supreme Court. If the phrase does

not mean what it was meant to mean when the marriage clause was passed, the blame will be that of the Government. They have raised the issue, not the Indian community. Millions of Indian unions in which the husband has married only one wife are, to the lay mind, monogamous marriages. If the phrase means anything else, the Government have misled the Senate, the Imperial and Indian Governments, and the Indian community. It will not be denied that this marriage question is one of the highest importance to us. I am sure the Europeans of South Africa will permit us to cherish the honour of our womanhood as much as they cherish that of theirs.

As to the £3 poll tax, I note that your correspondent does not seriously contend that it is a new point. He has only to look at the reservation clause in the correspondence of 1911 to see that it cannot be treated as a new point. It is new in the sense that it was not included in the recent negotiations. It could not well be as the discussion turned only upon the new Act. Had there been a settlement on the basis of the negotiations, the community would have continued to urge the removal by way of petitioning, etc., but the negotiations having failed, the way was open for the community to include this matter of simple humanity in the struggle. Lord Amthill has declared that the Union Government gave Mr. Gokhale a definite promise that the tax would be removed. If the Government intend to keep the promise, they have but to say so and there will be no struggle on that point. If they do not intend to keep it, Indians would have no right to exist side by side with a free and self-respecting community if they have not the decency and moral strength to suffer imprisonment or worse in order that a promise given to their distinguished countryman may be fulfilled and their poor helpless countrymen freed from a burden which ought never to have been imposed on them and for which the sin must, I fear, be shared by the free Indian population of South Africa almost equally with the Europeans.

—Lastly, your correspondent's advice that we should accept thankfully what has been granted and waive what has been denied as being of little importance and then press forward the redress of the balance of grievances by way of petitions, etc., and his suggestion that then we may be blessed with a special law, such as the Natives Land Act, whereby we may have a reserve set apart for us where we can buy land, etc., remind me, if he will forgive me for the analogy, of *Æsop's* justice-loving wolf. We have petitioned in vain all these years. Right after right has been taken away from us. And an Indian reserve means that the substantial right at present enjoyed of owning and buying land in Natal and the Cape and a modified right of possessing land in the Transvaal should be surrendered and we must allow ourselves to be penned in an enclosure, and then bless the Government for this grace as a reward for not offering passive resistance, which involves suffering for nobody but ourselves but which, if it ensures nothing else, at least saves us from a surrender of our manhood.

The Late Mr. Hoosen Dawad

We regret to announce that young Hoosen Dawad, who was ailing for a long time and who had the benefit of the most skilled medical attendance and the unceasing and devoted nursing of a loving father, passed away on Monday night. We consider that Mr. Hoosen gave promise of being one of the greatest Indians of South Africa. We extend our sympathy to the bereaved family. We hope to give a special memoir and portrait of the deceased in our next issue. This issue being specially published for giving news of the passive resistance struggle, it is impossible for us to cope with the memoir.

From the Editor's Chair

THE £3 TAX

FOR many reasons we consider that the central point of the struggle is this blood tax, as we have not hesitated to call it. It ought never to have been imposed. The history of the imposition does not reflect any credit on Natal. It would never have been imposed if we, the free Indian settlers of Natal, had, at the time, done our duty completely. It would never have been imposed if the otherwise fine statesmen of Natal, who were then in power, had not truckled to the planter and the farming communities. We may here recall the fact that the original intention of the then Government was to impose an annual tax of £25 on ex-indentured Indians and to make its non-payment a criminal offence. This was too much for the Government of India, though it was soft and accommodating enough. The figure was, therefore, brought down to £3 and the Government of India would not listen to the proposal to make its non-payment a criminal offence. So a bill was passed in 1895 imposing the tax, the condition being that, if the ex-indentured Indian left for India on the termination of his indenture or entered into further indenture, he was exempt but, if he did not do either and wished to settle in Natal as a free man, he and his were bound to pay the tax which could be collected by a civil summary process. The first collections started in 1900, and since then men, women and children have been harassed, more or less inexorably, to pay this wretched penalty for their freedom. We call it a penalty because it is admittedly not a revenue-producing impost. It is avowedly for the purpose of compelling the helpless people to re-indenture or to return to India from whence they came to avoid starvation, and on the strength of unscrupulous allurements of touts. The law-officers then set about working to find out how they could send these men to gaol although it was a compact between the Natal and the Indian Governments that it was not to be deemed a criminal offence if the tax was not paid. They found out that it was possible to use effectively the small debts clause of the Magistrates' Courts Act in order to override the compact and send these people to gaol if they did not pay the tax. Disobedience of an order of Court is contempt of Court, for which the defaulter is sentenced to imprisonment. There is an exception to the clause to the effect that, if a debtor shows that he has been unable, through want of means, to discharge a debt which he is ordered to pay, he may not be imprisoned. But we know that, in most cases, the Magistrates, after all human beings living in the midst of the all-powerful planting community, have disbelieved the evidence as to poverty and sentenced the men to be imprisoned for non-payment. The latest case in point is that of Sarjoo. He has not paid for the last three years. He paid what he could and then pleaded inability. But the plea was not accepted and he had to serve imprisonment with hard labour for 30 days. And even this imprisonment does not free him from payment. If he is believed by a police officer to have means, he can be re-arrested and re-sentenced unless he pays the tax. Thus we hold that the local Government have broken faith with the Government of India by resorting to the Magistrates' Courts Act to thrust the poor men and women into gaols for non-payment.

But one would have thought that, with the stoppage of the system of indenture, the tax would be abolished. Nothing of the kind has happened. The relentless employers, who want indentured labour, having tasted the sweets of it, are not satisfied with anything less, certainly not with free labour. And so the tax has continued.

Then came the climax. Prominent people of Natal

assured Mr. Gokhale that the tax would go, that they did not want it. The Union Government made a definite promise to our distinguished countryman that they would remove the tax. And yet, during the last session of Parliament, they broke the promise.

Who can say that the local Indian community have decided a second too soon upon passive resistance? It would have been proper at any moment. It is doubly so at this moment. If our readers only knew, as we know, how this breach of faith, this failure to remove the tax, has shaken Mr. Gokhale and how, in spite of strong medical advice, he decided to return to India to rouse the Government and the people to action, and what extraordinary pressure was brought to bear upon him to induce him to postpone his departure from England, every Indian would let every consideration of self go and fight for the removal of this tax even unto death. It is a simple, primary duty every Indian in South Africa owes to his country, to Mr. Gokhale and to the poor men who are the victims of gold hunger on the part of the employers of indentured Indian labour.

WHAT APPEAL BOARDS STAND FOR

THE *Natal Mercury*, in a leaderette, offers the opinion that the Appeal Boards are a distinct advantage to the Indians because one or two men have been successful in their appeals. This would be true if the Appeal Boards had taken the place of something worse. But the facts are that they are dealing with a situation that did not exist before. That is to say, before the Act was passed, men who were undisputed possessors of their domicile certificates re-entered as a matter of right. Now the Act has nullified the effect of these certificates and created work for the Boards which reject the majority of cases, which formerly were quite safe and then grant one or two. Thus the law, having deprived the community of all its rights, allows Appeal Boards to restore some. If, for this mercy, one has to be thankful, one ought also to thank a thief who restores part of stolen property. Of course, we have nothing to say against the Boards as such. Indeed, the appointment of Mr. Binns and Mr. Maurice Evans is unexceptionable. But the best judge is of no use, if he is appointed merely to act as an anæsthetic acts when a patient has to undergo a severe operation resulting in the loss of a limb. And the analogy is somewhat too flattering for the Government. In the latter case the patient submits to the operation willingly and for his own good. In the former case he is the unwilling victim.

Latest Information

Volkstrust, Tuesday.

The trial came off to-day and, after the charges were read, ten of them were sentenced to three months imprisonment, with hard labour, and six, including the four ladies, were sentenced to one month's imprisonment, with hard labour. They received their sentences most cheerfully, the six considering themselves unfortunate that they had only one month when their companions got longer sentences.

We are compelled, in the interests of the struggle, still to hold over giving the names of the party at Volkstrust.

We hear that, in spite of information to the contrary in the *Mercury* article above referred to, the £3 tax is being collected from Indian women at Port Shepstone. We have asked our informant to verify his facts and give us details.

Mr. Polak, who has already landed at Capetown says, in a wire, that a meeting of Indians was being held there yesterday. Mr. Polak arrives at Durban by the mail-boat on Sunday.