

Indian Opinion

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(HARDSHIPS OF THE IMMIGRATION LAW

A MEETING of Indians of Durban was held at 9.30 on Friday morning soon after the conclusion of the Eid festival prayers, to protest against the present administration of the Immigration Laws. The meeting was held on the ground adjoining the Mosque in Grey Street. Mr. Dawad Mahomed presided. Amongst others present were Messrs. E. M. Paruk, M. C. Coovadia, S. P. Mahomed, M. S. Randerce, Osman Ahmed Effendi, A. M. Kajee, A. M. Shaikh, M. A. Jeewa, A. D. Padia, HajeeAbdoolla, Rooknoodeen, E. C. Paruk, Fazloodeen, Mahomed Ebrahim, D. M. Timol, I. B. Timol, Moulvi Bashir, A. D. Badar, G. A. Bassa, Mayet, Dada Osman, and M. C. Anglia.

The Chairman said that they had met in order to discuss a subject which was generally believed to have been settled once for all in their interests, and in the interests of all the people in the country. They met only under a sense of grievous wrong done to them, in spite of all the promises and assurance, as regards their vested rights and their primary rights as British citizens; and it was a source of great and sincere regret to him that the amount of suspicion and distrust harboured in the minds of certain persons in the community, which he had done his best to combat, in respect of the labours and recommendations of the recent Indian Inquiry Commission, had to a large extent been justified. Not so very long ago the Secretary of State for the Colonies assured their people that the Imperial Government would be no party to the taking away of any rights possessed by them, and quite recently the Minister of the Interior gave them the assurance that the law relating to immigration, which had hitherto caused so much irritation and vexatious treatment, would be sympathetically administered, and cases under it liberally dealt with. The Indian Inquiry Commission that sat in South Africa last year, had with every disposition to be just and fair towards the Indian people, most carefully considered every aspect of the question of Indian entry into South Africa. It had issued its recommendations, based on sympathy and consideration. If they read sub section 9 of section 5 of its reports, they would find definite and equitable reference to things which that meeting had been called to now take cognisance of as affecting respectable people of the community. Similarly in the Act of Parliament, No. 22 of 1914 (known as the Relief Act), section 7, there was explicit reference in respect of their domicile in that Province, and to the right of their people to identification certificates, when they choose to secure them. In the face of those enactments, assurances and recommendations, they found that applicants who tried to obtain their elementary or vested rights were harassed and thwarted in their endeavours to do so, and were prevented from settling down peacefully after a visit to their people within the confines of the Empire.

The following resolutions were unanimously adopted :

"This mass meeting of British Indians resolves that representations be at once respectfully made to his Excellency the Governor-General and to the Government of the Union to the effect that the laws and regulations in force in this Province relating to Indians holding certificates of domicile bearing their thumb impression and of many like undeniable identity, whilst entering in, or returning, after a temporary absence, are harshly and unsympathetically administered, and that the recommendations of the recent Indian Inquiry Commission as well as the enactments in this regard, together with the verbal and written assurance of just treatment in all cases given by the Honourable the Minister of the Interior, are not observed and carried out in the spirit in which they have been conceived. That the following cases, now under order of deportation, are quoted in reference to the above, viz. :—

"(1) Ahmed Essack, a resident in Natal from the year 1879 to 1906 continuously, who was temporarily absent without a certificate of domicile, such a document being at the time considered unnecessary.

"(2) Mahomed Yoosof Kajee and others who had left temporarily for India without a certificate of domicile, the issue thereof having been suspended at the time of their departure. The above-named having now returned, are debarred from remaining here permanently by reason of technical irregularity.

"(3) Suleman Mahomed, who originally came to this Province with his father in 1906, and whose claim was then admitted by the immigration authorities. He has remained in this Province ever since, and is now desirous of leaving for India on a visit, but his application for an identification certificate to enable him to return is refused.

"(4) Mahomed Ebrahim Patel, who is an educated Indian, holding satisfactory certificate as to his character and qualifications, who seeks entry as an educated person, is prohibited from remaining in the Province and is under order of deportation."

"Resolved by this meeting of Indians that the substance of the first resolution be wired to his Excellency the Governor-General with a prayer that his Excellency may be graciously pleased to take the facts therein mentioned into his kind consideration, and to obtain the cancellation of the deportation orders in the cases of the persons mentioned, and that his Excellency may be pleased to intervene, on behalf of the Indian community of Natal, in order that the law and regulations affecting the Indian people in the matter of departure to India and re-entry into the Province, as circumstances may require, may be liberally and sympathetically administered and needless restrictions and source of annoyance be done away with."

"Resolved by this meeting of Indians that a request be respectfully made to the Government to move the Immigration Appeal Board to sit in a public court rather than in the office of the Immigration Officer, as was the case previously, so that the Board may be more

accessible to the public; and also that as provided for in the Immigration Act, the Board be reconstituted, to be composed of new members, with a view to give greater confidence to persons whose cases come on appeal before them."

It was also resolved that the chairman be requested to transmit the above resolutions to the proper quarters.)

Licensing Transfers

The Estcourt correspondent of the *Times of Natal* reports the following case of an application for transfer of an existing licence:—

Two important appeals have just been decided by the Estcourt Town Council, sitting as the Borough Licensing Appeal Board. The sitting occupied the greater portion of a day, and was presided over by the Mayor, (Councillor R. M. Drummond). The other Councillors present were the Depty Mayor (Councillor the Rev. R. P. Rogers, M. A., and John T. Gelling, G. R. Gillbanks, and H. H. Mulcahy. The appeals were brought against the decision of the Borough Licensing Officer (Mr. W. H. Pitcher), who had in both cases refused application for transfer of certain licences.

In the case of M. H. Vawda, it was sought to transfer an existing licence from said M. H. Vawda to a partnership firm consisting of the latter and his two nephews, the premises in question being a wholesale and retail store at corner of Harding and Alexandra streets.

Mr. Advocate Chadwick appeared on behalf of appellant, and in his address before the Board relied chiefly on the ground that "there was no legal ground for the licensing officer's refusal," quoting the decisions of the Supreme Court in *Cassin v. Maritzburg Corporation*, *Goga v. Ladysmith*, and *Bodhanya v. Estcourt Licensing Board*.

Counsel asked for the Licensing Officer's decision to be set aside and for the transfer to be authorised.

The Licensing Officer, present in person, offered no objection.

The Board, after retiring to consider its decision, pronounced the following verdict, the Mayor delivering the judgment on behalf of the Board:—

This is an appeal from the decision of the Licensing Officer of the Borough of Estcourt, wherein he refused the application of Mahomed Hoosen Vawda for transfer of his wholesale and retail licence in respect of premises situate on portion of E 10, Block F, facing Harding Street, Estcourt, from the said Mahomed Hoosen Vawda to the partnership firm of Vawda and Co. the individual partners whereof consist of Mahomed Hoosen Vawda, Dawood Ismail Patel, and Amod Moosa Vawda.

The applicant appears to have duly complied with all the laws and regulations in regard to his application, and the Licensing Officer finds no objection to the transfer except that "the effect of the application if successful would, in my opinion, be tantamount to the licensing of an additional number of Asiatic traders within the Borough, which appears to me to be contrary to the policy of the Council as representing the burgesses of Estcourt."

From the record as placed before us we can find no other objection to the transfer. This Council, whilst opposed to any further facilities being granted to Indians to trade within the Borough, is bound to consider the application quite apart from any local prejudices and to exercise the discretion placed in us as required by law.

The law makes no distinction between Indians and Europeans, and if we made that distinction in dealing with the matter we should not be exercising a proper discretion. We have therefore disabused our minds of all questions as to the applicant's colour, and judged the application purely on its merits. No question has presented itself as to an increase in the number of

licences. The application, if granted would not have that effect. No objections have been lodged by any townsmen; consequently we presume the Licensing Officer's objection is not well founded. We can find no legitimate objection in a trader assuming a partner or partners.

In these circumstances we feel bound to set aside the Licensing Officer's decision and to grant the application as applied for.

In coming to this decision we have been guided by the authorities quoted by appellant's counsel, viz., *Goga v. Ladysmith Corporation*, 34 N.L.R., 1913, and *Bodhanya v. Estcourt Licensing Board*.

Licence Refused to Colonial-born Indian

At the first business meeting since the elections of Durban Town Council, Mr. C. F. Clarkson appeared on behalf of J. S. Rajpaul, who appealed against the decision of the Acting Licensing Officer, who had refused him a retail grocery store licence for premises at 761, Unigeni Road. The applicant stated that he is Colonial-born, and has been 11 years with Messrs. Stranack and Glew, and holds a good testimonial from them. The officer refused him the licence solely on the ground that he did not consider it desirable to increase the number of Indian licences in Durban.

On the motion of Mr. Anderson the Council retired to consider the case, in order that the new Councillors might have an opportunity of becoming acquainted with the Council's policy in regard to Indian licences.

On resuming, on the motion of Mr. Nicoll, seconded by Mr. Anderson, the Licensing Officer's decision was upheld.—*Natal Mercury*.

Mr. Hosken and Parliament

In a letter by an anonymous correspondent to *The Rand Daily Mail* recently, it was urged that Mr. Hosken's nomination as the Unionist Candidate for the Hospital Hill Division should be opposed on, amongst other grounds, that of his pro-Indian views. In a reply published in *The Star* by a writer signing himself "Unionist," the following paragraph appears: "The attack on Mr. Hosken regarding the Indians is surely belated. The whole Empire is thankful that a settlement of the question regarding Indians in the Transvaal was arrived at before the present dreadful war came on us. In that settlement, brought about exactly on the lines advocated by Mr. Hosken, India is to-day not only in a peaceful condition, but has furnished splendid help in France and in the Dardanelles, and India, with its vast population now so loyal and enthusiastic in the British cause, is the ultimate factor that will decide the war in our favour."

Mr. John Weightman, the Chairman of the Clifton Branch of the Unionist Association, writes to *The Rand Daily Mail*, saying: "Your correspondent mentioned the Indian question in his letter, which I consider at the present time was in very bad taste. The Indians are doing their bit for the Empire, and we are pleased to acknowledge it."

Mr. Polak has addressed the following letter to *The Star* and a similar one to *The Rand Daily Mail*.

I do not wish, though a registered voter of the Hospital Hill Division, to interfere in the political issues now being discussed, but it has been unfairly charged against Mr. William Hosken that he has adopted views on the Indian question, which do not commend themselves to the patriotic electors of the Division. I would like to corroborate all that "Unionist" says in his letter published in your issue of last evening. Mr. Hosken's critics forget that the

policy that he has advocated for so many years on the Indian question has been adopted at length by the Government and Parliament of the Union, and it would have been highly advantageous to this country had that policy been adopted at an earlier stage. There is no doubt that had last year's settlement not been reached when it was reached, the attitude of India towards the war might have been considerably modified, and it is no exaggeration to state that a very different spirit would have animated the Princes and peoples of India at the time of the outbreak of war. To Mr. Hosken is due the great credit of having foreseen the Imperial dangers several years ago, and of having done a great Imperial service in helping to convince others of the reality of those dangers. If any man deserves well of the Empire, it is surely he.

From the Editor's Chair

A PROTEST MEETING

THE meeting held in Durban on Friday last to protest against the present unsympathetic administration of the Immigration Act brings to notice the growing seriousness of the position of Indians of this Province who were born in India. This meeting, it appears, was attended solely by Mahomedans. Large numbers had gathered together on the occasion of the annual Eid Festival and advantage was taken of the holiday to raise a large gathering. We are in general agreement with the resolutions passed at the meeting and, in regard to the third resolution, we should like to emphasise the unfairness of conducting the proceedings of the Appeal Board behind closed doors at the Immigration Office. One of the rooms at the Law Courts should be used for the purpose and thus do away with the suspicion and dissatisfaction aroused on this score. There is no doubt that many serious questions have arisen of late and the position of domiciled residents is jeopardised. Some of the questions raised are delicate ones, and seem to be against the settlement of last year. We believe that the Government is at present considering some of these questions, but the community should certainly not rest with a protest of the kind made on Friday. The Natal Indian Association, as representing Natal Indians, should collect complete records of all cases of hardship and forward them at once to the Government. Then only shall we be able to show that our grievance is a real one. As soon as sufficient information is collected (and in this matter we would urge upon those who are in possession of information to place such at the disposal of the Association), a mass meeting, representing all sections and districts, should be held in Durban at an early date. May we appeal to our colonial-born friends, who are not affected by these difficulties, to show an equal interest in these questions and so show their broadmindedness?

THE RIGHT TO TRADE

A fortnight ago we reported that the Durban Town Council had decided to grant a licence to a colonial-born Indian for a trading licence in Victoria Street. The Licensing Officer had refused the licence because he did not consider it advisable to increase the number of Indian licences in Durban. In this issue we report another case in which the Licensing Officer refused to grant a licence to a colonial-born Indian for exactly the same reason. The Town Council on this occasion has upheld the decision of the Licensing Officer. Wherein lies the policy of the Durban Town Council? We are puzzled to know why the one licence should be granted and the other refused by the Council when the same reason for refusal was brought forward in each case. Is the reason to be found in the new Council

and the new Mayor? It may be noted that the Council acted generously a few days before the elections but, a few days after, decided to prevent an Indian who was born in Natal from obtaining his livelihood in a perfectly legitimate way. Indian voters and would-be voters should observe these things.

In contrast to the action of the Durban Town Council we have the attitude taken up by the Town Council of Estcourt. Here we have a Municipality saying: "The law makes no distinction between Indians and Europeans, and if we made that distinction in dealing with the matter we feel that we should not be exercising a proper discretion. We have therefore disabused our minds of all question as to the applicant's colour, and judged the application purely on its merits." If the Durban Town Council is right in refusing a licence on racial grounds, the Estcourt Municipality must be wrong. It is true that, in the case of Mr. Vawda, it was a question of transfer and not a new licence. But if "the law makes no distinction between Indians and Europeans" the Durban Licensing Officer was wrong in making the distinction and the Council was equally wrong in upholding his decision. This must be clear to anyone who is not absolutely blinded by colour prejudice.

STRANGE IF TRUE

IN our last issue we re-printed from the *Times of Natal* a report of an electioneering meeting at Maritzburg in support of the candidature of Mr. Dunlop. There was nothing new about the answers to questions by Indians, but there was something irregular in a civil servant taking part in such a meeting and supporting the candidate. We refer, of course, to the presence of Mr. Wynne-Cole, the Licensing Officer for the Province. We learn that he gave "some interesting facts on the Town Council's policy in restricting Asiatic licences"—a matter in which he has no concern, as there is a Borough Licensing Officer in whose hands the question lies. We do not know, of course, how Mr. Wynne-Cole justified his presence at that meeting. Nor did we ever know how he satisfied his conscience in going round the country raising war funds from Indian storekeepers whose destiny largely rested with himself. And we suppose that we never shall know. But we have a duty to perform, and that is to point out to the Government that a civil servant was to be seen upon a platform backing a candidate for the Maritzburg Town Council. We consider such a thing intolerable, but we leave it to the Government to decide whether such action was allowable in an officer of the Administration.

Another Tramway Deadlock

The following further correspondence has passed regarding this matter:—

3rd August, 1915.

The Town Clerk, Johannesburg Municipality,
Johannesburg.

Sir,

On behalf of my Association I desire to object to the draft Tramway By-laws advertised in the *Provincial Gazette* Notice No. 194, dated the 20th July, 1915. My Association's objections are based upon the same ground as regards racial distinctions as are contained in the joint petition of my Association and of the Cape Coloured People of Johannesburg addressed to the Chairman and Members of the Tramway Committee of your Municipality, dated the 4th day of March, 1915.

I have, etc.,

(Sgd.) A. M. CACHALIA,
Chairman.

10th August, 1915.

The Town Clerk, Johannesburg Municipality.

Sir,

In continuation of my Association's letter herein of the 3rd inst., I would suggest on behalf of my Association the following alternatives.

That sub-section (i) of clause 33 as amended which now reads "set apart such carriage or a portion thereof for the conveyance of white persons only", be altered to read "set apart such carriage or a portion thereof for persons other than natives"; or alternatively, that sub-section (i) should be deleted altogether. As the clause as amended now stands, it contains a racial bar which is highly offensive to and will not be tolerated by the community that my Association has the honour to represent. As amended in the manner suggested by my Association hereby the racial taint, so far as the Indian community is concerned, will disappear. My Association is anxious, if possible, that this controversy may be settled in a manner that will avoid reasonable grounds for agitation, and the suggestions made by my Association hereby, if adopted, together with clause 33 (a) that is now suggested and which carries out the Durban practice, will in my Association's opinion, maintain the principle of non-differentiation so far as the law is concerned, for which the Indian community has always fought, and which was secured for it at the time of the settlement last year, and at the same time the Municipality have all necessary powers

In conclusion, I am to say that my Association reserves to itself the right to communicate with you further as to the method of administration of the clause 33 (a) if adopted.

I have etc.,

(Sgd.) A. M. CACHALIA,
Chairman.

[NOTE:—At a meeting of the Johannesburg Town Council, held on the 10th inst., it was unanimously agreed to adopt the new draft Tramway-by-laws.—Ed. I.O.]

14th August, 1915.

The Provincial Secretary, Pretoria.

Sir,

My Association learns with regret that the Municipal Council of Johannesburg has passed certain new draft Tramway By-laws for assent by the Honourable the Administrator. These draft By-laws imply the right of the Municipality to set aside cars or parts of cars for the exclusive use of white persons, and these powers that are now sought are in conflict with the judicial decision in the case of Adendorf and Willams *versus* the Johannesburg Municipality, heard in the Transvaal Provincial Division of the Supreme Court some months ago.

I have the honour, on behalf of my Association, to enclose herewith copies of correspondence with the Municipality from my Association for the information of the Honourable the Administrator, and I beg to urge, on behalf of my Association, that this matter is highly controversial, and that no good grounds either in theory or as a matter of practice, have been shown by the Municipality for the adoption of the proposed By-laws.

My Association has the honour to remind the Honourable the Administrator of the interview that he was pleased to accord to a Deputation, on which my Association was represented, and of the terms of his answer to the Deputation, and trusts that, having regard thereto, he will be pleased to refuse consent to the proposed Tramway By-laws.

I have, etc.,

(Sgd.) A. M. CACHALIA,
Chairman.

Travellers' Difficulties

The following letter has been received by Mr. Osman Hajee Abdool Latif, Johannesburg, in the matter of the difficulty experienced by British Indians travelling on the South African Railways:—

General Manager's Office,
Johannesburg,

19th July, 1915.

Dear Sir,—With further reference to your letter of the 30th ultimo relative to difficulty experienced in obtaining refreshments at Potchefstroom station, I find, it is the practice there, in order to facilitate business to serve British Indians with their requirements in the room behind the bar. No exception has been taken hitherto to this arrangement which has worked quite satisfactorily.

With regard to the case at Welverdiend station, the refreshment room at this place is leased to Contractors and is not run departmentally. I have taken up with the Contractors and from the instruction furnished to me it would seem that the attendant at the stall did not act in as tactful a manner as could be desired and he is being removed from his position at the end of the current month.

Any inconvenience experienced by you is regretted.

Yours faithfully,

(Sgd.) for W. W. Hoy,

General Manager.

Mr. Cousins' Methods

The following is a judgment delivered in the case of *Razlodien Dawood versus the Immigration Officer, Cape Town*, heard in the Supreme Court, Capetown, on the 12th July before the Judge President and Mr. Acting Justice de Villiers:—

In this case an Indian named Dawood was notified on the 13th February last year that he was a prohibited immigrant. He had made a sworn declaration that he was under 16 years of age and that he was the son of Dawood Cassim, of Cape Town, a person exempted within the meaning of the Act 22, of 1913, section 5, sub-section (f). If these statements were true he was not a prohibited immigrant; but the Immigration Officer did not believe his declaration as to his age and consequently the notification was given him. He then appealed to the Board, constituted under section 2 of the Act, at Cape Town.

The Board found on the 16th February as a fact, that the Appellant was under 16, and was exempt under section 5, sub-section (g) of the Act, and allowed the appeal. This was the only question of fact before the Board.

Here I may refer to the ninth regulation framed under the Act which provides that at the hearing of an appeal there shall be placed before the Board a statement by the Immigration Officer of the grounds upon which he has deemed the Appellant to be a prohibited immigrant and the Board shall inform the Appellant accordingly, etc. The only ground would seem to have been the age of appellant; but as a fact both he and Cassim gave evidence that they were son and father. In February, 1915, the Immigration Officer, having, according to the questions of law reserved by the Board for this Court "ascertained that the appellant and his alleged father had committed perjury and that the alleged parentage did not exist, and that there was no proof that the appellant was the son of any person exempted under section 5, sub-section (f)" had Dawood again arrested as a prohibited immigrant and so notified him. He appealed again to the Board, and the Immigration Officer offered to lay evidence before it of the alleged facts which he had ascertained, but the Board declined to hear any evidence and resolved: "That the case could not be re-opened and that the Appeal be allowed"; but deferred the recording of the decision on appeal in order first to reserve and submit certain questions of law at the instance of the Immigration Officer. It is rather an unusual course to take, to first allow the Appeal, and then to submit questions of law to this Court which, apparently under section 3, sub-section 1, of the Act has no jurisdiction to review, quash, reverse, interdict, or otherwise interfere with the proceedings of the Board. But under the Act it is our duty to answer the questions put to us, whatever might be the result of our answers.

The questions put are: (1) Whether the Board can decide whether the first decision of the Board was obtained by fraud and perjury or whether Dawood is the son of Cassim or any other person exempted under section 5, sub-section (f) and if so whether it can declare him a prohibited immigrant. (2) Whether, apart from such declaration, if such fraud or perjury were committed and the appellant is not a son of Cassim or any other person exempted under section 5, sub-section (f) the declaration of the Immigration Officer (viz., that Dawood was a prohibited immigrant apparently), of the 13th of February, 1914 or the 25th of February, 1915, must be regarded as of full force and effect.

A number of very important and interesting questions were raised in the course of the argument, but I think that it is unnecessary to go into them. Because the questions put to us can be answered upon simple grounds.

The Board is a Court; it hears evidence and gives judgment. Its decision therefore on the first Appeal which was whether or not the appellant was a prohibited immigrant and exempt under section 5, sub-section (g) is *res judicata* in the subsequent proceedings, the

matter being identical and the parties the same. So that, so long as that first decision stands, the Appeal Board cannot now go into the evidence offered on the questions raised.

Whether or not, and how, if at all, that decision can be set aside are not questions of law reserved by the Board in this case, nor do I see how they could have been reserved.

The answer to question No. 1 is that it is not competent for the Board to do any of the things contained in question No. 1 so long as its first decision stands recorded and is not set aside. Question No. 2 is not easy to follow. But in view of the first answer this question falls away. The answer to this is therefore the same as to question No. 1.

Costs against the Immigration Department.

The Attorney-General said it was not competent for the Court to give costs against the Board. The case was stated *mero motu* by the Board and costs could not be given against the Board. It did not appear that the case was stated at the request of the Immigration Officer, and costs should therefore not be given against him.

The question still arose as to how the Board should proceed to set aside its own judgment. This was a question on which advise was sought.

The Judge-President said: In regard to the further question which the Attorney-General has put, I think he is labouring under a mistake which goes to the whole root of the matter. It is not for the Board to consider what steps to take to set aside its own judgment. It is a question for the parties to consider and not for the Board, and inasmuch as in this case in which the question of law arises the Court has held that the Board cannot consider any question in issue until the present judgment has been set aside; it seems to me that the present Court of Appeal cannot put the question: "How is our former judgment to be set aside?" It does not seem to me to arise out of these proceedings at all and it is a question for the parties to consider how the Board's judgment is to be set aside and not a question for the Board to consider how to set aside its own judgment. Under the circumstances I do not see how this particular question can arise, and I do not see any use in granting leave to raise the question. Then as to costs, it is quite clear that the Board was of opinion that the appeal should be allowed. In other words, they were quite in favour of the view that Dawood was an exempt person and they passed a resolution showing that in view of their former decision they were of that opinion, and it was at the instigation of the Immigration Officer that these questions were reserved, and therefore, as the Immigration Department had not succeeded and as Dawood had been put to the expense of coming to this Court it is only fair that he should be allowed his costs, and the order of costs will therefore be against the Immigration Department.

Commenting upon the appointment of Sir Sankaran Nair the *Mahratta* (Poona) says:—

This is the first time that an Indian has been entrusted by the Government of India with the task of supervising and controlling the education of Indians. Even Europeans will admit that, other things being equal, an Indian is likely to have more sympathetic interest in and a deeper insight into the educational needs and aspirations of his people than a European, however well-intentioned or fair-minded he might be. But though this truth is obvious, it has up till now been ignored in the misty atmosphere of Simla. We do not wish to dwell on this, except so far as to bring into relief the liberal and wise policy inaugurated by Lord Hardinge. This statesman is believed, like Lord Carmichael, to find himself in opposition to his bureaucratic councillors in some cases, and it is natural that he should wish to have men about him who will look at Indian problems from a broad-minded and sympathetic angle of vision. And his choice has fallen upon the right man.

An Important Transvaal Case

Recently, in "B" Court, Johannesburg, before Mr. Gill, Noor Mahomed, a Pathan, was charged with contravention of section 6 of the Immigration Act No. 22 of 1913, in that he, being a prohibited immigrant, had returned to the Transvaal after removal from that Province. Mr. Polak defended. P. C. C. Harrison stated that he was an Immigration Officer, and that the accused had twice been deported from the Transvaal prior to the coming into force of Act 22 of 1913. He stated that in his opinion the accused was a prohibited immigrant under that Act, but admitted that he had never been so declared by an immigration officer or the Immigration Appeal Board.

Mr. Polak admitted the deportations, but asked for the discharge of the accused on the ground that there was no evidence to show that the accused actually was a prohibited immigrant under Act 22 of 1913.

Mr. Gill: "But there is evidence; the witness Harrison has stated, as an immigration officer that he considers the accused to be a prohibited immigrant."

Mr. Polak, in reply, stated that Harrison's statement merely amounted to an opinion, but that it did not in any way indicate that the law had been complied with. Act 22 of 1913 distinctly laid it down that, where any person was arrested or detained as a prohibited immigrant in any province, a prohibition notice must be served upon him. The statute was peremptory, and Harrison had stated that no such notice had been served upon the accused. The present proceedings, if continued, would have the effect of depriving the accused of his right of appeal to the Immigration Appeal Board, and this was never contemplated by Parliament, as was evident from the peremptory wording of the statute. Moreover, it was clear, from the case of *Rex vs. Purbhoo*, heard in the Supreme Court, in 1914, that two things had to be proved by the Crown. Not only was it necessary to show removal from the Province under some earlier law, or under the Immigration Act itself but that the accused person was also a prohibited immigrant under the present law. Whilst the first was admitted, Mr. Polak denied that the Crown had in any way proved the second, for it was absolutely imperative, under the law, that before a man could be dealt with as a prohibited immigrant, he must be so declared in terms of the statute. A mere expression of opinion or merely a verbal intimation was not sufficient. The notice had to be in writing and duly served upon a suspected person, who then, within the statutory period, had the right to appeal, and as this procedure had not been followed, Mr. Polak argued, no conviction under this section of the Immigration Act could ensue. He therefore asked for the discharge of the accused. The magistrate reserved judgment, and subsequently acquitted and discharged the accused, stating that he thought that Mr. Polak's argument was sound, and that the Crown had not proved the charge.

Below we publish relevant extracts from the Supreme Court case, *Rex versus Purbhoo*, judgment being given on the 25th March, 1914, by Justices Mason, Bristowe and Gregorowski.

Mr. Justice Mason said:—

"It is not necessary in the view which I take of this case, to pronounce a definite opinion upon that point. To bring a person within this section (section 6 sub-section (1)) he must have been restricted from entering, removed from, or ordered to leave, the Union or a Province in which he is a prohibited immigrant. Now the question arises as to what is the meaning of the words "in which he is a prohibited immigrant?" Do they mean a prohibited immigrant at the time when he is found within the Union of the Province, or do they include every person who has ever been a "prohibited immigrant." The present tense is used, and the section is satisfied by confining it to persons who are prohibited

immigrants at the time they are found within the Union or Province, because the parenthesis "whether before or after the commencement of this Act" may well be considered to refer to the restriction from entering, the removal from, or the order to leave the Union or the Province. If the other interpretation were adopted, the result would be that any person who had at any time come within the provisions of Act 15 of 1907 would be permanently excluded from the Colony, even though he were not a prohibited immigrant under Act No. 22, 1913. Under the former Act there are some disqualifications which quite clearly are not necessarily permanent, such as inability to read an application for permission to enter in a European language, the absence of sufficient means of support, and the disqualification contained in section 2 (4). This very case illustrates what would be the injustice of interpreting the words "prohibited immigrants" in this section retrospectively. It seems impossible to believe that the legislature ever intended such a conviction to impose a permanent disability, which would have prevented any minor subsequently entering any Colony with his parents if they were entitled to enter. It seems to me, therefore, that the appellant does not come within the terms of section 6, unless he was at the time when he was found in the Colony a prohibited immigrant in terms of the Act No. 22 of 1913, because the prior Act dealing with prohibited immigrants has been repealed. Now the summons in this case does not charge him with being a prohibited immigrant in terms of this Act, and the conviction therefore cannot be sustained."

Mr. Justice Bristowe said:—

"In other words two conditions are requisite to constitute an offence under the section. First, the person charged must at some time have been "restricted from entering, removed from or ordered to leave." Secondly, he must at the time of the commission of the offence be a prohibited immigrant. If this were not so then (1) "was" should have been used instead of "is"; (2) the words "in which he is a prohibited immigrant" would be superfluous for it would have been sufficient simply to make it an offence to be found within the Union or Province after having once been excluded, and (3) seeing that being a prohibited immigrant may be a removable bar it can hardly have been intended by this section to preclude the removal of the bar if otherwise possible. And that this was what the legislature intended seems also to be indicated by the side note of the section which was thus: "Punishment of prohibited immigrants if they have been previously dealt with as such."

Mr. McDonald, the Durban Indian Market Mastet, retired from the service at the end of last month. He was presented with an illuminated address and a purse of gold from the Indian staff, stall-holders and farmers attending the market.

In reply, Mr. McDonald heartily thanked the Indians for the honour they had done him. He found the Indians law-abiding, and added that they had given him no trouble whatever. The market was a paying concern, and the day was not distant when a proper market would be provided. The present building was inadequate for the proper carrying on of the market, and it was a wrong policy to use the street for such purposes. At least five acres of ground was necessary upon which to have a proper market. It was only just and fair that everyone patronising the market should receive equal treatment, and be provided with proper facilities for the disposal of their goods. In conclusion, he thanked the Indians for having so liberally subscribed towards the Mayor's War Relief Fund, as well as the Prince of Wales's Fund, and also to the recent Red Cross Fund sale.