

# Indian Opinion

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## (SIR PHEROZESHAH MEHTA'S CAREER

IT is impossible, in the brief space at our disposal, to give a full account of the life of such a strenuous and devoted patriot as the late Sir Pherozeshah Merwanjee Mehta. Springing from a race of foreigners, driven from their homes in Persia twelve hundred years ago, to find a new home in Western India where the Parsees are now firmly established, Sir Pherozeshah lived his life in and for India. This small community has produced some of the greatest men in India. Such men as Mr. Framji Cowasji, Mr. Dadabhai Naoroji, Mr. Naoroji Furdoonjee, Mr. S. S. Bengali, Mr. D. E. Wacha, Mr. Tata and Sir Pherozeshah Mehta, are fine examples of public men of whom any race would be proud indeed.

It should be said that, from the first, fortune uniformly favoured Sir Pherozeshah Mehta. He was born of respectable middle class parents on the 4th of August, 1845, and is one year younger than that intrepid lifelong associate of his, Mr. Dinshaw Edulji Wacha. His father was a successful partner of the firm of Messrs. Cama & Co., pioneer merchants first of China and then of London, and had fully realised the value of sound liberal education. He himself had won a name for literary activity and readily put him to college. Mehta belonged therefore to the first batch of young Indians who were recipients of a high-class European education. His college career was brilliant and he gave such high promise that Sir Alexander Grant took a peculiar liking for him. He graduated in 1864 and passed with honours his M.A., six months later. He being the first Parsee M.A., Sir Alexander Grant resolved upon securing him the benefit of a few years' residence in Great Britain, and he was sent up to train himself for the Bar with Mr. Rustomji Jamsetji Jeejeebhoy's travelling fellowship, which, however, became only partially available to him owing to the adverse fortune that overwhelmed that philanthropist.

Whilst studying for the Bar at Lincoln's Inn, he came into inspiring contact with Mr. Dadabhai Naoroji, who was even at that time fighting his lonely battle on behalf of India, and of course caught his genial spirit and fervid enthusiasm. Mr. Dadabhai Naoroji was closely connected with two important organisations, the London Indian Society and the East India Association, at which papers were read on Indian problems with a view to creating a healthy public opinion in England. Young Indians could avail themselves of the splendid opportunities their meetings afforded to train themselves for a political career. It was at these meetings that Mr. Mehta and Mr. W. C. Bonnerjee laid the foundations of a personal and a political comradeship that were to bear such brilliant fruit in after years.

While in England, Mr. Mehta himself read a paper at a meeting of the East India Association on "The Educational System of Bombay," which is an eloquent plea for liberal education. He held the view that India was in need of a system of thorough and advanced education in order to train those capable of rising above

the average and this could only be attained by the highest possible university course. Without disparaging in the least the modest usefulness of elementary education, it may be laid down, he said, that in India it must yield precedence to the question of high liberal education, and he continued to hold that view.

An evidence of his fearless independence was given so early as 1877, when at a public meeting held in the Town Hall of Bombay under the Presidency of the Governor, Sir Raymond West, he moved an amendment to the resolution on the Volunteer movement. The public meeting had been called in the name of the whole citizens of Bombay with a view to forming a Volunteer Corps solely and exclusively among the European inhabitants for the better preservation of the safety of the island of Bombay. But an one-sided and exclusive movement ought not to have been set on foot in the name of the entire citizens of Bombay, and when His Excellency asked if anyone wished to address the meeting, Sir Pherozeshah got up and moved an amendment to the effect that "it was not advisable to resolve on the formation of a Volunteer Corps composed exclusively of Europeans in a public meeting of the inhabitants of Bombay." The organisers of the meeting thereupon confessed that it was intended only to call a meeting of European inhabitants and the word "European" was inadvertently omitted!

We hope to give in our next issue further glimpses of this great man's character and career.)

## Indian Bearer Company

We are glad to be able to furnish our readers with the official confirmation of the arrangement regarding the payment of maintenance allowance to the families of members of the Indian Bearer Company. The interview with Senator the Hon. Marshall Campbell appearing in the *Natal Mercury* and which we reproduced in our issue of the 5th instant, was not, in our opinion, a definite statement, and seemed to leave the matter uncertain. We therefore obtained an interview with Senator Campbell and suggested that it was desirable that the arrangement outlined by him should be officially confirmed from the headquarters of the Governor-General's Fund at Pretoria. Mr. Campbell at once agreed that such confirmation was necessary and suggested our writing a letter to him, making the request, and he would see that the matter was brought to the Governor-General's notice. We readily fell in with Mr. Campbell's suggestion, and we have now received the following letter, dated the 15th instant, from Mr. Henderson, Town Clerk of Durban:—

"In reference to your letter of the 6th inst., addressed to Senator the Hon. Marshall Campbell, asking for confirmation of his statement re maintenance allowance to dependents of members of the Indian Bearer Company, I have pleasure in handing you herewith copy of

a letter from Lord Buxton to the Mayor, which I think gives the information you require. Should you so desire, this letter may be published in your paper."

The follow is the Governor-General's letter to the Mayor:—

Government House, Pretoria.  
10th November, 1915.

Dear Mr. Nicholson,—The Executive Committee of the Governor-General's Fund has been asked by the Durban Local Committee whether the dependents of the men serving in the Indian Bearer Companies now being raised in the Union are entitled to assistance from the Fund.

Under the original definition of its objects, the Governor-General's Fund is for "the relief of distress caused to persons who have been, or are, called out, or who volunteer in the service of His Majesty during the present war, or to their dependents resident in the Union."

It follows at once, therefore, from this definition that the dependents of men serving with the Indian Bearer Companies are eligible for assistance from the Fund.

The Executive Committee has decided that the extent of the assistance to be given must be fixed on the merits of each case after investigation by a Local Committee.

Believe me, Yours sincerely,  
Buxton.

### A Letter of thanks

The Editor INDIAN OPINION.

Sir,—The officer Commanding the Indian Stretcher Bearer Company, Stamford Hill Camp, would be glad if you would kindly allow him, through your columns, to thank the following for gifts gratefully received by the Company:—

Mrs. W. Burne, Stamford Hill, Books and Periodicals. Mr. Lawrence, 110 Field Street, Vegetables. Mr. Parsee Rustomjee, Soap 1 case and Matches. Mr. S. A. Naiker, Cigars 300. Mr. Rajkoomar, Milk daily. Mr. James Chinniah, The Bluff, Vegetables.

I. E. Briscoe, Major,  
Commanding I. S. B. Company.

Stamford Hill Camp,  
November 11th, 1915.

## (Important Cape Immigration Case

On October 5th in the Cape Provincial Division of the Supreme Court, Mr. Justice Kotze delivered reserved judgment as follows on the application of one Hassan Khan:—

This matter has come before the Court by way of petition, in which it is set out that the petitioner, Hassan Khan, came from India to Cape Town in the year 1902. The petitioner complains that he was wrongfully arrested and declared a prohibited immigrant by the Principal Immigration Officer in December last, but was granted a temporary permit to remain in the Cape Province for a certain period, which was extended from time to time, and expired on August 27th, 1915. It appears that in the months of November and December 1914, several Indians were arrested and declared prohibited immigrants. Certain allegations were made at the time as to irregularities in the Immigration Department, and certain grievances were expressed by the Indian community. In consequence of this, the Minister of the Interior, in April last, appointed a Commission to inquire into the working of the Immigration Department. Witnesses were examined in connection with this inquiry, and the petitioner, through his attorney, together with other Indians, tendered to give evidence.

A letter was written on behalf of the Cape British Indian Union to the Minister of the Interior, pointing out that there were Indians who could give evidence, and asking whether an undertaking could not be given that those who may give evidence will not be declared to be prohibited immigrants or deported, adding that if such an assurance were made, witnesses will come forward and give material evidence. To this letter a reply was sent by the Department of the Interior stating that, so far as the Department was concerned, the Commissioner who was to hold the enquiry, had been instructed that "an assurance should be given to the witnesses that no steps will be taken to deport, as prohibited immigrants, any of the men who come forward to give evidence in connection with the enquiry, and, further, that the Department will take no steps to prosecute them in connection with any matters arising out of the enquiry, provided that the evidence given by them justifies such a step." In a further letter from the Department of the Interior, the Cape British Indian Union was informed that the matter had been submitted to the Commissioner, and that he had replied by telegraph to the department that he had informed Mr. Baxter, acting as attorney for the Cape British Indian Union, and also for the petitioner, "that he is prepared, in specific cases of a special nature, to give an assurance that no steps will be taken to prosecute or deport as prohibited immigrants, any of the witnesses who come forward at the inquiry." The Commissioner, in his affidavit, states that Mr. Baxter approached him, and represented that he had witnesses in connection with the matters to be investigated by the Commissioner, and asked for an assurance so far as they were concerned. Mr. Baxter also explained to the Commissioner that he had statements from these witnesses which he declined to produce unless they were called. The Commissioner declares that he did not give Mr. Baxter an assurance that those giving evidence would be exempted from any proceedings to deport them, but told him that he was prepared to give an assurance in specific cases of a special nature. The Commissioner adds that, even in cases of witnesses who actually did appear before him, he declined to give any assurance in the case of anyone who had already been dealt with by the Immigration Department as a prohibited immigrant, and that the applicant, having been dealt with prior to his inquiry, could not have been given an assurance even had he given evidence. Mr. Baxter furnished the Commissioner with a list of persons who were willing to give evidence, and on this list was the name of the petitioner. The Commissioner informed Mr. Baxter that he would forward this list with a favourable recommendation, but he made no specific assurance in regard to the persons whose names were on that list. An assurance was, however, given by the Commissioner to certain seven persons that they would not be deported or prosecuted. A list of these seven persons, of whom the petitioner was not one, was handed to the Principal Immigration Officer, who in his affidavit states that he is instructed by the Minister of the Interior that only those whose names are on this list will be exempted from deportation, and that the petitioner is to be deported.

### A Breach of Faith?

The aid of this Court is now invoked on behalf of the petitioner on a twofold ground. First of all it is contended that there has been gross breach of faith by the Government which seeks to deport the petitioner, in violation of the terms of the assurance made to his attorney on his behalf, and that the Court, in the exercise of its equitable jurisdiction, will come to the petitioner's assistance and restrain the Department from deporting him. In the next place, it is contended that, as the petitioner is domiciled in Cape Town, he is not a prohibited immigrant, and cannot therefore be deported in terms of the Immigration Act No. 22 of 1913. It is no doubt to be regarded that the petitioner and his attorney seems to labour under the impression that

an assurance was definitely given by the Commissioner that all those Indians who were prepared to come forward and give evidence at the inquiry would not be treated as prohibited immigrants, and deported. But upon the information before the Court, I do not think that it can be accurately said that an assurance of the kind was given by the Commissioner to the petitioner and all others who were willing to tender their evidence, and whose names were on the list which Mr. Baxter handed to the Commissioner. The most that can be said with regard to that list is that the Commissioner undertook to submit it together with a favourable recommendation of his own to the Minister. He did not at any time give a definite assurance to the petitioner or to anyone else appearing on that list. The allegation, therefore, of a gross breach of faith has not been substantiated. And even had there been a breach of faith, it is difficult to see how the Court can, in the exercise of an equitable jurisdiction, as contended on behalf of the petitioner, come to his assistance.

As it has not been shown, upon the affidavits and documents before me, that an assurance was given to the petitioner, it becomes wholly unnecessary to consider what the legal position of the petitioner would have been had the existence of such an assurance been satisfactorily established.

The second point taken on behalf of the petitioner is the more important one, for it does not merely affect him, but relates to the liberty of the subject. On behalf of the petitioner, it is maintained that the evidence upon affidavit shows he was domiciled here before the Immigration Act of 1913 came into force, and that under section 5 (1) of this Act he can not be removed as a prohibited immigrant. On the other hand, it is contended that, any person found within the Union after the Act came into force, can be declared a prohibited immigrant by the Minister, and that, as the Minister has declared that the petitioner falls under that category, he must be deported, and cannot seek redress from the Court, which has been deprived of jurisdiction in the matter by section 3 of the Act. It will thus be seen that very great and drastic powers are claimed for the Minister, which may seriously interfere with personal liberty, and the Court be unable to afford any protection. As a general proposition of constitutional law, I quite agree with the observation, made by Wessels, J., in *Chotabhai v. The Union Government*, an observation which also met with the approval of the late Chief Justice (1911, App. Div. at p. 30). It is to the following effect: "This Court has an inherent right to prevent the Government or any official from interfering with the liberty of any resident within its jurisdiction. The person who claims to interfere with the liberty of a citizen must show that he has been given that right by the legislature. If he can show that he possesses that right, this Court will not interfere with his action, but every person resident within the jurisdiction of this Court is entitled to bring an official before the Court to justify his act of interfering with the applicant's liberty." The simple question, therefore, is whether the Minister possesses the power claimed of declaring the petitioner a prohibited immigrant with a view to his deportation and, if so, whether this power has been lawfully exercised in the present instance. Now, according to the affidavit of the petitioner, he came from India to Cape Town in the year 1902, and has resided here ever since that time. This statement is not traversed, and I must therefore hold that there is presumptive proof of the petitioner being domiciled within the Province. By section 4 (1) of the Immigration Act, any person, who is described in any paragraph of this sub-section and who enters or is found within the Union, shall be a prohibited immigrant. Among the persons so described are included any person or class of persons deemed by the Minister on economic grounds or on account of their standard or habits of life to be unsuited to the requirement of the Union. I was informed by Counsel for the respondent that it is upon this ground that the Minister

has arrived at his decision for the deportation of the petitioner. Section 5, however, provides that certain persons or classes of persons shall not be deemed prohibited immigrants, for the purpose of the Act, and among these, any person domiciled in any Province of the Union. By section 2 of the Act provision is made for the establishment of a Board whose duty it is to summarily determine appeals by persons who, seeking to enter or being found within the Union, have been detained, restricted, or arrested as prohibited immigrants. Save as is especially provided by section 3, the Board is to entertain exclusive jurisdiction in regard to the matters entrusted to it. Section 3, on which reliance is placed by the Minister, enacts that "no Court of Law in the Union shall, except upon a question of law reserved by a Board, have jurisdiction to review, quash, reverse, interdict, or otherwise interfere with any proceedings, act, order, or warrant of the Minister, a board, an immigration officer or a master, had, done, or issued under this Act, and relating to the restriction or detention or to the removal from the Union or any Province of a person who is being dealt with as a prohibited immigrant." The Board may, however, of its own motion, and must at the request of the appellant or of the Immigration Officer, reserve for the decision of a superior Court having jurisdiction any question of law which arises upon an appeal to it, and a question of law shall include a question of domicile.

(To be continued.)

## From the Editor's Chair

### CAPE IMMIGRATION CASE

WE publish in this issue the report of an important case heard recently in the Cape Provincial Division of the Supreme Court. It appears that one Hassan Khan, who claimed to have acquired a domicile in that Province, having arrived there from India in 1902, was declared a prohibited immigrant, but he did not appeal to the Immigration Board as he alleges that his witnesses were intimidated by the harsh procedure adopted by the then Principal Immigration Officer. The Court has held that, in the circumstances, it has no power to prevent this man's removal from South Africa, as he did not exercise the rights conferred upon him by the Immigration Law. Whether the Court is right or wrong in its interpretation of the law we do not profess to say, but if the man is deported, without further inquiry into the allegations made by him, a grave injustice will have been inflicted upon him. If Hassan Khan is domiciled in the Cape Province—and the Court said that there was uncontradicted evidence of this—he will be deprived of his rights by a technicality of the law. This is obviously not sympathetic legislation. And, further than this, this case should never have been allowed to go before the Court; for we understand that, even where a man has not entered a Province strictly legally, if he has resided there for a number of years and has thus acquired a vested right, the Government's policy has been not to disturb him or cause his removal. If our understanding of the Government's policy is correct, clearly the Principal Immigration Officer has acted in conflict with that policy.

From an examination of the applicant's petition, it would seem that Hassan Khan gave his evidence before the Cape Immigration Commission on the understanding that he would be indemnified. However this may be, it is admitted that his name was included in a list recommended for indemnity by the Commissioner, but the Government did not accept the recommendation. In the first place, the Cape Commissioner does not appear to have interpreted his instructions as liberally or humanely as his colleague who conducted the Trans-

vaal Inquiry. But then the latter was not under the thumb of the local Immigration Officer, as has been alleged by those who know how the Cape Inquiry was conducted. In the second place, the Government, in our opinion, were morally bound to accept the Commissioner's recommendation. That they did not, and yet made use of the evidence of those who, through a mistaken idea of the extent to which they were protected, came forward to assist the Government, is extremely unfair and ungenerous. We fear that this case will create a most unpleasant impression in the Indian community, who will resent this unsympathetic treatment of unfortunate people whose worst fault is that they trusted false permit agents, on the one hand, and the liberal interpretation, shared by the Transvaal Commissioner, of the terms of the Government's indemnity, on the other.)

#### A GRACEFUL ACT

WE referred briefly in our last issue to the case of Mr. Ahmed Essack, who was under order of deportation, but in whose behalf a final appeal had been made to the Minister. We are glad to be able to announce that the appeal has been successful and that the Government have been good enough to cancel the order and allow the old gentleman to pass his days in this Province in the bosom of his family. This is an example of what it is possible to do by means of a simple petition such as the one sent in this case to the Minister. The signatories thereto represent the majority of the Indian residents of Durban and district, and the Minister must have realised that such a united, popular expression of intense feeling was not to be ignored. The Government have done well in adopting a sympathetic attitude in this case and they are entitled to the thanks of the community for thus overruling the letter of the law and turning a sympathetic ear to this prayer. Such humane acts on the part of the Government are encouraging, and we hope that they will show a similar spirit in regard to other cases, such as the one reported from the Cape and others that demand treatment in accordance with the broad spirit of the settlement.

#### PROVISION FOR DEPENDENTS

ELSEWHERE we report an interview with Senator the Hon. Marshall Campbell and subsequent correspondence regarding the maintenance allowances to be made from the Governor-General's Fund to the dependents of the members of the Indian Bearer Company. His Excellency Lord Buxton has been pleased to confirm the arrangement outlined by Mr. Marshall Campbell. Each case will be taken on its merits and payments will be made according to needs. This raises the question of deciding as to the requirements of each family. We understand that, in the case of Europeans, a special committee has been appointed to decide what is true and fair—no easy task. Now if it is difficult to fix upon a fair allowance to a European family, how much more difficult it will be for the same committee to decide in the case of Indian families, even if this Committee has not already too much in hand in dealing with Europeans. It would not be fair to expect such a committee to undertake the duties. What, then, should be done is that the local Committee of the Governor-General's Fund should appoint a sub-committee to investigate the requirements of Indian families. Such committee should consist of Europeans and Indians. Senator Marshall Campbell is taking such a deep interest in the Indian volunteers and the Overseas Contingent Fund that we believe he would be willing to become a member of the sub-committee. He enjoys the confidence of all sections of the Indian community. Other Europeans might be willing to sit on this committee—say two others beside Mr. Campbell. In regard to the Indian members, we would suggest that His Worship the Mayor should nominate five well-known and respected members of the community. We should like to see at least one European and one Indian lady on this com-

mittee. We feel sure that, if so called upon, they would willingly respond. We are aware that such a position is a thankless one, but we feel that a sense of duty will prompt them to accept it in the interests of those who are doing a greater service by sacrificing all for King and Empire.

### The Case of Mr. Ahmed Essack

The following is a copy of the petition, referred to in our last issue, addressed to the Minister of the Interior, Pretoria:—

WE, the undersigned members of the Indian community resident in the Natal Province desire, humbly and respectfully, to bring to your notice the exceedingly unfortunate circumstances in which one Ahmed Essack finds himself, he having received a final notice from the Principal Immigration Officer in Durban to leave the Province as a prohibited Immigrant, and confidently hope the same will receive your favourable and sympathetic consideration.

We are informed that the whole of the circumstances of this aged gentleman's case has been placed before you in a letter addressed by Mr. Anderson, Solicitor, of Ladysmith, acting on behalf of his client, the said Ahmed Essack. It is unnecessary for us to repeat here what has already been stated fully. We beg of you to discard any mistakes that may have been made in the representation of his case and see that such an old and highly-respected member of the Indian community and an old resident of this Province is not driven away from it because of a mere technicality. We know as a fact that Ahmed Essack has resided in Natal for upwards of 27 years, doing business in Durban, Ladysmith, Stanger and Verulam. He has been a Trustee of the Ladysmith Mosque for a considerable number of years and still is. He has a large number of relatives, including sons, daughters and grand-children who, with their families, are settled in the Province. It is the desire of his relatives that he should remain in Natal and spend his declining years in comfort. Moreover, there are many members of his family laid to rest in this country and his one desire is that he, too, may, in the course of time, rest with them. He is at present under the doctor's care and is not in a fit condition to undertake any voyage. The doctor's certificate relative thereto is in the hands of the Principal Immigration Officer here.

We venture to express our humble opinion that it would be cruel and unjust to allow this old man, who is 77 years of age, to be deported like a criminal, notwithstanding his long and continuous residence here. His is, we humbly submit, a very exceptional case.

We sincerely trust that our appeal for clemency will, not be in vain, and are confident that you will be graciously pleased to grant Mr. Ahmed Essack's request that he may pass his remaining days in Natal, surrounded and cared for by his relatives and friends.

We leave the matter entirely in your hands, believing that justice will be done and sympathy extended in this case.

We have the honour to remain,  
Your obedient servants

Dawad Mahomed, Chairman, Natal Indian Association.

E. M. Paruk, Treasurer Natal Indian Association.  
Omar Haji Amod Jhaveri, L. Gabriel, Joint Hon. Secretaries Natal Indian Association.

M. S. Randaree, Chairman, Anjuman Islam.  
Parsee Rustomjee, President, Natal Zoroastrian Anjuman.

V. Lawrence, President, Catholic Indian Young Men's Society.

Mr. Dawad Mahomed and Mr. Ahmed Essack have received a communication, which we shall print in our next issue, granting the relief prayed for.