

Indian Opinion

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MORE "SYMPATHETIC" TREATMENT

THE following letter, dated the 4th instant, was addressed by Mr. Polak to the Acting Secretary for the Interior, Pretoria:—

I am instructed to request the Minister's intervention in the case of Mahomed Mahmood Dahya and Ahmed Mahomed Dahya. Both are orphans since infancy, in each case the parents having died of plague. The first-named is at the present time aged about 11 years, and, upon the death of his parents, he fell into the charge of his aunt, a sister of his father, who subsequently married Mr. Mahomed Suliman Mia of the firm of A. M. Suliman Mia, of Johannesburg. Upon her marriage with Mr. Mia the latter assumed the guardianship of this child and, upon the death of his wife, and his subsequent re-marriage, he brought the child to the Transvaal with him from India upon a temporary permit. Practically ever since his arrival in Johannesburg, the boy has been a student at the Government Indian School. In the case of the second boy, who is aged about 13 years, he came to South Africa under the guardianship of his elder brother, Suliam Mahomed Dahya, who is a registered resident of the Transvaal. The latter has recently been called to India on urgent business and intends to return shortly. The only other near relative of this boy is Mr. Hassan Sale Mia, Merchant of Johannesburg, who married the boy's elder sister. This boy, too, has been a student at the Government Indian School since his arrival.

"I am instructed to represent that a grave and cruel hardship will be imposed upon these children if, at the present time, they are removed from the Transvaal, as in India there is no near relative who can look after them. I feel assured that it was never the intention of Parliament that in cases of this kind, children of tender years should be sent away from this country, even though, strictly speaking, they are not legally entitled to be here, whilst they are in the care of responsible members of the community nearly related to them and who have assumed the obligations of guardianship and without any provision being made for their intellectual and material welfare. I have been given to understand that these cases have been presented to the Honourable the Minister for consideration as to whether or not he should exercise his discretion under section 25 (1) of the Immigrants Regulation Act of 1913, and that the Minister has declined to exercise his discretion thereunder. I am now, therefore, instructed respectfully to request that the Minister will be pleased to allow these boys to remain in the Transvaal under their present guardianship and, under due security, until such time as they reach the age of 16 years. Should the Minister be pleased to extend this act of grace, it will be deeply and gratefully appreciated by the relatives and also by responsible members of the Indian community who are acquainted with the circumstances and who are anxiously concerned lest a grave hardship should be inflicted. I beg, therefore, to request that you will be pleased to place this corres-

pondence before the Honourable the Minister at an early date.

With further reference to your telegram under reply, I do not know whether it is within your knowledge or under your instructions that this day a prohibition notice was served upon these two boys who were called upon to make a deposit of £10 each, upon the instructions of the Principal Immigration Officer. I venture to think that this action was unnecessary in the circumstances, especially having regard to your assurance that action would be delayed, and I venture, therefore, to request that the prohibition notice be withdrawn.

"Thanking you in anticipation."

The Acting Under-Secretary replied, on the 17th instant, as under:—

"With reference to your letter of the 4th instant representing the cases of the boys Mahomed Mahmood Dahya and Ahmed Mahomed Dahya, I have to inform you that these have been carefully considered, and the Minister regrets that he is unable to afford the desired relief."

Mr. Polak acknowledged the above letter on the 18th instant, and on the 22nd instance again wrote to the Acting Secretary for the Interior as follows:—

"With further reference to your letter No. 5/A/346 of the 17th instant, and to my letter in the same matter of the 4th instant, I beg to inform you that the boys, Mahomed Mahmood Dahya and Ahmed Mahomed Dahya, were surrendered to-day to the representative in Johannesburg of the Principal Immigration Officer. I understand that the latter was prepared upon payment of a fee of £1 in each case, to issue Temporary Permits to these boys, conditionally upon their leaving South Africa for India by the steamer leaving Durban on the 28th instant. Having regard, however, to the circumstances set forth in my letter herein of the 4th instant, the guardian has not felt morally justified in taking any steps by which he would make himself responsible for sending these homeless children back to India, and he has, therefore, declined the said temporary permits, feeling that the responsibility for such removal should fall upon the Government. I am now instructed to request a refund of the deposit of £10 in each case made by Mr. Mahmood Suliman Mia, as security for the due appearance of the boys, and I shall be obliged if you will kindly authorise the same."

[NOTE: We are advised that a last attempt was made on Thursday, the 23rd instant, to induce the Government to reconsider their decision by producing the boys in person before a high executive officer in order that ocular demonstration might be given of the extreme hardship that would result from the deportation of the children. This effort, however, ended in failure. —Ed. I.O.]

Important Transvaal Judgment

In the Supreme Court of South Africa (Transvaal Provincial Division), the application of Narayansamy (otherwise known as Kathayen) vs. the Minister of the Interior and the Registrar of Asiatics, was heard, Mr. B. A. Tindall being for the applicant, and Mr. Ferris, for the respondents, before Mr. Justice Wessels, and judgment was given as follows on the 17th ulto. :-

The petitioner alleges that he is a British Indian born at Umzingo in Natal, that in 1895 or 1896 he was brought into the South African Republic by his father, who was killed in an explosion at the Modderfontein Dynamite Factory. The petitioner further alleges that after the Boer War, he remained in the Transvaal, and applied for a permit under the Peace Preservation Ordinance, and received from the authorities documents which purported to be those for which he made application. In 1908 he made application for voluntary registration, but received no reply. He further states that he was a passive resister, and was deported to India in 1910, on the ground that he failed upon demand to produce a certificate of registration made by an authorised officer. He subsequently returned to Natal and was allowed to land. In 1912, whilst in Natal, he made a further application for registration under Act 36 of 1908, and again received no reply. In 1913 he was again a passive resister, and entered the Transvaal with the passive resisters during the Indian strike march to Volksrust. After that the petitioner alleges that he was allowed to remain unmolested in the Transvaal, until last January, when he was arrested for being without a registration certificate as required by Act 36 of 1908. The Magistrate ordered him to make application for registration under the Act. He did so, but his application was not considered by the Registrar of Asiatics. In November 1915, the petitioner was again arrested on a warrant purporting to be issued under Section 21(a) of Act 22 of 1913, and upon this warrant the Government threatens to deport him.

The petitioner has approached the Court and has asked it to declare, (1) That the warrant is no proper warrant in terms of the Act; and (2) that, if it is a proper warrant, it should not be executed, because the petitioner falls outside the Act, inasmuch as he was born in the Union.

Mr. Tindall has argued that the document upon which the petitioner was arrested, is no warrant under the Act, inasmuch as it does not set out that the petitioner was born outside the Union. He contends that the form of the regulations, published in terms of the Immigrants Regulation Act, has not been strictly adhered to, as in law the Government was bound to do. He relies upon the case of the Minister of the Interior v. Farmer 1914 T.P.D. p.130. This case is not in point, first, because the regulation, upon which that case has been decided, has been altered, and the words requiring a recital of the circumstances have been deleted, and secondly, because there is no indication, either in the Act or in the regulations, that the warrant should set out the grounds of the arrest, or the justification for the arrest. The warrant in question sets out that the petitioner unlawfully returned to the Union after having been deported, and that he is to be removed from the Union, and is signed by an officer authorised to sign. In these circumstances it appears to me that the warrant complies with all the necessary requirements of the Act, and with the regulations, and cannot therefore be called into question by this Court.

Mr. Tindall's second contention is a much more important one. He claims that the Government is not entitled to deport his client, because he is prepared to show that his client was born in the Union. Section 21(a) of Act 22 of 1913 does not affect persons who have been born in the Union; they are completely outside the Act. The Minister of the Interior has no right to cause them to be deported, whether they fall under the definition of prohibited immigrants or not, and this Court has jurisdiction to prevent such deporta-

tion. This contention raises two difficult questions:— (1) What is the exact scope and policy of the Act? and (2) Has the Act taken away the jurisdiction of the Court to enquire whether the petitioner does or does not fall under the class of persons whom the Government may deport?

I may preface my remarks by saying that the Act is not a model of clearness or method. Several distinct classes of persons are dealt with by the Act—the prohibited immigrant, the undesirable inhabitant, and certain other persons. The undesirable inhabitants appear under the heading "general and miscellaneous" in section 22. It was this section which was interpreted in Farmer's case, and as we are not concerned at present with the undesirable inhabitant, we may dismiss him with this passing notice. Section 4 tells us who are prohibited immigrants, and section 5 who are not, and if this definition of prohibited immigrant is exhaustive, the petitioner cannot be regarded as a prohibited immigrant, and the Court would have full jurisdiction to deal with him, for section 3(1) only relates to prohibited immigrants.

If the Legislature had not expressed a contrary intention, then every resident of the Union would have the right to appeal to the Courts, and the Courts would protect the liberty of the subject even against the Crown. Apart from any legislative enactment, there is an inherent right in every subject, and in every stranger within the Union, to sue out a writ of HABEAS CORPUS. This right is given not only by English law, but also by the Roman Dutch law. (De libero homine exhibendo Voet, 43. 29.) Prima facie, therefore, every person arrested by warrant of the Minister, or by any other person, is entitled to ask this Court for his release, and this Court is bound to grant it unless there is some lawful cause for his detention.

If an Act of Parliament gives the Government the right to arrest or deport a person, but excludes such persons as are born in the Union, then apart from any special legislative provision, the ultimate judge of whether a person is or is not born in the Union is the Supreme Court of South Africa in its various divisions. It is contended by Mr. Ferris that section 3(1) deprives the Court of this jurisdiction, whilst Mr. Tindall replies that section 3(1) is not sufficiently explicit in this respect. His argument is that a person born in the Union falls wholly outside the Act; neither Sect. 3(1) nor any other section affects him; and every person in the Union is entitled to ask this Court to say that he was born in the Union, and, therefore, is unaffected by the provisions of the Act, whether the Minister or any other officer has or has not granted a warrant for his arrest. *It is not a contention that can be dismissed lightly, for the contrary view strikes at the very root of our civil liberty. Moreover if two readings are possible, the court is bound to maintain that view which preserves its jurisdiction to protect the liberty of the subject, on the principle, LIBERTAS INVIOLABILIS EST ET DEFENDITUR A LEGE ET A PRINCIPE.*

This brings me to a consideration of the policy of the Act. The Act says there is to be an Immigration Department to carry out the powers and duties conferred or imposed upon it by Act No. 22 of 1913 or by any other law. It then proceeds to create Boards in the various Provinces, for the summary determination of appeals by persons who, seeking to enter, or being found within the Union or any Province, have been detained, restricted, or arrested as prohibited immigrants. Every person may appeal to this Board, and it is clear from section 1 sub-section 6, that the primary meaning of person is British subject, for the section provides that "Every person may appeal to the Board having jurisdiction under this section. For the purposes of this sub-section 'person' shall include an alien." Although called a Board, it is virtually a Court presided over, whenever possible, by a magistrate. The person who appeals from the decision of an administrative officer gives notice of his appeal, a day for hearing is appointed, the appellant may be represented

by counsel or attorney, witnesses may be summoned, the oath may be administered; it is similar to a court of record, for the evidence is to be taken down in writing. If so advised, the Board may refer a question of law to the Courts. Then follows section 3 (1), of which the *essentia verba* are:—

"3. (1) No court of Law in the Union shall, except upon a question of law reserved by a Board as in this section provided, have any jurisdiction to review, quash, reverse, interdict or otherwise interfere with any proceeding, 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 the removal from the Union or any Province, of a person who is being dealt with as a prohibited immigrant."

It seems to me therefore that the Legislature intended that the Board should take the place of the ordinary Courts, and that all appeals from Acts of administrative officers purporting to be done under Act No. 22 of 1913, should be heard by this Board only. The Courts of law are only to assist the Board, if the Board itself thinks there is a question of law involved, which it is not prepared to decide. The Boards are substituted for the Courts of law as far as prohibited immigrants are concerned. The person who is born under the jurisdiction of the Supreme Court of South Africa is not interfered with. It is only the person who comes from elsewhere for whom this special court is established.

If a warrant is issued by the Minister or his lawful substitute, or by an immigration officer, and such warrant deals in fact with any person who is a prohibited immigrant, the Court has no jurisdiction to interfere in any way. If however the person is not a prohibited immigrant, and is a person born in the Union, the Board does not take the place of the ordinary courts.

Now the applicant was arrested under a warrant which purports to be a warrant for the removal of the applicant under section 21 of the Immigrants' Regulation Act of 1913, and it states that the applicant has rendered himself liable to deportation inasmuch as he returned to the Union after having been deported therefrom. This in itself does not make the applicant a prohibited immigrant to whom Section 13(1) applies. Under the Transvaal Immigrants' Restriction Act of 1907, Sec. 2, the applicant would have been a prohibited immigrant, but this law is repealed and therefore we can take no notice of it. As far as I am aware, there is, at present, no law in existence by which the applicant can be regarded as a prohibited immigrant. I had some doubt upon the subject, and I specifically asked Mr. Ferris if he knew of any law by which the petitioner can be regarded as a prohibited immigrant, and he has not been able to satisfy me of the existence of any such law. It appears to me therefore the applicant is entitled to ask this Court to say that he is a person born within the Union, and that therefore he cannot be deported under the warrant in question signed by Mr. Shawe.

This Court cannot decide whether applicant was born within the Union upon the affidavits filed. The Court will therefore appoint a day on which the applicant may appear before this Court, with his witnesses and have any, to show the Court that he is a person born within the Union, and that he therefore falls outside of Act No. 22 of 1913, and cannot be deported upon the particular warrant signed by Mr. Shawe. The parties to intimate to the Court what day will be convenient, and the costs to follow the results. Pending this enquiry, I cannot express any opinion on the question raised by the applicant.

[N.B.—The italics in the above judgment are ours, and the paragraphs so italicised eloquently speak for themselves. As an appeal to the Appellate Division of the Supreme Court has been noted by the Crown, we are precluded from commenting upon the terms of the learned Judge's decision.—Ed. I.O.]

From the Editor's Chair

INDENTURED LABOUR

It would appear, from statements made in the Indian press, that the Government of India have unanimously recommended, in a recent dispatch to the Secretary of State for India on the subject of Indian indentured emigration, the complete abolition of this discreditable system. If the Indian press is well informed, we are sure that the whole of India will unite to express unbounded gratitude to Lord Hardinge and his Government at the action they have taken, and the hope that the Imperial Government will take the earliest possible steps to give effect to the views of the Indian Government. We are sure that, had he been alive to-day, no one would have rejoiced more at this news than the late Mr. Gokhale, to whom India owes it, more than to any other single individual, that this decision has been taken. No one who was present at the famous debate in the Imperial Legislative Council at Calcutta in 1912 will have forgotten the moral fervour with which Mr. Gokhale denounced, in unsparing terms, an immoral system, discreditable alike to the Government and to the people of India. We in South Africa join cordially in congratulating Lord Hardinge for what will be one of the last, but also certainly one of the most important, efforts made for the uplift of India during his period of administration.

ON "SYMPATHY"

THERE are apparently two kinds of sympathy, one being that to which the ordinary significance is attached, whilst the other is written in inverted commas. The first was the kind that the Indian community imagined the Government to mean when, at the time of the settlement, in 1914, it undertook to extend sympathetic treatment to the Indian community. The other is the kind that has, in fact, been meted out in recent months. To what extent, of course, the influence of the Principal Immigration Officer has been used, we are unable to say, though we have reason to believe that in any application to the Minister for special consideration of a particular case, a report is called for from that officer. Nevertheless the final responsibility for the extension of "sympathetic" treatment in a given case rests directly with the Minister and the public cannot allow that responsibility to be shifted. We showed not long ago, in the case of young Kadodia, how "sympathetically" the Minister had dealt with his moral claims to residence in the Transvaal. Other cases of just as bad a type are within our knowledge, and we shall possibly have to refer to them at some length on a future occasion. In another column in this issue, however, will be found as tragic a case of "sympathetic" treatment as the most hardened anti-Asiatic could desire. In the case of the boys Dahya, the Minister has even refused to allow them to remain at school in the Transvaal under the eye of their natural guardians until the age of 16 years, so that they might, to some extent, be equipped for the struggle for life. No reasons are given for this point blank refusal, and we are bound to admit that Mr. Mahmood Suliman Mia has acted rightly and courageously in refusing to burden his conscience with the responsibility for deporting from South Africa, to God alone knows where, these innocent victims of what we can only describe as "Teutonic" methods of administration. Dreadful indeed the thought that these children might remain to the eternal injury of the white population in the Transvaal! Such "sympathetic treatment," in our opinion, is directly opposed to the spirit of humanity and tolerance in which Parliament granted to the Minister wide powers of discretion to grant exemption in special cases. It may well be that, in particular instances, an act of grace is performed by

the Government, but we have reason to believe that in many such cases it has been ill-merited and obtained by fraud or intrigue. In the instances where such an act of grace has been deserved, the Indian community is not made aware of it by the Government. To do good by stealth is admirable. Why nullify the good thus done by cruel and intolerant administration in cases which are bound to appeal strongly to the humane instincts of South African Indians and their brethren in India?

The British Indian Association

[FROM OUR OWN CORRESPONDENT]

Johannesburg, Tuesday.

At a full committee meeting of the Transvaal British Indian Association yesterday, attended by representatives from outside districts, an important resolution was passed by virtue of which Mr. A. M. Cachalia, the chairman, hereby invites various special committees and societies of Transvaal Indians to appoint their representatives to attend a Conference of such representatives to be held at Goldberg's Bioscope Hall, Johannesburg, on Sunday, 9th January, 1916, at 10-30 a.m., to elect provisionally a new Executive and Committee of the British Indian Association.

The chairman was also authorised to convene in Johannesburg a public meeting in the afternoon of the 9th January, at 3 p.m., at a place to be hereafter announced, to confirm such elections and protest against certain grievances created by Government's interpretation and administration of the immigration laws.

Indentured Indians' Contribution to the War Fund

Mr. Wm. A. Campbell, Managing Director of the Natal Estates Limited, Mount Edgecombe, writes to us as follows:—

Dear Sir,—It may interest you and your readers to know that last pay day the Indians on our estates subscribed the sum of £38 10 10 towards the Governor-General's Fund. The amounts collected by the different estates were as follows:—

Mount Edgecombe Fields	£4	2	6
Cornubia	6	13	4
Saccharine	8	1	0
Milkwood Kraal	4	0	0
Blackburn	13	11	6
Phoenix	2	2	6

while last month the mill men subscribed £9 9s. 6d.

Indentured Labour to be Abolished?

Delhi, Nov. 12.—Although no further details about the Government of India's despatch of Indentured labour are yet available, it is understood to be a document of a far reaching character. It covers points raised in the report submitted last year by Messrs. McNeill and Chiman Lal, after enquiring into the indentured labour conditions in the Crown and Dutch Colonies. This was circulated to all the Local Governments and their opinions were received in due course after careful consideration of the whole question. The issues are narrowed down to two points, (a) whether the present system should be continued or (b) abolished. It is understood that the abolition has been urged by the Government of India, and it is now for the Secretary of State to decide. His Excellency the Viceroy has taken great interest in this question, and his name will ever be associated with the abolition of indentured labour in this country.—

Bombay, Nov. 12.—In connection with the announcement that an important despatch has been sent to the Secretary of State by the Government of India on the question of indentured labour the *Bombay Chronicle* says:—

"It would have been a disaster of the first magnitude if the Government of India had followed the example of the compilers of the Report in treating the question as they treated it from an almost exclusively economic point of view and ignored its political and social aspects. But under the wise guidance of Lord Hardinge that was hardly likely, and we are gratified to learn that the Government of India have unanimously expressed themselves against the system of indentured labour and have recommended its abolition to the Secretary of State, a recommendation which we trust will not be ignored by Whitehall. To Lord Hardinge of course must be given the chief credit for this far-sighted action and his name will for ever be associated with the abolition of a system akin to slavery which has existed too long under the official recognition. Its abolition will go far to re-establish the prestige and status of Indians in the Crown and self-Governing Colonies.

Under the auspices of the Districts Congress Committee in Bombay, Mr. M. K. Gandhi recently delivered a lecture on Indentured Indian Labour before a large gathering at the Empire Theatre, when Sir Ibrahim Rahimtullah presided. He pointed out that the two commissioners, Messrs. MacNeil and Chimanlal, had advised the fulfilment of certain conditions which, in the very nature of the contract, were impossible of fulfilment. They made a mistake in thinking the indentured labourer to be an independent man. He was bound hand and foot to his employer. They should decline to perpetuate this hateful system of indenture because it robbed them of their national self-respect.

A Prize Essay Competition

A Prize of Rs. 100 has been generously offered by Mr. C. P. Ramaswami Aiyar, High Court Vakil, Madras, for the best Monograph or Essay on the subject of Indian Emigration or any branch of it. It is the intention of the donor that a large number of Indians should make a scientific study of this important Imperial Problem, and this is intended only as an encouragement. The Essay should cover not less than 30 and not more than 50 pages of full foolscap size, typewritten on one side of the paper only. (1) The competition is open to Indians only, resident in India or abroad. (2) The Essay should reach the Office of the *Indian Emigrant*, Madras, on or before 1st May, 1916. (3) The subjects selected should deal with the Social, Economic and Political aspects of Emigration in separate parts, the details of subjects under these headings being left to the discretion of the writers. One or not more than two aspects should be attempted under each heading. Preference will be given to original and practical suggestions for improving the condition and status of Indians throughout the world and the best means of bringing about better relations between Indians at home and abroad.

It is requested that each candidate while sending his Essay will also add, if possible, a list of books consulted in the preparation. The Editor of the *Indian Emigrant* reserves to himself the right of making use of these articles without reference to the writers after the award of the Prize.

Any communications on the subject may be addressed to The Editor, *The Indian Emigrant*, 33, Broadway, Madras.

We have decided to offer the remaining copies of the "Golden Number" at one shilling. We still have some copies of the "Gokhale Souvenir" which we have decided to offer at 1s. 6d. The postage on each of these books is 3d.