

# Indian Opinion

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## NOTES AND NEWS

THE appeal to the Magistrate in connection with the Town Council's refusal of trading licences to certain Asiatics, was heard before Mr. Britten, at the local Court (says, the *Potchefstroom Herald*) the proceedings taking the form of a test case, one only of the applications for a grocer's licence—Suliman Tayob—being taken. It was agreed that the Court's decision in this case should be applicable to the remainder.

Dr. F. E. T. Krause with him Advocate Pyemont and Mr. L. W. Ritch) appeared on behalf of the applicants, and Mr. L. J. Phillips, assisted by Mr. A. R. Fleischack, (Town Solicitor), represented the Municipality.

The only witness called was Mr. W. S. V. Hosking (Town Clerk), who put in a copy of the minutes containing the Council's resolutions with reference to the refusal of the applications. The witness was examined by Dr. Krause as to the nature of the evidence which was taken at the sitting of the Council at which the applications were made. There was no objection, said witness, lodged by any member of the public. This particular applicant had been in business in the Potchefstroom District for some ten years and there was no record of any conviction against him nor of anything detrimental to his character.

Pressed by Dr. Krause to give specific reasons why the Council considered Asiatics undesirable to hold licences, the witness replied, among other considerations, the low rate of pay given to employees, their low standard of living and social life, and the nuisance they caused to their white neighbours. Reference was also made to the fact that there was considerable doubt as to the legality of their residence in town at all, and as to whether they might not be confined to the Asiatic Bazaar. Another point touched upon during the discussion was the possible evil of improprieties between woman of the poor white class and unprincipled Indians. The cumulative effect, added witness, of these considerations, was that the Council came to the conclusion that the applicants were undesirable persons.

From the decision of the Magistrate, which will be found in another column, it will be seen that this view of the Council was considered a good and sufficient reason for refusing the licence. We deal more fully with the matter in our leading article.

Another cable has been received from Mr. Andrews that he is delayed and that he will arrive by the *Karagala* about the 15th January.

The number of trading licences issued to Asiatics in the Transvaal alone during 1919, from January 1 to October 10 was 2,237. These staggering figures (says the *Matatiele Mail*) are quoted month by month, from the *Government Cassette*. No wonder there is an anti-Asiatic agitation! All the trouble would be saved if the Government had the courage to refuse trading licences to every man, white or yellow, who did not

take a part in the late war. We are not anti-Asiatic in the general sense; the Indians are good workers, and good producers, and South Africa has room for millions of the poorest class. But we are more than ever convinced that trading should be, in this country, the white man's prerogative.

The above figures have been quoted by the *Natal Mercury* and other newspapers and speakers as being new licences (fresh applications) whilst in fact that figure represents the total licences issued—quite a different matter.

The opinion expressed above that there is room in South Africa for millions of the poorest class of Indian producers, but that trading should be the white man's prerogative is frankly brutal. That, in a nutshell, is the essence of the anti-Asiatic agitation. Indians should be content to work for the white man!

### A SERIOUS SITUATION

THERE is not the least doubt that the position of the British Indians of South Africa is a critical one. The trading and land questions strike at the root of the Indian community's very existence. The year 1919 has seen a series of hammer blows showered on the heads of the Indian traders of the Transvaal. The first blow fell at Krugersdorp in the first month of the year when the terms of the Gold Law were put into operation against long-established Indians. This, whilst being a legal decision of the Court, constituted in practical effect a breach of the 1914 Settlement in regard to vested rights. On the petition of certain members of the Transvaal British Indian Association, a Parliamentary Select Committee was appointed by the Government to inquire into the matter. The result is well-known. The Land and Trading Act, subsequently passed by the Union Parliament, seemed to protect a certain number of Indian traders and land owning companies, whilst depriving the community generally of the vested right to trade and the legal right to hold land in the names of Indian limited liability companies or European nominees.

Whatever relief there might be in this Act is nullified however, by subsequent decisions of the Courts. In our last week's issue we published a summary of the judgment delivered by Sir John Wessels in the case of Dadoo Ltd. The decision appears to rob even those who were specially protected by the new Act of their right to retain the properties already transferred to them in terms of the Companies Law. This judgment will affect all the registered Indian companies and their ownership of landed properties. This judgment upholds the principle laid down in the Gold Law the land could not be transferred to an Indian or coloured person.

The Magisterial decision in the case of the Potchefstroom grocery licence is the most recent and very severe blow received by the Indian community. In the first case, the applicant, Mr Nulman Teyob, had resided in the Transvaal since 1898. He had kept a store in the District for ten years and understood the Dutch language. No objection was made to his application by the public and there was nothing whatever against his character. Still the Municipal Council refused the Grocers' Licence on racial and "economic" grounds. Readers will find the judgment reproduced elsewhere in this issue. The cumulative effect of the discussion in the Council was that the applicant was not a "desirable person." It was admitted that the considerations which influenced the Council would not have applied if the applicant had been a European. The Magistrate, in the course of his decision, said that the granting of licences in towns where residence of Indians would follow in consequence was in conflict with the express provisions of the legislature and therefore contrary to the public interest. *In agreeing that class distinctions have legislative authority, the Council had not acted arbitrarily or capriciously.* This decision affects all Indian traders dealing in foodstuffs, and it can be extended, as has been shown, to a silk merchant—and therefore to every trader.

So, as we have repeatedly emphasized in these columns, there is but one question. The principle of class distinction is the root of all our difficulties. Law 3 of 1885 is the source from which all other hardships arise. Because, under the old Republican Law, we are stigmatised as being unfit to hold any permanent rights at all, we are barred from the ordinary rights of citizenship and even prevented from earning a livelihood in a self-respecting manner. It is, therefore, futile to plead for palliatives such as the privilege of holding a licence or owning property.

Mr. Andrews arrives at an opportune moment. He will, we have no doubt, bring his mind to bear upon all aspects of the question, and will be able to use his powerful personality in our favour. But we should be more than foolish if we were to imagine that our status can be raised by any "arrangement" which might result by his visit. If we ourselves, as a self-respecting portion of the population of the Union, cannot demand and secure a *legal* status, we are doomed.

### THE BECKETT JUDGMENT

#### KRUGERSDORP COUNCIL AND INDIANS

After a long delay, and some considerable trouble, we have been able to secure the following report of the famous Beckett case:—

A judgment of considerable interest to the Reef Municipalities has been delivered by Mr. Justice Mason in the Supreme Court, Pretoria, in a case in which the Municipal Council of Krugersdorp applied for an order interdicting Mrs. T. W. Beckett & Co. from permitting a residence of Indians or coloured persons on certain stands which they own in Market Street in Krugersdorp.

The learned Judge said: "There is no question that the order must be granted against the respondents, but it must be qualified, he thought, by the words 'other than the *Bona-fide* servants of the respondents.'

Discussing the question of costs, his Lordship said the applicants had obtained, not all they asked for, but a very substantial portion of their claim. It was contended that the proper course to have adopted would

be to include the Indians so as to eject them, and this order could not really have any operative effect because it did act as an ejection of the Indians. He did not understand that all the Indians in these stands had a large amount of stock, but that at any rate, most of them had and he did not think it could be contended that the tailor who occupied the shop, with his cousins, had £5,000 worth of stock. The substantial point was this: Here was an application, partly which was successful. It was true that no letter demand was issued. If therefore, the respondents desired to avoid the costs, their proper course was this, as soon as they received notice of the application to say: "We do not contest the application; we are prepared to give you our assurance that no Indian will be permitted to reside on the premises, and you need not go to Court at all." If they had given this assurance there would have been a great deal to be said for the contention that no costs should be given against them. But there was nothing in the nature of a tender, and a tender was as much obligatory on the respondents, if they wished to avoid the costs on the application, as in ordinary actions. In the circumstances, especially seeing that the respondent had in the matter adjourned in order to be able to contest the matter, it seemed impossible to avoid the ordinary rule that the respondents must pay the costs of the application.

With reference to the question of giving time, he did not see how the Court could, in an application of this nature, grant time. The occupation by these Indians and coloured persons was illegal. The respondents were interdicted from allowing that occupation to continue, so far as they were concerned. That was all that was asked for. He did not think that the Court would be entitled to say, respondents could allow these people to occupy so as to recoup them for the loss which they had sustained owing to their misapprehension of the true state of law, even though fostered to some extent by the applicants. He did not think the Court could grant relief in that way.

The order would be that the respondents be interdicted from permitting the residence of Indians or coloured persons on the site of the stands, or in the shops there on, otherwise than *Bona-fide* servants of the respondents, and they must pay the costs of the application.

### THE COLONISATION OF MESOPOTAMIA BY INDIANS

The following appears in a recent issue of *The Review of Reviews* of London:

One of the best forms in which the country will derive great advantage is the colonisation of Mesopotamia by the Indians. The productive areas of Babylonia will furnish many a wandering labourer with sufficient to live upon comfortably, if he engages himself in agricultural pursuits. The poorer classes of India will consider it a boon to migrate to a country where they will be free from the fear of famine. Not a few are driven to dire destitution every year by the awful ravages of this calamity. The Indian Government has done much to combat the evil by opening up canals in the land where no natural supply of water is procurable, but yet the danger exists, and it is a very real one.

This plan would be helpful to both countries. India might then do without her costly famine departments labourers and tradesmen emigrating could not but enormously increase their earnings, and religious ties need not stand in the way. The educated Indians and a better form of Government must inevitably produce profound psychological and material changes.

After a complete survey of the Babylonian region has been made, the next move will be to intimate and extensively advertise the opening prospects and con-

visions which the Government is willing to make in favour of the emigrants. A separate department may be installed, the work of which should consist in receiving applications and arranging matters. Such applicants should be required to produce evidence of their respectability, and industrious habits, so that every nondescript that might feel inclined to leave the country should not infect the new land. In the beginning a batch might be taken, the expense of which would be covered by Government, so that after a few years these prosperous people would write glowing accounts of the better life, which would serve as a regular and inexpensive advertisement. A really good start is of fundamental importance, and the movement would soon make a headway of its own accord.

Climate and conditions are much the same as in India. Two main points are favoured by the writer for such settlements, round the coast of the Persian Gulf and the Basra region. Irrigation is required, and a railway system. Markets simply wait to be exploited by European traders.

## THE ASIATIC ACT

### A STRONG PLEA FOR VETO

We take the following from a very thoughtful letter on the situation in South Africa, contributed to the *Times of India*, by Mr. M. B. Dyalbhai, lately member of the Viceroy's Legislative Council. He says:

Two fresh developments in South Africa fully justify Mr. Gandhi's complaint in the *Indian Review* of August last year that "the resolutions of the Imperial Conference are decidedly an eye-wash. There is no change of heart in the colonies and certainly no recognition of Imperial obligations regarding India." The Asiatic Land and Trading Amendment Act is inapplicable on any other hypothesis. That the object of that Act is to exterminate the free Indian trade, is unhappily too clear. If there was ever any doubt about that, it ought to be set at rest by the following extract from the letter of the Pietermaritzburg correspondent of the *Times of India*. "There is no use in blinking the outstanding fact that there is a deep and widespread conviction in the minds of both British and Dutch in the Union that in the interests of South Africa as a Dominion, with its large native population and complex colour problems, the presence of Asiatic traders in the Union is highly detrimental and should cease. The native races and the uplifting of them has been the white man's burden, and will continue to be so. And the white man cannot stand a brown burden on the top of the black one. But the crux of the whole question is that South Africa cannot be run economically with the Indian in it. And the white people, who have made the country, cannot be expected to commit race suicide."

Language could not be plainer. That the correspondent voices the feelings of the bulk of the white population of the Union is evident. Without powerful support among the general public, which means in this case the European settlers, such an enactment could not have been thought of. The anti-Indian feeling is undoubtedly there, however unjust, however unrighteous, and however wrong on imperial grounds. That it is not only present but strong and predominant, will appear from the history of the new Act. That history is given in the authoritative statement of the Hon'ble Sir George Baines, Commerce and Industry Member of the Government of India, contained in his letter to Mr. Gandhi of the 18th July last.

It is curious that the attempt to rehabilitate the Transvaal Indian in his former rights has resulted in a further restriction of those rights and Mr. Burton's undertaking in the Imperial Conference has been followed by an extension of the scope of the Boer Law No. 3 of 1885. Lord Sivas, in his Memorandum before the Imperial Conference of 1918 condemned Law 3 of 1885 as "an anachronism" and opposed to the

spirit of modern legislation." Mr. Burton on behalf of the South African Union Government promised sympathetic consideration of the Memorandum.

"It is only fair to say, and it is the truth, that we have found that Indians in our midst in South Africa, who form in some parts a very substantial portion of the population, are good, law-abiding and quite citizens, and it is our duty to see, as Lord Sivas has expressed it, that they are treated as human beings with feelings like our own and in a proper manner. As far as we are concerned in South Africa we are in agreement with the proposal to refer the memorandum to the consideration of our Government and we will give it the most sympathetic consideration that we can certainly."

But far from being any attempt at repeal of the obnoxious measure, the Asiatic Land and Trading Amendment Act makes Law No. 3 of 1885 applicable to companies as well as to individuals. Under the Act the right of individuals to acquire and own landed property in the Transvaal was restricted, but the right of companies with limited liability was not fettered and was subsequently expressly conferred by the Transvaal Company Law of 1909. Indian settlers formed themselves into companies for the acquisition of real property. This was purely a measure of self conservation, and it was fully warranted by both the spirit and the text of the law. There was no question of evasion. As pointed out by Mr. Gandhi in his reply to Sir George Baines, Indians have openly done what was permissible under the law. During all these years nobody has questioned either the legality or the equity of this action of Indians. And now for the first time after nearly twenty-five years the plea of evasion is raised to deprive the Indian by special legislation of the only chance of owning a homestead with all the serious consequences of homelessness in an unsympathetic colony. The white colonist with his narrow and selfish ideas may feel proud of his recent achievement, but he ought to know that it is not statesmanship. Racial feelings have been wantonly stirred at a most inopportune moment when the statesmen of the Empire are faced with the problem of its reconstitution, possibly on a federal basis, as also the not less important problem of placing India firmly on the road to full realisation of the Dominion form of self-government in recognition of her "remarkable contribution" to the war, "notably in the East." The Asiatic Land and Trading Amendment Act must be embarrassing to His Majesty's Government. That Government cannot possibly ignore their Imperial obligations to India and cannot remain inactive in this crisis, without laying themselves open to the charge of breaking to the heart the words of hope uttered to the east. The Prime Minister in his public utterances has repeatedly admitted India's claim to partnership in the Empire. The most reactionary statesmen have been equally emphatic on the point. It will be a travesty of statesmanship if all the protestations of Imperial good will fail to secure to the few Indian settlers in South Africa the elementary rights of freedom of trade and of acquisition of a homestead. His Majesty has got the right under the Constitution to veto legislative measures of the South African Union. This veto has, of course, to be exercised in the exceptional circumstances, but if there was ever any justification for its exercise, the present Act undoubtedly provided it. All consideration of Imperial policy and Imperial interest required speedy interference by the Imperial Government. *With the Asiatic Land and Trading Amendment Act of 1919 in force the federalism of the British Empire is meaningless, the admission of India into the Councils of the Empire on equal terms with the Dominions is a huge farce. What does it cost India to give at the Peace Conference a statute equal to that of other nations while her 3000 who are already settled in the colonies are denied the elementary rights of citizenship? In South Africa even the Negro is in a better position than the Indian settler. South Africa is the home of both, the Indian by traditions, culture, refinement and habits superior to the native*

African; he has rendered service during the war which have come in for appreciative notice both by General Smuts and British statesmen. And yet while there is apparently no restriction regarding trade and homestead in the case of the African, fresh legislative disabilities are imposed upon the Indian in regard to both. This cannot surely promote good will among Indians generally towards the Dominion which is so absolutely necessary for the success of even the best scheme of Imperial federation. In the interests of the Empire if not on abstract grounds of equity His Majesty would, it was expected, veto the Asiatic Land and Trading Amendment Act, and it is most regrettable that it was not done.

In his reply to the Indian deputation of August 30 last Mr. Montagu, it is true, disapproved of the suggested exercise of the Imperial veto because (a) South Africa is a self-governing Dominion, (b) "it would certainly exacerbate the Government and people of South Africa" (c) "it would leave (Indians) largely at the mercy of bodies like the Krugersdorp Town Council and (d) the proposals is not 'politically feasible.'" Regard for truth forces the observation that the argument is anything but convincing. It is in the constitution of the self-governing Dominion only that the Imperial veto is provided as a safeguard against the use of the large powers of legislation given to them to the prejudice of Imperial interests. It becomes a meaningless formality unless it is exercised in circumstances like the present. Its exercise is in no way inconsistent with the autonomy of the Dominions. Even in the extreme view the scope and purpose of colonial legislation must not be allowed to affect prejudicially the general good of the Empire. In the next place the moral effects of the veto in South Africa might not, after all, have been so serious. It would probably have helped both the Government and the people of South Africa to realise their Imperial obligations better. In the worst view it was an unavoidable evil, but certainly the lesser of the two. The third reason assigned by Mr. Montagu was undoubtedly the most serious of all, but the prevention of the contingency should have been secured by diplomatic pressure and friendly discussion at the annual Imperial Conferences, and not by alleging irritating and disastrous legislation to go unchallenged. Then, again, it is not clear how the veto was not "politically feasible." If India be an important unit of the Empire, political considerations should on the contrary, have counselled Imperial intervention. Mr. Montagu rightly discredited retaliatory Indian legislation on the ground of its importance. India cannot unfortunately, "make her indignation seriously felt by those who hold the reins of Government in that country," pointed out Lord Hardinge as Viceroy. Informed opinion in India does not care for retaliatory legislation. But curiously, in the same breath Mr. Montagu set great store by "that (promised) sympathetic consideration of Lord Sinha's Memorandum upon which we set our hearts." The recommendations in the Memorandum would appear to be based upon the principle of reciprocity. The principle is neither universally acceptable in India nor does it provide a powerful check upon colonial aggressiveness even according to Mr. Montagu. We should not therefore make a fetish of reciprocity, but must find out some means of inducing the South African Union to recognise its Imperial obligations.

The claim of the white colonist that he has made the country may be to some extent true, but due weight must be given to the fact that the present development and prosperity of South Africa as a whole owe not a little to Indian labour and Indian industry. This has been acknowledged by the highest authorities over and over again. That the Indian has still his place in the economy of the country and is still wanted there for its successful exploitation, will be clear from the anxiety of one of the Provinces at least, Natal, for importation of Indian labour. In 1911, as a result of the trouble of those days, indentured immigration from India was stopped by the Government of India. The

effect was immediately felt, and a representative of Natal planters came to India, in the words of Lord Hardinge "to beg for a reconsideration of that measure." The truth is, the South African capitalist wants the Indian as a labourer to toil and sweat for him and to leave the country as soon as he aspires to the honourable role of the free man and the free trader. It is the cult of the monopolist impatient of competition, however weak and negligible. It may suit the isolated colonist, but not the true Imperialist, the federalist seeking development and progress of the British Empire as a whole by the conjoint action of the component units, by mutual goodwill and mutual understanding among the various nations owing allegiance to His Majesty. The monopolist has no place in the reconstituted Empire. With the present spirit prevailing in the self-governing colonies Imperial Preference is destined to fail as a binding force holding together the different Dominions by bonds of mutual interest and mutual co-operation. India cannot in justice and fairness be expected to enter of her free will into a Zollverein with South Africa as a colleague so long as her sons, at least those who are settled there, are denied, not only primary rights of free citizenship, but reasonable facilities of honourable existence. *The Asiatic Land and Trading Amendment Act is really inimical to the Empire. It was impolitic for the Peace Conference to have dropped the proposal about racial equality.* There is great force in the remark of Mr. Christopher that "the removal of the racial bar is a matter of paramount importance for the solidarity of the British Empire. The mischievous moral effects of the present anti-Indian campaign cannot be exaggerated. Mutual distrust and hatred can never cement the bonds of Empire."

## TRANSVAAL TRADING RIGHTS

### POTCHEFSTROOM COUNCIL WIN APPEAL

#### THE QUESTION OF RESIDENCE

We take the following from the *Potchefstroom Herald* :—

The judgment of the Magistrate (Mr. H. Britten) in the matter of Suleman Tayob & Co., v. the Municipal Council of Potchefstroom, was given in favour of the Council.

We understand the decision has created considerable alarm among the Indian community.

In view of the importance of the matter, we publish the judgment in full as follows :—

"This is an appeal from a decision of the Municipal Council of Potchefstroom, refusing the application of Suliman Tayob & Co., for a general grocer's licence. Four other appeals are also brought, in which similar applications were refused. It is agreed between the parties, that the facts in all five applications being similar, the decision of the Court in this appeal will be accepted in the other four, without production of further evidence or argument.

"The grounds of appeal alleged are that the respondent Council did not give proper and judicial consideration to the application. The applicant established the first onus resting on him of proving that his application was made and refused, by the production of a copy of the Respondent's resolution as follows :—

That after duly considering the application of Suliman Tayob for a General Grocer's licence, and after hearing the applicant in support of his application, the Council hereby decides by virtue of Section 90 (e) of the Local Government Ordinance 1912, as read in conjunction with Section 91, to refuse the said application, as in the opinion of the Council, the applicant is not a desirable person to hold such a Licence.

"The Town Clerk was then called and handed in a certified copy of the minutes of a Special Meeting of the Respondent Council held on the 12th September, 1919, and also gave evidence. The facts established are that the application is for a general grocer's licence

for premises in Potgieter Street, where there is already a business in the name of Gani Ebrahim. There are two partners, both married, the applicant with one child and the partner having two. It is their intention to live on the premises, the living rooms being at the back of and isolated from the store with which there is no connection. Neither applicant or his partner nor any clerk employed by them has been convicted of a breach of the bye-laws during the past three years. The applicant came to the Transvaal in 1898, was properly registered and held a permit which he produced. He had kept a store on a farm in the Potchefstroom District for 10 years and could understand questions put to him in the Dutch language.

"There was no objection on the part of any member of the public, no record of conviction or anything against his character. The discussion, which took place in committee, shewed that the members of the Respondent Council are opposed to Asiatic trading, having regard to certain considerations attached to such trading. The application was considered in a broad and general way, the merits or demerits of the applicant not being entered into.

The Council discussed:—

1. The methods of trading by Indians.
2. Their mode of life.
3. The small rates of remuneration paid to employees.
4. The low standard of living.
5. The annoyance caused to European neighbours owing to their personal habits.
6. The danger of possibility of improprieties between unprincipled Indians and low class European women.
7. The fact that Indians do not pay so much attention to sanitation as Europeans.

"The cumulative effect of the discussion was that the applicant is not a desirable person. In the course of the discussion doubt was expressed as to the legality of their residence in a town and whether they should not be confined to the Asiatic Bazaar. It is admitted that the considerations which influenced the Council would not have applied if the applicant had been a European.

"The Council met at 8 p.m. and dealt with applications, going into committee at 10.30 p.m. The discussion in committee lasted until 11.30 p.m. when the Council resumed in open session. One new license was granted to an Indian born in South Africa, to trade in the Bazaar. The application of the Appellant was unanimously refused in terms already recorded.

"The question for decision is whether in view of these facts, the application was refused on good and sufficient grounds.

"Under Section 90 of the Local Government Ordinance "the Council may refuse to grant any License to carry on a trade or business which it has power to license in accordance with its bye-laws." The effect of this is that *prima facie* any person is entitled to claim a license and it can only be refused on grounds relating to the social and economical interests of the public, which are embodied in the Section. (*Municipality of Vereeniging vs. Essop* A.D. 1916. P. 556. *Ermelo Municipality vs. Ismail Ibrahim* T.P. 1913. P. 357). The discretion of the Council is not absolute as it is fettered by the provisions of the Statute (*Ermelo Municipality vs. Ibrahim* Supra). This Court sitting as a Court of appeal from the decision of an administrative body is vested with the duty of satisfying itself that the administrative power, placed in the hands of the Municipality, has been properly exercised. In short, subject to the provisions of the Statute, the Magistrate has to supervise the administration of the Council in that respect. (*Essop's case* at P. 555).

"The character of the Appellant was not impugned, in any way, and the considerations which influenced the respondent Council were not personal to himself but against Asiatics as a class. The respondents appear to have discussed a number of considerations in general terms in regard to which there is no evidence on record either against the applicant himself or against Asiatics generally.

"While these are considerations not specifically re-

ferred to in Section 90 and 91 of the Ordinance, it is claimed that in their cumulative effect they justify the Council, in considering an applicant not a desirable person under Section 90 (e) or that the granting of a licence to such person would be contrary to the public interest under Section 91 (c).

"While it is clear that the Council can only refuse an application on grounds referred to in Section 90 the terms of Sub-Section (e) thereof are very wide and permit the consideration of objections that an applicant is not a desirable person on grounds otherwise than those mentioned in the Section. An admission by an applicant for the renewal of a licence that he had been guilty of selling an intoxicating liquor known as "raspberry" was held to justify a Municipal Council in regarding him as a person not desirable to hold a licence. (*Ahyen vs. Magistrate of Pretoria and Municipality of Pretoria* not yet reported).

"A Municipal Council responsible for the health and social conditions of its population is an administrative body, whose functions are defined by the legislature. The members sitting as an administrative body to deal with applications for licences are not bound by the rules of evidence. (*Magda vs. Registrar of Asiatics* T.S. 1909. P. 399). They are entitled to use or take with consideration acquired knowledge (case of *Ahyen*). Experience usually must be a most valuable help and no objection can be taken to a person making full use of it (*Britten and others vs. Pope*, A.D. 1916 P. 174).

"The *Bona-fides* of the respondents in dealing with the application have not been challenged. The question must be considered however whether in refusing the application on grounds of "class distinction" they have not acted arbitrarily or capriciously and thus improperly fettered the discretion vested in them by law.

"The Applicant admits that if successful it was the intention of his partner and himself to reside on the premises in respect of which the licence was sought, with their respective families. During the consideration of the application by the Council, doubts were expressed as to the legality of residence by Asiatics, elsewhere than in the Asiatic Bazaar. Has the Council any ground for such doubt, or is this expressed out of mere caprice? Law 3, 1885, lays down that the government shall have the right to point out certain streets, wards and locations for Asiatics to live in. The establishment of an Asiatic Bazaar at Potchefstroom is a fact, the knowledge of which I am entitled to avail myself of. In the case of *Habib Motan v. Transvaal Government* T.S. 1904, P. 404, it was held that the restrictions in Law 3, 1885, do not apply to business places, but only to residences of Asiatics and the government was ordered to issue trading licences to the applicant in the towns of Pretoria and Pietersburg. The decision makes it clear (see page 416) that if the applicant in that case had intended to reside on the premises, the Government had a perfect right to refuse the application. It is unnecessary for me to burden this judgment with an analysis of legislative enactments dealing with the subject. The attitude of the legislature is summarised shortly by *Kotze A.A.J.A.* in the following *obiter dicta*, in the case of *Madrassa, Anjuman Islamia vs. Johannesburg Municipality* A.D. 1917 at page 729, as follows:

The reason for restrictive or prohibitive provisions in regard to Asiatics, natives and coloured persons is to be sought in what has always been the clear and established policy of the Transvaal State, prior to annexation and subsequently. It is on the ground of Public Health that Asiatics, natives and coloured persons had special wards or location within which to live assigned to them, and were not permitted to dwell among the European population of a town or village, except as servants of some white persons.

"This statement of the position leaves little room for doubt that the granting of an application by an Asiatic for a licence to trade in a town, where his residence therein will follow in consequence, is in conflict with express provisions of the legislature and therefore contrary to the public interest.

"The respondent Council appear to have fully considered the applications. There is nothing to suggest that the directions with which they are vested was otherwise in any way. In agreeing with a class distinction having legislative authority and the existence of which finds the highest judicial support, it cannot be claimed that they have acted arbitrarily or capriciously.

"In my opinion the application was refused on good and sufficient grounds and the appeal is dismissed with costs."

### DR. SAPRU ON INDIAN REFORMS

The Hon. Dr. Tej Bahadur Saprú on his arrival in Bombay by the *Dufour*, from England, was interviewed by a representative of the Associated Press. Dr. Saprú said that on the question of Retorms while it was not possible to say what shape or form the Retorm Bill will take when emerging from the hands of the Joint Committee, he felt confident that any modifications the Bill may undergo will be to the advantage of India. He thought it highly probable, provided no impasse was created in England by domestic struggles as the last Railway strike, the Retorm Bill would be finally passed in Parliament by the middle of December. Dr. Saprú thought that after the Bill emerged from the Joint Committee, there was not much prospect of independent amendments to improve or vitiate the scheme being accepted.

### BRITISH PEOPLE AND INDIA

Speaking of the interest evinced by the British public on Indian questions Dr. Saprú said that he wished to emphatically say to his countrymen that it was an illusion from which the people in India were that Indian affairs created any interest in England. The average Britisher, whether a Conservative, Liberal, Labourite, did not feel any interest whatsoever in Indian questions or in the matter of that on many other questions beyond the circle of the immediate domestic problems before him. Mr. Bessant is the only person who is able to arouse interest and large audiences came to her many meetings on Indian affairs.

### WORK OF INDIAN DEPUTATIONS

Other Indian publicists of whatever reputation could hardly attract appreciable audiences. The chief work of the Indian deputations in England lay in interview in and placing facts before the leaders of the different parliamentary parties and others associated in the task of shaping the Retorm Bill and in influencing the British Press. The British Press supplied very scanty news on Indian affairs so much so that affairs treated in India as highly momentous received no notice at all in the British Press, the explanation given being the average Britisher did not feel interested in Indian questions. Dr. Saprú said he was in England during the Railway strike and one striking feature was the general respect for law and order showed both by the general public who suffered the inconveniences of the strike and the strikers themselves. There were not many changes of a revolutionary propaganda spreading at all in England. The Railway strike was purely an economic crisis. The burning problem of England was the struggle between Capital and Labour but both sides showed signs for the nation.

### LORD HUNTER'S REPUTATION

Coming to the Punjab Affairs, Dr. Saprú said the selection of Lord Hunter as President of the Punjab Committee was considered in high legal circles in England as the best that could be made. Lord Hunter was "a person of whom nothing was said" what Dr. Saprú had expressed to him while visited Edinburgh.

Lord Hunter enjoyed a very wide reputation both in England and Scotland not only for his ability as a lawyer and judge but also for his wide outlook. He was further well known for his absolute independence and as a strong man. Dr. Saprú travelled with Lord Hunter in the *Duff* and from what he personally knew during his acquaintance on board and from what he had heard in England, Dr. Saprú felt quite satisfied with the appointment of Lord Hunter. Dr. Saprú also expressed satisfaction at the selection of the Indian members of the Committee. He had worked together with both Sir Chimanlal Satawad and Pandit Jaggat Narayan on many occasions and knew Sardar Sahibzada Sultan Ahmedkhan personally and held all the three gentlemen in high esteem for their ability and independence.

### THE IMMEDIATE DUTY

He said he would advise his countrymen to concentrate their energies towards leading evidence about the incidents of the Punjab before the Committee of Enquiry. He thought it will be a misfortune if the public slackened any efforts in collecting evidence and leading same before the Committee. It would not be right to prejudge the Committee and its labours or to say anything which would in any way place difficulties in the way of Lord Hunter. If officials used undue influence at witnesses were intimidated the proper course would be to bring it to the notice of the Government and the Committee.

Replying to a question, Dr. Saprú admitted he was offered a seat on the Punjab Committee but on public and private grounds he felt constrained to decline it.

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