

Indian Opinion

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DURBAN'S NEW ORDINANCES

THE Indian community has been thrown into a state of consternation by the Governor-General-in-Council assenting to the recent ordinances promoted by the Municipality of Durban. We have already in previous issues referred to the protests lodged against these ordinances in so far as they affect our community which is again meeting, as will be seen from the notice we publish in this issue, on Wednesday next for the purpose of protesting against the manner in which the Governor-General-in-Council has assented to the ordinances and generally to consider the position arising out of the sanctioning of these ordinances. In regard to the question of licences the powers now conferred upon the Town Council or in other words its Licensing Officer are as extraordinary as they are extensive. He has the power now to refuse to grant a licence if he is satisfied that it is undesirable that the applicant should be allowed to carry on business in the locality in which the premises are in respect of which he has applied for a licence. We know in practice this will be applied against the Indian that it is undesirable that he should trade in a certain locality and thus gradually Indian trade will be localised or in other words segregated. He has the power also to exclude businesses in a locality and here too it is left to his discretion. This provision should really be so defined specifically in the law that the Licensing Officer will be bound to act within the specified requirements and not be at liberty to follow his own predilections without any let or hindrance. The observations that we have made apply *a fortiori* to the further provision that such conditions and restrictions as may be concurred in by the applicant shall be endorsed on the licence sought. The Indian whose chances of getting a licence are remote but if he be fortunate enough to get it, will find that the conditions or restrictions endorsed on the licence will give him the shadow of a licence for the substance. But this does not promise an Hobson's Choice. This endorsement provision tends but to make the Licensing Officer of Durban (Col. G. Molyneux) all powerful and practically master of the situation in dealing with licence questions for it is within the knowledge of the public that he declared in unequivocal language before the Asiatic Enquiry Commission that "Indians were refused as a matter of course if the application were a new one." Within recent years he has not hesitated to endorse the licences for certain places of amusement as for Europeans only and even in the case of the Victoria Bioscope, which is an Indian concern, we understand, the licence was endorsed to exclude Europeans but in the then existing state of the law, on representations of Counsel the endorsement was removed. If a licensee

fails to observe any or all of the conditions endorsed on the licence, such failure renders the licence then and there as of no effect. Surely nothing could be more arbitrary! The section that provides that the applicant shall give to the Licensing Officer in such manner as he may desire all such information as he may require concerning the nature of the business for which a licence is applied for smacks of a Jesuistical flavour.

The Durban Municipality has had the monopoly to establish and carry on markets in the Borough. It was empowered so to do by an act of the then Natal Parliament but it certainly has never had the power to create markets for any race or class of persons. It is true the Market in the use and occupation of our countrymen has been referred to as "The Indian Market" in the by-laws regulating it. But there was no racial or colour principle laid down in the enabling law. And this objectionable principle is now indirectly sanctioned in the Ordinance which empowers the Town Council to impose peculiar licences restricted in their application to those carrying on business in the Indian Market. Here again the Licensing Officer may issue or revoke the licences on such conditions and under such restrictions as he thinks fit. Licences, we take it, are issued either to regulate businesses and trades or to raise revenue. With reference to businesses in the Indian Market they are regulated according to the nature of the business done and varying charges are made by the Town Council, that is to say, produce sellers pay a certain charge; butchers another charge and so on. And the charges show a handsome return to the revenue of the Corporation. In the circumstances licences for the businesses in the Indian Market are as unnecessary as the incidence of the imposition of licence fees would be unjust to the people who are engaged in petty businesses therein. They are mostly struggling for an existence and most of them make but a bare living out of it and a fair percentage of them are women, dependent on themselves, who are endeavouring to live an honourable life.

The Union Government appointed the Asiatic Enquiry Commission to enquire into the questions of licences and trading and to make recommendations. It has toured the country taking evidence at great cost to the State. It has not yet presented its report. In the meantime the Municipality rushes through a measure affecting the trading rights of an unrepresented people. And the Government with the Governor-General assent to it in spite of the protests of the people who are affected by it. Why the Government has been a party to such rank class municipal legislation even not waiting for the report of its Commission is the cause of much

speculation as to what will be the destiny of that report. The action of the Governor-General with his Government in not hesitating to assent to this Ordinance and to the other relating to the tramways of Durban has disturbed any confidence the community might have had in them to protect it against the vagaries and prejudices of those who enjoy the power of the vote in the land, and from the predilections of those in whose hands the administration of laws especially in local affairs is vested. We have had but recently, not to go far afield, the case of Ally Hassan in Maritzburg whose application for the transfer of a retail licence from 128, Commercial Road to 132 on the same Road was refused and, within the month the case of E. C. Rawat & Sons, also in Maritzburg. In this application the father who was a resident in Maritzburg for some 40 years asked for the transfer of his licence to a firm in which he had included with him his two sons. On appeal, from the Licensing Officer's refusal, to the Town Council that body upheld the decision of its employee.

In the tramway ordinance also the colour bar has been laid down. The Municipality of Durban may allow an Indian to travel in a tram or segregate his kind on a separate tram. What the conductors haltingly did to men of colour, they will now do with all the arrogance that is borne of some in possession of unlimited powers. As in the licence question so in regard to the "trams" the policy of the Town Council is apparently to create a two tiered policy based on considerations of colour but were it not well that they who ruled to-day looked beyond little Durban to the hills and dales in the distance.

The meeting convened for Wednesday next to which we have referred will, we hope, be a representative and record gathering of the Indian community and will speak with definiteness on the questions arising out of the ordinances and decide upon a course of action not solely dependent upon resolutions of protest but in keeping with its self-respect and manhood and honourable to their living and unborn generations.

THE NEW LICENSING AND TRAMWAY LAWS

We give below sections from the duly promulgated "Durban Corporation Extended Powers Ordinance 1920," and "The Durban Tramways Consolidated Laws, 1905 and 1920" that affect the Indian community:

LICENCES

20. Section 27 of Ordinance 11 of 1911 is hereby repealed, in so far as it relates to the Borough of Durban, and the following is substituted therefor:—

- (1) The Town Council may refuse to grant a licence to any applicant if not satisfied
 - (a) That the locality in which the premises for which the licence is sought are situated is one in which it is desirable that the trade or business contemplated should be carried on by the applicant or at all; and
 - (b) That such premises are in every respect suitable for the purpose of such trade or business, whether as to structure, size, character, sanitation, ventilation, safety from fire, adequacy of fire appliances or emergency exits.
- (3) Wholesale and retail dealers' licences within the meaning of Act 18 of 1897 or of any Act amending the same shall be subject to the provisions of such Act, but shall not thereby be excluded from the provisions of this section.

- (4) The Town Council may grant any licence it has power to grant subject to such conditions and restrictions as may be concurred in by any applicant; such conditions or restrictions shall be endorsed on the licence, and a wilful failure to comply with any or all thereof shall *ipso facto* render the licence null and void.
 - (5) The words "Hawkers of South African Fruit and Vegetables" in the Schedule to Ordinance 11 of 1911 are hereby amended to read "Hawkers of South African Fruit, Vegetables, Flowers, Garden Produce and Eggs or any one or more of such things."
 - (7) Every applicant for a licence shall, before or at the hearing of his application, give to the Town Council in such manner as it may require all such information as it may require concerning the nature of the business for which a licence is sought, and concerning the premises in which it is intended to be carried on.
 - (8) For the purposes of this section the words "Town Council" shall include the Licensing Officer of the Borough of Durban.
33. Where any By-law present or future shall have been passed or made by the Town Council in the purported exercise of powers given by any particular Act, Law or Ordinance, and shall be found to be *ultra vires* the powers conferred by such Act, Law or Ordinance, but *intra vires* the powers conferred by any other Act, Law or Ordinance it shall be deemed to have been duly made or passed as from the date of promulgation of such other Act, Law or Ordinance as if the powers conferred by such other Act, Law or Ordinance had been contained in the Act, Law or Ordinance under which the Town Council has purported to make or pass it.

TRAMS

3. The Town Council is hereby empowered:—
 - (m) To set aside separate vehicles, tram shelters, or other premises intended for the convenience or use of persons travelling or intending to travel in their vehicles, or to set aside any portion of such vehicles, tramshelters, or premises, for the sole and exclusive use of persons of European descent, Natives or Asiatics, or of any one or more of such classes of persons, and to prohibit the entry upon, or use of, any vehicle, tram-shelter, or other premises or any portion thereof set aside for the convenience or use of any one or more of such classes or persons of any other of the said classes;
 - (o) To prohibit the entry upon or use of any vehicle, tram-shelters, or other premises intended for the convenience or use of persons travelling or intending to travel in their vehicles by a person who is—
 - (i.) Unclean in his person, dress, or habits;
 - (ii) Suffering from an infectious or contagious disease;
 - (iii) Under influence of liquor or drugs;
 - (iv) Likely by his behaviour or conduct to cause a breach of the peace, or to be objectionable or offensive to any other person in or upon or about to enter such vehicle, tram-shelter or other such premises.

Maritzburg Indians who are desirous of becoming members of the Natal Indian Congress can obtain the necessary forms of application, and any information in regard to the Congress from Mr. S. R. Naidoo, Hon. Sec. to the S. A. National Indian Congress (Maritzburg Branch)

The Influenza epidemic in Durban is on the decrease. There are very few cases under treatment.

A LICENSING APPEAL DISMISSED

BY MARITZBURG TOWN COUNCIL

A special meeting of the Maritzburg Town Council took place at the Council Chamber on Thursday afternoon, his Worship the Mayor (Cr. D. Sanders) presiding, and there were present Crs. Mrs. Theodore Woods, Mrs. Bragbury, Messrs. W. Cox, H. Brown, E. Mendenhall, D. C. Dick, L. Line, H. Doull, P. H. Taylor, W. J. O'Brien, T. C. Linscott, the Deputy-Mayor, (Mr. J. Fraser), the Town Clerk (Mr. D. Paton), and the Assistant Town Clerk (Mr. Jas. McGibbon).

The appeal of E. C. Rawat and Sons (67, Church Street) against the decision of the Licensing Officer was heard.

Mr. J. O. Smythe said the applicants had been resident in Maritzburg for 40 years. All the three applicants were burghesses of the town, and owned the premises. The firm had a good record, there being no police prosecutions, insolvencies, or computations with their creditors. They were spoken well of by all the merchants of the Province. He felt that the Council could not attempt to dispossess them of the rights of their property. His point was that there was a store, and all that was wanted was the transfer of the licence from the father to the firm, which included his two sons. It was erroneous to conclude that the application was for a new licence. Counsel emphasised that there were no objections by the residents. A petition had been signed by people of position and standing in the town. On behalf of certain burghesses he asked the Council to use a reasonable discretion. No one could say that the transfer, or extension, would be against the interests of the town. He was one who supported the idea of cleaning up the upper end of the town. On the other hand, they had native traders and boot-makers carrying on business. There were boarded-up windows which were extremely dirty. It was better that a licence of the character applied for should be continued. Furthermore, the case was a special one. They had laid down a policy that they were going to close down Indian stores in the other end of the town, but with regard to licences the death of the licensee would not mean the termination of the licence. He instanced the licence of the late Mahomed Cassim, which was carried on by the trustees.

At the conclusion of his remarks Mr. Smythe said he did not want to weary them, as when he was in the Council he often got wearied by listening to other lawyers' endless tongues. In other towns, where other nationalities traded he did not think the Indian was less desirable than those traders. He honestly believed that a well-conducted Indian store was not an eyesore.

By Cr. Doull: It lay at the discretion of the Town Council to grant or refuse a licence. The Council was a Court of Appeal, and the Legislature laid down that there was no appeal provided that the privileges were reasonably exercised.

By Cr. Dick: The executors, as in the case of Mahomed Cassim, could carry on the licence on behalf of the testators.

Counsel said that whether the licensee died or otherwise, the application should be granted.

Cr. Cox: As the licence would go on in spite of the decision of the Council, there would be no prejudice to the holder.

Cr. Linscott: It would probably mean that when the licensee (who was 80 years) died that his son would live to carry on another 40 years.

Cr. O'Brien remarked that it meant simply the establishment of continual rights.

The Council retired, and reviewed the position behind closed doors.

Cr. O'Brien subsequently moved that the Licensing Officer's decision be upheld. Cr. Cox seconded.

The decision of the Licensing Officer was upheld, there being two dissentients, Crs. Taylor and Mendenhall.—*Natal Witness.*

AN INDIAN ORPHANAGE

LAYING OF FOUNDATION STONE

MR. PARSEE RUSTOMJEE'S GENEROUS GIFT

The foundation stone of the Parsee Rustomjee Home and Orphanage for Indian children was laid on Wednesday, December 22nd, by his Honour the Administrator of Natal (Mr. C. T. Plowman, C.M.G.) at Prospect Hall Road, Umgeni. There was quite a large gathering of Europeans and Indians including Rev. G. H. P. Jacques, Rev. H. Grellier, and other ministers of the local Wesleyan body, Mr. G. F. Hignett (senior magistrate), and Mrs. Hignett, Mr. J. A. Polkinghorne (Protector of Indian Immigrants), Mr. Arthur H. Smith, O.B.E., Dr. Mackay, ladies from the St. Aidan's Hospital and St. Aidan's Mission School, Mr. A. H. West, Revs. A. R. and John Choomos, Messrs. Omar, Sorabjee Rustomjee, Manilal Gandhi, B. Sigamoney, H. L. Paul, Hajee Amod Jhaveri, A. M. Lockhat, Ismail Goraj, C. A. Bassa, Abdool Khalek, M. S. Banderi, S. Essack, B. Gabriel, L. C. B. Ephraim and many others. The proceedings were under the direction of Rev. C. S. Lucas, Superintendent of the Natal Indian Mission. Apologies for absence were read from the Rev. Henry Cotton and Mr. F. R. Dukes, Superintendent of education.

About 200 hundred Indian children assembled at the old orphanage, and marched in procession to the site of the stone-laying of the new one, and after prayer had been offered by the Rev. Mr. Griffiths of Maritzburg, three Indian girl children proceeded in customary Eastern fashion to garland the Administrator.

SUPERINTENDENT'S ADDRESS

The Rev. C. S. Lucas said that it was nearly two years ago since the Home for orphan Indian children was opened. It was in those dark days of the influenza epidemic, when many hundreds of Indians died, and children were left without parents to care for them, that an appeal was made for help towards commencing this work. In proceeding to bear testimony to the willing assistance he received at that time, Mr. Lucas said that on explaining the purpose they had in view he had received about £300 in a very short time from leading merchants and others in Durban. (Applause.) They then rented the house which stands below the present site, and for nearly two years they had been in residence there. Then came the offer from Mr. Parsee Rustomjee of £1,500 if they were prepared to build a large and permanent Home for Indian children. The Committee, which consists of 25 well-known ladies and gentlemen of Durban, then undertook what was really a heavy responsibility. To-day they had the pleasure of having his Honour the Administrator with them to lay the foundation stone, and he made bold to say that they were that day taking part in a work that would tell for good in the years to come. The Indians were with them, and he was sure he was voicing the sentiment of all present when he said that any service they could render to them, and especially to the orphan children, would be for the benefit of all concerned. There were times in the administration of State affairs when it would be exceedingly awkward, when children in need and whose needs were urgent had to be provided for if it were not for such institutions as this, and the public would be interested to know that he had already received some children under such circumstances. Their financial responsibility was great, as the financial statement would show, but he had been greatly encouraged by the gifts already received. The present financial position was as follows:—Cost of land (66 acres) with six-roomed house, £1,150; cost of transfer, etc., about £25; tender for proposed erection, £2,679; cost of making road, water for building, etc., £384; total, £4,238; by Mr. Parsee Rustomjee, £1,500; Rev. T. E. and Mrs. Marsh, £500—£2,000.

leaving a balance needed of £2,238.

Mr. Lucas intimated that accommodation would be provided primarily for 20 boys and girls, but provision had been made in the plans for the housing of 50 children at a later date.

The Indian boys and girls present having sung an ode of welcome and thanks to the Administrator for coming from Maritzburg to lay the foundation-stone, one of the Indian orphan boys presented his Honour with a silver trowel, with which he duly performed the ceremony. As two memorial stones were to be laid, the ceremony of laying the other was performed by the Rev. C. S. Lucas.

ADMINISTRATOR'S SPEECH

The Administrator before laying the stone said: In coming to Durban to lay the foundation-stone of the new building about to be erected by the Wesleyan Church community for the benefit of Indian orphan children, I regard it as a duty and a pleasure. At the present time two great efforts are being made by the South African Police and the workers of the Railways and Harbours to establish homes in various centres of the Province for the children of their deceased comrades, and it is a gratifying fact that the response not only from the bodies themselves, but from the public has been most encouraging. The care of the little ones is a great work. It must appeal to everyone with the right spirit, and I am pleased to be able to say that the people of this country are becoming alive to their responsibilities in this regard. In South Africa we cannot institute a comparison with the conditions obtaining in Great Britain and other countries in providing for benevolent institutions because our circumstances are so widely different, and we have yet to reach the stage when the evils and difficulties in the larger and older centres of population are evident. But of recent years we have begun to realise that these difficulties are growing with us and that it is incumbent on us to take early steps to face our obligations. It is not so many years back that little attention was bestowed by the general public on what we now regard as great social problems. There was undoubtedly a disposition to leave a good deal of the benevolent and reform work to the missionary bodies and the churches, particularly among the coloured races, and we owe to them a large debt for the invaluable work which they have performed. The missionaries came to this country when it was in a wild and troubled state, and they worked hard and suffered much in the early days. We owe a great deal to them as pioneers of education in Natal not only among the coloured, but also among Europeans. One is apt to forget the valuable services which have been rendered by our missionaries, but the good results remain in the education of to-day as well as in charitable and other philanthropic works.

While on the subject of education, the Administrator made reference to the death of Mr. Mudie, who was for many years the Superintendent of Education in Natal. In this Province they had been fortunate in having such men as Robert Russell, Mr. Barnett, their friend Mr. Mudie, and now their present Superintendent of education, Mr. Dukes, who was worthily following in their footsteps. Mr. Plowman said that he had the honour to be one of Mr. Mudie's oldest friends, and frequently corresponded with him. He was a man of infinite kindness, and Natal owed to him a very great deal for the position in which the education system in the Province stood to-day. He had left behind him many friends in South Africa, and he felt sure the sympathies of these and many others in South Africa would go out to Mr. Mudie's sorrowing widow and children.

Continuing, Mr. Plowman referred to the necessity which originated this Orphanage, and said: "There is a balance needed of £2,238, and an earnest appeal is being made to relieve the promoters of this burden. The Provincial Administration has favourably considered

an application for assistance, and I hope that it will be possible to make provision in the estimates for next year for a fairly substantial grant-in-aid. (Applause.) It is now about 60 years since Indians were first brought to this country, and their number is approximately 150,000 at the present time. The Indian has played a useful part, particularly in helping to develop our coast industries, and it occurs to me that it is not asking too much of the sugar planters and other employers of Indian labour to contribute to this very deserving object. I feel sure that it is not necessary to put forward any strong appeal to the Indians themselves, as it is well-known that the spirit of generosity and philanthropy is a feature of their character. The Institution is one which deserves the hearty support of Natal, and it should be remembered, that, whatever you contribute will be laid out to the best advantage. You should also remember what the promoters of this movement have done for the Indian community, and it is not too much if you are now asked to support their efforts for the care and upbringing of these children, who have had the misfortune to be deprived of their parents. Before closing my remarks, I should like to pay a tribute to the splendid work of the Rev. Mr. Lucas, who has devotedly laboured among the Indian community during the time he has filled the position of minister in charge of the Mission. The Indians, unlike the white people, are of a varied type, and have numerous distinctions, social and religious. To reconcile these differences and to bring the people into a common Christianity requires whole-hearted effort and infinite patience. Mr. Lucas has in a high degree these requisite qualities. I have been brought into touch with him in connection with educational matters affecting the Indians, so I speak from personal experience of his great zeal and enthusiasm. I am sure that I echo the sentiment of all who have been associated with him in expressing the hope that he may be able to continue his good work for the benefit of the Indians and the welfare of the general community. (Applause.)

A collection was then taken, and various offerings were intimated, to be laid on the Administrator's stone, which included a cheque for £100 from Mr. Arthur H. Smith. The collection amounted to £131 in all, including donation from various Indians and Europeans, and one of £2 5s. 3d. from the Bulawayo Indian Society.

Mr. A. H. West, in moving a vote of thanks to the Administrator for his kindness in coming there to lay the foundation-stone, said that Mr. Parsee Rustomjee, on whose behalf he was speaking, wished to appeal to well-to-do Indians, and point out to them that it was their duty to look after the education of such Indian children in Natal, and not that of the Government, and the speaker urged that they should follow the worthy example which had been shown in this respect.

The Administrator, in acknowledging the vote of thanks, said that the spirit of charity and benevolence was a feature of the Indian race, and he felt sure, knowing them as he did, that such an appeal did not require to be made, but that they all thoroughly realised their duty in this respect.

The function was brought to a close by the singing of the National Anthem.

The following letter has been received by Mr. Gandhi from Mr. Horniman—that sincere friend to India:—My dear Mahatmaji.

I am overjoyed at the decision of the Special Congress. I feel sure it is right, and I feel sure also that by conscientious performance of your programme India will, by her own efforts, achieve freedom. My only regret is that I am not there to help; there is so little that can be done here. I hope I shall be able to return soon.

Ever Yours,
B. G. HORNIMAN

THE REPATRIATION SCHEME

AN INTERVIEW WITH MR. C. F. ANDREWS

The following is a portion of an interview between *Young India* and Mr. C. F. Andrews dealing with the Asiatic Repatriation Scheme :—

Q.—What are your views about the way in which the voluntary repatriation scheme is being carried out by the South African Government?

A.—I have been utterly disappointed by the news which has reached me by cablegram and by letter. It appears that Mr. Wynne-Cole has gone far beyond the bound of distributing information to the depressed class of Indian labourers who may not know the Government's offer of a free passage. He went so far as to suggest a boycott of Indian traders by Europeans in order to drive them out of the country. He spoke in very ominous words about the determination of the South African Government to carry through the repatriation policy without surrender. All this implies pressure and makes the term 'voluntary' when applied to such a scheme, quite absurd and unmeaning. I greatly regret that I did not see at the time the political advantage which would be taken of even the slightest concession. I cannot help but think that Sir Benjamin Robertson, if he is reported correctly, has gone far beyond the limits of his mission. He seems from the report to have urged Indians generally to repatriate themselves. He does not seem to have confined his remarks to the submerged class only. But possibly the report of his words may have done him injustice.

STATUS OF COLONIAL-BORN INDIANS

A PRIVY COUNCIL APPEAL CASE

(From Our London Correspondent)

London, Nov. 25, 1920.

On October 28, 1920, before a Board consisting of Viscount Cave and Lords Moulton, Phillimore and Dunedin, a very strong Board, their Lordships of the Judicial Committee of the Privy Council heard an Appeal by the Indian Immigration Trust Board of Natal, (Appellants) against Vencategin Govindasamy, trading as the Stamford Hill Laundry, (Respondent), against a majority judgment of the Appellate Division of the Supreme Court of South Africa. Mr. F. H. Maugham, K.C., and Mr. W. E. Tyldesly Jones, K.C., instructed by Messrs. Budd, Johnson, Jecks & Colclough appeared for the Appellants, and Mr. W. H. Upjohn, K.C., and Mr. Bhagwandin Dube, instructed by Mr. Hy. S. L. Polak, represented the Respondent.

The matter was one affecting the status of Colonial-born Indians in Natal, and involved the interpretation of certain sections of the Indian Immigration Law, No. 25 of 1891. The facts are set forth in the judgment and their Lordships, delivered to-day, as under, when the appeal was upheld, the Respondent, however, in accordance with the Order of their Lordships when leave to appeal was granted, being allowed solicitor and client costs in any event :—

The question in this case arises under the Indian Immigration Act of Natal, being Law 25 of 1891. By Section 50 of that Act, it is provided that the Immigration Trust Board are authorised "to appoint a duly qualified medical practitioner to attend upon the Indian Immigrants employed upon any estate or elsewhere, and upon any such appointment the proprietor of the estate or the employer of such Immigrants shall be released from his obligation to obtain a duly qualified medical practitioner to attend upon such Immigrants. And every employer of Indian Immigrants not being free domestic servants, on any estate or place for which estate or place the said Board may have appointed a medical practitioner as aforesaid, shall pay quarterly, on or before the 10th

January, 10th April, 10th July and 10th October in each year to the Protector of Indian Immigrants (for whom for this purpose the Appellants were substituted by Section 10 of Act No. 17, 1895), a sum not exceeding 1s. sterling per month for every male statute adult Immigrant in the service of such employer."

A medical officer was so provided by the appellants and they applied to the respondents who employed Indians for their contribution. The respondents were willing to pay in respect of indentured Indian immigrants, but contended that they were not bound to pay in respect of either (1) Indian immigrants who had been indentured but whose term of indentured service had expired, and who had not re-indentured themselves, and (2) descendants of Indian immigrants. The local magistrate held that the respondents were liable in respect of both classes (1) and (2). Appeal being taken to the Supreme Court of Natal, the learned Judges, unanimously on point (1), by a majority on point (2), affirmed the decision of the local magistrate. Appeal being taken to the Supreme Court of South Africa, that Court upheld the decision as to the Indian immigrants who had been indentured but were subsequently free, but by a majority reversed as to the descendants. An appeal has now been taken to this Board against that decision on the latter point. There is no cross appeal as to the former.

The question, therefore, is simply whether the "every male statute adult immigrant" in Section 50 in respect of whom payment is to be made, does or does not include the descendants of Indian immigrants. Section 18 is in the following terms :—

"The words 'Indian Immigrant' shall mean and include all Indians introduced from India to Natal under the provisions of the Laws regulating such introduction, and those descendants of such Indians who may be resident in Natal."

The respondents' first argument is that the interpretation clause does not apply, because in specifying those in respect of whom payment is to be made, the expression is "every male statute adult immigrant," and not "every male statute adult Indian Immigrant." To this there are two answers. In the first place the nominative of the whole sentence, which is "every employer of Indian Immigrants"—he who is directed to pay—makes it clear that the immigrants in respect of whom he is to pay are Indian immigrants. Otherwise there would be the fantastic result that an employer of immigrants to Natal of whatever nationality in the world, would have to pay in respect of these persons if he employed as well at least two Indian immigrants, and would not have to pay if he did not. In the second place, the matter is made clear beyond all doubt by Section 51, which says :—

"The age of eighteen years and upwards shall be, and is hereby declared to be the age of an Indian Immigrant male adult for the purpose of the foregoing section."

There seems, therefore, no force in this argument.

Now, when the interpretation clause in a statute says that such and such an expression shall include so and so, a Court in construing a statute is bound to give effect to the direction unless it can be shown that the context of the particular passage where the expression is used shows clearly that the meaning is not in this place to be given effect to, or unless there can be alleged some general reasons of weight why the interpretation clause is to be denied its application. It is obvious that there is nothing to be found in the context of Section 30 which would fulfil the first stated requirement. It is accordingly on general considerations that the majority of the Supreme Court have based their judgments. The first suggestion made is that inasmuch as the Act of 1891 is a consolidating, as well as an amending Act, and as one finds that the set of provisions as to the medical attendance were in the earlier Acts, which did not mention descendants and had no interpretation clause like Section 118, it may be conjectured that the wider

scope of the interpretation clause was meant to be applied to the provisions which were new and not to the provisions which were a repetition of former legislation. This suggestion in their Lordships' opinion loses all force as an argument, from the very fact that is necessary for its statement, namely, that the Act is an amending as well as a consolidating Act. There is no intrinsic improbability that any of the older sections may not be amended, and it is a novel and, to their Lordships, unheard of idea that an interpretation clause which might easily have been so expressed as to cover certain sections and not to cover others, should be, when expressed in general terms, divided up by a sort of theory of *applicando singula singulis*, so as not to apply to sections whose context suggests no difficulty in its application. It is also that there are sections which show the interpretation clause does not apply, e.g. Section 10, which says:—

"Every Indian Immigrant leaving India to come to Natal for hire shall, before leaving India, either be engaged to an employer named in his contract, or shall be taken as bound to any employer to whom he shall be allotted by the Protector of Indian Immigrants on his arrival at Natal."

It is, however, not really accurate to speak of the interpretation clause not applying to such sections; the interpretation clause remains as it was, applicable to the expression "Indian Immigrants", but among the Indian immigrants there are classes, and such sections as Section 10 obviously only apply to one of them.

The further remark that the time has now come when both in number and in possible social position, the descendants of Indian immigrants are such that to hold them among the number of those for whom medical attendance is provided, and in respect of whom payment is to be made, is irksome and unlikely to be the wish of the legislature, is an argument that might well be addressed to a legislative body, but cannot have weight in the interpretation by a Court of a clause which spoke in an Act, dated nearly 40 years ago, when circumstances were very different.

An argument of a very technical character was presented by the learned counsel for the respondents. Taking it that Section 50 was an alternative to Section 48, which imposed on the employer himself the duty of providing medical attendance, he then turned to Section 94, which is the penalty section, and is as follows:—

"Every employer who shall neglect to retain a duly qualified licensed and registered medical practitioner to attend upon the Immigrants in his employ, or who shall fail to supply proper medicine or nourishment for any such Immigrant when sick, or who shall neglect to keep such general and medical register book as provided by this Law, or who himself or by any overseer or sirdar employed by him shall willfully ill-treat any Immigrant in his employ, or shall fail or neglect to supply to any such Immigrant any article of food, or to pay any wages to which such Immigrant shall be entitled, shall on conviction thereof before any Court forfeit and pay such sum not exceeding Ten Pounds Sterling for every offence as to the Court shall seem fit, or in default may be adjudged to imprisonment not exceeding thirty days: Provided always, that it shall be at the same time lawful to the Governor, if he shall see fit, to determine the contract of service of such immigrant, and also of any other Immigrants in the employ of the same employer and to assign such Immigrants to some other person for the residue of the original terms of service of such Immigrants respectively."

As the proviso, by its terms, can only refer to indentured Indian immigrants he argued that the failure to supply medical attendance can only refer to that class, and that, therefore, the alternative of Section 50 must be commensurate with Section 48 so construed. But Section 94 in its body refers to matters which obviously affect other Indians than indentured Indians, e.g. payment of wages. It follows that the

proviso is not, strictly speaking, a proviso, but is really an added power to be exercised in cases where it is applicable, such as, e.g., cruelty, in favour of the only class to which it is applicable, and cannot control the meaning of the earlier part of the section. In any event, the argument is too subtle and too indirect to prevail over the plain language of Section 118, which finds no obstacle to its application in the phraseology of Section 50. Their Lordships' view may be well summed up in the words of the learned Judge-President Dove Wilson, who said, "I am unable to see anything either in the subject matter or the context to prevent the definition in Section 118 having full force and effect in the application of Section 50."

Their Lordships will humbly advise His Majesty to allow the appeal and restore the judgment of the Provincial division of the Supreme Court affirming the judgment of the local magistrate with costs. The costs of this appeal will be dealt with in accordance with the undertaking of the appellants at the time that special leave to appeal was granted, viz. to pay the costs of the respondents as between solicitor and client in any event.

The Natal Indian Congress Resuscitation Committee meetings are being held regularly every week and are well attended.

સંવત ૧૯૭૭ ની ડાયરીઓ

સંવત ૧૯૭૭ ની પાકા પુસ્તાની ડાયરીઓ આ ઓરીસમ હમણાજ આવી છે. તેમાં હિંદુ સુસલમાન પારસી તેમજ ખ્રીસ્તી તારીખો આપવામાં આવી છે. સ્ટોક નહાનાજ હોવાથી માહકેને કિમ્પાઈ કરવામાં આવે છે કે તેઓએ તાકીદે ઓરકર મોકલવો.

ડાયરીની કિમ્પત મોટી શી. ૩

નાની શી. ૨

કરખના માહકેને ઉપલી ડાયરીઓ મેસરસ મકનજી એન્ડ સન્સ, ૧૯૨ ગ્રેસ્ટ્રીટ અને બોરોએ. પ્રીન્ટીંગ વરકસ, સેવીશ સ્ટ્રીટ એ સ્વલેથી મળી શકશે. કરખની બહારના માહકેને નીચેના સીરનામે ઉપર બંધાવેલી કિમ્પતનો મેસ્ટલ ઓરકર મોકલવાથી મળી શકશે.

Manager,

INDIAN OPINION.

Phoenix, Natal.

આંકવાણિક મંચન

વાર	ખ્રીસ્તી	હિંદુ	સુસલમાન	પારસી	સુમેદ્ય	સુપરિસ
૧૯-૧	૧૯-૧	૧૯-૧	૧૯-૧	૧૯-૧	ક. મી.	ક. મી.
લીસે.	મામથર	રખીઉલ-	આપર			
બને.						
શુક્ર	૩૧	૧૬	૧૯	૨૩	૫-૩	૭-૫
શનિ	૧	૭	૨૦	૨૪	૫-૨	૭-૫
રવિ	૨	૮	૨૧	૨૫	૫-૨	૭-૫
સોમ	૩	૯	૨૨	૨૬	૫-૩	૭-૫
મંગળ	૪	૧૦	૨૩	૨૭	૫-૩	૭-૫
બુધ	૫	૧૧	૨૪	૨૮	૫-૪	૭-૬
ગુરુ	૬	૧૨	૨૫	૨૯	૫-૫	૭-૬