

Indian Opinion

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APPEAL OF WING LEE LIMITED

JUSTICE CURLEWIS SETS ASIDE JUSTICE GREENBERG'S JUDGMENT

WE give below the full text of Justice Curlewis' judgment delivered in Wing Lee's appeal. Justice Curlewis has set aside the judgment given by Justice Greenberg:—

Appellant is a company registered with limited liability, consisting of two shareholders, both Chinamen, and has been carrying on business as a general dealer at 77a Grant Avenue on Stand 96, Norwood Township, since 1919. It had a licence to carry on this business until the end of 1928 when the renewal of the licence was refused. It continued to carry on business during 1929 without a licence, and in December 1929 again applied for a certificate of renewal, but a certificate was refused by a duly appointed committee of the respondent Council acting under the provisions of the General Dealers (Control) Ordinance, 1926 (No. 12 of 1926, Transvaal) as amended by Ordinance No. 10 of 1927. This refusal of a certificate by the committee was brought in review on a petition to the Witwatersrand Local Division which was heard by Greenberg J., who dismissed the petition with costs. The appeal before us is against this decision of Greenberg J.

It appears from the record that in the form of application which had to be completed by appellant for the issue of the certificate in terms of the Ordinance, and which required the full name of the person who will be in actual control of the business to be given, the name was given of Luk Yee who is admittedly a coloured person, a Chinaman.

In terms of the Ordinance objections were lodged against the granting of the certificate by M. W. Simpson and by a company called the North-Eastern Districts Association (Proprietary) Ltd. Simpson did not appear at the sitting of the committee, and his objection was not considered. The objection of the company, which is the registered owner of a stand in Norwood Township, was as follows:—

"The North-eastern Districts Association (Proprietary Limited) object to the granting of the said certificate on the grounds that the locality of the said premises is not one on which it is desirable that the business contemplated should be carried on by the applicant, because its owners and persons in control of the applicant business are coloured persons, and in accordance with the Title Deeds of Norwood Township and set out in the title deeds of every holder of a lot in the said township, including the applicant's title deeds of the lot on which the applicant intends to carry on business, there is a provision that no coloured person other than servants will be allowed to occupy any lot in the said township, and further that the said condition is portion of the general scheme upon which the said township was established binding on all lot holders and occupiers of property whether for purposes of trade or otherwise, and such scheme constitutes the township a township reserved for white or European persons, and consequently renders undesirable the granting of any licence to the applicant to trade on the said premises, as a

carrying on of a business under the licence would cause coloured people to be physically present on the said lot in contravention of the said conditions of title, and of the Volksraad Resolution No. 104, dated the 25th September, 1871, and further the aforesaid facts render the applicant unfit and an improper person to hold such a licence, or to carry on or control such a business."

The title deed of Stand 96, Grant Avenue, Norwood Township, which is registered in the name of Surkhey Limited, a private company registered with limited liability in the Transvaal, from which company appellant holds the stand under a lease, contains the following:—

"Subject to the following special conditions and stipulations, to wit—


1. That no coloured people other than servants will be allowed to occupy the property transferred hereunder."

Before the committee the appellant's reply to the objection lodged by the respondent was that the restrictive clause in the title deed was no longer of force and effect on the ground of acquiescence and waiver, and on the ground that the character of the neighbourhood had changed to such an extent that the restrictive clause was no longer enforceable or capable of attaining the object for which the restriction was imposed. And evidence was laid before the committee by the appellant with the object of showing, inter alia, that coloured persons have for years carried on various businesses in Norwood without let or hindrance until 1928, and that the lotholders and residents of Norwood had knowledge of and saw these businesses carried on by coloured persons and acquiesced therein, and also acquiesced in the trading and occupation of Lot No. 96 by the appellant. It also appeared from what took place at the hearing that there was an action pending in the Witwatersrand Local Division between the present respondent as plaintiff and Surkhey Ltd. and the present appellant and Yuk Lee and others as defendants, wherein the Plaintiff (present respondent) sought an interdict to restrain them from carrying on business in Norwood and to eject the present appellant; an interdict had been sought on an application, but as the defence of waiver and acquiescence had been raised the Court directed the matter to proceed by way of action. That action is now still pending, so we were informed from the Bar.

The committee, after hearing evidence and argument on behalf of the applicant and the objector, refused to grant the certificate. In announcing this refusal the chairman of the committee stated: "It is within the knowledge of the committee, and it has been brought out in the evidence, that restrictions have been imposed in the title deeds on the occupation of the property in respect of which a certificate is applied for, whereby no coloured persons other than servants are allowed to occupy the lot. The application is refused on the ground laid

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WHO IS DODGING THE FACTS?

 OUR contemporary the *Natal Mercury* has written a leading article under the caption 'Dodging the Facts' in its issue of the 20th inst., and criticised the speech of Sir Tej Bahadur Sapru which he delivered at the Round Table Conference in London the other day. In it we find the same old arguments that were advanced by the enemies of India's freedom. They want to retain full control over India for ever for the benefit of England and hence these arguments. They are to the effect that the Princes of India are not yet prepared to regard the government of a dominion of British India as their overlord. The Paramountcy of the Emperor of India which they acknowledge can only be exercised through his representative, the Viceroy.

Here is the trick to divide the Princes from a dominion of British India and they are painted as unpatriotic. The Princes of India, on the contrary, have one and all stood for Dominion Status. But even if they are not prepared to come under a Dominion of British India at present the would-be Dominion of India is quite willing to wait and convince them that they will be quite safe under a National Government as they were under a foreign Government. There is no immediate hurry for them to come under a Dominion of British India. On this account the right of British India to a Dominion Status must not be withheld for a single moment.

Then there is the problem of minorities, the Mahomedans, the depressed classes, the Europeans, and the Anglo-Indians. All these problems could be immediately solved if once the British Government consents to grant Dominion Status. May we ask our contemporary which country has not to face such problems? Here in this country the Whites have created a white heaven for themselves although they are in a minority. The Native people who are in a majority and to whom this country belongs are treated like helots. The coloured people are in a minority. Has the South African Dominion given them equal rights? The Indians are in a minority in this country and about 75 per cent. of them are South African born. What is their condition as a minority? May we ask our contemporary whether it has ever pleaded the cause of the majority of the Native population and of other minorities

in this wonderful Dominion of which it boasts a lot of experience in self-government? India is prepared to protect the rights of minorities if Dominion Status is granted to her. Equality and justice to all is her ideal. What has the British Government done for the depressed classes in India? The high caste people may have treated them unfairly in the past but they have paid the price for it and are now trying their utmost to raise them. Under a Dominion Government their status and those of Europeans and Anglo-Indians will be equal with others.

Our contemporary writes that it is idle for Sir Tej Sapru to make comparisons between the position of India and that of Canada, Australia and South Africa, because they had wide experience of self-government and possessed very wide suffrage.

We agree. It was wrong on the part of Sir Tej Sapru to make comparisons between India and those tiny Dominions. These Dominions are a creation of yesterday only. They learnt the art of Government recently. But India was in itself a great empire. Sir Tej Sapru's countrymen built up a great empire in India and ruled for centuries. A century and a half ago the countrymen of our contemporary journalist were begging with folded hands and heads lying low before the great rulers of India for a privilege to trade in Sir Tej Sapru's country. The rise and fall of nations is a law of nature. India had to pass through it as other nations did. Our contemporary therefore must not try to run down a great country like India and say she has no experience in self-rule. It is a sad fact that under the British rule in India no more than 3 per cent. of her population have possessed the franchise. India wanted franchise for all her adult population. The foreigners who usurped their country, kept them in subjection totally disarming them from the last century up to now, would not grant the franchise to the whole population? Whose fault is it? Our contemporary further writes, 'But India which demands the same treatment, acknowledges her incapacity to defend herself or to maintain internal peace without outside assistance.'

If a Sapru or a Sastri were to make this confession, it does not mean the whole of India does it. The Indian National Congress has not made this confession. The Congress wants full control over the army. Indian army in India was used more than

once at India's terrible cost for the expansion of the British Empire. The Indian army had saved the British Empire during the great European War. Is that army unfit to defend India? The Indians in the Indian army were not given commission. Why? because it was the policy of the foreign Government not to allow the Indians to be fit to lead the army. Self-governing India can train such men in no time. If the British people sincerely want to help India in this they could do so. It will be nothing but right if they do so. But if they do not want to do so self-governing India could well afford to pay to other experienced military nations to lend their men to train Indians. To deny the right of defending one's own country, to disarm the whole population in order to keep them under subjection was a horrible crime England committed in India. It is a great tragedy that to-day Indians are reminded of their incapacity to defend their country by those who committed this crime purposely. Sir Tej Sapru said that, given Dominion Status to-day, India's cry for independence would naturally die in a few months. To this our contemporary says he has no possible justification in saying this in view of his own complete failure to persuade Mr. Gandhi to call off the passive resistance campaign. If the British Government and Parliament gave way to the extent that Sir Tej Sapru desires, Mr. Gandhi and Congress would be emboldened to continue in the not unreasonable belief that, having given way so far, the British Government would shortly grant complete independence."

Independence is a thing that cannot be granted as a gift by anyone. It is to be taken. If the three hundred millions of India's people sincerely desire and work for complete independence there is no power on earth that could prevent it. Could England prevent America from becoming independent? It is sure to come sooner in India if Dominion Status is not granted to-day. Those who try to dodge this fact are rendering a great disservice to the Empire. The enemies of India's freedom are dodging the facts for self-interest. Dr. Moonje who is one of the delegates at the Round Table Conference said, Britain was like a farmer devotedly attending a cow (India) because of its milk production. Hence we Indians hear about 'Dodging the facts' which come from the side of England.

"ONLY AS TRUSTEES"

IN our last week's issue we published the text of a memorandum issued by Mahatma Gandhi from the gaol where in the Indian Raj has seen fit to confine his body. Speaking of "possessions" the Mahatma reminded us that "we must be interested in them not as proprietors, but only as trustees."

The reminder is one to which it were well that we Indians of South Africa should give special attention and thought. It expresses a duty that has devolved upon us, but a duty we have not always appreciated and perhaps, even now, do not quite appreciate which is that we Indians of South Africa as trustees of the good name, reputation and honour of "Indian" should be concerned primarily with the defence of the honour of the name and all that it implies, and only secondarily with the preservation of what we are apt to regard as "our possessions."

In the near future we shall be confronted with the choice of some miserable mess of pottage in exchange for our birthright i.e., some petty measure of compromise to induce us to accept the main indignity embodied in "the Bill", or of remaining loyal to our trusteeship and declining to save some small portion of "our possessions" as the price of our betrayal. It is perhaps as well to remind ourselves that our conduct is being watched with expectant interest by all to whom the cause of righteousness and freedom is dear; more important still to remember that there is an All-seeing Eye from which no motive of ours is hidden.

Coloured People And Suburbs

Effect Of Appeal Court Decision

A meeting of the North Eastern Districts' Association will be held on Tuesday evening, at the Scout Hall, Nellie Road, Norwood. In a circular to members, the honorary secretary states:—

"In view of the recent decision of the Appellate Court, that the City Council cannot refuse a certificate authorising a licence to be granted to Asiatic or coloured persons either on the grounds of race, or of restriction contained in the title deeds, it is essential, if it is desired to keep coloured persons out of private townships, that the present action against Surkhey, Ltd., and others be proceeded with.

"The Asiatics' contention that the persistent violation of registered conditions of title render such conditions void, is of far-reaching effect, applying not only to Norwood, but to many other private townships. The new Bill before Parliament is of no assistance in the above respects, except in Government or 'semi-Government' townships." The secretary urged members to help to "preserve the European suburbs for Europeans."—*The Star*.

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down in section 6 (2) of the Ordinance, viz., that the locality of the premises is not one in which it is desirable that the business contemplated should be carried on by the applicant."

In the petition which forms the subject of this appeal it is alleged (par. 22) that there was no evidence before the committee to show that the locality of the premises was one in which it is not desirable that the business contemplated should be carried on by applicant, or at all, and in support of that allegation a copy of the proceedings before the committee is attached to the petition. Paragraphs 23 and 24 of the petition are as follows:—

"23. That the sole ground upon which the refusal of the respondent committee was based was the restrictive condition contained in the title deed and that the respondent disregarded the evidence adduced that such restriction was no longer binding with respect to the particular lot.

24. That your petitioner submits that the committee of the respondent Council acted wrongfully and unlawfully in refusing to grant to your petitioner a certificate to enable it to carry on the business of a general dealer on Lot No. 96, Norwood Township and being 77a Grant Avenue, Norwood."

It is admitted that the business in respect of which the certificate was sought was intended to be carried on under the control and management of a coloured Asiatic, Yuk Lee. In *Norwood Land and Investment Company Ltd. vs. North-Eastern Districts Association (Proprietary) Ltd.* (1929 A.D. 23) this Court held that the word "servants" in the restrictive clause of a Norwood title deed meant ordinary domestic or menial servants and did not include the manager of a business carried on upon one of the lots. In view of that decision the control and management by Yuk Lee of the business in question would be a breach of the restriction, and if the restriction was still operative it could be enforced by any owner of a lot in the township. Indeed this latter was common cause in the Court below. The petition for relief is therefore based on two grounds (1) that the committee disregarded the evidence adduced that the restriction contained in the title deed was no longer binding with respect to the lot in question, and (2) that the sole ground upon which the refusal was based was the restrictive condition contained in the title deed. It may be remarked that the petition does not specifically allege that the committee was not entitled to refuse the certificate on this second ground; but in view of the allegations in paragraphs 22 and 24 of the petition, that was no doubt intended.

As regards the first ground, that would amount to a gross irregularity on the part of the committee and would entitle the proceedings of a public body such as the respondent, or the said committee of the respondent, to be brought in review (even where no appeal lay) on the well-known principles laid down by this and other Courts of South Africa, namely, on the grounds (stated shortly) of gross irregularity or clear illegality, but on the ground of a mistake of law or a wrong conclusion on facts. I should state that it was common cause before us that the sections of Ordinance 12 of 1926 dealing with a review by or an appeal to a Court of law were of no effect, they having apparently been declared *ultra vires* by a decision of the Transvaal Court.

As to this first ground, Greenberg J. held that it had not been established, and this part of his decision has not been challenged before us.

As regards the second ground, the learned judge held on the authority of *Senekal Licensing Court v. Stein* (1924 A.D. 506) and *Lamb v. Hitchcock* (1914 T.P.D. 552) that the local authority was bound to

refuse a certificate if the applicant had no right of occupation to the premises specified in the application, and that the local authority was therefore entitled to enquire into the applicant's right of occupation; he also held that the fact that an applicant had no right to occupy the specified premises imposed on the local authority a duty of refusal in addition to the grounds for refusal enumerated in the Ordinance. As regards the interpretation of section 6 (2) of the Ordinance, the learned judge held that it was unnecessary for him to deal with that section because, if the petitioner's failure to prove its right to occupy the premises bound respondent to refuse to grant the certificate, then even if respondent is mistaken in thinking that this falls under section 6 (2), it would not invalidate the refusal, and for the latter proposition he referred to *Ah Yen v. Pretoria Municipality* (1920 P.D. 28).

The applicability of the decision in *Senekal Licensing Court* was challenged on various grounds. I do not propose to consider all these grounds; it is sufficient to deal with one feature of the *Senekal* case which in my view differentiates it from the present case, and that feature is that there was no dispute before the Licensing Court as to the facts. The applicant himself had stated to the Licensing Court that his lease expired on 31st December, that he was not renewing it, that he was leaving the place and that he must transfer the new licence (which would be from 1st January) according to the terms of the lease. Thereupon the Chairman remarked: "How can we grant a licence to a man who distinctly says that he is not going to use it?" Indeed in the judgment in the *Senekal* case Solomon J. A., stated: "The facts of the cases are very simple and are not in dispute, and it is common cause in the present case that the application was made not for the purpose of entitling the applicant to carry on the business in the premises, as he had done for four years, but for the purpose of transferring the licence as soon as it was obtained to the lessor. "That, however, does not appear to me to be a purpose recognised by law." And the principle laid down by the Court in that case and under those circumstances was that at the date when the licence was to be issued the applicant should have the right of occupation of the premises so as to entitle him, when he has obtained the licence, to carry on there the business for which he is licensed, and if he did not have such right of occupation the Licensing Court could not entertain the application and that it would be illegal for the Licensing Court to grant the renewal of the licence. But it by no means follows that the Court meant thereby that where the right of occupation was in dispute and necessitated an investigation of involved questions of law and fact, the Licensing Court would first have to hold that in investigation and decide on the merits of the dispute before granting a licence. One can readily conceive that an applicant for a renewal of a liquor licence may claim that he holds a lease of the premises and though the lease would expire by the 31st December he had the right of renewal and had exercised that right, whereas the lessor might deny that applicant had such right. Or again the right of occupation of premises may depend on the interpretation of a will or of a contract, the terms and meaning of which were in dispute between applicant and other parties. That being so, I do not think we ought to extend that decision so as to confer on other public bodies jurisdiction to investigate and decide controversial questions of law and fact other than such as are specifically prescribed and arise for determination by the specific provisions of the legislative enactment under which such public bodies function, and by which jurisdiction is conferred on them.

Under the General Dealers Control Ordinance No. 12 of 1926, as amended by No. 10 of 1927, the respondent Council or its committee has certain duties

to perform. It is provided that no general dealer's licence or a renewal thereof shall be issued by a receiver of revenue unless the applicant therefor produces a certain certificate; for this certificate application has to be made in the manner prescribed by the Ordinance and to a local authority or a Board. The section 6 provides:

"Every local authority or board shall within the area of its jurisdiction have a discretion to refuse a certificate on any of the following grounds:—

(1) That the premises where it is intended that the business should be carried on are not suitable for the purpose of the business, whether as regards their sanitation or situation or character of the buildings, structurally or otherwise.

(2) that the locality of the premises is not one in which it is desirable that the business contemplated should be carried on by the applicant, or at all.

(3) That in the opinion of the local authority or body concerned the applicant or the person who will be in actual control of the business is not a fit and proper person to carry on or to control such a business.

And in the case of a business where articles of food or drink are produced, prepared, used or sold for human consumption, also on any of the following grounds:—

(a) That the applicant or the person who will be in actual control of the business is by reason of the uncleanness of his person or habits or methods unfit to be trusted with the handling, preparation or sale of such articles of food or drink, or is otherwise not a desirable person to hold such a licence.

(b) That the granting of such a licence in respect of the premises for which it is sought is calculated to cause a nuisance or annoyance to persons residing in the neighbourhood."

A new ground (c), relating to kafir eating houses, has been added to section 6 of section 4 of Ordinance 10 of 1927, but it is not material to the present enquiry. Section 7 provides that persons may lodge objections to and oppose the granting of a licence; and section 8 provides that the local authority or board hearing an application for a certificate authorising the renewal of a general dealer's licence shall record the evidence given for or against the application, and where the application is refused, the reasons for the refusal. Section 12 provides that the local authority or board, in authorising a licence, may direct it to be suspended pending the erection or completion of buildings or pending the execution of repairs or alterations.

We have thus the functions prescribed of a local authority or board, and under section 6 the grounds are set out on which a local authority or board shall have a discretion to refuse a certificate. The respondent in this matter would therefore have jurisdiction to investigate and decide on any facts that may arise or be involved from a consideration of the various grounds set out in that section. And its decision in such an investigation would be final and not subject to review by a Court of law except on the well-known principles and grounds which have already been mentioned. It was never contemplated by the legislature that the respondent would be competent to investigate and decide any other dispute which did not arise from, or fall within, the specified grounds on which it was given a discretion to refuse a certificate. The investigation which the respondent is authorised by the Ordinance to hold and make at the hearing of an application for a cer-

tificate must be limited to, and be found within, the four corners of section 6 of the Ordinance.

The decision of this Court in the Senekal case may possibly be regarded as a precedent or authority for the respondent to refuse a certificate on certain admitted facts which would make it wrongful or unlawful on the part of the respondent to grant the certificate, but we should not extend that decision so as to confer, and that decision was not intended to confer, any additional power of investigation and decision other than what respondent would have under the provisions of the Ordinances of 1926 and 1927 under which it functions. And we certainly cannot extend it as embracing the power and jurisdiction to investigate and decide an involved question of facts and law such as the one which the respondent's committee decided in the present instance, the more so as the right of occupation of the applicant itself was not questioned but merely the right of occupation through a coloured manager of its business, and as the dispute which the committee took it upon itself to decide formed the subject of an action pending in a Court of law in Johannesburg.

If then the decision in the Senekal case is not applicable, had the respondent jurisdiction under the Ordinance to inquire into the merits of the dispute as to whether the restrictive clause was operative?

The committee of the respondent refused the application on the ground laid down in section 6 (2) of the Ordinance, viz., that the locality of the premises is not one in which it is desirable that the business contemplated should be carried on by the applicant; and its reason for coming to this conclusion was on the ground that by the restrictive clause in the title deed coloured persons other than servants are not allowed to occupy the lot or stand in question.

We must therefore consider whether section 6 (2) gives the committee power or jurisdiction to exercise its discretion of refusal on such a ground. This depends on what is the proper construction to be given to sec. 6 (2). I was at first disposed to agree with Mr. Blakeway's contention that section 6 (2) contemplated that in respect of the locality of the premises the committee could exercise its discretion on two separate grounds—(1) that it is not desirable that the business contemplated should be carried on there by the applicant; (2) that it is not desirable that the business contemplated should be carried on there by anyone at all. But, on consideration, I do not think that it is the proper construction of subsection (2). The grounds on which the committee could exercise its discretion to refuse a certificate, as set out in section 6, may be classified under three heads—(1) the suitability of the premises, (2) the nature of the locality of the premises in relation to the kind of business contemplated, and (3) the personality or suitability of the applicant or of the person who will be in actual control of the business.

Though the well-known maxim of interpretation requires the Court, if possible, to give full effect to every word in a legislative enactment, I cannot see to what conditions it could have been intended that section 6 (2) should apply based on the personality of the applicant, apart from the nature of the contemplated business or of the locality, which would not fall under 6 (3) which deals with the suitability of the applicant or of the controller of the business as a fit and proper person. The only two instances which counsel could indicate as likely to fall under section 6 (2), by reason of the identity or personality of the applicant, were the case of Vrededorp, where

a coloured person is by law not allowed to occupy a stand (see Act 7 of 1907, sec. 13, Transvaal), and the case of an applicant having been interdicted by order of Court from carrying on business in the premises for which a certificate is required. But in the case of a coloured person applying for a certificate for a licence on a stand in Vrededorp, the certificate would be refused not on the ground of section 6 (3) but on the ground that, by reason of Act 7 of 1907, it would be unlawful and illegal for the committee to grant the certificate. And in the case of a person who has been interdicted by order of Court, the certificate would be refused because it would be illegal and assisting in a contempt of Court to issue the certificate.

I can conceive of no instances which can be said to fall under section 6 (2) based on the personality or identity of the applicant which would not fall under section 6 (3). If section 6 (2) were intended to authorise two separate grounds for refusal, one in respect of the applicant personally and one solely in respect of the locality, then we would expect to find in section 6 (2) the words which we find in section 6 (3) and in section 6 (a) where the suitability of the person arises for consideration, viz., the applicant or the person who will be in actual control of the business. The absence in section 6 (2) of the words underlined confirm the view that section 6 (2) was intended to deal solely with the nature of the locality in relation to the business contemplated and apart from the suitability or otherwise of the applicant or the person who will be in control of the business. And this is peculiarly applicable to the present case, because the objection is not to the applicant but to the person—Luk Yee—who will be in control of the business because he is coloured; if Luk Yee were a White or European there could be no objection. It has been laid down in circumstances analogous to section 6 (3) that a local authority would not be justified in holding that an individual is not a fit and proper person to carry on or control a business merely by reason of his race or colour. And we cannot assume that the legislature intended that under cloak of section (2) it would be competent for the respondent to hold that by reason of the race or colour of the applicant it was not desirable that the business contemplated should be carried on by him. If that had been the intention of the legislature it should, and would, have been expressed in clear language.

I have come to the conclusion, therefore, that Mr. Millin's contention is well founded, viz: that section 6 (2) deals only with the nature of the locality in relation to a business contemplated and not with the identity or personality of the applicant, and that by the words "by the applicant or at all" the legislature meant no more than "by anyone at all." Section 6 of the Ordinance seems to me to be intended as exhaustive of the grounds on which the respondent has a discretion to refuse a certificate. It entails a decision (1) as to the suitability of the premises, (2) as to the suitability of the applicant or of a person who is to carry on or control the business, and (3) as to the nature or character of the locality in relation to the business contemplated, as for instance where it is sought to carry on some particular business in a locality which is purely a residential quarter. Those are the facts which the legislature contemplated the respondent would be called on to investigate; facts which appear to admit of a ready and simple solution without an investigation of involved questions of fact and law. I do not think it was ever contemplated that the res-

pondent would be competent under section 6 (2) to investigate complicated questions of fact and law such as were involved in the dispute as to the right of occupation and whether the restrictive clause in question was still operative owing to acquiescence and waiver and to the change of character of the locality, delicate questions of law for the decision of which a Court of law is *prima facie* the proper forum. Indeed the committee would have been well advised, instead of investigating that dispute, to have left it to the objector to proceed with his action and to have it declared by a Court of law whether or not the restrictive clause was still operative.

In my opinion it was not competent for the committee of the respondent Council to hold an investigation into that dispute either under sub-section (2) of section 6 or of any other sub-section. The committee, therefore, exceeded its jurisdiction and the appeal must be allowed and the judgment of the Court below reversed, and judgment entered as follows:—The refusal of the respondent's committee of the certificate is hereby set aside and the respondent is directed through its duly authorised committee to re-hear appellant's application. Appellant is entitled to the costs in this Court and in the Court below.

(Sgd.) J. S. CURLEWIS,
Judge of Appeal.

Indian Press And The Land Tenure Bill

The Hindu of Madras writes as follows:—

The New Menace in South Africa

The resolutions adopted at the emergency conference of the South African Indian Congress held recently at Johannesburg to consider the Asiatic Tenure Bill have evidently caused a stir in that continent. Some of the principal newspapers there are exhibiting a friendliness towards the case for Indians which is indeed welcome at a time when the sky is overcast with clouds, so far as the Indian community in the Transvaal is concerned. It is, however, very difficult to say how far the argument adduced by them would appeal to the electorate in South Africa and to its representatives in the Legislature. For instance, *The Star* which says that the Asiatic protest is abundantly justified, points out that the Government of India and the Secretary of State would find their task made enormously difficult and complicated by the anti-Indian legislation in South Africa and calls upon the Union Government in the interests of Empire solidarity to relieve those authorities from gratuitous embarrassments of this kind. Each of the Dominions is entitled to pursue its own policy regarding its internal affairs and it may be said that South Africa will not feel called upon to follow a particular course simply for the purpose of rescuing the British Government from certain entanglements and difficulties. On the other hand, *The Natal Witness* very properly directs public attention to the grave injustice which would be perpetrated if the Bill were enacted into law and says that it disregards the spirit of the Cape Town Agreement. The case for Indians is morally and intrinsically very strong and there a point in the suggestion made by the South African Indian Congress for a Round Table

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Conference as a means of ensuring such a heart-to-heart talk on the whole matter as will yield a result similar to that which was achieved by the Cape Town Conference. That the various local authorities in the Transvaal are actively interesting themselves in ousting Asiatics from their trade relying upon statutes which Indians had been made to feel had fallen into desuetude, is becoming clear every day. In Norwood, there has been another case where the Supreme Court of the Transvaal has laid down that municipal licensing authorities have the power to issue trading licences to Asiatics in areas controlled by municipalities wherein occupation is prohibited by statute. The petitioner was a company registered with a limited liability and had been carrying on business as a general dealer in that township since 1919. The municipal council discovered that restrictions had been imposed in the title deeds on the occupation of the property under which no coloured persons other than servants were allowed to occupy the plot. It was pointed out on behalf of the Indian company that the Norwood residents had acquiesced in the breach of the statute and that the character of the locality had undergone a complete change. The Supreme Court, however, held that it would have been illegal for the licensing court to have granted renewal of the licence and that it had not been established that either the stand-holders in Norwood had acquiesced in the breach of the statute or that the character of that township had been changed. It is in order to make clear such doubts as may linger in the present statute that the Asiatic Tenure Bill has been framed. As revised by the Select Committee, it constitutes a very drastic measure seeking to ruin hundreds of Indian families who hold enormous property in land. The Bill prohibits ownership of land anywhere except in locations, places a ban on Asiatic companies, holding fixed property, though hitherto companies thus formed have been registered by the States, makes it illegal and an offence for a person to hold fixed property on behalf of or in the interest of an Asiatic, the properties so held prior to 15th May, 1930 being protected, and debars Indians from holding shares or debentures in companies holding fixed property. The situation, it will be thus seen, is one of extreme gravity necessitating the utmost vigilance on the part of the Government of India. Ministers in the Union have already begun to protest against the announcements and statements of policy by British statesmen which might possibly have repercussions in South Africa. These short-sighted persons in authority may well be reminded that there is such a thing as growing world opinion which is increasingly disinclined to look with indifference on repression of immigrant or less advanced communities and that the evil example thus set in South Africa encourages white colonists in other parts of the world to pursue similar selfish and unjust methods.

The *Tribune* of Lahore writes:—

Transvaal Land Tenure Bill

The Land Tenure Bill is on the legislative anvil in Transvaal. The Bill, if passed into law, is bound to have a disastrous effect on the interests of Indians in that country. The object of this new assault on the rights of Indians is to restrict "Asiatic trade and residence in certain defined areas." It is, therefore, quite natural that Indians in South Africa should feel alarmed. Their representative body—the South African Indian Congress—took the matter into its own hands and convened a

conference of Indians for the purpose of considering the Bill. That conference has now adopted a resolution "requesting the Government of India, in the event of the Union Government's failure to withdraw the Bill, to press for a Round Table Conference." This suggestion for the Round-Table Conference is presumably made in the belief that if such a conference were held, the representatives of Indians there would be in a position to convince the supporters of the Bill of the injustice involved in the measure. Indians in South Africa are, however, aware of the fact that the representations of the Indian Government are generally treated with scant courtesy by the Union Government. For in the same resolution, to which a reference is made above, they advocate the "termination of diplomatic relations and the withdrawal of the Indian Government's agency from South Africa if the Union Government declines to accede to this request (of holding round-table conference.)" It is to be hoped that the contingency contemplated in the resolution would not arise, and that the Government of India, backed as it is in this matter by the whole country, will take up a strong attitude on this question and tell the Union Government that it can not allow a further curtailment of the rights and privileges of its nationals. If it adopts such an attitude, its representations are bound to have some tangible effect. As has been pointed out time and again by Indian political leaders a policy of retaliation alone can meet the requirements of the case. The Indians in South Africa have been reduced to a position of complete helplessness and abject poverty by the discriminating legislation which has been enacted during the last two decades. The Government of India has been making more or less futile representations. It is now high time that the bolder and more manly policy of reciprocity or retaliation should be adopted.

The same paper writes in its other issue:—

Indians In South Africa

Once again has the South African Government violated the letter and spirit of the Cape Town Agreement and created a situation of great gravity for our countrymen residing in that part of the Empire. The Transvaal Asiatic Tenure Amendment Bill, which has been introduced in the Union Parliament, is wholly unacceptable to the Indian community on the grounds, among others, that it imposes disabilities upon Indians in regard to their trade, residence and occupation and deprives them of their vested rights in the Transvaal Province and that it aims at their compulsory segregation and their ultimate ruin in that province. So strongly do our countrymen feel in the matter that in a resolution passed at an emergency conference of the South African Indian Congress they have actually asked the Government of India, in the event of their failure to secure for the Indians the justice to which they are entitled, to intimate to the Union Government that the diplomatic relations between the two Governments should be considered to have ceased and to withdraw their agency in South Africa as a protest against the Bill. We hope with all our heart that the contingency contemplated by the conference will not arise and that the Government of India will succeed in persuading the Union Government not to go back upon the letter and spirit of the Cape Town agreement. But if the contingency does arise, public opinion in India will whole-heartedly support the proposal made by the conference.

Plea From Indian Flower Sellers

Deputations At Council Committee Meeting

"The proposed new by-law regarding hawkers and pedlars places a needless restriction on a class of traders composed of a poor section of the Indian community who have been carrying on their business to the advantage of European housewives for over fifty years," said Mr. S. R. Naidoo, the spokesman of the Natal Indian Congress at yesterday's committee meeting of the City Council of Maritzburg.

"If this move is directed against the flower sellers, why should such a comprehensive by-law be necessary," went on Mr. Naidoo. "There are only 12 of these flower sellers, whereas the proposed by-law will restrict all hawkers and pedlars from entering hotels and offices."

Mr. Naidoo went on to say that if the flower sellers were really a nuisance because they left refuse on the pavement, this fact should be proved. He also spoke in glowing terms of the beautiful displays of flowers by the sellers in Adderley Street, Capetown.

"I appeal to the Council, especially in view of the large-heartedness and changed atmosphere which has appeared throughout the country since the Capetown Agreement, not to confirm this proposed by-law, which is not only unfair but needless," said Mr. Naidoo in conclusion, after he had mentioned that a petition for the retention of the flower sellers as at present had been signed by 262 Europeans.

Mr. H. Frow, the chairman of the Maritzburg Chamber of Commerce, was the next to address the Council. He pointed out that, according to one of the existing City by-laws, no person, company, or firm should trade upon any verandah or open space, public or private, and also that no firm should permit the trading or carrying on of business upon a verandah or passage belonging to or rented by them.

Rentals Paid

"The Corporation is receiving a rental of £180 a year for the site of one Church Street florist shop alone," went on Mr. Frow, "to say nothing of rates and taxes and the sale of electric current and other services. The tenants have erected up-to-date premises and considerably improved the amenities of a portion of Church Street, and yet we find that the Indian flower seller ban, by the paltry payment of 2s. 6d. a year, compete to the unfair advantage of the European florist."

With regard to Mr. Naidoo's remarks about the beauty of flowers in Adderley Street, Capetown, Mr. Frow pointed out that the florists' windows in Maritzburg gave all the colour desired.

"If we must have a splash of colour in the streets," he added, "why not let us go the whole hog and have the trams and tram-poles painted in a few jazzy colours?"

Mr. Frow also declared that the street flower sellers both in Durban and Capetown had now been restricted to certain areas.

"I would suggest that the position might be met," he said, "by allotting the Indians sites either on the Market Square or in front of the main market entrance behind the gardens. Being then on market property they could then be treated as market stall-holders and charged a rental of, say, ten shillings per month for a space approximately six feet by four feet."

Mr. Frow further stated that, while he had dealt with the matter from the point of view of the flower sellers, the same danger awaited most other

classes of business.

In reply to the Deputy Mayor (Mr. H. V. Marsh) Mr. Frow said that he approved of the proposed by-law, although he thought that it would have been sufficient to make West Street the southerly boundary instead of taking it right up to railway property.

Owing to the fact that the by-law is now before the Council, and not the Council in committee, the matter was not discussed further on the departure of the two deputations.

The Proposed By-law

"No person shall carry on the trade of selling flowers, fruit or vegetables as a hawker or pedlar, or exhibit his wares for sale in either such capacity in any street, sidewalk, passage or open space, whether public or private, within the area bounded on the North by Pietermaritz Street and Havelock Road, on the South by Longmarket Street on the East by Boshoff Street, on the South-West by railway property and on the West by and including Baverstock Street except at such place or places as may be set apart by the Council from time to time and notified in the public press; provided that this prohibition shall not extend to any hawker or pedlar proceeding from door to door of private dwelling houses within the prohibited area for the purpose of offering or exhibiting his wares for sale to the occupier of such premises."

What Is A Theft?

Gandhiji's Letter From Yeravada Prison

The fifth discourse from Gandhiji is on Non-Stealing. A condensed translation is given below:

"We now come to the observance of Non-Stealing. Upon deeper thinking we shall find that all observances are implicit in Truth and Love or in Truth alone. Love may be deduced from Truth or may be paired with Truth. Truth and Love are one and the same thing. I am partial to Truth however. In the final analysis there can only be a single reality. The highest Truth stands by itself. Truth is the end, Love a means thereto. We know what is Love of Non-violence although we find it difficult to follow the law of Love. But as for Truth we know only a fraction of it. Perfect knowledge of Truth is difficult like the perfect practice of Non-violence.

Definition Of Theft

"It is impossible that a person should steal and simultaneously claim to know Truth or cherish Love. Yet every one of us is consciously more or less guilty of theft. One may steal not only what belongs to others, but also what belongs to oneself, as is done for instance, by a father who eats something secretly, keeping his children in the dark about it. The Ashram kitchen shows are our common property, but one who secretly removes a single crystal of sugar from it stamps himself a thief. It is theft to take anything belonging to another without his permission even if it be within his knowledge. It is equally theft to take something in the belief that it is "res nullius." Things found on the roadside belonged to the ruler or the local authority. Anything found near the Ashram must be handed over to the Secretary, who in his turn will pass it on to the Police if it is not Ashram property.

"Thus far it has been pretty smooth sailing. But the observance of Non-Stealing goes very much farther indeed. It is theft to take something from another even with his permission if we have no



real need for it. One should not receive any single thing that one does not need. Theft of this description has mostly food for its object. It is theft for me to take any fruit that I do not need or to take it in a larger quantity than is necessary. One is not always aware of one's real need, and most of us improperly multiply our wants and thus unconsciously make thieves of ourselves. If we devote some thought to the subject, we shall find that we can get rid of quite a number of our wants. One who follows the observing of Non-Stealing will bring about a progressive reduction of his own wants. Much of the distressing poverty in the world has arisen from a breach of the principle of Non-Stealing.

Other Kinds Of Thefts

"Theft thus far considered may be classed as external or physical theft. There is besides a second kind of theft subtler than this first and far more degrading to the human spirit. It is theft mentally to desire acquisition of anything belonging to others or to cast a greedy eye at. It is mental theft to feel temptation in respect of any good object we see. One who observes a fast take no food, physically speaking, but he is guilty of theft as well as a breach of his fast, if he gives himself up to a mental contemplation of taste when he sees others taking their meals. He is similarly guilty if during his fast he is continually planning the varied "menu" he shall have when he has broken the fast. One who observes the principal of Non-Stealing will refuse to bother himself about things to be acquired in the future. This evil anxiety for the future will be found at the root of many a theft. To-day we only desire possession of a thing; to-morrow we shall begin to adopt measures, crooked as well as straight, directed to such possession.

"And ideas may be stolen no less than material things. One who egotistically claims to have originated some good idea which, really speaking, did not originate with him, is guilty of a theft of ideas. Many learned men too have committed such theft in course of world history, and plagiarism is by no means uncommonly even to-day. Supposing for instance that I see a new type of spinning wheel in Andhra, and manufacture a similar wheel in the Ashram, passing it off as my own invention. I not only practise untruth but am clearly guilty of stealing another's invention.

"One who takes up the observance of Non-Stealing has therefore to be very humble very vigilant and very simple in habits"

South African Indian Congress

ELEVENTH SESSION OF CONFERENCE

The eleventh session of the South African Indian Congress in Conference will be held at Cape Town on the 29th, 30th and 31st December 1930.

AGENDA

1. Presidential Speech.
2. Minutes.
3. Gen. Secretaries' Report.
4. Treasurers' Statement.
5. Notices of motion.
6. Revision of Constitution and Standing Orders.
7. Election of Officials.
8. General.

S. R. NAIDOO & E. M. MALL,
Joint Hon. Gen. Secretaries,
South African Indian Congress

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Congratulation To Mr. Tyson

The South African Indian Congress has sent a cable to Mr. J. D. Tyson on the occasion of his marriage with Miss Yuill congratulating him and wishing him the best of luck.

In The Magistrate's Court

For The District of Durban—Held At Durban.

No. 16794/1930.

In the matter between

CHENDRAMMAH, No. 56658/71072, Free Indian Woman, of Clairwood—Plaintiff, and CUPPUSAMI, No. 112614, Free Indian Immigrant, lately of Clairwood, but whose present whereabouts is unknown to Plaintiff—Defendant.

To the above-named Defendant :

Take notice that a summons has been issued against you in this Court by CHENDRAMMAH, No. 56658/71072, of Clairwood, for divorce a vinculo matrimonii on the ground of malicious desertion and costs of suit and that an order has been made that the publication of notice of such summons shall be deemed to be good and sufficient service of the summons on you.

You are hereby required to enter appearance to the summons on or before the 16th day of January 1931 and if you do not do so Judgment may be given against you in your absence.

Dated at Durban this 20th day of November 1930.

(Sgd.) BRIAM CAMP,
Clerk of the Court, Durban.

A. CHRISTOPHER,
Plaintiff's Attorney,
Madoline Buildings,
Little Grey Street, Durban.

NOTICE

To The Indian Public

The attention of the Indian public is invited to the fact that any persons having complaints or grievances in regard to any of the following matters, namely:—

1. Railway and postal services,
2. Immigration matters,
3. License,
4. Education,
5. Firearms,

are requested to communicate in writing to their respective Provincial bodies:—

(1) Natal Indian Congress, 175 Grey Street, Durban.

(2) Transvaal Indian Congress, 6 Kort Street, Johannesburg.

(3) Cape British Indian Council, 80 Hanover Street, Cape Town, or to the undersigned:—

S. R. NAIDOO & E. M. MALL,
Joint Hon. General Secretaries,
South African Indian Congress,
P. O. Box 173,
Johannesburg