

Indian Opinion

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INDIA'S COMING INDEPENDENCE

ITS PROBABLE EFFECTS ON SOUTH AFRICA

[BY O. F. ANDREWS]

THE new status, which India expects to obtain without any undue delay, will bring very important changes with it in her relations with the other Dominions. As far as foreign policy and defence are concerned, India will still be to a large extent dependent on Great Britain, though the utmost effort will be made to bring these also as early as possible within the control of responsible Indian Ministers elected by the Indian people. For the Prime Minister, Mr. Ramsay MacDonald, has made it quite clear on behalf of all political parties in Great Britain that there are to be eventually no reservations whatever in Indian self-government. That is what is now actually implied by the phrase "Dominion status."

While foreign affairs are still subject to control from the Viceroy, representing the British Crown and Parliament, there is now to be, as far as possible, freedom from control in domestic affairs. India within the Commonwealth is to be mistress within her own house in the same manner as the other Dominions. Only three exceptions need to be mentioned here: (i) The Secretary of State for India will remain responsible for certain necessary transactions during the interval of transition. (ii) There will be financial guarantees reserved, which as yet are not fully specified. (iii) The Indian States under their Princes will still maintain their direct relation to the British Crown even after they have entered into Federated India.

How these remaining controls will operate has not yet been made clear. Obviously further conference in India is necessary before decisions are taken, and a standing committee is to sit in India to work out these important matters before the final "India Self-Government Bill" will be presented to the British Parliament for ratification.

But however important these exceptions may be, as safeguards, they do not appear to me to invalidate the general proposition I have put forward, that in domestic policy India is to be mistress within her own house in the same manner as the other Dominions. Just because reservations have still to be made, India's new independence in other directions will be most jealously guarded.

Domestic Policy

Under the head of domestic policy, I place without any hesitation all questions affecting the other Dominions. As long as the Commonwealth is maintained, these questions remain domestic rather than foreign. The vital difference in these domestic matters that has now suddenly revealed itself is this, that while the Indian Government was entirely subject to the British Parliament in these matters before, it will now be no longer in subjection. If the point is brought forward that ever since the Hon. V. S. S. Sastri came out as Agent-General from India, direct relations have been established, it has to be remembered that the Agent from India took his instructions ultimately from the Secretary of State in London. There was no responsible Government in India. Even Mr. Sastri's appointment, popular as it was, was not a responsible appointment by

members of the Indian Parliament; it was the Viceroy's nomination sanctioned by the Secretary of State in London.

When the new status is reached, these things will all be different. The Viceroy will only be able to act, within the new constitution, on the advice of his own Ministers, in a perfectly constitutional manner. He will not nominate, but rather select, the next Agent for South Africa on the advice of these popularly elected Ministers. The whole relation between South Africa and India will be taken out of the hands of the Secretary of State in London and will be left entirely in the control of the Legislative Assembly at Delhi, which will be empowered to take its own responsible line of action.

This means that the Indian people, in future, will be able to frame and carry out their own inter-Dominion policy. They will be able to undertake in India, in domestic matters, those things which are undertaken in the other Dominions without any interference from Great Britain. This new relationship with South Africa, when it materialises, is surely much more healthy and self-respecting than that of perpetual dependence and tutelage which India has endured up to the present time.

Practical Effects

What this change will mean in practice may be stated in the following manner:

- (1) India will have, in future, entire responsibility for the regulation of her own internal and external trade and commerce. She will set up her own Customs duties and tariffs for goods entering and leaving her ports. Her policy, as a Dominion, is likely to be Protectionist; since this has already been declared by her leading statesmen. How far she will be prepared to give preferences will depend entirely upon the goodwill of her people. In making her trade arrangements with other countries, she will naturally study her own interests and friendships.
- (2) India will have, in future, complete and final control of the composition of her own population. Thus she will be able, for the first time, to restrict immigration to her own shores and to reply in action to the "exclusion" legislation exercised against her by other countries. She will be able to "exclude" in turn.
- (3) India will be able, in future, to lay down conditions for her own citizenship and municipal rights. Her political and municipal franchises will be in her own hands to give or to withhold.
- (4) India's railway service and coastal steamer traffic, in future, will be subject to her own regulations.
- (5) The raising of internal and external loans and the fixing of the rate of exchange will, in future, be decided by the Indian Legis-

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THE OUTLOOK

"Find full reward of doing right in right
Let right deeds be thy motive; not the fruit
which comes from them."

(SONG CELESTIAL)

HINTS are being thrown out that the Transvaal Asiatic Bill may after all be shelved, a newer but equally effective weapon having been discovered.

The argument so frequently advanced by the protagonists of equal justice for all irrespective of race or colour that already the majority of the South African Indian community are South African nationals and that only a comparatively small number are in any sense aliens, would appear to have suggested to the Minister and his following that the Capetown Agreement, if dissolved, would leave the Union Government free to work its will upon its Indian population without being troubled by considerations of interference from the Indian or any other Government.

The time-honoured tradition "Every man entitled to wallop his own nigger" dies hard in this country. It still has many adherents. If not always subscribed to in its most literal sense, it nevertheless remains true that the non-white is very widely regarded as having no rights other than those permitted to him by his natural lords and masters upon whose privileges and prerogative he shall never be permitted to encroach. Helotage is regarded as being the right and proper status for the "coloured" man to occupy, helotage is the lot that in the Transvaal has been apportioned to the coloured man of South African origin, helotage is the portion it is calculated it would be easy to assign to the South African nationals of Indian origin.

The difficulty of the Indian-born is one that must disappear *pari passu* with the disappearance of the class itself. In the natural order of events what still remains of it will have gone the way of all the flesh if it have not already succumbed to the seductions of the repatriation scheme. Therefore, it occurs to us that the rumour referred to may not be without foundation. Something of the nature of a "ballon d'essai" has already appeared in the daily press. Mr. Patrick Duncan, who it may safely be assumed does not speak for himself alone,

has permitted the publication of a hint suggestive of a change or at least a modification of regard in respect of "The Bill". Any respite will, of course, be welcome, but advantageous to the Indian community as such, only if every section of it exercises a wise foresight, and caution in the acceptance of Greek gifts. "Divide and Rule" is a policy with which India and Indians the world over have grown sufficiently familiar to recognise at sight. Nor is the spectacle of a sprat being thrown to catch a mackerel altogether unknown. We have, we trust, made it sufficiently clear at the recent Congress meeting that no concession will be acceptable that plays up the interests of one section of the community at the expense of the community as a whole. We have at least learned to appreciate that a mess of pottage is but a poor exchange for a forfeited birthright. Every attempt at further degradation, whether of the Indian-born or of the South African born must be resisted with a united front. Divided, we must *all* inevitably fall. The real issue is, as we have emphasised again and again, one of status, not of any one or other section of us but of us as a community. The future of the Colonial-born is as precious to us as the immediate present of the Indian-born; the dignity of the humblest as vital as that of the wealthiest merchant or shareholder. Nor are we purchasing ease for our own generation at the price of helotage for our children. The right to freedom of opportunity for all of us who are lawfully domiciled in the Union is not dependent upon the Capetown or any other man-made agreement. It is a natural right that has existed, still exists and will continue to exist whatever be the fate of the Capetown Agreement, so long as it is maintained with all due respect to the rights of other sections of the Union's peoples. It existed as a right from the outset in spite of its violation by those influenced by class selfishness and colour bias; it will not cease to exist merely because self-interest prompts its continued denial and violation. Ours must be the duty and the task to assert and to defend the right; to expend our every energy to remedy the wrongs already done.

THE TRANSVAAL PERIL

(BY G. F. ANDREWS)

IN my last article on the Transvaal, in answer to the *Natal Mercury's* attack, I tried to show:—

(1) That originally the mining areas only were affected by the Gold Law legislation and only mining rights were regarded as being prohibited to Indians in the Transvaal.

(2) Owing to faulty drafting in the wording of the Gold Laws, it was found at a later period, by judgments given in the Courts, that other rights, besides mining rights, had been adversely affected if the letter of the law was observed. At the same time, a pledge had actually been given by the Attorney General, Mr. Jacob de Villiers, that the Bill, when it became law, would not go beyond the prohibition of mining rights to Indians in the Transvaal.

(3) Owing probably to this understanding and other causes the Gold Law of 1908 was for many years administered sympathetically and with due regard to vested rights.

In this article, I want to explain by quotation how in the Gandhi-Smuts Agreement this 'sympathetic' administration of the Transvaal laws, affecting Indians, was fully safeguarded by Mr. Gandhi himself.

The following passage in Mahatma Gandhi's farewell letter to the Indian and European public in South Africa will make this plain. He writes:—

"I have also assured the Indian community, that the present settlement does not preclude them from agitation (as has been made clear in my letter to the Secretary of the Interior, of June 16, 1914) for the removal of other disabilities, which the community will still suffer from, under the Gold Law, the Townships Act, the Law 3 of 1885 of the Transvaal, and the Trade Licence Laws of Natal and the Cape. The promise made by General Smuts to administer the existing laws justly and with due regard to vested rights gives the community breathing time; but these laws are in themselves defective and can be, as they have been, turned into engines of oppression and instruments by indirect means to drive the Indian population out of South Africa...It is by mutual co-operation and goodwill that the solution of the balance of the pressing disabilities, which were not made points for passive resistance, may be obtained in the natural course and without trouble or agitation in an acute form."

Mahatma Gandhi ended this letter with a remarkable word of affection for South Africa as his second home.

"This sub-continent", he said, "has become to me a sacred and dear land, next only to my motherland. I leave the shores of South Africa with a heavy heart, and the distance that will now separate me from South Africa will but draw me closer to it; its welfare will always be

a matter of great concern, and the love bestowed on me by my countrymen and the generous forbearance and kindness extended to me by the Europeans will ever remain a most cherished treasure in my memory."

In the two official letters which formed the Gandhi-Smuts Agreement, Mahatma Gandhi ended his own letter as follows:—

"Meanwhile, if the generous spirit that the Government have applied to the treatment of the problem during the past few months continues to be applied, as promised in your letter, in the administration of existing laws, I am quite certain that the Indian community throughout the Union will be able to enjoy some measure of peace and never be a source of trouble to the Government."

One thing, I feel certain, will be felt by every reader of such words as these. Mahatma Gandhi fully expected that the Transvaal legislation would be modified in the course of time and made more lenient in its application by administrative acts; he did not expect further restrictive legislation to be passed and the administration to be made more and more unbearable by the pressure of the letter of the law and the disregard of its spirit.

As I have already stated, for many years the existing laws were actually administered sympathetically. Of that there is ample and clear evidence. Indians in the Transvaal found means, that were proved in the Courts to be legitimate, of trading and occupying sites without hindrance by the higher authorities. But from the year 1919 onwards, one after another new disabilities were imposed. In the year 1930, matters were pressed so far by those who were opposed to the Indians in the Transvaal, that new restrictive legislation was brought forward which would entirely change the generous spirit in which the Gandhi-Smuts Agreement was signed, and lead to repression.

For this reason, it was entirely right for the Indians immediately to call attention to the new situation and seek a remedy for it.

The remedy has taken the form of asking for postponement of this new obnoxious legislation in order to gain what Mahatma Gandhi has called a 'breathing-time' for the community. If it is possible, during this pause, to get back to a more generous spirit, all may be well. It is for that alone that we are now striving and hoping day by day, without even for a moment relaxing our vigilant efforts—to prevent disaster.

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lative Assembly. Apart from army expenditure, the Budget will come before Parliament for ratification.

Many other changes will, of course, take place when self-government is established. Those that I have briefly indicated may have, in some form or other, their repercussions in South Africa. Already an Agreement exists between South Africa and India which is likely to form the basis of all future relations between the two countries. This Agreement is called the Reciprocity Resolution of the Imperial Conference, 1918, that was supplemented by a resolution at the Imperial Conference of 1921 which all the other Dominions accepted but the South African representatives refused to accept. Since these resolutions are very little known, it may be well to quote the important clauses in full before commenting upon them. The resolution of the Imperial Conference of 1918 reads thus:

"It is an inherent function of the Governments of the several communities of the British Commonwealth, including India, that each should enjoy complete control of the composition of its own population by means of restriction on immigration from any of the other communities.

British citizens domiciled in any British country, including India, should be admitted into any other country for visits, for the purpose of pleasure or commerce, including temporary residence for the purpose of education. The condition of such visits should be regulated on the principle of reciprocity, as follows:

"(a) The right of the Government of India is recognised to enact laws which shall have the effect of subjecting British citizens domiciled in any other British country to the same conditions in visiting India as those imposed on Indians desiring to visit such countries.

"(b) Such right of visit, or temporary residence, shall in each individual case be embodied in a passport or written permit issued by the country of domicile and subject to *visâ* there by an officer appointed by and acting on behalf of the country to be visited, if such country so desires.

"(c) Such right shall not extend to a visit or temporary residence for labour purposes or to permanent settlement."

Imperial Conference

The Imperial Conference of 1921 reaffirmed the Reciprocity Resolution of 1918 and added a resolution of its own, as follows:

"The Imperial Conference recognises that there is incongruity between the position of India as an equal member of the British Empire and the existence of disabilities upon British Indians lawfully domiciled in some parts of the Empire. It is therefore of the opinion that in the interests of the British Commonwealth it is desirable that the rights of such Indians to citizenship should be recognised. The representatives of South Africa regret their inability to accept this resolution in view of the exceptional circumstances in a great part of the Union. The representatives of India while expressing their appreciation of the acceptance of the resolution recorded above, feel themselves bound to place on record their profound concern for the position of Indians in South Africa and their hope that by negotiation between the Governments of South Africa and India some way can be found, as

soon as may be, to reach a more satisfactory conclusion."

Both these resolutions have been, for all practical purposes, left, as a dead letter, by South African statesmen hitherto, except where their own interests were concerned. They were able to disregard them because the Government of India was directly controlled from Great Britain and that country was anxious to avoid as far as possible any disturbance in South Africa concerning Imperial affairs. But the question must now be frankly faced, whether India herself is likely to adopt such a temporising attitude, when she is free to take her own course and is no longer under direct British tutelage in all Dominion concerns.

It may be suggested, in answer to this, that South Africans, who are Europeans, have so little inclination to go to India, that clause (a) in the Reciprocity Resolution, which would subject them to the same conditions as those imposed on Indians in South Africa, becomes almost nugatory in practice. But such an answer takes little account of the world situation as it is developing to-day and as it will develop still more rapidly in the future.

Union Recognition

This may easily be seen from the fact, that already the Union Government has been compelled to recognise the trend of events in the commercial world by signing a treaty with Japan which embodies different features of the Reciprocity Resolution and makes these at once effective for Japan. India, when her national consciousness is fully energetic with the immense impetus which self-government brings with it, is likely to be able to offer more advantageous commercial bargains with the Union Government than Japan can ever do, because India with its vast population lies across the sea almost opposite the rapidly growing port of Durban, holding out her trade with both hands. When India becomes as self-governing as Japan and as free to choose her own partners, in the mutual advantages of commerce, she will assume much more importance in the eyes of the Union Government than she has done hitherto.

Such commercial advantages, if they are to be realised, mean the establishment of South African business houses in India similar to the business houses owned and staffed by Japanese. These have more than doubled their trade with India since the year 1920; and in the next ten years the progress will be still more rapid.

Let me relate some experiences of my own. When I first went to India, nearly thirty years ago, I cannot remember any Japanese merchant firms doing business in Calcutta or Bombay. There were also very few large Indian firms doing business in Kobe and Yokohama. Now, on both sides, the expansion of trade has been increasing every decade. Wholesale merchants, holding capital running into hundreds of thousands of pounds, are developing commercial relations between the two countries. I have noticed also the very same thing happening with Australian trade, which has increased enormously during the last few years since proper business steps were taken and trade advantages were explored. Between Australia and India mutual goodwill has grown almost as rapidly as commerce.

Therefore it has been to me a cause for wonder, which I have expressed on many occasions, that the same basis of mutual advantage and goodwill has never been established by the South African Union in relation to India. The trend of world commerce is pointing that way, and the door is now open. The newly won status of India, as an independent country managing its own trade, may draw attention to the opportunity offered.—*Cape Times*.

India: A Friend?

The *Cape Times* editorially comments as follows under the above heading in its issue of Jan. 26:—

From India comes news of a change in political outlook more sudden and more favourable towards the work of the Round-Table Conference than even the wildest optimist would have thought possible a few days ago. Far from trying to work up prejudice against the results of the Conference, the Congress leaders have behaved with restraint and wisdom. The response of the Government of India has been immediate and untainted by conditions. The legal ban on Congress activities is removed. The suggestion made by Mr. Ramsay MacDonald, that such concessions should be conditional on a Congress promise of good behaviour has been ignored. This is the best of the good signs which have showed themselves during the past week in India. It was tempting, no doubt, for the Indian Government to seize on the chance of exacting promises from the Congress leaders as the price of their release. But it would have been a had mistake to have insisted on any conditions at all. Thus whereas a few months ago, the future of India seemed dark beyond sensible hope, the past week has made hope not merely sensible but a commonplace of patriotism. We shall all be very short-sighted in South Africa if we fail to understand that this sudden change in India is certain to have reactions here. It is not so much that—with the British Government and moderate Indian leaders at one about the possibility of federal self-government, and with the Congress hothouse converted in a night from rank hostility to compliance, if not to active co-operation—a flare-up in South Africa of anti-Indian feeling would be most unpleasantly conspicuous and would put South Africa in a very equivocal position before the eyes of a watching world. Even if that is so, a genuine need in South Africa for such new legislation as the Asiatic Tenure Bill would justify our Government in saying that they cannot be deterred from doing their duty by thoughts of what the rest of the world may say.

But the question which the public will ask, and will expect the Government and Parliament to put to themselves, is whether there is any genuine need at the moment for legislating on Indian matters. The agreement with India has no more than a few months to run. When it was made, the Asiatic tenure controversy was deliberately left out of account on both sides. We in South Africa should not be in a hurry to exhibit ourselves as the one remaining focus of Indian discontent, just at the moment when the long-chafed soreness between Great Britain and India is being magically soothed away. That seems to us to be the statesman-like point of view for the Government to take. There is the important fact, too, that in this matter, self-interest for South Africa reinforces statesmanship. As Mr. C. F. Andrews shows in the article which appears in this page today, a self-governing India will be mistress of her own trade policy. The possibilities of commercial development as between South Africa and India are so large that few have even contemplated them as yet. If South Africa chooses this moment for aggressive legislation against the local Indian community, she can say farewell to all hope of reaping benefit for herself from this great change in India. This is hardly the time to throw away any source of new prosperity, unless a clear national necessity makes its rejection imperative. We do not think that the friction between

European and Indian traders in the Transvaal creates a national necessity of that importance. If not, the Government will be wise to make up its mind to postpone this controversial Bill till the new agreement with India has been negotiated, and to announce its decision without delay.

Cape Immigration Appeal

Nagar Kara vs. Principal Immigration Officer

The following important judgment was delivered in the above case on the 15th December 1930 by Mr. Justice Watermeyer in the Cape of Good Hope Provincial Division of the Supreme Court:—

In this matter the Immigration Appeal Board has submitted certain questions of law for our decision.

It appears that one Nagar Kara, an Indian, entered the Cape Province in 1912. He was then a prohibited immigrant because he could not read or write a European language, but he was allowed to enter because he was in possession of a permit to enter which had been fraudulently obtained for him.

The statement of the case then proceeds as follows:

2. From the time of his first entry and at all material times thereafter the Appellant intended to have his permanent abode in the Cape Province and resided here except during his absences to India as stated below.
3. In the year 1916, being desirous of visiting India, the Appellant applied to the Principal Immigration Officer for a certificate of Identity under Section 25 (2) of Act 22 of 1913, and, on so applying, he gave truthful information and made full disclosure of his previous illegal entry in 1912 to the Principal Immigration Officer, who with full knowledge of all material facts took no action against Appellant but issued to him the Certificate of Identity he had applied for.
4. Appellant thereupon visited India and returned to South Africa in 1918, when the Principal Immigration Officer allowed him to land.
5. The Appellant again visited India from 1920 to 1928 and once more from 1927 to 1929, on each occasion obtaining a Certificate of Identity from the Principal Immigration Officer issued under Section 25 (2) of Act 22 of 1913, and being allowed to land on his return to South Africa.
6. On the 3rd April 1930 in terms of a Deeming Order issued by the Minister of the Interior under Section 4 (1) (a) of Act 22 of 1913 on the 1st August 1913, a copy of which is hereunto annexed, the Principal Immigration Officer declared the Appellant to be a prohibited immigrant under Section 4 (1) (a) of Act 22 of 1913, against which prohibition notice an appeal was lodged by the Appellant.
7. At the hearing of the said appeal by the Immigration Appeal Board, application was made on behalf of the Appellant for the subpoenaing of Mr. Brande (retired Principal Immigration Officer at Cape Town) and another witness who were alleged to be able to testify that the failure to take action against the Appellant when his illegal entry into the Union of South Africa was discovered, and his subsequent admissions into the Union of South Africa, were in accordance with the policy pursued at the time by the Department on general instructions from the Minister. The present Principal Immigration Officer admitted that during the period 1917-1921 the Department had general instructions from the Minister to take no action

against Asiatics whom the Department knew to be here illegally.

2. The Board considered the evidence for which subpoenas were asked immaterial and came to the conclusion that the Appellant was here illegally and that his appeal against the prohibition notice should be dismissed.

The so-called "deeming order" is in the following terms:

"Under the powers conferred on me by paragraph (a) of sub-section (1) of Section four of the Immigrants' Regulation Act, 1913 (Act No. 22 of 1913), I hereby deem every Asiatic person to be unsuited on economic grounds:—

- (1) to the requirements of the Union; and
- (2) to the requirements of every Province of the Union:
 - (a) in which such person is not domiciled;
 - or
 - (b) in which such person is not, under the terms of any statute of such Province, entitled to reside.

(Sgd) J. C. Smuts."

The questions which we are asked are:

- (a) Whether in the circumstances of this case Nagar Kara has lawfully entered or remained in the Cape Province or has acquired a domicile therein.
- (b) Whether the evidence in respect of which subpoenas were applied for would have been material in arriving at a decision on those points.

Now it is quite clear that under Section 4 of Act 22 of 1913 Nagar Kara was a prohibited immigrant both because he was an Asiatic and because he could not write a European language. It was therefore the duty of the Immigration Officer under Section 19 of the Act to declare him a prohibited immigrant and to remove him from the Union. Though he had full knowledge of the facts from the year 1916 to the year 1930 this was not done, but on the other hand certificates of identity were issued to the man which enabled him to visit India and re-enter the Union on three occasions during that period.

Now under Section 20 of the Act anyone who aids or abets any person in entering or remaining within the Union in contravention of this Act, knowing that person to be prohibited from entering, commits an offence and is liable to a fine or imprisonment. If this man was a prohibited immigrant and was known to be such, then the issue to him of the certificate of identity, which enabled him to re-enter the Union, was an offence and the persons issuing such certificates with knowledge that he was a prohibited immigrant were liable to the penalties imposed by the Act.

In terms of Section 25, the issue of these certificates of identity is authorized by the Minister and they can only be issued to persons lawfully resident in the Union. Under Government Notice 1667 published in the Gazette of 19th December 1919, the Minister authorised J. L. Conway to sign certificates of identity.

Under Section 23 (2) of the Act a certificate signed by the officer authorised by the Minister by Notice in the Gazette shall be evidence in all Courts of law that it was issued in accordance with the provisions of the Act. Two such certificates that of 1920 and that of 1927 have been placed before us signed by the proper officer Mr. Conway; they are therefore evidence that they were properly issued in accordance with the Act. That is, we must take it that the issue of these certificates was duly authorised by the Minister.

It follows that if Nagar Kara was a prohibited immigrant in 1920 and 1927, then Mr. Conway and the Minister of the Interior have committed a crime and should be prosecuted.

On the face of it this seems rather startling and consequently we must examine our premises to see whether there is any flaw in our assumptions. The

main assumption which leads to the conclusion that the Minister and Mr. Conway have committed a crime is the assumption that Nagar Kara was a prohibited immigrant in 1920 and in 1927, and the question is whether that assumption is correct.

It is quite true that throughout the period of his residence in South Africa, he remained an Asiatic and he could not read or write a European language, but those disqualifications are subject to exception.

Under Section 25 of the Act, a discretion is given to the Minister to exempt any person from the provisions of Section 4 (1) (a) and (b) of the Act.

Further, though Asiatics were in 1913 deemed by the then Minister of the Interior to be unsuited to the requirements of the Union, it does not follow that his successors in title must necessarily be of the same opinion. Subsequent Ministers may have deemed that the class of Asiatics who are unsuited to the requirements of the Union did not include those already in the Union.

The Minister, therefore, is left a very large discretion as to whom he deems to be a prohibited immigrant. We must take it that the Minister has not broken the law which it is his duty under Section 1 of the Act to administer through his officials.

We must further take it that the certificate of identity which he authorized to be issued under Section 25 to Nagar Kara was lawfully issued; that is was issued in terms of Sections 25 (2) and Regulation 21 (2) to a person lawfully resident in the Union.

An Asiatic who had no connection with South Africa till 1912, when he arrived here for the first time, and who could not read or write a European language, could only be lawfully resident in the Union if he was exempted by the Minister from the provisions of Section 4 (1) (a) and (b) of the Act, or if he had received a temporary permit to reside here as provided in Section 25 (1). The form and issue of such temporary permits is governed by Regulation 20 and the evidence shows that no such temporary permit was issued.

It follows, therefore, that the Minister, either before or by means of the issue of the certificates of identity to Nagar Kara, exempted him from the provisions of Section 4 (1) (a) and (b) of the Act.

It follows that Nagar Kara lawfully resided in South Africa for a period of over 8 years, and such residence was known to the authorities and he was not allowed to remain through oversight or misrepresentation. Consequently since he always intended to make South Africa his permanent home, he became domiciled here.

The difficulty which I feel in the matter arises from the reasons which the Immigration Appeal Board gave for their decision. They state that "all the actions of the Immigration Department in issuing certificates etc. are in our opinion beyond the powers conferred on them by law. The Immigration Officer had no power to act as they did. They in fact usurped the functions of the Minister."

I do not know if this is meant to be a finding of fact, but it does not seem to agree with what is stated in Section 7 of the Oath, because it is there stated that from 1917-1921 the Principal Immigration Officer admitted that the Immigration Department had general instructions from the Minister to take no action against Asiatics whom the Department knew to be here illegally.

In other words, the Minister, and not the Immigration Officer, exempted this appellant, *inter alia*, from the operation of the Act, and as he could not legally do so except by exempting him under Section 25 (1) from the provisions of Section 4 (1) (a) and (b), it must be taken that he acted under that section.

The answer to the first question therefore is that: In my opinion the appellant lawfully resided in the Cape

Province and acquired a domicile therein prior to 3rd April 1930.

The second question then falls away, as appellant does not raise that, if the first question is decided in his favour.

Costs to be paid by the Principal Immigration Officer.

The Expansion Of Indians Abroad

(BY C. F. ANDREWS)

By far the greatest dispersion of Indians abroad in modern times took place between the years 1837 and 1916, owing to the introduction of the indenture system of Indian labour. This labour system was devised as a remedy for the dearth of agricultural workers in the sugar plantations, after the Abolition of Slavery in the West Indies, Mauritius and other tropical regions. There were also other Indian labourers who went out, under conditions much less harmful and restrictive, to the countries which border on India. In these other countries, the population, overflowing from India, has settled down in a much more stable manner than in the countries far distant.

A Greater India has been formed which borders everywhere on India itself along its whole eastern border. The immigration from China has met it everywhere half way, making a Greater China.

The natural meeting place of these two streams of migration coming from the two most populous countries of the world, is the Malay Peninsula. Both in Burma and in Malaya, Indian and Chinese emigrants are pressing forward today. It is not yet clear which stream of migration will finally predominate, but the prospect in Malaya is more favourable to China than to India.

To summarise rapidly, the whole emigrant population of Indians abroad in our own generation numbers less than 2,500,000. First of all, into the adjoining island of Ceylon nearly a million Indians have emigrated during the last century. The flow backwards and forwards still continues. Now that the east coast of Ceylon is being rapidly opened up, both by railway and road extension, this important growing Indian population from Southern India, which is densely crowded with agricultural people, forms one part of India's overflow.

In Malaya, which is the second outlet, there are now resident in round numbers more than half a million Indians, who work in the rubber plantations. It is a somewhat unstable population, constantly moving backwards and forwards. There is still room in Malaya for a much larger number to settle than have hitherto gone over from Madras. But the pressure of emigration from China is also beginning to tell heavily.

In South Africa, all told, there about 185,000 Indians in residence, and in East Africa about 45,000, of whom are in Kenya. The island of Mauritius contains over 200,000. In the West Indies, British Guiana and Trinidad contain each of them some 125,000 Indians. A much smaller number reside in Surinam, or Dutch Guiana, and also in Jamaica. In Fiji, far away down in the South Pacific, some 70,000 Indians have gone out, chiefly as indentured labourers. There is a fairly large floating population of Indians also in the Dutch East Indies as well as at the great ports of Hong Kong and Singapore.

In the British Dominions of Canada, Australia and New Zealand, the number of Indians in

residence has now become almost insignificant. At an earlier date, it was one of the burning questions within the British Commonwealth.

Last of all, in Europe and America, there is a variable population of those who have come over for study and commerce. This may, perhaps, number in all some 5,000 to 10,000 people. These do not, for the most part, reside permanently in Europe, but give place to others who come over for special study in their turn. They form an exceedingly important section of the whole migration; but since they do not come over for labour purposes and do not settle in the country, their presence has not hitherto raised any colour or race problem.

These figures that I have given represent in a very rough manner the largest groups of emigrant Indians. But it must always be remembered that there are besides many scattered individuals, who have gone to Mesopotamia, Afghanistan and Central Asia; who are to be found in Somaliland, in the Belgian Congo, in the Soudan, at Aden, in Rhodesia, and even on the West coast of Africa. They are also resident in Corneo, Java, Sumatra, in the Philippines, and Japan, chiefly carrying on trade.

Two of the Provinces that are included in British India, namely Burma and Assam, have been partly populated by Indian emigrants. These regions had a somewhat scanty population only half a century ago. Since then, over a million Indians have gone to Burma, and 1,200,000 have gone to the tea-gardens in Assam. In Burma today, there is a movement to prevent further Indian labour immigration on a large scale. Assam is also getting rapidly filled up with recruited Indian labour under a free immigrant system.

Let us now consider the group of colonies to which indentured labour was sent. They were Natal, Mauritius, Trinidad, British Guiana, Dutch Guiana, Jamaica and Fiji. This system was so harmful in its domestic consequences that it was at last abolished by the Government of India between the year 1915 and 1920. The few Indian indentured labourers, who had not yet served out their full five years' indenture, were set free on January 1st, 1930, a date which is regarded by many Indians today as almost comparable in importance with the date on which slavery was abolished in the West a century ago.

Fortunately, the very large emigration to Malaya never suffered from the effects of this indenture system, because it was almost immediately abandoned for a healthy system of free labour. On the other hand, Ceylon suffered for more than half a century under a peculiar method of recruitment, with money advances, which placed the labourer under a debt to his employer. So great was this debt that it was quite impossible to pay it off. This *tundu* system (as it was called) of indebtedness brought evils of its kind, which were abolished soon after the Great War. Now, at last, in all the colonies, throughout the British Commonwealth, Indian labour is entirely free. There are no longer in existence any old semi-servile conditions.

With regard to South Africa, the greatest political difficulties have arisen. In no part of the world has there been a nobler Indian struggle for freedom. The whole situation had received some relief owing to the new Indo-Union Agreement made between the South African Union Government and the Government of India. The Rt. Hon. Srinivasa Sastri, the Indian Agent-General, in South Africa, had won golden opinions from Europeans and Indians alike for his masterly statesmanship. But the temporary improvement has again been interrupted owing to the introduction

of a new Bill regarding the Transvaal. The problem can be hardly said in any way to be solved, so long as the colour prejudice remains in such an offensive form as the Gold Law of 1885, the racial legislation of 1908 and the distinctly racial Colour Bar Act, of 1927.

In East Africa, the tension between Indian and European is still at the point of danger, and there hardly seems any immediate likelihood of the different racial and political problems being amicably settled. At the same time, it may be truly stated that the general tone of discussion has lately been one of slightly more hope than before.

News In Brief

Mr. A. M. Jivanjee and Mr. Ebrahim Hiptoola, well-known merchants of Nairobi and Bombay respectively, after visiting Pretoria, East London, Port Elizabeth, Capetown and other parts of the Union, arrived in Durban. Many private functions were held in honour of both the merchants during their few days' stay in Durban. Dinner parties were also given by Messrs. O. H. A. Jhaveri, E. M. Paruk, Sorabjee Rustomjee, Baasa, E. A. Tyeb and Miankhan, in honour of both the visitors.

Mr. A. M. Jivanjee and Mr. Ebrahim Hiptoola, accompanied by Mr. O. H. A. Jhaveri, Mr. Fida Hoosen and Mr. Kurban Hussen, paid a visit last

Friday to the Phoenix Settlement and the Ohlange Institute.

By their affable nature both Mr. Jivanjee and Mr. Ebrahim Hiptoola have made many friends in this country by whom they will be missed. They left last Tuesday for Nairobi. We wish them a very pleasant voyage.

The Bombay correspondent of the *Natal Witness* writes:—

The eyes of all India are focussed on Allahabad, where the Congress leaders, including Mahatma Gandhi, are in council preparing a statement on the position regarding Mr. Ramsay MacDonald's declaration, and their future programme.

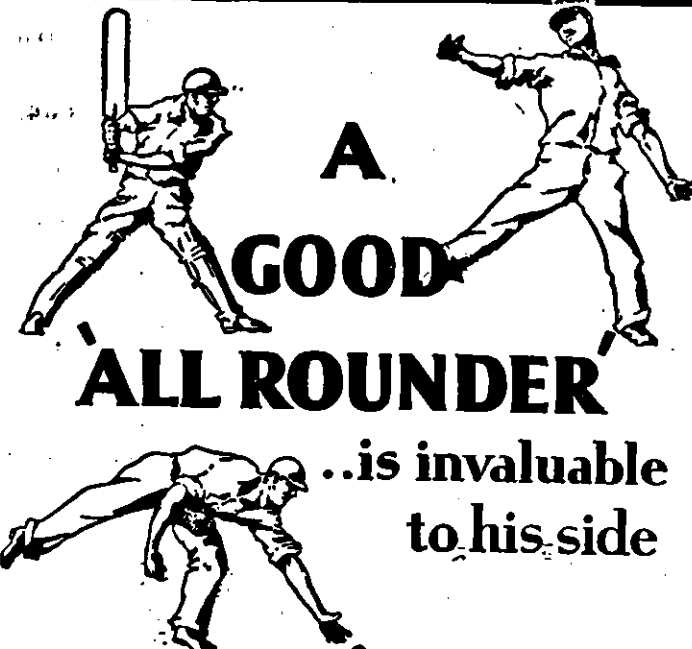
Mahatma Gandhi, as of old, is dominating the discussions, and he continues to play no insignificant part on the question of the present constitutional changes.

The Swarajist leaders are anxiously awaiting the message which, it is believed, is being brought by Mr. Srinivasa Sastri and the other leaders at the Round Table Conference from the British Premier.

There are reasons to hope that there will be assurance from the Labour Government that everything will be done to give India "swaraj".

The Swarajist leaders will come to Bombay to meet the Federation of the Chamber of Indian Merchants to discuss economic issues relating to the new position.

They will later meet Mr. Sastri and the other delegates to the Round Table Conference. A full meeting of the Working Committee of the All India National Congress will be held on February 10.



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