

Indian Opinion

No. 16—Vol. XXXI.

Friday, April 21st, 1933

Registered at the G.P.O. as a Newspaper.
Price Fourpence.

NOTES AND NEWS

It is with regret that we learn of the fact that the buildings, now comprising the St. Aidan's Indian Hospital in Durban, have been condemned by the authorities. This necessitates the erection of the new buildings which, it is hoped, will rise immediately in the neighbourhood of Sastri College. Rev. Satchell, priest-in-charge of the St. Aidan's Mission, has already commenced the difficult task of collecting funds. The hospital, though under Christian supervision, is non-denominational. Persons of all creeds in times of travail, have and will always find the St. Aidan's hospital a heaven of repose. It is hoped, therefore, that donations to the fund will pour in rapidly, so that the work of erecting the new buildings might be expedited.

Following closely on the recent sudden demise of Mr. J. M. Francis, the Indian community of Durban will learn, with feelings of profound regret, of the death, after a prolonged illness, and at the ripe age of 64, of Mrs. Anboo Royeppen. Her popularity was shown by the large gathering which assembled at the funeral service in the Lorne Street Wesleyan Church on Monday afternoon (17th inst.) at which the Rev. Allen Lea, assisted by Rev. R. Choonoo, officiated. The death of Mrs. Royeppen removes from the community another landmark, a Christian pioneer in this country. To the grieved sons and daughters we extend our heartfelt sympathies on their recent sad bereavement.

The Congress leader, Mrs. Sarojini Naidu, was released after serving four months of her sentence of a year's simple imprisonment for disobeying a police order forbidding her to leave Bombay, states a Reuter's cable from Poona.

If the above message is to be followed as a criterion we will most decidedly never get to know the truth about India through Reuter's Agency. The fact is that Mrs. Sarojini Naidu who came as one of the Government of India delegates to the Capetown Round Table Conference in the beginning of last year was arrested soon after her return to India by the Bombay Government and sentenced to a year's simple imprisonment. She has been released after completing her full term at the Yeravda prison.

Principal Urquhart, ex-Vice Chancellor of the Calcutta University, addressing the Aberdeen Brotherhood, London, recently condemned the self-conscious notions of trusteeship in the claim that we alone knew what was best for India whatever Indians themselves thought. We ought not to encourage those who looked upon India simply as a land in which fortunes might be made and less commercially efficient people be exploited. Dr. Urquhart reminded those who magnified terrorism that a vast majority of people were peaceful, law-abiding citizens who desired freedom and independence but only by constitutional means. Were we to alienate them by repeated demands for firm Government, as if they were a nation of children? India's leaders might make mistakes, but they were intensely and sacrificially in

earnest. No Government however firm, no new constitution however perfect, would restore peace unless those responsible were influenced by the spirit of Christ.

THE INDIAN PROBLEM

In discussing Bishop Fergusson Davie's paper on "The Relations of Europeans to Indian in Natal" which he read at a meeting of the Indo-European Council we tried to point out last week that Indians did not in the first instance come to Natal of their own choice but were introduced by the European as cheap labourers to develop the sugar industry and that the majority of the present Indian population consists of the descendants of those Indians. We also tried to point out how the European, who claims to have civilised the country and produced law and order among the Natives, instead of profiting by the Native, which he claims as his right to do, ignored him and exploited cheap Indian labour for his own benefit, and how that Indian labour helped his sugar industry to thrive and enabled his European master to prosper and live a very comfortable life. "European tradesmen have a standard of living for which their fellows have longed and fought," to that we tried to point out how that standard was established and maintained by exploiting cheap Indian labour. We also tried to point out that if 80% of the Native trade was in the hands of the Indians it was due to the industry, frugality and hospitality of the Indian as against the swollen headedness of the white man who looked upon the black man with contempt. The other complaint against the Indian was that he was an unfair competitor in trade owing to his standard of living being lower than the European. Against that we pointed out that there were other sections of the community who were in the principal trade centres such as West Street, for instance, who were selling at a much cheaper rate than even the Indian and were responsible for having ruined the trade in those centres.

We now come to the charge against the Indian of being untidy and unhygienic. This is no doubt a serious charge and any community that claims to be civilised should feel ashamed of such a charge being levelled against it. It is an exaggeration to say, however, that Indians as a community are untidy and unhygienic. In many individual cases we feel ashamed to have to admit it is true and it calls for a very large measure of social work on our part to remedy the situation. But here too a great deal of the blame lies with the State and the European masters. We must once again go back to early

history. The European masters who introduced cheap Indian labour were in the majority of cases criminally negligent in seeing to the hygienic conditions of their Indian employes. They were kept in the most insanitary hovels. Mr. C. F. Andrews, the friend of the poor, as late as 1919 made a tour of the districts where Indians were engaged and he had some severe comments to make against the European employers. There was the Protector of Indian Immigrants. What did that "Protector" do? He protected the European employer whenever the latter found one of his Indian employes absconding being unable to bear the cruelty of his master. Never did he take the trouble of inquiring whether the employer treated his employes fairly. These Indians were kept and allowed to breed under the most appalling conditions and no facilities were provided for the proper education of their children. This is in so far as the individual European employers were concerned. But conditions under the State administration were no better. The Durban Town Council has come in for a great deal of criticism for the way in which it housed its Indian employes. Even our Social Service Committee had to find fault with the Corporation for the insanitary conditions in which it housed its Indian employes. The question of paramount importance whether with the State or individual European master, obviously, was to exploit cheap Indian labour, but not to teach them the rudiments of health and sanitation. Apart from this gambling and drink was actually encouraged so that the employes would ever remain penniless and serve their masters diligently. An example of this may be witnessed at Mount Edgecombe on May 6 when the great annual festival will take place.

How could people living, born and bred under such conditions be expected to know the rules of health and sanitation? And the chances are still less when they are herded together in segregated areas and there allowed to 'stew in their own juice.'

It is complained that in some private European houses where Indians are employed they are found lacking in honesty and cleanliness of speech which are a source of annoyance to Europeans. We hardly think their speech could be worse than that of an untaught European. And after all what facilities are there for good education for the Indians? Though he is compelled to follow the European standard in so far as trade and labour conditions are concerned so that he may not compete unfairly against the European, in the matter of social, political and moral upliftment a much lower standard has been prescribed for him. Practically one-fifth of what is spent on European education is spent on Indian education. What better results could be expected when the standard of education is so low?

It is said that social intercourse between Europeans and Indians is difficult owing to their different civilisations and that there is the fear of intermarriage which neither the European nor the Indian wishes to encourage. Indians have never aspired for social intercourse that would result in intermarriage and we refuse to believe that it always necessarily leads to intermarriage. We might state here as an example that Hindus and Moslems in

India who are known to the outside world to be deadliest enemies of each other are, nevertheless, the best of friends in the villages of India. They intermingle socially as brothers and sisters and yet there is neither interdining nor intermarriage among them. Social intercourse as such depends wholly on the individual's wish. We do not wish to be uninvited guests in a European home nor would we expect Europeans to come to ours as such. The social equality we ask is that in the eye of the law we must not be debarred as a race from the social amenities provided for the general public. For instance there should be no segregation in public places of entertainments.

As for political rights we wish to dispel the fear of the European that we wish to deprive him of his right to rule. What we ask is that there should be no restrictive legislation against us as a race thus according us an inferior status. We should be given equal opportunities for our upliftment.

Indians are certainly not so soft-skinned as to be annoyed by school-children shouting "coolies." We take that merely to be the result of ill-breeding. What we resent, however, is being branded as coolies in the legislation directed against us.

The Bishop referred to one complaint against us that any suggestion that the Government or Town Council makes as regards Indian matters is treated with suspicion and, as an instance, he referred to the suggestion made by the last Capetown Conference of exploring the possibilities of a colonisation scheme in other countries for Indians in South Africa where they might get more political freedom than they have here. Now this, we think is the wrong way of settling the Indian problem, and if we treat this suggestion with suspicion there is justification for doing so. This scheme has not been suggested out of any sense of sympathy on the part of the Government for the Indians but out of contempt towards them in that they are not wanted in this country and must seek new pastures. In other words it is a direct insult to the Indian race. Having brought Indians to this country and having exploited them, a reasonable act on the part of any civilised people or Government would be to allow them to remain honourably in the country. On the part of Indians in order to dispel the fear that they wish to flood the country or to dominate it they have agreed to the stoppage to new immigrants from India. In addition to this thousands of our brethren have been sent away to India, under the assisted emigration scheme. It remains therefore, now to deal with the resident population and the natural increase due to the excess of births over deaths. It is a totally wrong and unfair policy on the part of the Natal members of Parliament such as Mr. Heaton Nicholls to press for the repatriation of Indians. What they should aim at is the removal of the inter-provincial barriers set up against Indians. If that is done it will soon be found that the Indian problem in Natal or elsewhere is non-existent. This is the only just solution of the problem and any other would naturally be treated with suspicion.

We have understood the difficulties and aspirations of the Europeans. Their difficulties are of their own creation and their aspirations are much

too extravagant. On the other hand what we are aspiring for is equal treatment and equal opportunities and a policy of live and let live.

CAPE MALAYS VERSUS INDIANS

THE statement of the Cape Malays of the Transvaal to the Asiatic Land Tenure Act Commission is not very happily worded. The Government has always safeguarded the rights of the Cape Malays. While Indians in the Transvaal did not enjoy the right of ownership of land the Cape Malays always did. They cannot complain, therefore, that they were badly treated. We fail to see why they have been so bitter against the Asiatics asserting their own rights. They claim to identify themselves with the Europeans and declare that their social and moral standard is different to that of the Asiatics. We do not wish to enter into a discussion of their moral standard but in so far as their social standard is concerned very many of them have intermingled with the Indian Muslims. By religion they are Muslims and in their language they are Afrikaans. We do not begrudge the Cape Malays their superior status but they will certainly not benefit by running down the Asiatics. They will not thereby acquire the status of the European. They have been classed among the coloureds and they will remain so. According to their own statement the Cape Malays have been resident in the Transvaal for many years and have occupied as their residential quarters the Malay Location. This is for the first time, however, that we have heard of their grievance in regard to the encroachment of Asiatics. For the first time they have expressed resentment against the word "location" being used for their residential quarters. Perhaps the word "bazaar" or the "Malay Camp" might suit them better! The next thing we might hear is of divorce suits for so many marriages have taken place between Malays and the Indian Muslims. We do not think Indians will be any the poorer by the severance of the connection of the Cape Malays from them. Indians will surely not wish to be in their way should they stand a chance of acquiring a better status by dissociating themselves from the Indians. But indeed they might at least give Indians the credit of being pure bred Indians and of being no more foreigners than the British are.

Transvaal Indian Congress

Provincial Conference

A Provincial Conference of the Transvaal Indian Congress will be held at the Trades Hall, Johannesburg, on the 7th May 1933 at 10 a.m.

Affiliated bodies and district organisations are requested to send 3 delegates. The names of the delegates should reach the secretaries not later than 5th May 1933.

Agenda—1. Transvaal Asiatic Land Tenure Act, 2. Licences, 3. Immigration, 4. Railways, 5. Education, 6. General.

D. M. NURSOO

E. M. MALL

Joint hon. Secretaries.

Transvaal Asiatic Land Tenure Act Commission

Statement By Transvaal (Cape) Malay Association

The following is the text of a statement submitted by the Transvaal (Cape) Malay Association to the Asiatic Land Tenure Act Commission. The Statement is signed by the president G. S. Rasodien, and hon. secretary N. Miller and addressed to the secretary to the Commission:—

Sir,—We are directed to address you ament the position of the Cape Malays in this Province with special reference to the matters at present receiving the consideration of your Commission.

Other sections of the non-European community resident in the Transvaal have some representative by virtue of which, each can press its case, the Indians have their Agent-General; the Chinese, their Consul; the Bantu their Native Affairs Department and the coloured people depend on the voices of the European Ministers of Religion. The Cape Malay, however, remains neither represented, heard or assisted. He has no protection, and no champion to bring his position to bear on the community generally.

Our Association is representative of upwards of 350 families of Cape Malays resident in the Witwatersrand, and we voice the opinion of practically every Cape Malay in the Transvaal.

For the better illustration of the separate identity of the Cape Malay as distinguished from the Asiatic, permit us the liberty of placing before your Commission a brief resume of the history of the Cape Malay in this country, and particularly his Association with the Europeans in the Transvaal.

When the Great Trek of 1836 caused free thinkers to leave their homes and face the wilds, many faithful Cape Malays found it impossible to sever their connections from the Europeans they had so conscientiously and diligently served, that they, too, abandoned whatever puny possessions they might have had and threw in their lot with the Voortrekkers.

This lot of Cape Malays consisted in the main of artisans and some assumed posts of coachmen.

In the early building boom occasioned by the discovery of gold, the Cape Malays took part or actually built such prominent buildings as the Hydes Hotel, the Old Market (the site of the present Cenotaph) and the present General Post Office in Johannesburg. At that time there was no colour bar and the Cape Malays worked side by side with the Europeans.

The Cape Malays first settled in Lower Market Street, towards End Street, then known as the Natal Camp and also in that portion now better known as City and Suburban. Later on, ground was given to the Cape Malays and Coloureds by the Rev. Hutsenburg, for the purpose of building a small house in Ferreirastown at a nominal rental of 10/- per month. In about the year 1895, the present Cape Malay Location was given to the Cape Malays and Coloureds by the late Transvaal Republic. Since that time the Cape Malay has been resident in the portion so allocated to him; he has had his own particular interests and his few personal possessions; an especial condition of this grant was that Asiatics or Natives were not permitted or allowed to reside in the Location.

For some unknown reason the Asiatics have gradually assumed control of the Malay Location and have usurped the Cape Malay himself. The trusting Cape Malay has too readily fallen to the cunning overture of the Asiatic. With the advent of the Asiatic in the Location, the Natives soon also gained entry. This was caused by the Asiatic

renting property acquired in the Location to Natives. So gradually, the Cape Malay fell back before this insidious economic attack of the Asiatic. The Cape Malay has nothing in common with the Asiatic either socially, morally or politically. We have adopted the language and the customs of the Europeans for the last 300 years, our rights have been assailed continually, not intentionally, but, we say, nevertheless, undeservedly, through encroachment on us by Asiatics.

Although the Malay Location itself is not embraced in the investigations of your Commission, in the consideration of the position of the Cape Malay it is here necessary to point out that in this area, primarily intended for the habitation of the Cape Malay, Asiatics hold approximately 75% of the immovable property. The rents charged are abnormally high; the premises themselves are insanitary; four cottages are built on a stand of 50' x 50' leading to an undesirable, unhygienic tenement system; the average number of persons on one stand is 20. The Cape Malay, for want of cleaner habitation, is forced to, therefore, leave this area.

We appreciate the successive Government's real intention to protect the rights of South Africans from aliens, but, Sir, as South Africans, born and bred in South Africa, we ask that we shall not be excluded from similar protection and stigmatised through the Asiatic who has encroached on our preserves.

The Cape Malay always associated himself with the Europeans. In the Voortrekker's struggle for existence, the Cape Malay ought side by side with him for equality and freedom. In the prolonged Kaffir wars the Cape Malay keenly identified himself with the Europeans.

We beg to refer your Commission to a copy of an extract from a speech by the Honourable the Minister of Interior made on the 13th February, 1924, in which the Learned M.P. appreciates the identity of the Cape Malay.

We resent the fact that the Government should associate us in the same Bill concerning Asiatics. If the legislature must pass measures concerning us, we ask that the measures shall not include mention of Asiatics. The Cape Malay must not be drawn into an Asiatic Bill.

It is now sought to definitely assemble Cape Malays and Asiatics in the same Location. We ask that Asiatics be excluded from our area; that we be given the same trading facilities as every South African is entitled to, and that the appellation "Location" be withdrawn from the name "Malay Location" and another substituted. We appeal to your Commission not to class or to put the Cape Malay in the same area as the Asiatics; by so doing the Cape Malay must eventually become totally assimilated and a foreign coloured must triumph over a distinct South African born race.

We pray you to preserve our identity, to protect us as you have protected yourselves from the influx of Asiatics, and to keep us as a race and as a Nation distinct from the Asiatics. We would suggest that the area now occupied by the Cape Malays and Coloureds should be left thus; and that allowance be made for the ordinary expansion of the Cape Malay.

We beg that you will let those who love their country, who fought side by side with Europeans against foreigners, who are in danger of assimilation with an alien race and who desire always to have South Africa as their permanent home, to live distinct from those elements and from those nations which are silently but steadily ousting the Cape Malay and converting our freedom and independence into oppression.

We know, Sir, that your Commission will give this communication the earnest and sympathetic consideration it so assuredly merits.

Extract From Dr. Malan's Speech

The following is an extract from the speech referred to in the above statement delivered by Dr. D. F. Malan, on February 13, 1924, then a member of the opposition side of the House.

"I think that it is not necessary that more than a few words be said from this side of the House concerning the Bill. And that is, namely, that we agree wholeheartedly with the aim and purpose of the Bill and with the reasons set forth by the Minister in his introduction thereof. As was made plain there is on the part of the Malay in regard to ownership of ground in the Transvaal a genuine grievance and this grievance is founded on misunderstanding. There is no clear line of division laid down between the Asiatic from outside and the Malay as to for whom the exemption Laws were intended.

The Malay has already been long in the land, and, what is more, economically he stands on a higher basis than the Asiatic from outside.

"The exemption Law against the Asiatic is not being promulgated as a result of racial hatred, but because the Asiatic from outside is an economic danger whereas the Malay is no such danger, because in his ideas and mode of life he has freed himself from the Asiatic and has identified himself with the European civilisation of South Africa; and it is for that reason that the danger which the Asiatic from outside provides for the land does not exist in his case. We shall therefore support the Bill."

Judgment Of Appellate Division In Roodepoort Case

The following is the text of the judgment delivered by Mr. Justice Stratford in the Appellate Division in the appeal case of the Town Council of Roodepoort-Maraisburg versus Eastern Properties (Proprietary) Limited :—

This is an appeal from a judgment of the Transvaal Provincial Division overruling a decision of Greenberg J. given in the Witwatersrand Local Division. The present appellant was the applicant in the Local Division and prayed for an order (a) directing the respondents to eject from stands Nos. 577, 1039, 1163, 1164, 254 and 308 Roodepoort, the persons mentioned in the petition (being admittedly coloured persons), and (b) interdicting respondent from thereafter leasing the said stands to Asiatics or coloured persons and from permitting their residence or occupation thereon except as bona fide servants of the registered owners. A summary of the material facts set forth in the judgment of Greenberg J. slightly amplified is as follows :—

The petition alleges that respondent as owner of the premises on the stands mentioned is permitting their occupation by coloured persons in breach of the provisions of Sections 130 and 131 of Act 35 of 1908. The occupation by coloured persons is admitted but respondent resists the granting of any order on a number of grounds. Petitioner is the Municipal Council vested with the control of the Roodepoort and Maraisburg townships. Roodepoort township is situated in the mining district of Johannesburg on a portion of the farm Roodepoort No. 43. The farm was proclaimed a public digging by proclamation dated 8th September 1896. In 1896 a survey of the claims diagram was confirmed and is filed in the office of the Registrar of Mining Titles in Johannesburg. The township of Roodepoort was established under an agreement between the owners of the farm and the Government of the South African Republic, dated 18th December 1897. According to the general plan of the township it originally com-

prised 1,555 stands with streets and open spaces. The general plan also shows 108 excluded figures within the boundaries of the township. These did not originally form part of the township but represented stands granted in terms of Section 92 of Lot 15 of 1898 or under corresponding sections of prior gold laws. They have been dealt by section 13 (2) of Act 34 of 1908 for the purposes of that Act, and the township now includes these stands. Respondent owns stands 577, 1039, 1163 and 1164 which are included in the original 1,555 stands, and also stands 254 and 308 which are included in the 108 figures referred to above. None of the title deeds made in favour of respondent contain any restriction relating to occupation by coloured persons. Petitioner is the registered owner of about 35 stands in the township. The application was opposed first on the ground that the petitioner had no *locus standi in judicio*. The learned Judge decided this question in favour of the present appellant. He likewise rejected the further grounds of opposition raised by respondent and granted the application. It will be necessary to examine these alternative objections later, for they were not discussed by the Provincial Division which overruled the judgment and dismissed the application on the preliminary objection of want of *locus standi*.

On this first question Greenberg J. held himself bound by a decision of the Transvaal Provincial Division in the case of Krugersdorp Municipal Council v. Dadoo Ltd. and others, a report of which is to be found in the report of the case on appeal (1920 A.D. 530). The appeal was upheld by a majority (de Villiers A.J. dissenting) for reasons not affecting the question of *locus standi*, which was only discussed by the dissenting judge. We concur in the view expressed by both the lower courts that the Provincial Division's decision in Dadoo's case is directly in point, and, if correct, disposes of the objection of want of *locus standi* in the present case. The Provincial Division, however, held that the decision was clearly wrong and refused to follow it. In this Court of course the question is *res integra* and must now be decided.

The appellant originally claimed to have a *locus standi* on three grounds (a) That it is the owner of stands within the township, (b) that it is the owner of stands which have suffered depreciation as a result of respondent's unlawful acts (c) that as local authority it is the supervisor of health and sanitation and is the representative and guardian of the interests of the inhabitants of the township. The second ground, however, was not urged as it admittedly depended upon proof of damage which could not be established on motion. Dealing then, with the first claim it is the admitted fact that the stands in question in this case (including the 35 held by the appellant) are held by their registered owners by virtue of a right which falls under the category of rights "acquired under Law 15 of 1898 or a prior law" within the meaning of Section 130 of Law 35 of 1908 (Transvaal). That section contains the following prohibition:

"(1) Save as is provided in section twenty-four no right may be acquired under this Act by a coloured person; and the holder of a right acquired under Law No. 15 of 1898 or a prior law under this Act shall not transfer or sub-let or permit to be transferred or sublet, any portion of such right to a coloured person, nor permit any coloured person (other than his *bona fide* servant) to reside on or occupy ground held under such right."

and the penalty:

"(2) any person contravening this section shall

be guilty of an offence, and liable on conviction to a fine not exceeding fifty pounds, and in the case of a continuing contravention to a fine not exceeding five pounds for every day during which such contravention is continued."

The appellant claims, under the heading of his first contention, to have this prohibition enforced and bases his *locus standi* on the ground that it was enacted in the interest, *inter alia*, of stand township owners of whom the Appellant Municipality is one. The decisions in *Patz v. Green & Co.* (1907 T.S. 497) and *Madrasa Anjuman Islamia v. Johannesburg Municipality* (1917 A.D. p. 718) were invoked in support of the proposition that where the legislature prohibits the doing of an act in the interest of any person or class of persons, such person or any one of such class can obtain the intervention of the Court to enforce the prohibition without proof of special damage. The first of these decisions has been affirmed in this Court on more than one occasion and indeed is relied upon by Solomon J.A. in delivering judgment in this Court in the latter case. Two questions then arise, firstly whether that proposition is good law and, secondly, whether the prohibition in section 130 is of the nature above described. As to the first, the proposition can be extracted from either decision in almost the exact language used above. In *Patz v. Green* the actual decision was made to depend upon proof of special damage but that was because the learned Judge was not satisfied that the provisions of the ordinance there in question were enacted in the interests of the class of traders to which the applicant *Patz* belonged. If he had been satisfied on that point the learned Judge intimated clearly that the case would have fallen within the principles of law laid down in *Chamberlaine v. Chester and Birkenhead Railway Co.* (18 L.J. Ex 494); the passage in the decision in that case was the following:—

"Where a statute prohibits the doing of a particular act affecting the public, no person has a right of action against another merely because he has done the prohibited act. It is incumbent on the party complaining to allege and prove that the doing of the act prohibited has caused him some special damage—some peculiar injury beyond that which he may be supposed to sustain in common with the rest of the Queen's subjects by an infringement of the law. But where the act prohibited is obviously prohibited for the protection of a particular party, then it is not necessary to allege special damage."

In the *Madrasa* case the same learned Judge in this Court said, referring to *Patz v. Green*:—

"The law on the subject was there fully discussed, and it was pointed out that, where an act is expressly prohibited in the interests of any person or persons, it is unnecessary, in order to obtain the intervention of the Court, to prove special damage, for that this will be presumed, but where the prohibition is in the public interest, only those members of the public who can prove that they have sustained damage are entitled to their remedy. Now in the present case, I do not think that there can be any question that the prohibition in the Act against the occupation of stands by Asiatics and coloured persons was enacted partly for the protection of owners of land in the township."

Now, no doubt there is some difference in the language used in *Chamberlaine v. Chester and Birkenhead Rly Co.* and generally in the English decisions on the subject and that employed by Solomon J.A., and we are invited by Counsel for the Respondent to attach more importance to the

English judgment from which he derived his views than to those views themselves. It would, of course, be quite wrong to do this; both these judgments are judgments of this Court, the one by adoption and the other in actual fact, and the principles affecting the question before us so far as they are stated therein must be regarded as settled law. There is, however, one word in the judgment in the Madrasa case that needs correction, that is the word "expressly" used by the learned Judge in the phrase ".....where an act is expressly prohibited etc....." This should read 'Obviously' or the words 'or impliedly' should be added. So much is clear from all the reasoning of the learned Judge in that case as also in Patz v. Green where the word 'obviously' appearing in Chamberlaine's case is adopted. Indeed, in my view, no adverb is necessary and the proposition can be stated thus: Where it appears either from a reading of the enactment itself or from that plus a regard to surrounding circumstances that the legislature has prohibited the doing of an act in the interest of any person or a class of persons, the intervention of the Court can be sought by any such person to enforce the prohibition without proof of special damage. This view is in strict accord with the decision in Patz v. Green for there it will be seen the learned Judge intimated that evidence could be led to show whether the prohibition was imposed, for the benefit of traders or of illegal traders. The proposition as I have stated it above, is therefore clearly to be inferred from the two decisions quoted and must be regarded as the settled law of the land. It now becomes necessary to ascertain whether the prohibition in Section 130 was imposed wholly or partly (as to 'partly' see Madrasa case) in the interests of the class to which the appellant belongs, namely stand-holders in this township. It is important to bear in mind that we are scrutinising an Act of the Transvaal passed in the year 1908. At that date Johannesburg was a large and flourishing city comprising many townships. Some of them were commonly called "stand townships" (i.e. townships situated on proclaimed land). These are divided into "government townships" and "semi-government townships" according to the definitions in the Township Act 34 of 1908; both kinds were laid out under the provision of Law No. 15 of 1898 or of a prior (gold) law. The Roodepoort township with which we are concerned was established in 1897. Under the Gold Law then in force, once a farm was proclaimed, the owner was deprived of the right of disposal of the surface rights of the proclaimed area and the right to use the surface for various purposes was only obtainable under the provisions of the gold law. Indeed this was the policy of the gold law from the earliest days and remains the policy of the present day. The Mining Commissioner was given specific power to issue stand licences over proclaimed land, but this power was limited and did not include the authorisation of a stand township; he had for example to obtain the Government's consent to issue stand licences for more than five stands *en bloc*. It appears from the agreement attached to the petition in this case of the Roodepoort township that the owner of some 166 claims being desirous of laying out a township thereon, sought and obtained the authority of the Legislature, which empowered the Government to enter into an agreement with the owner as to the conditions under which this would be permitted. That agreement is before us, and it provides for an equal division of the licence moneys between the Government and the owner. These were the licences payable under the Gold Law, and the licence to

hold a stand was thus only obtainable under that law and was issued by the Mining Commissioner's department. Thus the licence constituted the primary title to the stand, and it is therefore clear that these stands were held under the provisions of "a prior law" to that of 1898 within the meaning of Section 130, and the prohibition in the latter portion of the section not to transfer, sublet, etc. to coloured persons or permit such persons to occupy, extended to the holders of these stands. So much was not disputed by Counsel for Respondent, but he challenged the further proposition that the prohibition was imposed in the interests of the stand holders. His contention was that the purpose of Section 130 as well as Section 131 was merely to carry out the general policy of the Transvaal in regard to the distinction between white and black in the interests of the white people of the Transvaal. The contention is plausible if confined to the first portion of the sub-section (1) but the concluding words of the sub-section completely destroys any such assumption. No holder can permit any coloured person (other than a servant) to reside on or occupy his ground. It is not only their acquisition of rights but their mere presence in the locality which is forbidden. Now who could possibly be interested to object to the presence of a coloured person in any particular place except those who are conscious of their presence and affected by it; namely, Europeans possessing residential property in that locality. So it seems to me that the Legislature must have had the interests of the stand holders in mind when imposing the prohibition. The very exception "other than his bona fide servant" points in that direction; for this exception, as was pointed out in regard to a similar exception in *Norwood Land Investment Co. v. N.E. Districts Association* (1929 A.D. 32) must obviously have been inserted in the interests of European residents in the locality covered by the prohibition. It is true that the prohibition extends beyond the township, namely to stands beyond the boundaries of the township and to ground held under mining title; but though in terms it also applied to these places the paramount consideration must have been the interests of the purely residential quarter. It is sufficient for the appellant to show that the prohibition, partly at any rate, was imposed in the interests of the class to which he belongs; and that much in my judgment, is manifest from a reading of the section in its context, having regard to the conditions commonly known to exist at the time it was passed.

It follows, therefore, that it was competent for the appellant municipality as an owner of stands in the Roodepoort township to make the application for the enforcement of the prohibition which was imposed in the interests of the owners of such stands, and it is unnecessary to pronounce any opinion upon the appellant's alternative contentions in support of his *locus standi*. It also follows that, in our judgment, the case of *Krugerdsorp Town Council v. Dadoo* (supra) was, on the facts of the case, correctly decided on the question of *locus standi*. In that case, as in this, the applicant was the owner of stands in a township to which the prohibition in Section 130 related, and it was correctly held on the authority of the decision of this Court in the Madrasa case (Supra) that it had a *locus standi in iudicio* to claim the intervention of the Court to enforce the prohibition. The reasons therefore of the Transvaal Provincial Division cannot be supported; but this does not entirely dispose of the appeal, for a number of alternative defences were raised in the hearing before Greenberg J. Of these the conten-

tions based upon waiver, laches and the changed character of the locality were all tacitly abandoned at the hearing before us, and it need only be said that we see no reason to differ from the conclusion arrived at by Greenberg J. There remains the contention of the respondent that section 130 does not apply to stands Nos. 254 and 308, because of the provisions of section 77 of the same law. These two stands are physically within the boundaries of the Roodepoort township, but the title to them, though also granted under the gold law, is not the same in origin as the title to the ordinary stands in the stand-township of Roodepoort. The latter as already related owe their origin to the gold law as amended by the Volksraad Besluit mentioned above, and the consequent agreement between the Government and the owner of the claims followed by the issue of licences thus authorised. These two stands, however, were granted in terms of section 92 of Law 15 of 1898 or corresponding sections of a prior gold law, and, as Greenberg J. states, have been dealt with under section 13, (2) of Act 34 of 1908 (the Townships Act) and now form part of the township of Roodepoort. It is upon this difference of title that the respondent relies; it is argued that section 77 (1) of the Gold Law of 1908 takes all stands having title similar to that of these two stands out of the prohibitive prohibitions of section 130, and that the phrase "stand outside a township" in the earlier section refers to this kind of title and not to the position of the stand in relation to the boundaries of the township. The argument was founded upon the decision in *Rex v. Tamblin* (1911 T.P.D. 772) in which it was held that section 77 exempted stands referred to in it from the restrictions of section 130. A reference to the record in that case discloses that the Court was concerned only with stands situated outside a township. The Court held that the effect of section 77 upon stands of that kind was to exclude them from the operation of the restrictive prohibition of section 130. This was all that the Court decided. The question then is: What is the category of stands exempted by this section 77? The controversy has been conducted on the footing that the choice lies between taking the words "stand outside a township" to refer to locality or to title, the appellant advocating the first and the respondent the second. This has led, I think, to some slight confusion; the phrase in a sense refers to title; it obviously refers only to stands granted by the Mining Commissioner under empowering sections of the various gold law and does not refer to stands of the stand-township origin. The question really is whether the phrase refers to all "Mining Commissioner" stands (it will be convenient to call them that) or only to those physically outside the boundaries of a township. Looking as one should, first to the language of the section we have to construe, all considerations seem to me to point one way, namely, that it was intended to apply to stands outside the boundaries of a township. First, there is the plain meaning of the words and secondly there are the provisions as to enlargement of such stands which it is almost ludicrous to suggest were intended to apply to stands in a stand township. It was said that the phrase "stands outside a township" has acquired a meaning connoting title and not locality; that stands so referred to must be of special title (Mining Commissioner stands) I have already pointed out, but to hold that the phrase was meant to apply to *all* of such stands regardless of their situation in or outside a township would be doing violence to the words used. Where a phrase such as this occurs more than once in the same enactment it would be proper as a general rule to give it the

same meaning wherever it occurs. So in the present case it was argued that as the phrase "stand outside a township" in section 99 of the law clearly referred to stands of a special title (Mining Commissioner stands) we must conclude that the words in section 77 only referred to title. The answer to this has already been given, in both sections the words do refer to stands of a special title, but they do not apply to *all* of this category, but only to such of them as are situated outside a township. Greenberg J. has made this clear as regards section 92, for referring to the Township Act No. 34 of 1908, he points out that stands of this category and of this particular township situated inside its boundaries are dealt with by section 13 subsection 2 of that Act, and he concludes, I think correctly, that section 99 of the Gold Law did not apply to such portion of the class as was already dealt with by the Townships Act. It is complained, however, that the learned Judge has misconstrued the Townships Act so far as it bears upon the question and particularly has failed to give the respondent the benefit of subsection 3 of Section 13 of that Act and failed to give sufficient weight to the words "for the purposes of this Act" in sub-section 2. The Township Act dealt with stands inside a township and made provision for their conversion into freehold, and as regards this class of stands inside the Roodepoort township, section 13 (2) provides that pending their conversion the conditions of their title shall remain unaltered. Now it was argued that the effect of section 3 and section 13 so far as they relate to the stands in question was to preserve the conditions of their title despite the repeal (then imminent) of the Gold Law of 1898. That much can safely be conceded, but the further argument that such preservation of conditions of title makes the holders immune from the prohibition of section 130 of the subsequent Gold Law seems to me a *non sequitur* and opposed to the clear language of that section. The matter need not be further discussed for in my judgment a perusal of the language of the Gold Law with which we are concerned is quite sufficient for the purpose of arriving at a definite opinion as to the meaning of the phrase "stand outside a township" without the necessity of any recourse to the Townships Act for assistance. It need only be said that there is nothing in that earlier Act which can destroy the conclusion that the words in question mean Mining Commissioner stands outside the boundaries of a township. The two stands in question, therefore, are subject, equally with the other stands, to the prohibition in section 130.

The result is that the appeal succeeds, with costs in both Courts and the order of the Witwatersrand Local Division is restored.

The Chief Justice agreed with the judgment of Mr. Justice Stratford, adding that *actio popularis* was obsolete, and no one could bring an action and all go that he was bringing it in the interest of the public, but by our law a person could bring an action to vindicate a right which he possessed whether he suffered special damage or not, provided he could show that he had a direct interest and not merely an interest which all citizens had.

Mr. Justice Curlewis and Mr. Justice de Villiers concurred.

Mr. Justice Beyers, concurring, said his concurrence must not be understood to mean that the *locus standi* of the appellant could be justified only on the grounds of appellant's ownership of the stands with the municipality. His Lordship suggested that it was possible that a public body like the municipality might have *locus standi* as such, as powers and duties

of the central government and provincial councils had been delegated to municipalities.

The Cape Indian Congress

Annual General Meeting

(From a Correspondent)

The annual general meeting of the Cape Indian Congress was held at the Fidelity Hall, Capetown. Mr. Hawa presided. The secretary in his annual report gave a good account of the useful work done by the Congress during the past year.

The following officer-bearers were then elected for the ensuing year:—President: Mr. H. K. Gool, senior vice-Presidents: Mr. Sundra Pillay, Mr. A. Malik, General Secretary: Mr. Ahmed Ismail, Assist. Secretary: Mr. M. I. Khan, Organising Secretary: Mr. S. D. Hoorzook, Joint treasurers: Mr. E. I. Patel and Mr. Eesa Ally, Auditor: Mr. D. A. Nagia, Advisors: Messrs. A. E. Bukeimia and Mr. Abdul Hamid, Committee chairman: Mr. Ockim Khan, Vice-Committee chairman: Mr. M. Y. Hawa and Mr. M. L. Paul, Executive: Messrs. Sathaiven Rangan, Hadjee Hassan, S. R. Palsania, Ismail Valley, I. M. Fancy, Joe Reddy, Jaabeer Khan, Dada Maymen, E. Ragai, H. Paark, Nathoo Devjee, Ahmed Khan, Adam Ebrahim Sooja Khan, Meer Absul.

Mr. Shaikh Ahmed, chairman of the Pretoria branch of the Transvaal Indian Congress who was present at the meeting related the grievances of the Transvaal Indians.

A resolution moved by Mr. A. Ismail was passed expressing appreciation for the good services rendered by the Agent of the Government of India Kunwar Sir Maharaj Singh and Lady Maharaj Singh.

The meeting decided to have the Congress headquarters at the office of Messrs. A. Ismail and Sundra Pillay who have opened the African Mercantile Agencies at 61, Tennant Street, Capetown.

The meeting terminated with a vote of thanks to the chair.

News In Brief

In a report published in *INDIAN OPINION* dated April 7, of the annual general meeting of the Kimberly Indian Political Association it was reported that Mr. M. Ramsamy was elected vice-President of the Association. It has been intimated to us that he was not elected vice-President.

The Administrator of the Transvaal and executive committee have agreed to the establishment of a school for Indian children in Lichtenburg. Between 50 and 60 are expected to attend. If a suitable building can be found the school will open at the beginning of next quarter.

Mr. E. H. Lawrence Msc. (Cantab.), formerly Principal of Ladsmith High School, has assumed duties as Principal of Sastri College. He fills the temporary gap occasioned by Mr. Buss' departure on a holiday visit to England.

On Wednesday evening (12th inst.) a debate was held in the Gandhi Library. The subject: "Is India ripe for Home Rule" was discussed at length, the affirmatives finally winning the day. Mr. T. M. Naidoo presided.

With reference to the Indian member's request for a common electoral roll instead of separate European and Indian rolls in Fiji the Secretary for Colonies in

reported to have stated that it was impracticable under the present conditions to contemplate the adoption of a system of common roll representation.

Natal Indian Congress

The adjourned annual general meeting of the Natal Indian Congress will be held at the Parsee Rustomjee Hall, Queen Street, Durban, on Sunday the 30th April, 1933 at 3 p.m.

AGENDA:—1. Election of officials,
2. Supplementary financial statement,
3. General.

A. I. KAJEE

P. R. PATHER

Joint hon. Secretaries.

Irrigation And Conservation Of Waters Act, No. 8 Of 1912

IN THE WATER COURT OF THE WATER COURT DISTRICT NO. 15 (DURBAN)

Application of the Natal Estates Limited, for permission to divert and use, in perpetuity, and at all seasons of the year a portion of the normal flow and surplus water of the Umgeni River for irrigation and other purposes on certain non-riparian land.

The attention of all parties interested in the use of water of the Umgeni River is invited to the Notice (No. 125) of the above application, published in the Union Gazette of 10th March, and in the *Natal Advertiser* of 14th March, 1933.

The further hearing of this application will take place at the Law Courts, Durban, at 10 a.m. on Tuesday 27th June, 1933, or on such date thereafter, as may be fixed by Notice in the Gazette.

Any claims or objections must be served not later than the 20th June next, on the Registrar, Pretoria, and on the applicant's attorneys, Messrs. Livingston, Doull and Dumat, P. O. Box 180, Durban; from whom any further information may be obtained on application.

J. A. STEGMANN,

Registrar of Water Courts (North).

Water Court Office,

Pretoria.

13th April, 1933.

Notice

INDIAN UNEMPLOYMENT

Will employers of Indian labour kindly notify the undersigned of any vacancies in their establishment.

WRITE: Hon. Secretary, Sir Kurma Reddi Unemployment Relief Committee, 175 Grey Street, Durban, or Phone Central 3506.