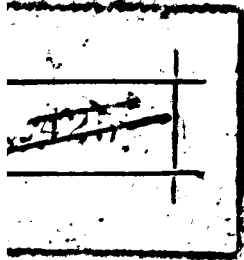




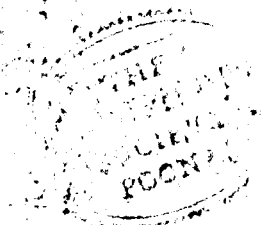
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UNION OF SOUTH AFRICA.



REPORT
OF THE
ASIATIC INQUIRY COMMISSION.

*Presented to both Houses of Parliament by Command of His Royal Highness
the Governor-General.*

Price: 5s.

CAPE TOWN;
CAPE TIMES LIMITED, GOVERNMENT PRINTERS.
1921.

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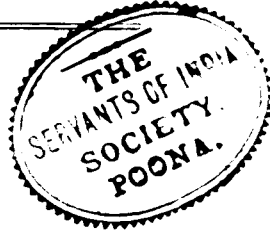
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UNION OF SOUTH AFRICA.



REPORT

OF THE

ASIATIC INQUIRY COMMISSION.

*Presented to both Houses of Parliament by Command of His Royal Highness
the Governor-General.*

CAPE TOWN :
CAPE TIMES LIMITED, GOVERNMENT PRINTERS.
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[U.G. 4—'21.]

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UNION OF SOUTH AFRICA.

Asiatic Inquiry Commission.

Presented to both Houses of Parliament by Command of His Royal Highness the Governor-General.

REPORT,

TO HIS ROYAL HIGHNESS MAJOR-GENERAL PRINCE ARTHUR FREDERICK PATRICK ALBERT OF CONNAUGHT, KNIGHT OF THE MOST NOBLE ORDER OF THE GARTER, A MEMBER OF HIS MAJESTY'S MOST HONOURABLE PRIVY COUNCIL, KNIGHT OF THE MOST ANCIENT AND MOST NOBLE ORDER OF THE THISTLE, KNIGHT GRAND CROSS OF THE MOST DISTINGUISHED ORDER OF SAINT MICHAEL AND SAINT GEORGE, KNIGHT GRAND CROSS OF THE ROYAL VICTORIAN ORDER, COMPANION OF THE MOST HONOURABLE ORDER OF THE BATH, PERSONAL AIDE-DE-CAMP TO HIS MAJESTY THE KING, HIGH COMMISSIONER FOR SOUTH AFRICA, AND GOVERNOR-GENERAL AND COMMANDER-IN-CHIEF IN AND OVER THE UNION OF SOUTH AFRICA.

MAY IT PLEASE YOUR ROYAL HIGHNESS,

In terms of a commission issued on the 3rd day of February, 1920, by His Excellency The Right Honourable Viscount Buxton, P.C., G.C.M.G., Governor-General of the Union of South Africa we, your Commissioners, were appointed to enquire into, and report on, the provisions of the law affecting

- (a) the acquisition of land and rights affecting land in the Union by Asiatics and persons of Asiatic descent for trading and other purposes ;
- (b) the trading or carrying on of business by such persons generally, or in specified localities ;

and further to report whether it is in the public interest to alter the law in any respect, and to make recommendations with regard to any difficulties and grievances which have arisen in regard to matters (a) and (b).

On the 12th May, 1920, your Commissioners submitted an *interim* report to His Excellency the Governor-General recommending that certain steps should immediately be taken to facilitate the return to India of a considerable number of Indians, who, we were given to understand, were willing to do so, if opportunity were afforded them.

Having concluded our enquiry we now have the honour to submit to your Royal Highness the following final report :—

1. The Commission held meetings, and examined witnesses, at Cape Town, Kimberley, Johannesburg, Pretoria, Vereeniging, Rustenburg, Potchefstroom, Durban, Pietermaritzburg, and Dundee. A sub-Committee also visited Krugersdorp, Middelburg, Pietersburg, Volksrust and Zeerust for the purpose of inspecting local conditions regarding the inroad of Asiatics complained of by inhabitants from those places.

An advertisement was inserted in the Bloemfontein newspapers calling for evidence from the Orange Free State but no response was made thereto. Letters were also addressed to the Mayor of Bloemfontein and the Chamber of Commerce of that City. The Secretary of the latter body stated in reply : " the existing law prohibiting the entry of Asiatics into the Free State, for the purpose of acquiring land or carrying on business, precludes the necessity for any evidence from the Chamber, beyond the statement of fact that the Chamber and the whole community strongly uphold the law, and would strenuously oppose any alteration making it possible for Asiatics to enter this Province."

The Commission, therefore, deemed it unnecessary to proceed to any town in the Orange Free State Province.

2. At the various towns abovementioned the Commission obtained evidence relating to the subject of their enquiry from deputations representing fifty-six public bodies, including Municipalities, Chambers of Commerce, Farmers' Associations and Agricultural Unions, Church Congregations, Shop Assistants' and other Unions, and branches of the South Africans' League, as well as from representatives of twenty-six Indian and two Chinese Associations. In addition to these, evidence was tendered by twenty Government and Municipal Officials,

and one hundred and fifty private individuals. The latter comprised farmers, professional men and members of various trades and industries, and included forty-one Indians and four natives. At most of the towns the South Africans' League (anti-Asiatic) as well as the Indian community were represented by Counsel.

3. The terms of our Commission embraced an enquiry into matters affecting all Asiatic within the Union, but our investigations were directed mainly to those relating to the Indian races. Scarcely any complaints were heard from Europeans regarding Chinese resident in the Union, of whom there are comparatively few, but certain grievances were laid before the Commission by representatives of that race, which will be dealt with later.

The bulk of the evidence consisted on the one hand of protests against the encroachment of Indian traders on the European community; and on the other hand of equally vehement protests against the restrictions placed upon Indian traders and members of the Indian community generally.

4. At the various sittings of the Commission, which were held in public, the Government of India was represented by Sir Benjamin Robertson, K.C.S.I., K.C.M.G., late Chief Commissioner of the Central Provinces of India, who was accompanied by Mr. G. L. Corbet of the Indian Civil Service, as his Secretary. The presence of both these gentlemen during the whole course of our enquiry proved of the greatest assistance to the Commission, especially as, in addition to their intimate knowledge of the Indian language and character, they are thoroughly familiar with the history and facts relating to the emigration of Indians to South Africa from its inception.

Shortly before his return to India, after the conclusion of our sittings, Sir Benjamin Robertson submitted to the Commission a written statement, embodying in clear and comprehensive terms the views and representations of the Government of India upon the subject of our enquiry. We are indebted largely to the contents of that document for a review of the early history of the introduction of indentured Indian labour to Natal during the latter part of the last century, and the negotiations that took place from time to time between the Natal and Indian Governments with reference thereto.

5. We gather from the evidence of Sir Benjamin Robertson and other sources that the Indian Community in South Africa has its origin in the indentured labour which was introduced by Natal between 1860 and 1911 for the development of its industries, and more especially the sugar, tea and wattle plantations. This indentured labour came in two streams, one from Madras and the other from Upper India through the port of Calcutta. It was recruited mainly from the agricultural labouring classes; and the majority of the immigrants who have settled in the Country on the expiry of their indentures and their descendants are still connected with agriculture, being either employed by planters and farmers or settled on their own land as market gardeners. A considerable number, however, have taken to other occupations, such as household service, industrial labour, both skilled and unskilled, employment on Railways and under Municipalities, clerical work, trading, and even the learned professions. With few exceptions, the Indians of this class are confined to Natal. Few of the Colonial-born have seen India, and South Africa is now their home.

It should be emphasized that there has been very little spontaneous emigration of the labouring classes from India to South Africa. They were recruited with difficulty, and not infrequently by methods which were commonly known in India as "coolie catching."

6. In the wake of the indentured labourer came the trader, who was generally a Mahomedan from the Bombay Presidency and is commonly misnamed "Arab" in South Africa. He came first to supply the wants of the indentured labourer; but when once established here he quickly extended his dealings to natives and Europeans. These Bombay Mahomedans have for centuries traded along the East Coast of Africa and up the Persian Gulf as well as in Burma and the further East. They are men of considerable enterprise, and, until immigration was prohibited, they spread into the Transvaal and the Cape Province, finding a peculiarly favourable field for their activities in the pioneer development of the Transvaal which followed the gold rush. Generally, they maintain a close connection with India, which they still regard to a great extent as their permanent home.

Here again the recruiting ground is limited. Indeed, a considerable portion of the Mahomedan traders come from the single district of Surat, at the mouth of the river Tapar, formerly an important port on the West Coast of India which has now sunk into comparative insignificance as commerce has concentrated on Bombay and Karachi. It is largely the traders of this decayed port and its neighbourhood who have found an outlet in South Africa.

7. The Commission found it impossible to obtain accurate information as to the number of Asiatics resident in the Union at the present time. No census has been taken since the year 1911, when the total Asiatic population of the four Provinces of the Union was approximately 150,000 Indians and 2,000 Chinese, including men, women, and children.

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These were divided amongst the different provinces as follows :—

Transvaal	11,072 (including about 1,000 Chinese)
Cape Province	7,690 (including about 1,000 Chinese)
Natal	133,439
Orange Free State	108
Total	152,309

8. The variation which has taken place in the Asiatic population from time to time, so far as it could be ascertained, will be discussed later. It will be sufficient for present purposes to estimate the total number of Indians in the Union at the present time approximately at 155,000, distributed as follows :—

Natal Province	135,000
Cape Province	8,000
Transvaal Province	12,000
Orange Free State Province	100

These Indians may be roughly divided into two classes, Hindoos from Madras and Calcutta and Mahomedans from Bombay, with their respective descendants, many of them South African born. As has been stated the former class are resident principally in the Province of Natal, where large numbers of them are engaged in the sugar and tea industries.

According to the records of the Protector of Indian Immigrants in Natal there were at the end of the year 1919 in that Province 115,515 Indentured Indians and their descendants, of whom more than half were born in Natal.

A considerable number of that class are, however, also found in the Cape and Transvaal Provinces. There they are confined chiefly to the fruit and vegetable business, as far as trade is concerned, many of them being hawkers ; others are employed as waiters and domestic servants, but not a few of the younger generation are sufficiently well educated to be employed as clerks and even to engage in professional occupations.

9. The Bombay Mahomedans are of quite a different type. They are born traders and have the reputation of being remarkably capable, astute business men, and competent to hold their own against their European competitors in that respect. It is to this class that the bulk of the Indians in the Transvaal belong. Some of them are wealthy merchants in Johannesburg and elsewhere with branch businesses in the country districts ; while many others have established themselves in business for several years past in some of the country towns and villages. Unlike the Madrassi they do not confine themselves to the fruit and vegetable trade, but engage in mercantile business. They have thus undoubtedly become formidable competitors with European traders, particularly in the country districts of the Transvaal. For this and other reasons a widespread agitation has during recent years been fomented throughout that Province against what is termed the "Asiatic menace." As a consequence petitions were presented to Parliament, and representations made to Government, which eventually led to the passing of Act No. 37 of 1919 and the appointment of this Commission.

10. It will be convenient, therefore, to deal first with the question as it affects the Transvaal Province ; although the trouble may be said to have originated in Natal, with the introduction of indentured Indian labour into that Province.

11. The rights and privileges enjoyed by Asiatics differ greatly in the various provinces of the Union. In the Cape Province they possess both the Parliamentary and Municipal franchise, but in Natal only the latter ; while in the Transvaal and Orange Free State they have neither. In the Cape and Natal Provinces they have unrestricted rights both as to trading and the ownership of land ; although they are subject to the licensing laws of the respective provinces, in the administration of which they complain that they are sometimes unjustly and harshly treated.

In the Transvaal, ownership of immovable property by Asiatics is prohibited by law, except in certain specified locations ; and their trading rights have been hampered by actual or attempted restrictions which have caused grave dissatisfaction and trouble for many years past.

In the Orange Free State they can neither trade nor own land, and are practically debarred from entering or residing in that province.

ASIATIC QUESTION IN TRANSVAAL PROVINCE.

LAW 3 OF 1885.

12. The first legislative enactment dealing with Asiatics in the Transvaal was passed by the Volksraad in the year 1885. It is known as Law 3 of 1885, and is still in force in that Province. It is based on the general principle, laid down in the Grondwet of the Transvaal from time to time, that no equality between the white and coloured races shall be tolerated.

13. Law 3 of 1885, as originally framed and passed by the Volksraad, enacted that
- “persons belonging to any of the aboriginal races of Asia, including thereunder the so-called Coolies, Arabs, Malays and Mahommedan subjects of the Turkish Empire
 - “(a) shall not acquire the rights of citizenship in the South African Republic ;
 - “(b) shall not be owners of landed property in the Republic ” (this provision has no retroactive effect) ;
 - “(c) shall, as far as those who settle in the Republic with the object of trading, etc., are concerned, have to be inscribed in a register, to be specially kept for that purpose by the Landdrosts of the respective districts, according to a model “to be prescribed by the Government.”

Then after further providing in paragraph (c) for the payment of a registration fee of £25 for each person, etc., it enacted in paragraph (d) that

- “The Government shall have the right to assign to them special streets, wards and locations for habitation.”
- “This provision shall not apply to those who reside with the masters in whose service they are.”

14. This law appears to have been passed in consequence of an agitation which was set on foot in the South African Republic during the previous year against “the threatened invasion of Asiatics such as already has commenced at Pretoria.” Memorials were presented to the Volksraad strongly urging that the influx of such Asiatics should be restricted by law.

There seems to have been some doubt in the minds of the memorialists whether such a step would not be in conflict with the provisions of Article 14 of the London Convention, which was entered into between the British and Republican Governments during the year 1884, shortly before the memorials were framed ; for they freely discussed the question in one of their petitions.

15. The provisions of Article 14 of the London Convention of 1884 are to the following effect :—

- “All persons, other than natives, conforming themselves to the laws of the South African Republic
- “(a) will have full liberty, with their families, to enter, travel or reside in any part of the South African Republic ;
- “(b) will be entitled to hire or possess houses, manufactories, warehouses, shops and premises ;
- “(c) may carry on their commerce either in person, or by any agents whom they may think fit to employ ;
- “(d) will not be subject in respect of their persons or property, or in respect of their commerce or industry, to any taxes, whether general or local, other than those which are or may be imposed upon citizens of the said Republic.”

16. In another petition from Pretoria the signatories alleged that “the population of the Arabians and coolies is much increasing in this town and in this State.” They then proceeded to point out the danger to the European community of allowing these Asiatics to settle in the centre of the township owing to their “neglect of sanitary measures and loathsome mode of living,” and finally urged that they should be “isolated within their own locations quite separated from the white population.”

17. A counter petition was also presented to the Volksraad by certain Indian merchants of a superior class (usually spoken of as “Arabs” at that time) in which they drew attention to the difference between themselves and Coolies, Chinese, etc., contradicted certain assertions made in the petitions presented by the white inhabitants, and prayed that their demands might not be acceded to.

18. Before any legislative action was taken these petitions were forwarded by the Republican Government to the Imperial Government in a letter dated 6th January, 1885, in which Her Majesty’s Government were asked for their views upon the question ; that is, whether

the proposed legislation would be regarded as being a contravention of Article 14 of the London Convention.

Considerable correspondence ensued, from which the Republican Government concluded that the British Government had waived their right to insist upon the strict interpretation of the Convention of London.

Thereupon they proceeded to pass Law 3 of 1885 through the Volksraad in the form above set out. Later on, during the same year, protests were sent to the High Commissioner on behalf of Arab traders and merchants complaining of the operation of that law.

Further correspondence then took place in the course of which the High Commissioner pointed out that the law as passed was a breach of the understanding upon which Her Majesty's Government waived their right to insist upon the strict interpretation of the terms of the Convention of London, and added that it was expressly understood by the Secretary of State that the proposed legislation was not to apply to Arab traders or merchants, but to Indian or Chinese Coolie immigrants.

19. This version of the understanding was not accepted by the Government of the South African Republic, whose State Secretary wrote to the High Commissioner on the 6th September, 1886, expressing the regret of his Government that the provisions of Law 3 of 1885 were not quite in accordance with the views of Her Majesty's Government, and that there had been an apparent misconception as to the understanding referred to. In this letter the State Secretary observed that there also appeared to be a misconception in respect of the object with which the law was made. He then proceeded to explain and emphasize that it was necessary for sanitary reasons and in the interest of the public health; and concluded by stating that in order to let that object appear more clearly the Republican Government had asked and obtained from the Volksraad authorisation to make certain amendments to Law 3 of 1885, which he notified in detail.

20. Eventually the High Commissioner (Sir Hercules Robinson), in a letter dated the 24th September, 1886, acknowledging receipt of that letter, made the following announcement:—

“Although the amended law is still a contravention of the 14th Article of the Convention of London, I shall not advise Her Majesty's Government to offer further opposition to it in view of your Honour's opinion that it is necessary for the protection of the public health.”

Finally on the 4th November, 1886, the Secretary of State intimated that Her Majesty's Government no longer raised any objections to the legislation in regard to “Asiatic traders,” having regard to the amendments which the Volksraad had introduced into the law of 1885.

21. On the 26th January, 1887, the law as amended was promulgated, and now reads as follows:—

Law No. 3 of 1885

(Relating to Coolies, Arabs and other Asiatics).

1. This law shall apply to the persons belonging to one of the native races of Asia, including the so-called Coolies, Arabs, Malays, and Mahomedan subjects of the Turkish Empire.
2. With regard to the persons mentioned in Article One the following provisions shall apply:—
 - (a) They cannot obtain the burgher right of the South African Republic.
 - (b) They cannot be owners of fixed property in the Republic, except only in such streets, wards and locations as the Government for purposes of sanitation shall assign to them to live in.
This provision has no retrospective force.
 - (c) (This sub-section as amended by subsequent resolutions of the Volksraad has been repealed by Act 2 of 1907).
 - (d) The Government shall have the right for purposes of sanitation, to assign to them certain streets, wards, and locations to live in (ter bewoning). This provision does not apply to those who live with their employers.

22. It was urged by Dr. Krause, K.C., who appeared before the Commission at Johannesburg as Counsel for some of the Indian Associations, that Law 3 of 1885 could not have been intended to apply to the better class of Indian, or so-called Arab, traders, but only to the inferior class of “coolies,” whose habits were insanitary and who formed by far the largest portion of the Indian population of the Transvaal at that time. But that contention can scarcely be upheld in view of the fact that, before the law was finally amended by the Volksraad, the High Commissioner made special reference (as will be seen from paragraph 18 above) to the distinction which he understood was to be drawn between “Arab traders or merchants” and Indian or Chinese coolie immigrants. Moreover, the Secretary of State in assenting to the law as finally amended referred to it as legislation in regard to “Asiatic traders.”

It appears that in those days the Indians engaged in trade were comparatively few in number, and were confined mainly to the township of Pretoria.

23. In any event it is clear that the reasons for the enactment of Law 3 of 1885 were sanitary and not economic. While it prohibited the acquisition of fixed property by Asiatics, except in certain localities set apart for their residence, it recognised their right to settle in the Republic for the purposes of trade.

24. It has been deemed advisable for various reasons to discuss somewhat fully the negotiations and correspondence relating to Law 3 of 1885, both before and after its enactment. For it forms the basis of all subsequent legislation affecting Asiatics; while its interpretation or application has been the subject of several decisions, both in the Supreme Court of the Transvaal and of the Appellate Division of the Supreme Court of the Union.

25. There does not appear to have been any anxiety on the part of the Republican Government to enforce the law strictly or immediately. That may have been owing to some difficulty encountered in fixing the necessary locations; or possibly (as has been suggested by some witnesses) to indirect pressure from the British Government who, notwithstanding their assent to the passing of the law, did not by any means regard it with favour. In this connection it may be noted that all these negotiations took place not many years after the retrocession of the Transvaal, at a time when the relations between the two Governments were of a friendly character, and there probably was no disposition on the part of the Republican Government to offend the susceptibilities of the British Government unduly.

26. At any rate it appears that Indians were permitted not only to trade but to reside outside locations. They were allowed also to own fixed property outside locations through a nominal European trustee. This practice arose from the case of an Indian firm (Mahomed Ismail & Co.) who, in March, 1888, purchased certain stands at Klerksdorp at a Government sale. When difficulties occurred regarding transfer to an Asiatic, the land was registered in the name of the Mining Commissioner, a Government officer, as trustee for the purchasers. This was done with the consent, and at the instigation, of the Government; and in subsequent cases of a similar nature other Government officers were instructed to adopt the same course.

Thereafter this system of indirect ownership of land by Asiatics became common. The practice was for a European trustee to pass a mortgage bond on the property to the full amount of the purchase price, without interest, in favour of the Indian purchaser, giving him at the same time an unrestricted power of attorney to deal with the property. By this means the provisions of the law were evaded to a very great extent, with the recognition of the Government. One witness, an attorney practising at Johannesburg, stated in evidence that he himself had at one time acted as trustee of such properties for Asiatics of the total value of a million sterling.

27. The same stratagem was resorted to in order to avoid the conditions embodied in the Townships Acts, which prohibited the alienation of stands to coloured persons in the various townships to which the Acts related. It was eventually discovered, however, that this mode of getting over the difficulty was attended with some risk. There was always a chance of the trustee being declared insolvent, in which case the property in question, being registered in his name, could be claimed by his creditors as an asset of his estate. Recourse was therefore had to another expedient after the promulgation of the Transvaal Companies Act of 1909, when Indians began to form themselves into Limited Liability Companies, which enabled them to acquire fixed property. This will be discussed more fully when the question of trading rights has been dealt with.

TRADING RIGHTS.

28. After the promulgation of Law 3 of 1885 in January 1887, the Transvaal Government appear to have assigned locations to Asiatics in some of the towns of the Republic, and to have held the view that by that law trading, as well as residence, outside such locations was forbidden. They accordingly required certain Indian traders, claiming to be British subjects, to conduct their trade within the locations and refused them licences to do so elsewhere.

In August 1888 a case was heard in the High Court of the Transvaal in which an Indian firm (Ismail Sulieman & Co.) applied for an order compelling the Landdrost to issue to them a licence for trading purposes in the town of Middelburg on an erf formerly occupied by them. The Landdrost had refused to do so, on the ground "that they wished to carry on business "on a spot which was not situated within the location pointed out to the Indians for occupation." The Court refused the application, holding that it would be inconsistent with the spirit of Law 3 of 1885 to draw a distinction between "living" and "trading."

29. In consequence of this decision complaints were made to the British Government on behalf of Indian traders in the Republic, which led to further correspondence between the

two Governments on the subject of Law 3 of 1885. The British Government stoutly maintained that it was never intended that Asiatics should be relegated to Locations, except for residential purposes and for sanitary reasons; and that Law 3 of 1885 refers only to such residence, and does not restrict Asiatics from trading anywhere as heretofore; while the Republican Government relied upon the judgment of the Court in the case of Sulieman & Co., and insisted upon their right to confine Asiatics to locations both as to trading and habitation.

The dispute continued in the form of protests and correspondence for several years, during which no very active steps appear to have been taken by the Republican Government to enforce the law against Indians, who continued to carry on business in the townships. But in September 1893 the Volksraad passed a resolution to the effect that Law No. 3 of 1885 should be strictly applied in such manner that all Asiatics and persons falling under the law should have to confine themselves, in respect both of habitation and trade, to the locations assigned to them, with the exception of those whose leases (entered into before the locations had been assigned) had as yet not expired.

Thereupon more correspondence ensued, but, as no satisfactory settlement could be arrived at, it was eventually agreed to submit the matter to arbitration, the Chief Justice of the Orange Free State Republic (Mr. Melius De Villiers) being appointed Arbitrator.

30. The claims put forward before the Arbitrator on behalf of the British Government were :—

- (a) That the Indian and other Asiatic traders, being British subjects, be allowed to reside in the towns of the South African Republic in some quarter ("wards and streets") which for sanitary reasons may be assigned to them; and
- (b) That they be allowed to carry on their trade or business in shops or stores in any part of the town.

On the part of the Government of the South African Republic it was claimed :—

- (a) That the South African Republic has full liberty to make such regulations in respect of Coolies, Arabs, Malays and Mahomedan subjects of the Turkish Empire, as it may think fit, and
- (b) That Her Majesty's Government have no ground of objection should the Government of the South African Republic prohibit Coolies, Arabs, Malays and Mahomedan subjects of the Turkish Empire from having business premises upon any places in towns or villages other than those assigned to them by Government.

31. The Arbitrator's award, dated 2nd April 1895, was as follows :—

- (a) The claims of Her Majesty's Government and of the Government of the South African Republic respectively are disallowed, save and except to the extent and degree following, that is to say :—
- (b) The South African Republic is bound and entitled in its treatment of Indian and other Asiatic traders, being British subjects, to give full force and effect to Law 3 of 1885, enacted, and in the year 1886 amended, by the Volksraad of the South African Republic, subject (in case of objections being raised by or on behalf of any such persons to any such treatment as not being in accordance with the provisions of the said law as amended) to sole and exclusive interpretation in the ordinary course by the tribunals of the country.

32. The award was accompanied by exhaustive reasons for the decision arrived at by the Arbitrator, two paragraphs of which may be here quoted. Referring presumably to the case of Sulieman & Co. abovementioned, he observes :—

"As regards the question whether the words 'for habitation' and 'for sanitary purposes' have reference only to dwelling places, and not to business premises, I would feel myself bound by any decision the High Court of the South African Republic may have given on the subject, were it necessary for me to give a decision thereon. It is indeed said that no actual decision on that point was given by the High Court. It is not for me to give an interpretation of the decision of the High Court, but if it be so that no such decision has actually been given, the point is one that may at any time arise, and then it will be with the tribunals of the South African Republic to give the necessary decision thereon."

33. The Arbitrator concludes by remarking with reference to the resolution of the Volksraad of the 8th September 1893 above set out :—

"In terms of my award Her Majesty's Government may rightly object to that resolution, and to any similar amplification by the Legislature of the South African Republic of Law No. 3 of 1885, as also to the circular of December 1893, embodying that resolution. That resolution does not merely convey instructions to its own

“functionaries as to the execution of the abovementioned law ; it virtually also has the effect of establishing a legislative interpretation of that law which may or may not be in accordance with judicial decision, but which at all events the tribunals of the country will, no doubt, consider themselves bound in future to adopt and to recognise as having force of law, so long as it remains in existence.”

34. In November 1896 the Volksraad passed a resolution adopting the report of a Commission which had been appointed in August 1895 (a few months after the publication of the award of the Arbitrator), to investigate the question of the administration of Law 3 of 1885. In that report the Commission stated that the Government entertained difficulties as to carrying into execution the provisions of the said law until the locations for Asiatics had been duly surveyed and beaconed off in all towns, and as that work, as well as the selection of suitable places, would take some time, the Government found itself compelled to suspend the operation of the law in the meantime.

The Commissioners expressed their agreement with the view of the Government as regards the desirability of applying the law simultaneously in all towns, or in any case in the main centres. They added that locations had now practically been provided for everywhere, where necessary, and were ready for occupation ; and concluded by urging that Law 3 of 1885 should be “immediately applied and rigorously maintained.”

They recommended, however, that an exception should be made in the cases of Asiatics who had acquired contracts of lease before 1889, who should be permitted to remain on the ground leased until the expiration of their contracts.

35. Notwithstanding this report, and the resolution of the Volksraad adopting it, no immediate steps seem to have been taken by the Government to enforce the law strictly. Indians were permitted not only to trade but to reside outside locations. But a year or two later instructions appear to have been issued to Government officers not to issue licences to Asiatics to trade in certain towns. For in August 1898 a test case was heard in the High Court of the Republic, in which an Indian trader named *Tayob Hadji Mahomed Khan* sued the Government for a declaration of rights. He prayed that certain instructions issued by the Government to the Field Cornet and Civil Commissioner of Pretoria be declared illegal. In accordance with these instructions he had been refused a licence for a shop business in Church Street, Pretoria. The Court, by a majority of two judges to one, decided to follow the previous decision in the case of *Suliman & Co.*, and accordingly gave judgment in favour of the Government. One of the two judges, who formed the majority, stated, however, in his judgment that in his view the Court would have decided in accordance with sound juridical principles had it acknowledged in the case of *Ismail Suliman & Co.*, a distinction between “residence” and “carrying on business” in a place. He considered, however, for reasons which he mentioned, that the judgment in that case was justifiable and reasonable, and he felt bound to follow it as being a decision of the full Court ; but he added later :—

“Thus, although I should probably have decided in favour of the Plaintiff, if the case were *res integra*, I am not prepared to do so under the circumstances above detailed.”

It may be noted here that in *Suliman's* case the matter was decided on motion, and the judgment was not a considered one.

It is not surprising, therefore, that the question was not allowed to rest there, and that, as will be seen later, it was again definitely raised in the Supreme Court after the Anglo-Boer war.

36. In November 1898 a Government notice was issued directing that “Asiatics who are still dwelling and carrying on business in townships in conflict with the law, shall be notified to proceed to dwell and carry on business in the locations appointed for that purpose on or before the 1st January 1899.” The Landdrost or Mining Commissioner was, however, authorised to extend the time for such removal by three or six months, in his discretion; in cases of Asiatics who had been carrying on “a large business” outside locations, and would therefore find it difficult to transfer their business in so short a time. Moreover, such Asiatics as had entered into long leases of their premises years ago, or had obtained transfer of same, were invited to give notice thereof before 1st January 1899 to the Landdrost or Mining Commissioner, who should report to the Government.

37. Subsequently on the 25th April 1899 a Proclamation was issued in the name of the President of the South African Republic, placing the streets, wards and locations which had been surveyed and appointed for the use of Asiatics for business as well as residential purposes, “and which do not at present form portion of the adjoining town or stand township,” under the local authority or administration of such town or stand township, “whether such be the local Landdrost, Mining Commissioner, Responsible Clerk or any Town Council or Town Administrator.”

The Indian Community acting, it is said, on the advice of the British agent at Pretoria, did not comply with these notices, and no effect appears to have been given to them prior to the outbreak of the Anglo-Boer war, a few months later.

38. In 1898 also the Gold Law (No. 15 of 1898), which has since been repealed by Act No. 35 of 1908, was passed. From its provisions the following relevant clauses may be quoted :—

Section 3 (Definitions) The term "coloured person" shall signify any African, Asiatic, Native or Coloured American person, Coolie or Chinaman.

Section 59. Every white person of full age of the male sex . . . shall have the right to not more than fifty licences to dig or mine for precious metals on a public field. . .

Section 92. Every white person who wishes to erect a shop or house or dwelling on a proclaimed field, but not in stand townships, shall make application to the Mining Commissioner for one or more stand licences. . . .

Section 133. No coloured person may be a licence holder, or in any way be connected with the working of the diggings, but shall be allowed only as a workman in the service of whites.

The term "stand township," a somewhat peculiar one, is defined as follows :—

"Stand Township shall be taken to mean every area of land situated on a proclaimed diggings or on land proclaimed for the purpose of stands, which has been either wholly or in part surveyed for stands by a Government Land Surveyor, and has been proclaimed as such or been approved by the Government."

HISTORICAL.

39. The foregoing may be regarded as a summary of the legislation and negotiations relating to Asiatics in the Transvaal up to the commencement of the Boer War.

It would appear that at the time of the retrocession of the country by the British Government and the signing of the Pretoria Convention of 1881 there were no Asiatics in the Transvaal. As evidence of this, the following statement by Mr. E. F. Bourke, an old resident of Pretoria, at a National Convention *re* Asiatics held in that town in November 1904, may be quoted :—

"When the 1881 Convention was concluded there were no Indians in the Transvaal, and there is little or no doubt that the Asiatic side of the question never presented itself to the authors of that document sitting in Pretoria; and a study of the whole of the provisions of that document clearly shows that the white races and the natives resident in the Country alone were contemplated. It was only after the arrival of the first Indian traders, and after the 1884 Convention had been substituted for that of 1881, that restrictive legislation was proposed."

40. There can be no doubt that after 1884 as Indian traders continued to migrate into the Transvaal from Natal from time to time, anti-Asiatic feeling began to be aroused amongst the European inhabitants. This feeling does not appear to have been due to trade jealousy at that time. It more probably had its origin in the innate antipathy of the Dutch people, of which the population of the country was mainly composed, to anything approaching equality between the white and coloured races. The principle that no such equality shall be allowed is reiterated in the various Grondwets of the Republic.

41. Although the entry of Asiatics into the country could not be forbidden (as in the case of the neighbouring Orange Free State Republic) owing to the provisions of Article 14 of the London Convention of 1884, the policy of the Republican Government towards Asiatics was always of a restrictive character.

In pursuance of that policy they made constant and persistent efforts by means of legislative enactments and Volksraad resolutions to mitigate what they regarded as a serious evil.

These efforts were based entirely on sanitary grounds, so far as the establishment of locations was concerned.

Asiatics usually resided on their business premises, and, owing to their insanitary habits, and mode of living, were found to be objectionable to their European neighbours, and a source of danger to the public health.

42. It appears, however, that even after 1888, when the decision in Sulieman's case was given, the provisions of Law 3 of 1885 and the various resolutions of the Volksraad were carried out only partially and in a halfhearted manner. The towns in which locations were actually set apart, and so-called "Asiatic bazaars" established, were few in number; and even in those cases no serious attempts were made to enforce the removal of Asiatics from the townships.

There is possibly some foundation for the statement made by some old Transvaal residents, who appeared before the Commission, that this attitude of reluctance or neglect on the part

of the Republican Government to carry out their own laws, was due to constant pressure from the British Government, whose agent at Pretoria was incessantly raising protests on behalf of the British Indians.

But, be that as it may, the fact remains that in 1899, when the war broke out, a large number of Indians were freely carrying on business, as well as living, in several of the towns in the Republic.

43. The Commission found it impossible to ascertain even approximately what the Asiatic population of the Transvaal was at the time of the outbreak of the Anglo-Boer War. It was said by Dr. Krause, in his evidence before the Select Committee of the House of Assembly, to have been about 17,000 in 1899. That was probably an extravagant estimate, but their numbers must have amounted to several thousands. They were mostly Indians, and chiefly Mahomedan traders, who had settled in the larger towns and in the various townships that had sprung up along the Witwatersrand as the goldfields developed. They generally held leases of the premises which they occupied in the townships for business as well as residential purposes; but in many cases they were permitted to acquire those premises by purchase and to own them through nominal European trustees.

POLICY OF CROWN COLONY GOVERNMENT.

44. When the war broke out a great many of these Indian traders left the country for Natal or the Cape Colony, and in some cases, no doubt, for India; but after the declaration of peace they gradually returned and resumed their trading operations.

By the Peace Preservation Ordinance which was passed after the close of the war, and the Ordinance No. 5 of 1903, residence in the Transvaal Colony was confined to those, amongst others, who were actually there, or in the Orange River Colony, when peace was signed; or who had obtained certain permits to enter the Transvaal. But the privilege was extended as a matter of equity to refugees, including Asiatics, who had left the country in consequence of the outbreak of the war.

45. Advantage was taken of this provision by many Indians who had not been previous residents in the Transvaal, and who by fraudulent means obtained admission to the country. This influx of Asiatics gave rise to some agitation on the part of Europeans, as a result of which a Government Notice (No. 356 of 1903), was issued on the 8th April to the following effect:—

That His Excellency the Lieutenant-Governor, in Executive Council, has decided that, in the disposal of applications made by Asiatics for licences to trade, the provisions of Law 3 of 1885 (as subsequently amended) shall be enforced, with due regard to the vested interests of those Asiatics who were trading outside bazaars at the commencement of the late hostilities, and has resolved accordingly:

1. That the Government take immediate steps to have bazaars in every town set apart, in which alone Asiatics may reside and trade.
2. That no new licence to trade be granted to any Asiatic except to carry on his business in bazaars set apart for the purpose.
3. That Asiatic traders who held licences at the commencement of the late hostilities outside locations or bazaars, may have their licences renewed to trade under the same conditions, such licences not to be transferable.

Further that, with regard to the residence of Asiatics which by the law above-mentioned is confined to those streets, wards and locations which may be set apart for the purpose, His Excellency has decided that an exception shall be made in favour of those whose intellectual attainments or social qualities and habits of life appear to entitle them to it.

46. This notice was regarded by the Indian community as an infringement of their trading rights; and early in 1904 a test action was brought in the Supreme Court, which had been established in the Transvaal since the British occupation, by an Indian trader named Habib Motan against the Government, in which the long standing dispute was finally settled. The decision of the Court was as follows:—

“Section 2 (d) of Law 3 of 1885, as amended by Volksraad resolution of the 12th August, 1886, does not apply to the business places, but only to the residences of Asiatics. The Government therefore has not the power, under either of those measures, to refuse to grant to Asiatics licences to trade in places outside the boundaries of the locations allotted to them for occupation.”

By this judgment the two previous decisions given by the High Court of the South African Republic, before referred to, were disapproved and overruled.

The present Chief Justice of the Supreme Court of the Union of South Africa, who was then Chief Justice of the Supreme Court of the Colony of the Transvaal, remarked in the course of his judgment that "it is important to notice that neither the law of 1885 nor the resolution of 1886 contained a single line purporting in express terms to curtail the trading rights of Asiatics. The only provision made was one giving the Government the right, for sanitary purposes, to assign to them certain streets, wards and locations for residence (ter bewoning). I fail to see any ground for holding that those words, whether we take the original Dutch or the English equivalent, in any way prohibit trading outside the residential locations It is significant that the reasons for giving the Government the right to assign locations to Asiatics were expressly stated to be sanitary reasons. It was for sanitary purposes that locations were established, and such purposes have a more obvious relation to places of residence than to places of business. The mischief purported to be aimed at was an insanitary mode of life in the midst of a European population, not an inconvenient competition with the European trader."

During the argument in that case reference was made by Counsel on both sides to the blue-books containing the award and the reasons of the Chief Justice of the Orange Free State, and the correspondence which had passed between the British and Republican Governments. As to the latter the Chief Justice observed "one thing is clear from these despatches, and that is that the interpretation which the Transvaal authorities now seek to place upon the law is one which the Government of the South African Republic always advocated, and which the British Government consistently opposed. Under the circumstances it does strike one as remarkable that, without fresh legislation, the officials of the Crown in the Transvaal should put forward a claim which the Government of the Crown in England has always contended was illegal under the statute, and which in the past it has strenuously resisted."

47. These observations, which were made on the 11th May, 1904, are of peculiar interest, in view of the correspondence that was passing at this very time between the Transvaal authorities and the Imperial Government on the subject of proposed legislation regarding Asiatics.

On the 13th April, 1904, just four weeks before the judgment in Motan's case was delivered, Sir Arthur Lawley, Lieutenant-Governor of the Transvaal, addressed a despatch to Lord Milner, Governor of the Transvaal, for transmission to the Secretary of State for the Colonies, asking for the consent of the Imperial Government to the introduction of such legislation in the Legislative Council of the Transvaal.

This despatch, together with that of Lord Milner of the 18th April, 1904, accompanying it, and the reply of Mr. Alfred Lyttelton, Secretary of State for the Colonies, dated 20th July 1904, are documents of the first importance in dealing with the Asiatic problem as it existed in the Transvaal shortly after the conclusion of the war. That must be our justification for making copious references to their contents.

48. The despatch of Sir Arthur Lawley is a lucid and exhaustive review of the whole subject; and it discloses a thorough acquaintance with the sentiments of the older inhabitants of the Transvaal. He mentions in the first place two incidents of recent occurrence, which had rendered the Asiatic question intensely acute. One was the outbreak of bubonic plague in the location set apart for coolies in Johannesburg; the other had reference to a test case which was pending in the Supreme Court to decide whether under Law 3 of 1885 the Government had the power to prohibit trading and residence, except in places pointed out for that purpose. This is, no doubt, an allusion to Motan's case which was then in course of preparation.

49. He then proceeds to give an outline of the legislation, embodying the policy foreshadowed in the Government notice above referred to, which it was proposed to introduce. Its main provisions were to the following effect:

- (1) That those Asiatics who satisfy the Colonial Secretary of the Colony that their mode of living is in accordance with European ideas should be allowed to live, with their servants, outside locations, but not to trade outside locations, unless they fall under (2).
- (2) That those Asiatics who had established businesses outside locations before the war should not be disturbed.
- (3) That with the two exceptions mentioned above all Asiatics should be required to live and trade in locations, and should be prohibited from holding land outside. This provision not to apply to land now set aside and used for religious purposes.

50. In advocating the necessity for legislation in the direction indicated, Sir Arthur Lawley emphasizes the strong public feeling upon the subject, as revealed in the course of debates on Asiatic questions in the Legislative Council, and the constant resolutions adopted by every Chamber of Commerce throughout the Transvaal. "Trade jealousy," he says,

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"undoubtedly exists, but it is really prompted by the instinct of self preservation in the minds of the European trading community. The problem is far reaching and does not begin and end with a shopkeeper's quarrel." He adds "I do not seek to justify the prejudices which exist; I merely desire to set them forth. They cannot be ignored. They have got to be reckoned with."

Then, referring to the sentiments of the people, he remarks :

"Under the old Grondwet the line was distinctly drawn between coloured and white. It is there stated, there shall be no equality between coloured and white; and, though in the eye of the law they are equal, there is not in this country one man in a hundred who would agree to recognise the coloured man as capable of admission to the same social standard as the white. I do not urge that these sentiments are reasonable, but they imbue the mind of every South African, and find expression in the universal cry of 'a white man's country.' Any attempt to ignore them would be attended, I feel sure, with most deplorable results."

51. A contrast is drawn in this despatch between Johannesburg, where Indians, though numerous, had not become a very important element in the population, and remote communities like Pietersburg, in which almost the entire retail trade was in the hands of Indians.

The most serious feature about Pietersburg is said to be the increasing predominance of Indians. The total white population of the town was estimated at 1,684; while the registers of the Asiatic Department showed that there were no less than 135 Indians, almost entirely adult males, and practically all engaged in the business of storekeeping.

52. Lord Milner, in his covering letter to the Secretary of State, endorses the statements of Sir Arthur Lawley as to the extent and causes of the strong anti-Asiatic feeling among the European population, and is equally emphatic in urging the necessity for the proposed legislation.

He indicates a desire on his own part that Asiatics of a superior class should if possible be liberally treated, by giving them a special status somewhat approaching that of Europeans. Upon that point he remarks :

"I think that to attempt to place coloured people on an equality with whites in South Africa is wholly impracticable, and that, moreover, it is in principle wrong. But I also hold that when a coloured man possesses a certain high grade of civilization he ought to obtain what I may call 'white privileges' irrespective of his colour. I have on more than one occasion given expression to these views. They are very unpopular in the Transvaal at the present time, but I do not despair of their ultimately prevailing.

"For the present, however, there is no prospect whatever of their prevailing, certainly as far as Asiatics are concerned. There is, perhaps, more chance in the case of the coloured people of South African birth; and no doubt their claim is a stronger one, inasmuch as they are natives of the country, and have no choice but to live here, while the Asiatics are strangers forcing themselves upon a community reluctant to receive them."

53. Lord Milner expresses the opinion that, in the existing state of public feeling, it would be practically impossible to pass in the Legislative Council any proposal dealing with the position of Asiatics, short of the absolute exclusion of future immigrants and the relegation of the Asiatics already in the country to bazaars selected for them by the Local Authorities.

He then proceeds to say that, in the circumstances, while the Government would be justified in legislating, even contrary to public opinion, to protect the vested rights of Indians already in the country, they would not, in his judgment, be justified in regulating the Asiatic question, in so far as it is *res integra*, in a manner opposed to the views of the vast majority of the European population.

54. The Secretary of State, in replying to these two Despatches on the 20th July, 1904, traces in detail the history of the Asiatic question in the Transvaal from the date of the passing of Law 3 of 1885, including the negotiations between the two Governments and the various decisions of the Courts.

In doing so, he emphasizes that, up to the outbreak of the war, the British Government had steadily maintained, at first as a matter of right, and subsequently to the Award of 1895 by diplomatic persuasion, the interest of the British Indians resident in the Transvaal; and that the treatment of these fellow subjects formed part of the British Case against the late South African Republic.

55. At the time of writing Mr. Lyttelton had received information of the decision of the Supreme Court in Motan's case. He points out that by that decision every Asiatic now resident in the Transvaal is as free to carry on trade where he pleases as is a subject of English or Dutch origin; so that legislation of the kind proposed by the Transvaal Government

must be in diminution of existing rights. That fact, in his opinion, much changed the aspect in which the matter must be regarded by His Majesty's Government as the trustees of Imperial interests, including those of Indian subjects of the Crown.

56. He draws a distinction between British Indians who may in future enter the country and those who were then resident there. With respect to the former class he recognises the strong opposition among the European population to a continued and unrestricted influx of Asiatic traders, and intimates that His Majesty's Government would give their sanction, though with great reluctance, to the immediate introduction into the Transvaal Legislative Council of a measure restricting immigration on the lines of the Cape and Natal Acts.

But as to the latter class he makes the following observations :—

“ With respect to British Indians now resident in the Transvaal, who are confirmed by the decision of the Supreme Court in the rights for which His Majesty's Government have so long contended, the case is wholly different. Every rational precaution to safeguard the health of the community and of the British Indians themselves must, of course, be taken, and regulations securing this end with respect to their residence, and to the general treatment of their lower classes, carefully prescribed.

“ But an apprehended trade competition from the British Indians now in the country, whose number is now comparatively small and will under proposed restrictions on emigrants be in a diminishing proportion, cannot be accepted as sufficient reason for the legislation proposed. His Majesty's Government have steadily declined to allow this fear to influence their views in the past. On the contrary, for many years they protested before the Empire and the civilised world against the policy and Laws of the late South African Republic in relation to this subject.

“ Those Laws were, indeed, only partially enforced, yet His Majesty's Government is now asked, not merely to sanction their strict enforcement, but to set aside by legislation a judgment of the Supreme Court, which has given to the British Indians rights for which His Majesty's Government have strenuously contended.”

57. He intimates, in conclusion, therefore, that :—

“ The proposed Ordinance, which will take the place of Law No. 3 of 1885, should therefore not interfere with the right of those now in the country to obtain licenses to trade outside locations, but should be limited to creating the necessary machinery by means, I assume, of Municipal Regulations for placing Asiatics in locations in accordance with the law, and should provide, in the case both of present residents and of newcomers, that those required to live in locations or bazaars should be so required for sanitary reasons in each case, whilst those of a superior class should be exempted and allowed to reside anywhere. With regard to the question of the holding of land, British Indians who are entitled to reside outside locations must at least have the right to acquire property in the premises which they occupy for business purposes.”

58. As regards the question whether new-comers should be compelled without exception to trade in bazaars or locations, Mr. Lyttelton points out that those who will come in under the proposed Immigration Restriction Ordinance will be few in number, and not Asiatics of a low class ; in his opinion, therefore, the Ordinance should not limit their rights in respect of trade ; especially in view of the absence of any legislation of the kind in the Cape Colony and Natal.

59. This despatch contains a clear and unequivocal enunciation of the policy which was consistently maintained by the Imperial Government up to that date, and which was, as is shown by subsequent correspondence, approved and followed by successive Secretaries of State. After its receipt no further steps appear to have been taken by the Crown Colony Government in the direction of the proposed legislation, and Law 3 of 1885 was allowed to remain unaltered.

60. Public feeling, however, remained unabated, and in November, 1904, the National Convention before mentioned was held at Pretoria to discuss the “ Asiatic invasion ”. It was convened by Mr. E. F. Bourke and Mr. R. K. Loveday, members of the Legislative Council, and was attended by delegates from over thirty towns and districts of the Colony. They came from all parts of the country and many of them were undoubtedly men of standing and repute in the various communities which they represented. The Chairman was Mr. Loveday, an old and prominent resident in the Transvaal, who delivered an able and moderate address in which he reviewed the history of the whole Asiatic question. He was followed by several speakers who referred in the strongest terms to what they regarded as a serious menace to the country.

[U.G. 4—'21.]

Resolutions were passed—

- (1) thanking the Government of the Transvaal Colony for the sympathetic attitude they had taken up in regard to the question of the Asiatic trader ;
- (2) affirming the principle that Asiatic Immigration should be prohibited except under restrictive legislation ;
- (3) urging the removal into bazaars of all Asiatic traders, with compensation for vested interests legally acquired ; no further licences to be issued to Asiatics to trade outside bazaars ;
- (4) affirming the opinion that all Asiatics should be required to reside in bazaars or locations appointed by the Government.

The correspondence abovementioned between the Colonial Government and the Secretary of State, which had taken place a few months earlier, had presumably been published, for it was referred to and discussed at the Convention.

61. In 1906 an attempt was made to stem the tide of Asiatic immigration into the Transvaal by providing for the compulsory registration of all Asiatics and their identification by means of finger prints. An ordinance for that purpose was actually passed in that year by the Legislative Council, but it did not receive the assent of the Imperial Government. Its provisions were strongly opposed by the Indian community, and a deputation was sent to England to interview the Secretary of State upon the subject. As a result of their representations, Lord Elgin (then Secretary of State for the Colonies) decided that in view of that opposition and the near approach of the establishment of Responsible Government, the measure should not be proceeded with.

POLICY UNDER RESPONSIBLE GOVERNMENT.

62. In the following year, however, during the first session of Parliament under Responsible Government in the Transvaal, an Act (No. 2 of 1907) was passed which was practically a copy of the Ordinance of 1906.

In the same year another Act was passed (No. 15 of 1907) providing for restrictions on immigration into the Colony ; it also provided for an education test and the establishment of an Immigration Department.

Though based on the Cape and Natal Immigration Acts, it was of a more stringent character. Access to the Transvaal, the right to which had been enjoyed by Asiatics unfettered by any condition under the regime of the late Republic, was closely regulated and controlled by that Act.

These two measures met with bitter resentment from the Indian community, and led to what is known as the "passive resistance" movement. As a result of this agitation Act No. 2 of 1907 proved a failure, and in the following year an amending Act (No. 36 of 1908) was passed, which was also unacceptable and failed to arrest the movement.

63. In 1908 two measures which materially affected the trading rights of Asiatics were passed by the Transvaal Legislature, and came into operation on the same date. They were the Townships Amendment Act, No. 34 of 1908, and the Precious and Base Metals Act, No. 35 of 1908, generally known as the Gold Law of 1908. The latter Act and certain provisions of the former Act apply to "proclaimed land," that is, to land proclaimed as a public digging. Section 60 of the Townships Act provides for the conversion of a leasehold in a Government Township on proclaimed land into a freehold, and by Section 62 the Governor is authorised to make regulations fixing the terms and conditions to which such freehold stand or lot shall be subject. One of the conditions promulgated reads as follows :—

"The land hereby granted shall be subject to the provisions of the Townships Amendment Act, 1908 (Transvaal), or any amendment thereof, and shall be subject to the following conditions :—

- (a) It shall be subject to such town regulations, stipulations, and laws as already exist or may hereafter be in force.
- (b) It shall be subject to all obligations and regulations which already exist or may hereafter be in force with reference to land granted on similar conditions.
- (c) All rights to minerals, mineral products, mineral oils, metals and precious stones in or under the land shall be and are hereby reserved to the Crown.
- (d) The land having formerly been held as a right acquired under Law No. 15 of 1898 (Transvaal), or a prior law, the owner shall not transfer or sub-let or permit to be transferred or sub-let any portion of the land to any coloured person, nor permit any coloured person other than his *bona fide* servant to reside thereon or occupy the same.

64. Although the Gold Law of 1908 repealed the Republican Gold Law of 1898, some of the provisions of the latter, which restricted the rights of coloured persons, were submitted

for interpretation by the Supreme Court of the Transvaal in 1909 in what is known as Khota's case.

Section 92 of that law enacted that

"Every white person who wishes to erect a shop or house or dwelling on a proclaimed field, but not in stand townships, shall make application to the Mining Commissioner for one or more stand licences and produce a diagram clearly indicating the locality. The Mining Commissioner shall decide whether such application shall be granted or not."

Then Section 133 provided that

"No coloured person may be a licence holder, or in any way be connected with the working of the diggings, but shall be allowed only as a workman in the service of whites."

These Sections were interpreted by the Supreme Court as follows:—

- (1) The fact that Section 92 of the Gold Law of 1898 prohibited any but white persons from being the holders of stands granted under the section does not prevent coloured persons from acquiring and exercising leasehold rights to such stands.
- (2) Section 133 of the Law, prohibiting coloured persons from being licence holders or from being in any way connected with the working of the diggings, refers only to such licences as diggers and claim licences, and does not prohibit such persons from holding general dealers' licences to trade on diggings.

This decision had important results; for the rights of those Asiatics, who had for many years occupied and traded on leased premises situated on proclaimed land, were thereby confirmed.

65. The provisions of the Gold Law of 1908 material to the interests of Asiatics are contained in Sections 130 and 131, which impose the following restrictions on coloured persons:—

Section 130:

- (1) No right under the Act may be acquired by a coloured person except as provided in Section 24 for native locations.
- (2) The holder of a right shall not transfer or sub-let 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.

Section 131:

- (1) In the mining districts of Witwatersrand no coloured person shall be permitted to reside on proclaimed land, except in bazaars, locations, mining compounds and such other places as the Mining Commissioner may permit: but
- (3) nothing in this Section shall apply to coloured persons in the employ of a white person, in so far as they live on the premises where they are so employed, or to coloured persons who at the commencement of this Act were lawfully in occupation of premises."

66. These provisions gave rise to a great deal of controversy, to which our attention was drawn by Sir Benjamin Robertson in his statement before referred to. He pointed out that on the 13th May, 1908, before the Bill was passed, the Under Secretary for the Colonies was asked in the House of Commons whether "the effect of the proposed new law will be to deprive coloured persons, including British Indians, of the right which they now possess to trade or reside in mining districts, and compel them to remove for both trade and residence into compounds, locations and bazaars."

The matter was referred to the Transvaal Government, and the Attorney-General, Mr. Jacob de Villiers, submitted a report dated the 3rd October, 1908, the Act having been assented to by the Governor of the Transvaal on the 22nd August and promulgated on the 2nd September, 1908. The Attorney-General concludes his Report as follows:—

"Before concluding this report which, owing to the importance and difficulties of the subject, has exceeded the usual length, the position of coloured persons under the Act calls for some explanation, especially as the special disabilities and restrictions put upon these persons by the Act has necessitated its reservation for the special consideration of His Majesty.

"In every previous mineral law of the Transvaal, the right to acquire mining title or privileges incidental thereto has specially been withheld from persons who do not belong entirely to European races, and, certainly, public sentiment in this Colony would not tolerate a departure from the practice of withholding such a right from coloured persons. The Act, therefore, throughout specifically provides for the issue of prospecting permits, prospecting and diggers' licences, stand licences and

“other privileges to white persons only; but no right or privilege which a coloured person has at the present time is taken away by the new Act. Where, however, the existing law is not particularly clear on any matter regarding the disabilities of coloured persons under it, and the obvious intention was to impose such disabilities, the new Act endeavours to remove all possibility of controversy. The native owner and occupier of land can therefore dispose of his mineral rights, but will not be able to obtain a mining title while, under Section 24, the native chief and tribe occupying a native reserve or location will retain all the rights which he has to-day under Article 49 of Law 15 of 1898. These rights do not consist of a share in the minerals on his land but of compensation for the share he would obtain if he were a white person.

“Section 131, which, before the Bill was introduced into Parliament, formed the subject of questions in the English House of Commons, and of despatches from the Secretary of State to the Governor, has been amended in Committee so as to safeguard any rights which a coloured person may at the present time have of occupying land in mining areas. But, as a matter of sound police and sanitary legislation, the power to regulate the residence of coloured persons in the populous mining areas of the Witwatersrand is most essential. By the legislation passed under the Crown Colony Administration the residence of such persons inside municipalities is confined to the bazaars and locations set apart by the Town Councils; the coloured mine employes have always as a matter of convenience been housed in special quarters provided by their employers. But there are parts of the Witwatersrand which are not within municipalities, and it is important in the interests of public health, morality and good order that unauthorised and unsupervised congregations of coloured persons—many of them idlers and loafers—should not be allowed to exist so as to be a danger and a nuisance to the community.”

67. The Colonial Secretary, in a telegram dated 11th December, 1908, noted the assurance that no right or privilege which a coloured person then had was taken away by the new Gold Law. But he was not satisfied that the new law might not “deprive those coloured persons who have not actually acquired vested rights on gold fields of power to acquire *rights which were open to them before*”—i.e., under the Gold Law of 1898; and he asked for a further explanation.

On receiving a further assurance, in the Governor’s telegram dated the 17th December, 1908, that Section 130 of the new law “carries out the spirit of Article 133 of the Gold Law of 1898,” the Secretary of State replied on the 28th December, 1908, that His Majesty would not be advised to exercise his power of disallowance. In conveying this intimation, he expressly noted three points:—

- (1) That Section 131 (3) safeguarded any rights which coloured persons might at that time have of occupying land in mining areas;
- (2) the assurance of the Attorney-General that no right or privilege, which a coloured person had at that time, was taken away;
- (3) that by the use of the words “other places” in Section 131 (1), the powers vested in the Mining Commissioner enabled him in the future to exempt coloured persons, including Asiatics of superior class, from being required to live in bazaars, locations or compounds.

68. It is strongly contended, therefore, on behalf of the Government of India, that the Gold Law of 1908 was assented to on the explicit assurance that it did not deprive coloured persons, including Asiatics, of any right which they enjoyed under the Gold Law of 1898. These rights, according to the ruling in Khota’s case, included:—

- (1) The right to acquire and exercise leasehold rights to stands granted under Section 92 of the law of 1898;
- (2) the right to hold general dealers’ licences to trade on diggings.

It is further contended that the intention of the Law of 1908, as explained by the Attorney-General in his report dated 3rd October, 1908, was not to restrict Indian trading, but

- (1) to continue the existing law which reserved for white persons “the right to acquire mining title or privileges incidental thereto”;
- (2) as a matter of sound police and sanitary legislation to regulate the residence of coloured persons in the populous mining areas of Witwatersrand, and more especially outside municipalities;

and that the restrictions on the residence of coloured persons purported to be aimed, not at Indian traders, but at “idlers and loafers”; and special powers were reserved to the Mining Commissioner to enable him to permit respectable Indians to reside outside locations.

69. There is undoubtedly great force in the contention of Sir Benjamin Robertson, and the arguments he advances in support of it. It is clear that the vested rights, which coloured persons had actually acquired on proclaimed land before the Gold Law of 1908 was passed, are protected by the last paragraph of Section 131 of that Act. But it is the wider question, whether the same protection is afforded by that section to those who had not actually acquired such rights but had the power to acquire them; which unfortunately caused some misunderstanding.

70. In considering this question it must not be forgotten that the Attorney-General's Report was written six months before the judgment in Khota's case was delivered. At that time the view held by the Government was that coloured persons were prohibited by the old Gold Law of 1898 from acquiring leases of stands on proclaimed land and holding general dealers' licences to trade on diggings. That was the contention set up on their behalf by their Counsel in Khota's case in the following year. In those circumstances the Attorney-General's statement that "no right or privilege which a coloured person has at the present time is taken away by the new Act" becomes intelligible; for Section 130 of the new Act merely laid down in positive terms what, in his view, was already prohibited by implication in the repealed Act of 1898.

His further statement that Section 131 of the Act had been amended in Committee "so as to safeguard any rights which a coloured person may at the present time have of occupying land in mining areas" must clearly refer only to those coloured persons "who at the commencement of the Act were lawfully in occupation of premises"; for they are the only persons that the section does protect.

In the course of his judgment in Khota's case the Chief Justice remarked:—

"Section 92 of the Gold Law of 1898 certainly forbids the issue of a stand licence to any but white persons; no coloured man, therefore, can hold a stand licence. But it does not say that a white man shall not let his stand to a coloured person; nor does it say that no coloured person shall occupy a stand. That being so, it seems to me that neither of those things are illegal."

Both those things are, however, now specifically made illegal, as to rights acquired in the future, by Sections 130 and 131 of the Act of 1908.

71. In 1911 a European named Tamblin was convicted by the Assistant Resident Magistrate, Krugersdorp, and sentenced to a fine of £2 or ten days' imprisonment under Section 130 of Act No. 35 of 1908 for renewing the lease of a stand to certain Asiatics, which had expired in January, 1909. On appeal the Transvaal Provincial Division of the Supreme Court held that Section 77 of Act No. 35 of 1908, which provides that all the rights and obligations attaching at the commencement of the Act to a stand outside a township and acquired under Law 15 of 1898 or a prior law should remain in force, created an exception to Section 130 of the Act and safeguarded all rights attaching to stands under any previous Gold Law. Hence, as it had been held in Khota's case that coloured persons could acquire and exercise leasehold rights to stands granted under Section 92 of Law 15 of 1898, it followed that no restriction was imposed by Act No. 35 of 1908 on the letting to Asiatics of any stand granted under the Mining Laws prior to 1908, which is situated on proclaimed land outside a township.

72. It appears that in consequence of the great dissatisfaction caused by this legislation amongst the Indian community, and the litigation to which it led, no steps were taken by the Government to enforce its provisions; and the Revenue Officers continued to issue to Indians licences to trade on premises on proclaimed land without discrimination.

But representations and complaints are said to have been made to the Government from time to time by various sections of the European population, particularly by the Municipality of Krugersdorp, where the presence of Asiatic traders was most keenly resented.

PASSIVE RESISTANCE MOVEMENT.

73. Towards the end of 1913 certain disturbances took place in Natal in connection with a strike of Indian labourers in that Province. The causes and circumstances of that agitation were investigated by a Commission, of which Sir William Solomon, K.C.S.I., K.C.M.G., was Chairman.

Various grievances were ventilated before that Commission, but the strike was found to be immediately due to dissatisfaction on the part of the leaders of the Indian community with the provisions of the Immigrants Regulation Act, 1913, which had recently been passed by the Union Parliament. Although the actual strike and the disturbances connected with it were confined to the Indian labourers in the coal areas and the sugar plantations in Natal, the agitation was carried into the Transvaal Province. It appears from the Report of the Commission that on the 1st November, 1913, a large crowd of the strikers, led by Mr. Ghandi

and accompanied by their wives and children, numbering in all about 2,200, marched from the coal districts of Natal into the Transvaal, with the deliberate object of contravening the Immigrants Regulation Act, and of courting arrest and imprisonment.

After they had crossed the border Mr. Ghandi and the other leaders were arrested and imprisoned, the rest being sent back by rail to Natal.

This was a further development of the passive resistance movement which had been initiated some years earlier. It eventually led to certain negotiations and correspondence between Mr. Ghandi and the Union Government, in connection with the status and rights of Asiatics in the Transvaal, which culminated in what is generally known as the Smuts-Ghandi Agreement.

SMUTS-GHANDI AGREEMENT.

74. That Agreement is embodied in two letters which passed between Mr. Gorges, Secretary for the Interior, and Mr. Ghandi on the 30th June, 1914. Mr. Gorges in his letter to Mr. Ghandi deals with a number of grievances and other matters which had been discussed between General Smuts (then Minister of the Interior) and Mr. Ghandi; but these need not be here referred to. It will be sufficient to quote the concluding paragraphs of Mr. Gorges' letter which are as follows:—

“ With regard to the administration of existing laws, the Minister desires me
 “ to say that it always has been, and will continue to be, the desire of the Government,
 “ to see that they are administered in a just manner with due regard to vested rights.
 “ In conclusion General Smuts desires me to say that it is, of course, understood
 “ and he wishes no doubts on the subject to remain, that the placing of the Indians
 “ Relief Bill on the Statute Book of the Union, coupled with the fulfilment of the
 “ assurances he is giving in this letter in regard to the other matters referred to herein
 “ and touched upon at the recent interviews, will constitute a complete and final settle-
 “ ment of the controversy which has unfortunately existed for so long, and will be unre-
 “ servedly accepted as such by the Indian community.”

The following reply, which it is desirable to set out in full, was sent by Mr. Ghandi on the same day:—

Cape Town,

30th June, 1914.

“ Dear Mr. Gorges,

“ I beg to acknowledge receipt of your letter of even date herewith setting forth
 “ the substance of the interview that General Smuts was pleased, notwithstanding
 “ many other pressing calls upon his time, to grant me on Saturday last. I feel deeply
 “ grateful for the patience and courtesy which the Minister showed during the dis-
 “ cussion of the several points submitted by me.

“ The passing of the Indians Relief Bill and this correspondence finally closes the
 “ passive resistance struggle which commenced in the September of 1906 and which
 “ to the Indian community cost much physical suffering and pecuniary loss and to
 “ the Government much anxious thought and consideration.

“ As the Minister is aware, some of my countrymen have wished me to go further.
 “ They are dissatisfied that the trade licences laws of the different Provinces, the
 “ Transvaal Gold Law, the Transvaal Townships Act, the Transvaal Law 3 of 1885,
 “ have not been altered so as to give them full rights of residence, trade and ownership
 “ of land. Some of them are dissatisfied that full inter-provincial migration is not
 “ permitted, and some are dissatisfied that on the marriage question the Relief Bill
 “ goes no further than it does. They have asked me that all the above matters
 “ might be included in the passive resistance struggle. I have been unable to comply
 “ with their wishes. Whilst therefore they have not been included in the programme
 “ of passive resistance, it will not be denied that some day or other these matters
 “ will require further and sympathetic consideration by the Government. Complete
 “ satisfaction cannot be expected until full civic rights have been conceded to the
 “ resident Indian population.

“ I have told my countrymen that they will have to exercise patience and by
 “ all honourable means at their disposal educate public opinion so as to enable the
 “ Government of the day to go further than the present correspondence does. I
 “ shall hope that when the Europeans of South Africa fully appreciate the fact that
 “ now, as the importation of indentured labour from India is prohibited and as the
 “ Immigrants Regulation Act of last year has in practice all but stopped further free
 “ Indian immigration, and that my countrymen do not aspire to any political ambition,
 “ they, the Europeans, will see the justice and indeed the necessity of my countrymen
 “ being granted the rights I have just referred to.

“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 the 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.

I am, etc.,

(Sgd.) M. K. GHANDI.

A week later the following further letter was despatched to Mr. Gorges from Natal by Mr. Gandhi, on the eve of his departure for India :—

Phoenix, Natal,

7th July, 1914.

“Dear Mr. Gorges,

“I have now got a moment to submit my note on the Gold Law. As you know, after maturer consideration, I refrained from pressing for the insertion of a special clause defining ‘vested rights’ in connection with the Gold Law and Townships Amendment Act, because I felt that any definition in the correspondence might result in restricting the future action of my countrymen. However, so far as my interpretation of ‘vested rights’ is concerned, I think that I should reduce it to writing. General Smuts was good enough to say that he would endeavour to protect vested rights as defined by me. The following is the definition I submitted to Sir Benjamin Robertson, who, I understood, submitted it to General Smuts. My letter to Sir Benjamin containing, among other matters, the definition is dated the 4th March, 1914: ‘By vested rights I understand the right of an Indian and his successors to live and trade in the township in which he was living and trading, no matter how often he shifts his residence or business from place to place in the same township.’ I am fortified in my interpretation by the answer given by Mr. Harcourt in connection with the matter, in the House of Commons, on the 27th June, 1911 :—

‘Complaints against that legislation (the Gold Law and Townships Amendment Act) have been made and are now being investigated by the Government of the Union of South Africa, who have lately stated that there is no intention of interfering with any business or right to carry on business acquired and exercised by Indians prior to the date of the legislation.’

“I have also now traced the note by Mr. de Villiers which I alluded to in our conversation. It is contained in a White Paper published in London in March, 1912, and has the following :—

‘No right or privilege which a coloured person has at the present time is taken away by the new Act (Act 35 of 1908).’

And again—

‘Section 131, which before the Bill was introduced into Parliament, formed the subject of questions in the English House of Commons and of despatches from the Secretary of State to the Governor, has been amended in Committee so as to safeguard any rights which a coloured person may at the present time have of occupying land in mining areas.’

“Certainly, prior to the passing of the Gold Law, no restrictions were, to my knowledge, placed upon the movement or the trade of British Indians in the gold areas. There can therefore be no justification for any restriction now, especially in regard to those who are already settled in their respective townships.

I am, etc.,

(Sgd.) M. K. GHANDI.

75. The definition of the term “vested rights” as used in this correspondence has been the subject of much dispute. Before the Select Committee of the House of Assembly, Dr. Krause, on behalf of the Indian Community, contended that it was not confined to rights actually acquired at that date, but included the inherent right appertaining at that time to all Asiatics, including new-comers, to lease and occupy, as well as to trade upon, stands and premises on proclaimed land; which right they were not precluded from exercising by any law then in existence.

[U.G. 4—'21.]

From Mr. Ghandi's own definition, however, as given in his letter of the 7th July, 1914, it would appear that no more was intended than that the vested rights of those Indians who were then living and trading in townships, whether in contravention of the law or not, should be respected.

76. As we have seen, up to 1908 an Asiatic had the right, in accordance with judicial decisions, to hire a stand on proclaimed land from the European licensed holder of it, and to carry on business upon it. There was nothing in the Gold law of 1898 or any other law to prevent his doing so.

Then by Section 130 of the Gold Law of 1908 Asiatics were prohibited from acquiring a lease in respect of a stand granted after the promulgation of that Law. Though no specific mention is made of trading rights, the effect of that section and of Section 131 is to preclude Asiatics, amongst other coloured persons, from exercising such rights by reason of their being prohibited from hiring such stands and occupying and residing on them.

The provisions of the Gold Law and Townships Act of 1908 were not strictly enforced, with the result that between 1908 and 1914 a considerable number of new businesses had been established by Indian traders in several places, in spite of the Law.

These must have been the vested rights, unlawfully acquired without interference from the Government, which General Smuts and Mr. Ghandi had in mind during the negotiations.

77. About the time of the agreement of 1914 and thereafter an effective method of evading the rigorous provisions of the two Acts above referred to was brought into operation by Asiatics by their employing the machinery of the Companies Act of 1909 (Transvaal).

No fresh legislation was introduced to meet the new situation, probably on account of the difficulties arising from the European War; or owing to a desire, as has been suggested, to place a liberal interpretation on the promise made by General Smuts to administer existing laws "in a just manner."

Eventually (as will be seen later) by Act 37 of 1919 rights which had been acquired by British Indians before 1st May, 1919, were excluded from the operation of Sections 130 and 131 of the Gold Law of 1908.

78. It appears that the terms of Mr. Ghandi's letter of the 7th July, 1914, in which he gives his definition of the term "vested rights," were not known to the general body of Indians in the country, or to the Government of India, until it was disclosed in 1919 during the proceedings of the Select Committee.

The Government of India relied upon the Report of the Attorney-General of the Transvaal, and the assurances received by the Secretary of State before assenting to the Gold Law of 1908, for their contention that no rights which Asiatics possessed at that time were taken from them by that Law. They had always understood, therefore, that by "vested rights" General Smuts meant such rights as Asiatics had enjoyed before and since 1898, and still enjoyed in 1914.

Thus, from their point of view, they regarded Act 37 of 1919 as an interference with such rights; although they admit that as far as General Smuts' promise to Mr. Ghandi is concerned, it has, in view of Mr. Ghandi's own definition, been more than fulfilled by extending the protection to vested rights which had been acquired up to the 1st May, 1919.

FORMATION OF COMPANIES BY ASIATICS.

79. Before dealing with the provisions of Act 37 of 1919 it will be convenient to consider the circumstances which brought about its enactment. After the Smuts-Ghandi agreement of 1914 the Government were in the main inclined to leave the Indian question in abeyance during the period of the European war, but the Indian traders themselves were by no means inactive. They continued to apply for, and obtained, new licences to trade, and formed private companies, with limited liability, for the purpose of acquiring land and fixed property, which individual Asiatics were debarred by Law 3 of 1885 from owning. Under the Transvaal Companies Act of 1909 only two shareholders are necessary to form a private limited liability company. According to the plan usually adopted an Indian trader, who was in occupation of a stand on which he carried on business, formed a company in which he held all the shares except a small number which were placed in the name of an Indian friend or relative. The stand and premises were then purchased from the European owner and registered in the Deeds Office in the name of the Company. By this means the Indian trader to all intents and purposes became the owner of the land. It was obviously an evasion of the provisions of Law 3 of 1885; but it was declared to be legal by the decision in the case of Reynolds versus Oosthuizen, which was heard before Mr. Justice Ward, in September, 1916, in the Witwatersrand Local Division of the Supreme Court at Johannesburg.

Subsequently, in the case of *Krugerdsorp Municipal Council versus Dadoo Limited, and others*, which was heard before the Provincial Division of the Supreme Court at Pretoria in 1919, it was held that such a transaction was *in fraudem legis* and therefore invalid. This

decision was, however, reversed on appeal by the Appellate Division of the Supreme Court in June, 1920. The legal position is now as laid down by Mr. Justice Ward in 1916, that there was nothing in the law to prevent such private companies, consisting entirely of Asiatic shareholders, from owning land in the Transvaal.

That holds good, however, only in regard to such companies as were registered before 1st May, 1919; for by Act 37 of 1919 the provisions of Law 3 of 1885, prohibiting the ownership of land by coloured persons, were made applicable, after that date, to companies in which coloured persons have a controlling interest.

80. It was strongly urged by Mr. Leslie Blackwell, who appeared before the Commission as Counsel for the South Africans' League, that the formation of a number of such Companies by Indian traders, almost immediately after the conclusion of the Smuts-Ghandi agreement, was a flagrant violation of the terms of that compact. This was disputed by the representatives of the Indian community, who denied that there was anything in that agreement to debar them from adopting such a course. They pointed out, moreover, that similar companies had been formed before the agreement was made.

81. The following return, published in the report of the Select Committee of the House of Assembly in 1919, shows the number of private companies, registered under the Transvaal Companies Act (No. 31 of 1909) all the shareholders of which are Indians :—

Year.						Number of Companies.	Nominal Capital.		
							£	s.	d.
1913	..	..	..	..	..	3	7,500	0	0
1914	..	..	..	..	..	9	13,150	0	0
1915	..	..	..	..	..	38	84,274	0	0
1916	..	..	..	..	..	103	132,255	0	0
1917	..	..	..	..	..	91	118,229	0	0
1918	..	..	..	..	..	114	113,319	7	0
1919 (31.3.19)	..	..	..	..	..	12	10,600	12	0
Totals						370	£479,327	19	0

82. There is evidence that one Indian Company (The Land and Trading Company, Ltd.) obtained transfer of a stand in the Township of Pretoria on the 19th October, 1909, soon after the passing of the Companies Act. But the above return shows that very few were registered before 1915. The marked increase after that year is said to be due to the decision of Mr. Justice Ward in 1916 in the case of Reynolds *vs.* Oosthuizen, by which the legality of the procedure was confirmed.

83. It was further pointed out by Indian witnesses, as well as by the representative of the Government of India, that, when defining "vested rights" in his letter of the 7th July, 1914, Mr. Ghandi was referring to rights in connection with the Gold Law and Townships Amendment Act only. The amendment of these two Acts was not an issue in the passive resistance movement; and they were regarded as falling within the category of existing laws which General Smuts undertook to administer "in a just manner and with due regard to vested rights."

There was, moreover, no reference in that correspondence to the question of the acquisition of land by Asiatics (either individually or by means of companies) except an allusion by Mr. Ghandi to the dissatisfaction amongst some of his countrymen that Law 3 of 1885, amongst others, had not been altered.

84. The concluding paragraph of Mr. Gorges' letter to Mr. Ghandi certainly indicates that General Smuts expected that the agreement arrived at would be regarded as a final settlement of Asiatic grievances in the Transvaal.

On the other hand, it seems equally clear that Mr. Ghandi in his reply reserved the right of his countrymen to raise at some future time the question of the amendment of the various laws which he enumerated, so as to give them full rights of residence, trade and ownership of land. And in a farewell message to his fellow-countrymen, which was circulated in the press through Reuter's Agency, he assured them that the settlement arrived at does not preclude them from agitating "as has been made clear in my letter to the Secretary for the Interior "of the 30th June," for the removal of other disabilities which the community will still suffer from under the Gold Law, Townships Act and Law 3 of 1885 of the Transvaal, and the Trade Licences laws of Natal and the Cape.

85. According to the evidence given by the leaders of the Indian community in the Transvaal, they placed the same interpretation on the Smuts-Ghandi agreement as the Government of India did. For that reason they continued to apply for new trading licences, and to acquire [U.G. 4—'21.]

fresh leaseholds on proclaimed land as before. New licences were not refused to them, and they met with no interference from the Government in respect of their leaseholds, or their acquisition of land by means of private companies.

86. In the case of Krugersdorp Municipal Council versus Dadoo, Limited, the Appellate Division affirmed the legality of the *ownership* of fixed property by the company. The legality of the *occupation* of the land by Dadoo himself, as representative of the Company, was not in question. But in the previous case of Johannesburg Municipal Council versus Madrassa Anjuman Islamia, which was an appeal to the same Court from the Transvaal Provincial Division in August, 1919, it was held that a Company is incapable of being physically present at any place and could not "occupy" a stand; and that the stand in question, therefore, was occupied by the employees of the company within the meaning of the statutory conditions. Such occupation, the employees being all Asiatics, was accordingly declared illegal. That was a case under Section 4 of the Vrededorp Stands Act (No. 27 of 1907) which contained conditions similar to those of Section 130 of the Gold Law of 1908, prohibiting the owner of the stand from permitting an Asiatic or coloured person to reside on or occupy the stand or any part thereof. The decision is said to be under appeal to the Privy Council.

The question is, however, of little importance in present circumstances; for ownership of fixed property by such companies is now prohibited as from the 1st May, 1919; and in the case of those Companies which had acquired property upon proclaimed land before that date, the Indian trader who formed the Company had invariably occupied, and conducted his business upon, the stand for some time previously. Presumably, therefore, he would be protected as regards his future occupation of it, in his capacity as the representative or employee of the Company, by Section one of Act 37 of 1919.

PETITION TO PARLIAMENT—SELECT COMMITTEE—ACT 37 OF 1919.

87. Early in 1919, the war having now been concluded, the patience of the Krugersdorp Municipal Council apparently became exhausted. Finding that the Government paid no heed to their repeated requests that the continued encroachment of Asiatic traders in their Township should be arrested, they decided to "step into the breach" themselves. They accordingly applied for, and obtained, an interdict from the Supreme Court at Pretoria in January, 1919, restraining Messrs. T. W. Beckett and Company from permitting the residence of certain Indians on a stand in Krugersdorp, which had been leased by that firm to an Indian tailor, and was at the time occupied by him and several other Indians.

The application, which was based on Section 130 of the Gold Law of 1908, was not opposed by Messrs Beckett and Co., and no notice of it was given to the Indians, who did not appear at the hearing.

This action on the part of the Krugersdorp Municipality caused great consternation amongst the Indian community on the Rand, and induced them to send a petition for relief to Parliament, which resulted in the appointment of the Select Committee during the Session of 1919.

88. The petition, which was signed by members of the Committee of the Transvaal British Indian Association, and by the Chairman of the Krugersdorp branch of that Association, was referred to the Select Committee by the House of Assembly. It complained, *inter alia*, of certain disabilities which had been imposed on the British Indian community in the Transvaal, in respect of the application of Sections 130 and 131 of the Gold Law of 1908.

At the same time the Committee were instructed to take evidence and report on the alleged evasions by Asiatics of Law 3 of 1885 of the Transvaal, by means of forming themselves into limited liability companies.

The evidence taken by the Select Committee was, together with their Report, placed at our disposal; and most of the witnesses who were examined by the Committee gave supplementary evidence before the Commission.

89. The Select Committee in their Report recommended:—

- (a) that the vested rights of Indians who were carrying on business in proclaimed mining areas in June, 1914, should be respected.
- (b) That the vested rights of Indians who since that date obtained trading licences and are carrying on business on such areas should also be respected;
- (c) that Indians should have the right to transfer and make over their existing businesses to other Indians legally residing in the Transvaal;
- (d) that steps should immediately be taken to render it impossible for any Indian or Asiatic in future to obtain a trading licence for a new business—in other words, that whilst existing rights should be recognised and protected, and where necessary validated and legalized, no further obtaining of trading licences (save and except as renewals of existing licences), or opening of new businesses by Indians or Asiatics should be allowed.

The Committee further expressed the opinion that legislation should immediately be introduced for the purpose of amending Law 3 of 1885 in such manner as to apply the prohibition contained in that Law, against the owning of fixed property by coloured persons, to companies in which Asiatics have the controlling interest ; and that it be rendered impossible for prohibited individuals to acquire landed property by means of forming and registering a limited liability company.

A draft Bill, embodying those recommendations, was attached to the Report by the Committee. That Bill, with some additions and alterations, was finally passed by the Legislature as Act No. 37 of 1919.

90. The Act contains only two Sections. The first Section reads as follows :—

Those provisions of Sections 130 and 131 of Act No. 35 of 1908 (Transvaal) which relate to the residence on or occupation of, ground held under a stand licence on proclaimed land by coloured persons and any provisions similar thereto contained in the conditions of any deed of grant or freehold title in a Government Township (as defined in Act 34 of 1908, Transvaal) issued under the last mentioned Act shall not apply :—

- (a) to any British Indian who on the first day of May, 1919, was, under the authority of a trading licence lawfully issued, carrying on business on proclaimed ground or on any stand or lot in such township, or to the lawful successor in title of any such Indian in respect of such business ; or
- (b) to any person *bona fide* in the employment of such a British Indian or his successor in title,

so long as such British Indian or successor in title continues so to carry on business on the same ground or stand or lot on which or on any other ground or stand or lot in the same township in which it was being carried on on the first day of May, 1919 ; provided that nothing in this Section shall be construed as abrogating any exceptions contained in the said sections 130 and 131 or in the conditions aforesaid.

The second Section provides that in future the provisions of Law 3 of 1885 (Transvaal) which prohibits Asiatics from owning fixed property in the Transvaal shall be construed as also prohibiting

- (a) any registration of a mortgage over fixed property in favour of an Asiatic, otherwise than as security for a *bona fide* loan or investment in the ordinary course of business ;
- (b) the ownership of fixed property by companies in which one or more Asiatics have a controlling interest ;
- (c) the registration of a mortgage over fixed property in favour of such a company, otherwise than as security as aforesaid.

It further enacts that the provisions of this section shall apply as from the 1st May, 1919, provided that, in respect of any fixed property acquired by any such company before that date, the aforesaid provisions of Law 3 of 1885 shall be construed as if this Act had not been passed.

That proviso left open the question, then pending the decision of the Courts, of the legality of the acquisition of fixed property hitherto by Companies controlled by Asiatics.

91. This legislation gave as little satisfaction, and caused as much disquietude, amongst the Indian community in the Transvaal, as amongst their European opponents. The latter consider that it is not sufficiently drastic and makes unjustifiable concessions to Asiatics who had systematically evaded and violated the laws of the country in the past ; while the former complain that, in response to their appeal to Parliament for relief from their existing disabilities, further restrictions affecting their rights have been imposed upon them.

Early in September, 1919, soon after the promulgation of the Act, a Congress was held in Pretoria "under the auspices of the Anti-Asiatic League, for the purpose of submitting resolutions upon the Asiatic menace and forming an organisation to combat it." According to the report of the proceedings, it was attended by delegates from a large number of towns and districts of the Transvaal, including representatives of 26 Municipalities, 30 Chambers of Commerce, 9 Agricultural Societies, 12 Churches and 40 Unions and other bodies. Resolutions were passed emphasizing the serious menace to the economic and social welfare of the inhabitants of the Transvaal occasioned by the continued encroachment of Asiatics, and urging the stringent application of all legal restrictions against such encroachment in the future.

At this Congress the "South Africans' League," frankly stated to be anti-Asiatic in character, was instituted and arrangements have since been made for the formation of branches of the League in almost every town in the Transvaal.

The Chairman of the League is Mr. L. J. Phillips, an attorney practising at Krugersdorp. That gentleman presided at the Congress and delivered the opening address. He was also

the principal witness representing the League before the Commission. Having acted as legal adviser to the Krugersdorp Municipal Council for some years he is thoroughly conversant with the various aspects of the question. But at all the towns in the Transvaal where evidence was taken, witnesses representing branches of the League were examined. In fact, the proceedings of the Commission at times assumed the character of a contest between two opposing parties, with the supporters of the South Africans' League on one side and the leaders of the Indian community on the other. At the same time a great deal of valuable evidence was received from independent witnesses on both sides who tendered their evidence voluntarily and were not connected with any association or interest.

POSITION OF ASIATICS REGARDING OWNERSHIP OF LAND AND TRADING RIGHTS.

92. To define in exact and exhaustive terms the present position of Asiatics regarding ownership of land and trading rights in the Transvaal as laid down by legislation and decisions of the Courts is by no means easy. The following brief summary is, however, submitted for purposes of reference :—

Generally in the Province Outside Public Diggings.

(After the promulgation of Act 37 of 1919).

- (1) They cannot own fixed property anywhere in the Province, either directly or indirectly, *i.e.* through nominal trustees or limited liability companies, except in such localities as the Government may for sanitary reasons assign to them for purposes of residence.
- (2) They can acquire leasehold rights with respect to fixed property.
- (3) They can obtain general dealers licences to trade anywhere.

Inside Public Diggings Proclaimed under the Gold Laws.

(After the promulgation of Acts 34 and 35 of 1908 and Act 37 of 1919.)

- (1) They cannot own fixed property, including stands inside and outside townships directly or indirectly, *i.e.* through nominal trustees or limited liability companies, anywhere within a public digging except in such localities as the Government may for sanitary reasons assign to them for the purposes of residence.
- (2) They can continue to acquire leases with respect to stands outside townships which have been granted under the Mining Laws prior to 1908.
- (3) They cannot acquire leases in respect to stands outside townships granted after the Gold Law of 1908 came into force.
- (4) They cannot acquire leases with respect to stands inside townships whether now held under the Gold Law title or under a title converted into freehold under the Townships Act No. 34 of 1908.
- (5) They can obtain trading licences to carry on a trade on any of the stands mentioned in (2) and (6), but not in respect of (3) and (4).
- (6) Under the provisions, respectively, of Section 77 and sub-section (3) of Section 131 of the Gold Law of 1908, they are safeguarded in the rights they acquired with respect to stands inside and outside townships prior to the passage of that law.
- (7) Asiatics who on the 1st May, 1919 were carrying on a duly licensed business on proclaimed land, or in townships, are exempted from the above disabilities as to trade; they, and their *bona fide* Asiatic employees, as well as their successors in title, are left undisturbed in their businesses, so long as the latter are confined to the same township in which they were being conducted at that date.

In addition to the foregoing, rights to fixed property throughout the Province which were acquired by Asiatics by means of forming companies before the 1st May, 1919 are protected and not interfered with.

ASIATIC POPULATION.

93. There seems to be a strong and widespread impression throughout the Transvaal, particularly in the country districts, that the number of Indians in the Province has greatly increased during recent years, and fears are entertained that the influx is still continuing.

But a careful consideration of the evidence tends to show that there are no solid grounds for those fears. According to available statistics and other sources of evidence the Asiatic population of the Transvaal has apparently remained more or less stationary since the Census of 1911 was taken. It certainly has not increased to an alarming extent, as is generally supposed. This would be owing partly to the fact that until comparatively recently few Indians had their wives in this country, and partly to the number of departures for India from time to time, which would counterbalance the natural increase of the population.

Further immigration of Asiatics into the Union has now been effectually stopped by the education test and other prohibitive provisions of the Immigrants Regulation Act, No. 22 of 1913, which consolidates all the Immigration Acts of the various Provinces.

94. It is no doubt true that, since the passing of that Act, in addition to the wives of Indians domiciled in the Union who have been admitted into the country under its provisions, a certain number of Indians have made their way into the Union by illicit means. But the number has lately been very much diminished, owing to increased police supervision and greater vigilance on the part of the Immigration Department; and we have the assurance of responsible officials that there is practically no leakage into the Transvaal at the present time. That has, moreover, been confirmed by special enquiries made by a sub-committee of the Commission.

It might occasionally happen that an Indian youth, under the age of sixteen years, is smuggled into the Union on the false representation that he is the son of a father lawfully domiciled in it, or that an unusually venturesome Indian adult might succeed in escaping the vigilance of the Police and cross the border from Portuguese territory. But the risk is very great, and the number of such cases must consequently be negligible.

As was pointed out by the Acting Principal Immigration Officer of the Transvaal, the life of such a man in that Province would be intolerable. Having entered the Province unlawfully, he cannot obtain the certificate of registration which all Asiatics must have. He cannot therefore obtain a licence to trade, even as a hawker, or be openly employed as an assistant to a licensed trader. He lives in constant fear of being called upon by the Police or Shop Inspector to produce his registration certificate, failing which he can be expelled from the Province. He is, moreover, always at the mercy of his compatriots and acquaintances who, in consequence of some quarrel, may at any time give information concerning him to the authorities. It is not likely, therefore, that the danger attending such a surreptitious and unlawful entry into the Transvaal in present circumstances would be faced by a member of the trading class; although an Indian of the coolie type, content to lead a life of obscurity in the slums, may occasionally make the attempt.

95. The more probable explanations of the increase of Indian shops in the country towns are, firstly, that some of the successful Asiatic traders in large centres like Johannesburg have opened branches in them, and, secondly, that Indian shop assistants, who have for some years been employed in business in one of the larger centres, and have thus acquired considerable knowledge of the trade, often migrate to one of the smaller towns in the country, where they commence business on their own account on a limited scale. In this manner the number of Indian traders in those towns would gradually be increased without effecting a corresponding increase in the total Asiatic population of the Province.

96. As however there seems to be a great deal of misapprehension as to the actual Asiatic population of the Transvaal, it may be advisable to discuss such figures upon the subject as could be obtained.

The Census figures are:—

	Asiatic Males.	Asiatic Females.
April 17, 1904	9,799	1,522
May 7, 1911	9,018	2,054

In the Transvaal all male Asiatics over the age of sixteen must be registered, and those under that age and over eight years may be so registered. The Transvaal Asiatic Registration Certificate is a valuable document to its holder, for in terms of the law it is accepted as conclusive evidence that the lawful holder thereof is entitled to reside in the Transvaal; and it is certain that the Asiatic traders, at any rate, register practically all their children over the age of eight years in order to safeguard the rights of the latter. In fact, children are brought from India specially for that purpose and returned immediately after registration. Females are not registered.

Under this system the registrations from 1st July, 1907, to 31st December, 1919, were:—

Indians	13,182
Chinese	1,345
Japanese	3
Other Asiatic races	94
	<hr/>
	14,624
	<hr/>

The Director of Census maintains a card record of migration of all persons, and the following figures relating to all Transvaal Asiatics show a yearly decrease :—

Year.	Arrivals.	Departures.	Net Decrease.
1918	594	1,019	425
1919	1,065	1,359	294

Owing to many females remaining in India, while the majority of males are in South Africa, the normal birth rate is reduced. The population is further diminished by the drift back to India. It was probably for these reasons that between the Census of 1904 and that of 1911 there was a decrease in the total male population.

From 1st July, 1907, to 7th May, 1911, (the Census date) 10,339 Asiatic males had been registered, but only 9,018 males were found when the 1911 Census was taken, showing a loss of 1,321 or roughly 12½ per cent; and if the same percentage of loss is taken on the 14,624 registrations to 31st December, 1919, it will be seen that according to this basis of computation there cannot be more than 12,800 male Asiatics (including Chinese) entitled to be in the Transvaal, but many of these would be absent in India at any given time.

The general conclusion of the Immigration Department, with which we concur, is that the 1921 Census will show that there has been no material increase in the number of male Indians in the Transvaal since 1911.

ASIATIC TRADING LICENCES IN CERTAIN DISTRICTS.

97. We were unable to obtain details of the number of trading licences issued to Asiatics in all the various districts of the Transvaal, but after concluding the evidence we deputed one of our members, Mr. H. J. Hofmeyr, to visit some of the towns in the Transvaal, in which the Asiatic population is said to have increased greatly during recent years, in order to investigate the local conditions more closely. It appears from his investigations that in some cases the evidence given by the witnesses from those towns, as to the number of traders and other details, was erroneous and misleading. This was doubtless unintentional, and due to insufficient enquiry or exaggeration of estimates in cases where accurate information was not readily available.

Krugersdorp.

98. The Krugersdorp Chamber of Commerce through its Vice-President stated that there were 139 Asiatic trading licences in existence in the Krugersdorp Municipal area in April, 1920, and that there had been an increase of at least 125 licences since 1902.

The Chairman of the South Africans' League said :—

“There are 5 European grocers' licences carried on in Krugersdorp against 27 “Indian grocers' licences,” and in the statement submitted to the Select Committee “(page xxi—S.C. 11—'19) it is stated “that within the Krugersdorp magisterial area “there are being exercised at the present time ninety-three (93) general dealers' licences.”

On investigation it was found that the total number of Indian shops in Krugersdorp and Burghershoop, a suburb, was actually as follows :—

	Krugersdorp and Luipaardsvlei.	Burghershoop and District Township.
General Dealers with Grocers' Licences	6	4
Soft Goods Shops	1	4
Tailors	2	—
Shoemaker	1	—
Butcher	—	1
Cycle Dealer	1	—
Barbers	—	2
Laundries	—	2
	11	13

There are also two or three Chinese shops which were not inspected.

The three statements referred to do not agree, and it is difficult from the returns submitted by the Chamber of Commerce to ascertain how their total of 139 Asiatic Trading Licences is arrived at. According to a schedule of occupations of the Asiatic population of

Krugersdorp and Burghershoop as at 31st March, 1919, submitted by the Chamber, the following details are given :—

	Krugersdorp and Luipaardsvlei.	Burghershoop and District Township.
Hawkers and Pedlars	18	21
Grocers and General Dealers	13	14
General Dealers, Soft Goods	1	4
Shoemakers	1	—
Barbers	1	1
Tailors and Assistants	5	1
Bag and Bottle Dealers	2	—
Fruit Dealers	4	—
Cycle Dealers	1	—
Butchers	—	1
Laundrymen	—	10
Trades	46	52
Shop Assistants	23	11
Cooks and Chefs	7	—
Waiters	1	—
Clerks	3	—
Property Owners	2	—
Gardeners	1	6
Brickmakers	—	1
Housewives	12	15
Children	26	36
	121	121

In examining these figures it must be borne in mind (a) that the full number of holders of trading licences must in any event be below 98 (46 plus 52), inasmuch as certain tailors' assistants have been included; (b) that a number of traders do not carry on business by themselves, but are associated with others in partnership; (c) that the general dealers, grocers and dealers in soft goods number only 32. We are accordingly satisfied that the information obtained by us on investigation is correct and that the figures supplied by the Chamber of Commerce under this head are inflated and unreliable.

99. It was found that in Krugersdorp one new Indian shop had been opened since 1914, and that an Indian tailor had opened in premises previously occupied by an Indian general storekeeper. In Burghershoop six new Indian shops (one general dealer, three soft goods, one barber and one laundry) had been opened. Against these new Indian shops which have been opened a list of 23 Indian shops which have closed since 1902 has been supplied on behalf of the Indian community. Five of these have been closed down since 1914.

It was also stated by the Krugersdorp Chamber of Commerce that, since 1902, 34 Europeans in various trades had to close down their businesses on account of Asiatic competition. This statement could not be investigated, but its accuracy seems doubtful in view of the fact that there are at present not more than 24 Indian businesses in Krugersdorp and Burghershoop.

Johannesburg.

100. The Chairman of the South Africans' League stated :—

“ You have now to the best of my belief well over 4,000 Asiatic licences of various sorts in Johannesburg, that is from the hawker and pedlar up to your wholesale trader.”

It is not clear whether Mr. Phillips referred to the Magisterial District of Johannesburg or confined himself to the Municipality only.

The Magisterial district of Johannesburg extends from the boundary of the Krugersdorp district on the west to the Germiston district on the east, and from the boundary of the Pretoria district on the north to the boundaries of the Heidelberg and Vereeniging districts on the south, and it includes the Municipality of Johannesburg.

The figures supplied by the Receiver of Revenue, Johannesburg, show that in 1919, 7,165 general dealers' licences were issued in that Magisterial area. Of that number 1,430 represented Asiatic general dealers' licences, 28 hawkers' and 14 pedlars'. The 7,165 include renewals as well as new licences. In 1919 the figures were high, owing to the rush by Asiatics for new licences,

in anticipation of possible alteration of the licensing law restricting their trading rights. Many of these new licences were, however, not used.

In addition to the above, the Licences Officer for the Municipality of Johannesburg issued 815 trading licences to Asiatics in 1919, viz.:—

28 Eating houses.
2 Asiatic eating houses.
1 Tea room.
1 Dairy.
49 Laundries.
7 places of public entertainment.
41 cab drivers and cartage contractors.
686 hawkers.
—
815
—

The hawkers are mainly Indians. Approximately, therefore, about 2,000 trading licences of all classes (storekeepers and street traders) were issued in 1919 to Indians and Chinese in the Johannesburg Magisterial Area. It is therefore obvious that the statement above quoted by the Chairman of the League is an exaggeration.

Zeerust.

101. It was stated in evidence that there were two white traders remaining in the town of Zeerust, and that Asiatics constitute the rest.

The fact is that there are eleven Indian shops in Zeerust (seven general dealers and four fruit shops). These shops are practically all in Church Street—the only business street in the town—and interspersed among the European shops.

Four European and two new Indian businesses have been opened in Zeerust since 1914.

In twenty years four European businesses have closed down, but there is no evidence that they closed on account of Asiatic competition. On the other hand one business closed down owing to the retirement of the owner, and two of his assistants commenced business operations on their own account and are said to be doing well.

Middelburg.

102. Representatives from the Municipal Council of Middelburg stated “in 1909–1910, “before the general influx of Indians into Church Street, this was the premier business street . . . “Gradually the Indians worked their way into Church Street until only a few whites remained “on the premises facing the square.” On investigation it does not appear that this statement exactly represents the position. Church Street was formerly the most important street because it was the coach road and it was near to the old cantonment. But, subsequently, when the Railway was opened the centre of trade gravitated to Market and Long Streets.

There are eighteen general dealers having twenty-three shops, three fruiterers, two cycle dealers and one shoemaker of Indian descent; but only two general dealers have any considerable European trade. The others have practically only native trade.

103. The anti-Asiatic feeling at Middelburg seems to have been largely aroused by the fine premises erected by one of the Indian general dealers in Long Street, but there appears to have been a considerable increase in the number of Indian shops in recent years. This is ascribed to the general development of the district and, in particular, to the expansion of native trade which the Indians have worked up, and to which they chiefly devote themselves. Further expansion, however, is checked by the shortage of assistants, and one shop has been closed down on that account.

One café, one sporting and stationery shop, and one photographer closed down in the period 1910 to 1920; but as Asiatics have not entered any of those classes of businesses the cause of such cessation of business would not appear to be Asiatic competition; nor was it found on investigation that Asiatic competition was the prime cause of any business being abandoned in Middelburg.

Pietersburg.

104. The evidence regarding Pietersburg was given by a deputation consisting of Mr. E. G. Ireland and the Rev. B. H. Swart. They represented the Municipality, the Agricultural Union, the Chamber of Commerce and the South Africans' League. According to the statement submitted by these gentlemen there are at present forty-five Indian general dealers in the town of Pietersburg. A list was given of the names of these traders and the numbers of the erven on which it was stated their businesses are situated. It was found, however, that there are only thirty-three Indian shops in the town, which are owned by twenty-nine firms.

The discrepancy is accounted for by the fact that in some cases two or three partners in a business each hold a trading licence, and traders who have left the town, as well as businesses which have been closed, are included by the witnesses.

105. Only two new Indian shops have been opened since 1914, and the other shops are generally of old standing. The trade is mainly with natives, and only one business appears to be attracting European customers.

Pietersburg in 1904 was described as follows, by Sir Arthur Lawley, the Lieutenant-Governor of the Transvaal, in reporting on Asiatic affairs to the Secretary of State :—

“ While the town supports a few substantial wholesale merchants, almost the entire retail trade is in the hands of Indians. There are a few large stores belonging to European merchants which are the retail depots of wholesale establishments. In addition to these, there is one retail store in the hands of a small English trader. With these exceptions, and leaving aside hairdressers, chemists and shops of a special nature, the whole of the retail trade round the square is in the hands of the Indians. In fact, the white men supported by the trade carried on round the Market Square in Pietersburg, are numerically in the minority. The town, from a commercial point of view, has a hybrid appearance, the Indian element being rather more prominent than the European. But the most serious feature in this town is the *increasing* predominance of the Indians. A long list might be furnished of small white traders who once had stores round the square, and have now been crushed out of existence. The total white population of Pietersburg is estimated at 1,684. The registers of the Asiatic Department show no less than 135 Indians, almost entirely adult males, and practically all engaged in the business of storekeeping.”

The witnesses from Pietersburg submitted a census recently taken by a Municipal Official of the Asiatic population of that town, showing that there are at present :—

	85 adult males.
	16 adult females.
	19 male children.
	27 female children.
	—
Total	147
	—

It would thus appear that there has been no material change in the total of the Asiatic population in the town during the past sixteen years. Moreover, if Sir Arthur Lawley's statement is correct that the 135 Indians in Pietersburg in 1904 were “ almost entirely adult males and practically all engaged in the business of storekeeping ” the number of Indian traders must have decreased.

Volkstrust.

106. In a letter from the Mayor it is stated there are 23 Indian storekeepers in Volkstrust. On investigation it was found that there are 14 Indian shops. Of these only 4 businesses are of any importance. The others are small shops, the majority of which represent an insignificant turnover.

Potchefstroom.

107. The representatives of the Potchefstroom Municipality stated before the Commission that in 1903 there was one Indian licence and 12 European licences, but Mr. G. M. Slade, the delegate from the Potchefstroom Municipality to the National Convention, held in Pretoria in 1904, stated :—

“ In 1894 we had in Potchefstroom 12 Asiatic licensed dealers . . . and since the cessation of hostilities the number of licences issued to Asiatics in Potchefstroom has risen from 12 to 64. . . I find on inspection that we have the 64 licences, but we have in Potchefstroom and surroundings 84 stores . . . In addition to that we find we have the hawkers. There were on the 31st March, 1904, no less than 64 licensed dealers and 94 hawkers, in a very little rural district ; a little town of such size as the ancient capital of the Transvaal—Potchefstroom. In 1903 the turnover, made by Asiatic traders in Potchefstroom amounted to £94,000. During 1904 no less than 13 or 14 European stores closed down, 8 of which were taken by coolies.”

On 21st April, 1920, there were, according to a return furnished by the Receiver of Revenue, 157 businesses in Potchefstroom : 107 European, 45 Indian and 5 Chinese (12 of these Indian businesses being conducted in the Asiatic Bazaar.)

[U.G. 4—'21.]

The Indian businesses were :—

Grocers and general dealers	..	..	..	..	..	..	..	36
Silk Merchant	..	..	..	..	..	..	..	1
Laundry	..	..	..	..	..	..	..	1
Butcher	..	..	..	..	..	..	..	1
Fruit shops	..	..	..	..	..	..	..	5
Barber	..	..	..	..	..	..	..	1
								—
								45
								—

Chinese hold five grocery businesses.

European businesses were :—

Grocers and general dealers	..	..	..	..	..	..	..	16
Produce merchants	..	..	..	..	..	..	..	8
Butchers	..	..	..	..	..	..	..	5
Barbers	..	..	..	..	..	..	..	3
Fruit shops	..	..	..	..	..	..	..	1
Bakers	..	..	..	..	..	..	..	3
Drapers	..	..	..	..	..	..	..	6
Stationery	..	..	..	..	..	..	..	5
Miscellaneous	..	..	..	..	..	..	..	60
								—
								107

Miscellaneous include bootmakers, auctioneers, second-hand dealers, refreshment rooms, garages and businesses not generally undertaken by Asiatics.

If the statement made in 1904 is correct it is clear there has been no material increase of Asiatic licences in Potchefstroom.

GRIEVANCES AGAINST ASIATICS AND VIEWS OF COMMISSION.

108. The following are the principal grievances and objections which were raised by witnesses in the Transvaal against Asiatic traders :—

- (1) They send their money out of the country instead of spending it where they earn it.
- (2) They are a source of danger to the public health owing to their unclean habits, and require constant supervision to make them conform to sanitary and other bye-laws.
- (3) They depreciate the value of property in their neighbourhood, as well as of the premises which they occupy.
- (4) Their standard of living is inferior to that of Europeans.
- (5) Their standard of trading and methods of business are different to those of Europeans in the following respects :—
 - (a) they use inferior buildings as shop premises and pay less rent for them.
 - (b) the owner of the business and his shop assistants all usually reside on the premises.
 - (c) They defraud their creditors by fraudulent insolvency more frequently than Europeans.
 - (d) They pay lower wages to their assistants than Europeans.
 - (e) They evade the laws regulating hours of trading.
 - (f) They habitually give short weight and adulterate foodstuffs.
 - (g) They thus succeed in underselling European traders.
- (6) They carry on businesses which should be carried on by Europeans, and close avenues of employment which should be open to Europeans.
- (7) They produce nothing in the Transvaal, and do not consume the produce of the country, but import their requirements from India.
- (8) They form "rings" to keep out European competitors.
- (9) Their presence has a bad influence on the natives, who are jealous of the rights and privileges enjoyed by them, as coloured people.
- (10) Their religion, language, colour, mode of thought, ideals, manners and customs are entirely different to those of Europeans; they cannot be assimilated and their presence is a menace to European supremacy.
- (11) They are generally immoral and debauch the natives by inciting them to theft, and by readily receiving the stolen property.
- (12) They become too familiar with Europeans, especially females, in the conduct of their business, and thus destroy the respect of natives for Europeans.

109. Many of the statements on which these objections are founded were strenuously disclaimed by the Indian community, who were supported by a number of European witnesses. Amongst the statements so disclaimed are more particularly the allegations that they are habitually dishonest in their dealings and defraud their creditors; that they are immoral and debauch the native mind; and that they become too familiar with their European customers.

As to the rest they complain that it is unfair to reproach them for sending their money to India for the support of their families who are not allowed to join them in this country. Moreover, every possible obstruction, they say, is placed in the way of spending their savings here. They are not allowed to invest them in acquiring land, and they cannot be expected to spend money on improving the properties of their landlords. They cannot indulge in the ordinary amenities of life; they are precluded from admission to theatres and other places of popular amusement; even travelling on the railways and tram cars is made irksome and unattractive for them; and an Indian seen in a motor car is looked at askance.

Their inferior mode of living is attributed by them mainly to their inability to purchase land, and improve their own premises; they cannot expand, and must be content with such confined spaces as they can lease from Europeans. They cannot, therefore, avoid overcrowding; and in places where they are segregated for residential purposes their sanitary requirements are neglected by the Municipal authorities.

The allegations that they pay lower wages to their employees than Europeans and undersell them are generally denied by Indian traders. They almost invariably include board and lodging in the remuneration of their shop assistants, and sometimes provide them with clothing and other comforts as well. In several cases the witnesses produced their books to show what their inclusive payments for salaries were.

110. On the whole their scale of remuneration was proved to be undoubtedly lower than that prevailing in European businesses; and that they do undersell European traders to a considerable extent cannot be refuted. In doing so they are regarded by some Europeans as of great benefit to the public, especially to the poorer class of whites and to natives. As hawkers and pedlars they travel into outlying parts of the country, and supply the wants of isolated farmers who are far removed from access to the centres of trade.

Appeals were, in fact, made to the Commission by members of the farming community not to interfere with the trading rights of Asiatics in country districts. It was pointed out that, if they are debarred from trading, the farmers will be left at the mercy of the alien European trader who is alleged to be far worse than the Asiatic. The latter, it is said, is honest in his dealings, sells at reasonable prices, gives credit readily, and does not press his creditors unduly; while the former is often dishonest, generally exorbitant and exacting, and aims at eventually getting a mortgage on the land of his debtor.

On the other hand, a large number of farmers, as well as townsmen, gave evidence to the contrary effect. These regarded Asiatic traders as a most undesirable element in the community, although many of them admitted that they sometimes have dealings with them.

111. There can be no question that in some of the country towns Indians have to a great extent captured the trade with the farmers of the district. The members of the Commission happened to visit Krugersdorp on the Saturday before the quarterly *Nachtmaal* of the Dutch Reformed Church, when there was the usual large influx of farmers and their families into the town. We found the leading Indian store crowded with European women making their purchases.

112. At Potchefstroom the European shop assistants recently sent an application to the local Chamber of Commerce for an increased scale of salaries, owing to the extra cost of living; the Chamber, after due consideration, replied that the merchants were unable to comply with the request, owing to the competition from Asiatic traders. At that town it was impressed upon the Commission by a local merchant that young assistants in mercantile establishments usually look forward to starting business on their own account in some smaller town or village, after gaining a few years experience; but now-a-days that avenue of advancement is entirely closed to them, because wherever they attempted to make such a start they would find Indian traders, against whom they could not possibly compete successfully.

113. On the evidence before the Commission we are satisfied that in the country towns in the Transvaal the Asiatic is a formidable competitor of the European trader.

The question naturally arose, if the European community find the Asiatic traders so obnoxious and undesirable why do they continue to deal with them? For it is admitted that the Asiatic trader relies largely upon European support for his success in the country towns. The answer invariably given was that, human nature being what it is, the public—especially the women folk—will always purchase in the cheapest market.

In these circumstances, it has been asserted that the anti-Asiatic agitation in the Transvaal originated with, and has been engineered by, rival European traders. That is possibly correct to some extent. There is no doubt that the question of trade competition occupies a very

prominent place in the movement, as is evidenced by the activities of various Chambers of Commerce and individual European traders who appeared before us. On the other hand there was a great deal of evidence, strongly opposed to Asiatic trading, which came from witnesses who are in no way connected with trade or commerce.

114. As regards the influence of Asiatic traders upon the natives, and their familiarity with European women, the evidence was conflicting and inconclusive. General statements or suggestions were made by several witnesses, but when asked for specific instances of undue familiarity which have come under their observation, they could not supply any. A few cases were mentioned, by Ministers of Religion and others, of white women who were found married to, or cohabiting with, Asiatics. They were women belonging to the very poor, uneducated and backward class of Europeans. But such occurrences are admittedly rare, and would probably be found as frequently amongst the coloured population of the country as amongst Asiatics. The evidence certainly did not disclose any serious grounds for the fear of miscegenation in the future which was expressed by some of the witnesses. Apart from other considerations, differences of religion would go a long way towards averting such a danger.

Several reliable witnesses who have lived for years in districts largely occupied by natives, and frequented by Indian traders, testified that they have never observed any evil influence exercised by those traders either over Europeans or natives.

CLAIMS OF ASIATICS.

115. The first and foremost grievance advanced by Indians in the Transvaal is that, though British-born subjects, they are excluded from civic and other rights and privileges which are freely accorded to aliens, who are permitted to own land, and enjoy full and unfettered rights of trading anywhere in the Province. Many of these aliens, they allege, are men of the lowest type who have emigrated to this country from the slums of Eastern and South-Eastern Europe. They maintain, therefore, that, being British subjects, they are entitled to claim at least the same rights as these aliens, who are regarded by many South Africans as less desirable citizens than Asiatics.

They demand that there should be no differentiation in the law, or its administration, as between them and Europeans; and they particularly resent the continuance of Law 3 of 1885 and the restriction on their trading rights in the future.

116. They are supported by a number of European witnesses in their claim that as traders they have in various ways greatly benefitted the European community. Amongst these the following may be cited:—

- (1) by penetrating outlying districts where European traders are unwilling to go, and supplying the wants of farmers and their native servants.
- (2) by saving Europeans from being impoverished and thus becoming "poor whites" through the methods of business adopted by certain alien traders.
- (3) by catering for the poorer class of whites, and selling the necessaries of life in small quantities and at low prices.
- (4) by habitually rendering financial and other assistance to these poorer classes when that has been refused by European traders.
- (5) by stimulating the trade in fruit and vegetables, the distribution of which is mainly in their hands.
- (6) by giving their customers better terms and greater facilities for payment than the alien traders who are their chief rivals.
- (7) by keeping down the cost of living through their keen competition.

117. Serious complaints were made of unjust treatment of Asiatics by Municipal bodies who frequently refuse to grant them licences to trade, purely on the ground of their nationality; and they are confirmed in this by the reports of numerous cases in the Law Courts, as will be seen later when the Licensing Laws are discussed.

The Asiatic traders further assert that trade jealousy is at the bottom of the agitation against them; and they point to the fact that they receive such substantial and general support in their businesses from the European community as evidence that they supply a public want, and that their methods of doing business are appreciated.

REMEDIES SUGGESTED AND VIEWS OF COMMISSION.

118. Although most of the witnesses examined in the Transvaal were emphatic in their denunciation of the Asiatic population on various grounds, many of them found great difficulty in suggesting any remedy for the evils they complained of. Those who entertained exaggerated ideas of the continual influx of Asiatic traders, notwithstanding the cessation of immigration, and were accordingly apprehensive of their eventually dispossessing the white man throughout the country, could think of no effectual remedy but compulsory repatriation of all Asiatics

at any cost to the State. This feeling was shared by a number of witnesses in Natal. They realised that there could be no such repatriation without expropriation of property and adequate compensation, but maintained that the step would be worth taking, even at the cost of fifty millions sterling or more.

The possibility of the Orange Free State and Cape Provinces, with no Asiatic trouble, objecting to contribute towards the huge expenditure, presented no difficulties to them. They relied on the patriotic feelings of their fellow South Africans to assist them in removing the evil which, they contend, is menacing the whole of the Union. They saw no injustice in adopting a scheme of compulsory repatriation, if carried out gradually and with ample compensation. But when confronted with the fact that approximately half of the Asiatics in Natal, and a considerable proportion of those in the Transvaal, were born in South Africa, the futility of the suggestion dawned upon them.

It was, however, only by a few witnesses that these extreme opinions were expressed. The large majority took a sane and more reasonable view, and recognised that, apart from its obvious injustice, the proposal was wholly impracticable. Eventually it was virtually abandoned, and Counsel for the South Africans' League candidly stated that it did not receive the support of the League; not on account of the cost, but because of its injustice.

Compulsory repatriation of Asiatics may therefore be regarded as out of the question, and need not be further discussed.

119. At the same time the Commission felt very strongly that every effort should be made by the Government to encourage voluntary repatriation amongst all classes of Indians by offering special shipping and other facilities for those who were willing to return to India. According to information received by the Commission, a great many were anxious to do so, if assisted thereto, on account of the present high cost of living and scarcity of rice. We, accordingly, submitted an interim report to His Excellency the Governor-General in May last, recommending that immediate steps be taken in that direction. It is gratifying to find that the Government lost no time in acting upon that recommendation.

It is realised, however, that the response to this movement will come mainly from the Madrassi in Natal. The Indians in the Transvaal, being composed chiefly of the trading class from Bombay, are not so likely to avail themselves of the opportunity of returning to India.

120. The difficult question remains, how to ameliorate the position arising from their presence in the country. Segregation of some kind was the panacea invariably recommended by witnesses. The extreme section advocated the immediate and complete segregation of all Asiatics, both as to trading and residence; that is to say, that bazaars or locations should be set apart within Municipal boundaries, but at some distance outside of the township proper, in which Asiatics are to carry on their trade as well as reside; and that they should on no account be allowed either to reside or carry on business in the township itself; that those who, at present, have businesses in any town should be compelled to remove them into the bazaar or location, and that no new licences to trade should be issued to Asiatics in the future.

The more moderate section recognised that it would be most unjust and unreasonable to force men who had been trading in the centre of the town for many years, and established business connections there, to remove to an outside location. They suggested therefore that such traders should be allowed to continue to carry on business in their present premises until the death or insolvency of the licence holder; but that, for purposes of residence, all Asiatics, including those traders, should be compelled to remove into locations; and that no new licences to trade, except in such locations, should be issued to Asiatics.

These recommendations embody the views expressed by Mr. Phillips, the Chairman of the South Africans' League, and were finally endorsed on behalf of the League by their Counsel at the close of the enquiry.

121. The result of our visits of inspection to some of the locations or so-called bazaars at present set apart for Asiatics in the Transvaal was not such as to inspire confidence in a general policy of segregation. At Germiston Asiatics are prohibited by the terms of the titles to stands from residing or trading in the township. But the Municipality has established an Asiatic bazaar about a mile outside the town, in which there are a considerable number of Indian residents, principally hawkers, and a few shopkeepers. The business carried on is chiefly with the natives employed at the neighbouring mines and those who reside in the adjoining native location.

This bazaar appeared to be in a very neglected and insanitary condition. The Indians residing in it complained that, as regards lighting, sanitary and other arrangements, their wants receive little or no consideration from the Municipality.

These complaints were fully confirmed by our inspection, in which we were accompanied by the Town Clerk and Location Superintendent.

122. At Boksburg there are two Asiatic bazaars. The newer one, though well arranged and laid out, has comparatively few occupants at present, owing to the difficulty experienced in inducing the inhabitants of the older bazaar to vacate their dwellings and move into the

former, which is only a few hundred yards off. The result is that the old location, which is the more populous, is in the same neglected and insanitary condition as that at Germiston.

123. But our worst experience by far was at Vrededorp, a township close to Johannesburg' and within its Municipal limits, which was originally established by President Kruger for the benefit of indigent burghers of the Republic. There are two locations, one for Asiatics and the other for Natives. They adjoin one another, and are separated from the European portion of the township by a single street. But no effort seems to be made to keep the inhabitants of the two locations apart. We found as many natives and Cape coloured people as Indians in the Asiatic location. The members of the Commission were guided through the location by the Municipal Medical Officer of Health, and made a close and thorough inspection of its conditions, which were found to be appalling. It is difficult to conceive of a worse slum existing in any part of the world. We found the inhabitants crowded and huddled together in small hovels amidst indescribable filth, and leading a most insanitary mode of life. And this was the state of things existing within the Municipality of Johannesburg, the wealthiest and most populous town in South Africa, and within a little more than a mile of its magnificent Town Hall!

The majority of the inhabitants of this location appeared to be Asiatics of a low and degraded type, though we met with a few of the superior class who strongly resented the miserable conditions under which they have to live.

The outbreak of bubonic plague in 1904 had its origin in the Vrededorp Asiatic location; but, although many of its tenements were destroyed at that time and have since been re-erected, there seems to be no improvement; and, according to the reports of the Medical Officer of Health, the place continues to be a serious danger to the public health of Johannesburg. It is moreover said to be the favourite haunt of illicit liquor dealers and criminals of the worst character.

124. In the circumstances it is not surprising to find the Indian community pointing to these so-called bazaars or locations as examples of what may be expected, if they are to be relegated to such places at the behest of Municipalities in the Transvaal.

There can be no question that the intermingling of the residences of Asiatics or other coloured people with those of Europeans is very undesirable, and should, if possible, be avoided. It is repugnant to the feelings and instincts of even the poorer class of whites in this country; and there appears to be no desire on the part of Asiatics to reside amongst Europeans. They would prefer living amongst compatriots of their own class, if they were afforded the opportunity of establishing decent places of residence in some suitable locality. But those traders who have acquired some education, and have raised themselves in the social scale, particularly object to be driven into locations, in which they would be mixed up with the lower classes of their own race.

125. It is sometimes not sufficiently recognized that there are social grades amongst Asiatics as amongst Europeans. At Johannesburg Indian merchants appeared before the Commission, who proved by their books and Income Tax receipts that their individual incomes amounted to several thousands of pounds per annum. They conduct both wholesale and retail businesses on an extensive scale, and live in commodious and well-appointed residences in various parts of the town.

From their annual household expenditure, as shown by their books, which were carefully and accurately kept, their standard of living appears to be quite equal to that of the ordinary well-to-do classes amongst Europeans. It seems monstrous, therefore, to suggest that these men, who have by their industry and commercial ability worked themselves up to such a position, should now be forced to remove into locations.

126. We are all agreed that in the circumstances some system should be devised for establishing separate Asiatic areas for residential purposes. Residence in those areas must, however, not be compulsory, but should be achieved by gradually attracting the Indian community to localities suitable for the purpose. Any attempt to enforce compulsory segregation would result in failure, and lead to a resurgence of the passive resistance movement.

127. We were much impressed with the evidence given at Durban on this aspect of the question, as on many others, by Mr. Leon Renaud, an advocate of the Supreme Court in Natal, who has been closely associated with the Indian community in that Province during the past 35 years. He knows their character and idiosyncracies, speaks their language, and is well acquainted with their views and habits. As he puts it, there is no man more easily influenced than the average Indian; if fairly treated he is easily led; but he will submit to anything rather than force; he does not like to be driven, and any sort of compulsion makes him a martyr; he is not very strong physically, but morally he is strong.

The Commission previously had some evidence of this characteristic of the Indian at its Cape Town sittings, when all the representatives of the Indian community entered a vehement

protest against any attempt to introduce into the Cape Province a system of compulsory registration of Asiatics, such as prevails in the Transvaal.

At the same time, some of the leaders expressed the opinion that if the registration were made voluntary, little objection would be raised, and ninety per cent. of the Indians resident in the Province would be found willing to register themselves.

128. On the subject of separate residential areas, Mr. Renaud made the following statement :—

“ Although the Indians have been here all these years, not many, even of the wealthy men, have acquired property in a European neighbourhood ; and I find on enquiry that, although some properties have been acquired by Indians in such neighbourhoods, they do not live there, generally speaking. An Indian does not like to live in a neighbourhood where he is looked upon as a helot ; he prefers to be with his own people, and I think that sentiment will always be so—of course the Indians might be attracted to one quarter of the town ; I think if you were to get the consent of the landlords it would be feasible to arrange such a scheme, because they have the same feelings as we have.”

“ Naturally there are amongst them some people more objectionable in character and with whom they would not like to come in contact : there are various classes of Indians, the same as with Europeans.”

“ I do not think it is desirable that Indians should go into European residential areas, because they are not welcome ; and I do not think they like to see Europeans in their neighbourhood either.”

129. We are of opinion that, subject to our recommendations in paragraphs 200 and 201, Municipalities should be empowered to establish one or more separate residential areas for Asiatics. These areas should be laid out on suitable and convenient sites, with adequate provision for an ample water supply, lighting, sanitary and other Municipal services, and may be divided into sections, for the separate accommodation of the various classes, grades and races. Those Asiatic traders who at present reside on leased premises in the town, apart from their shops, should be attracted to these areas and induced to move into them by allowing them to purchase stands therein on liberal terms.

130. The vested rights of those licensed traders who were settled on proclaimed land or in Government Townships (as defined in Act 34 of 1908) before the 1st May, 1919, and who form the majority of traders in the Transvaal, are protected by Act 37 of 1919.

They cannot be disturbed unless that Act is repealed or amended, a course which we do not recommend.

Even as regards trading we think that a system of separate areas may gradually be introduced. In most towns the Indian shops are found grouped together in one street. That is the case, for instance, at Potchefstroom, where there are only one or two Indian shops at one end of the main street of the town, but several are found in a row on one side of a street leading out of the main thoroughfare.

It should not be difficult, therefore, in such a case to allocate that particular street as an Asiatic trading quarter, in which Europeans should not be allowed to trade.

The few Asiatics in other streets might be induced to move into it voluntarily as suggested in the case of residences ; though here again there should be no compulsion.

New licences, however, should only be granted for businesses to be carried on in that street or quarter. By that means the desired separation of the Asiatic from the European traders might in course of time be effected.

A policy of that nature has, it is said, met with some success at Durban, where the number of Indian shops and warehouses in West Street, the principal business centre, has materially decreased during recent years, most of them being attracted to other parts of the town where Indian traders are congregated.

131. The suggestion that holders of new licences should be confined to trade in locations or segregated areas outside the townships is not reasonable and does not commend itself to us. As was said by the Chief Justice in Motan's case, if the commercial dealings of the Indian trader were to be restricted to the location in which he lived, situated outside the town proper, and peopled only by men of his own race, then he might for practical purposes as well not trade at all.

That result is, however, precisely what is aimed at by some of those who are responsible for the suggestion. Several witnesses who advocated compulsory segregation, both as to trade and residence, candidly stated that they supported it only as a means to an end ; that end being to drive Asiatics out of the country.

But it is reasonable that trading under new licences should be limited to such streets in the town as may be set apart specially for Asiatics, in the manner above recommended.

Some difficulty will no doubt be experienced in carrying out these recommendations in certain centres where Indians have acquired substantial properties scattered about the town, and it would not always be an easy matter to find the necessary sites. But in large centres the grievance is not so marked as in the smaller towns, where the proportion of Asiatics to Europeans is greater. In these towns the scheme recommended should lead to a gradual improvement in respect of the more objectionable features appertaining to the presence of Asiatics.

LICENSING LAWS.

132. The Licensing Laws and Regulations of the four provinces of the Union may, for purposes of comparison and reference, be here dealt with together. They are based on the same general principles, but vary considerably in some respects. Since the establishment of Provincial Councils they have been framed and enacted by those bodies, but in the Transvaal, Natal and Orange Free State, several of the Acts and Ordinances relating to licences of the previous Administrations before Union are still in force.

The Licensing Laws are usually of general application. There is no differentiation between European and coloured licence holders, except in the occasional references to Asiatic or Native eating houses.

It is proposed to set out here only those provisions of the Licensing laws of each province by which the interests of Asiatic traders are or may be affected.

TRANSVAAL.

133. In the Transvaal, general dealers' licences are issued by Receivers of Revenue in the service of the Union Government without enquiry, and expire on the 31st December of each year.

Any person who carries on a trade or business in any shop, store or fixed place where goods are sold or offered or exposed for sale must hold a general dealers' licence, which is issued as a matter of course to any person applying for it; but an Asiatic cannot obtain the licence, unless he produces to the issuer of licences his certificate of registration issued under Act 2 of 1907 or Act 36 of 1908.

In case of the death or insolvency of the holder the executor or trustee, as the case may be, can carry on the business without formal transfer of the licence; and removals of businesses to other premises, as well as transfers from one person to another, are granted without question.

Hawkers' and Pedlars' licences are granted outside Municipal areas by Receivers of Revenue on a certificate by a Magistrate, Justice of the Peace or Police Officer that the applicant is a fit and proper person to hold it; and renewals are granted without a fresh certificate if none of those officials object thereto.

In municipal areas they are issued by Municipalities.

The fees are for a General Dealer's licence, £1; for a Hawker's, £2, and for a Pedlar's, £1.

134. The local Government Ordinance No. 9 of 1912 of the Transvaal Provincial Council regulates the issue of licences by Municipalities. Under its provisions any person who desires to carry on a trade or business wherein articles of food and drink are produced, prepared, used, or sold for human consumption, must, in addition to his general dealer's licence, obtain a special licence to carry on such trade or business from the Council of the Municipality in which the premises are situated.

Various grounds are specified upon which Municipal Councils may refuse to grant such licences, including amongst others the following:—

- (a) that the granting of a licence is calculated to cause a nuisance or annoyance to persons in the neighbourhood.
- (b) that the applicant is by reason of uncleanness of habits or person or methods unfit to hold it.
- (c) that in the opinion of the Council the applicant is not a desirable person to hold such licence.

Licences for Native or Asiatic Eating houses, hawkers or pedlars may also, in addition to the above grounds, be refused for any of the following reasons:—

- (d) that the applicant has failed to produce satisfactory evidence of good character;
- (e) that the premises or any adjacent premises are frequented by persons of bad character;
- (f) that the granting of such licence would be contrary to the public interest.

But an applicant for any of the above licences, whose application has been refused, may appeal against the Council's decision to the Magistrate, and, in the event of the Council failing to satisfy the Magistrate on the appeal that the licence was refused on good and sufficient

grounds, he may order the Council to grant the licence applied for, and it must be granted accordingly.

The Municipal Council is also authorised to impose certain conditions regarding the class of persons to be employed on premises where articles of food are sold and regarding various other matters, but these need not be set out in detail.

CAPE PROVINCE.

135. The issue of Licences in the Cape Province is governed by the Licences (Consolidation) Ordinance No. 14 of 1916 of the Cape Provincial Council.

Many of its provisions are similar to those of the Transvaal Ordinance.

Licences are issued by Receivers of Revenue, Magistrates, Postmasters and other duly authorised public officers.

But no licence to carry on the business of Baker, Butcher, general dealer (including grocer), greengrocer or hawker can be obtained unless the applicant produces a certificate from the local authority allowing the issue of such licence; that is from the Municipality or Village Management Board for premises in their respective areas, and from the Divisional Council for premises outside those areas. Where no local authority exists the Magistrate issues or refuses the certificate in his discretion.

No such certificate is required for renewals of licences, except in the case of hawkers.

No application for a certificate for a general dealer's licence can be considered by the local authority unless satisfactory reports are received:—

- (a) from the Health Officer as to the suitability of the premises for the proposed business and the absence of objection on the ground of Public Health;
- (b) from the Police Authorities as to the character of the applicant.

Every application made to the local authority for a certificate for such a licence must be granted, unless it is opposed by a majority of members present when the application is finally considered, and such majority also forms a majority of the whole number of the members constituting that body.

136. There is no appeal from the decision of the local authority, but the Administrator has the right to grant the necessary certificate, if he is satisfied that it has been refused by the body solely on the ground that there are already a sufficient number of general dealers within the particular area.

But any person who holds a general dealer's licence for a particular premises, and wishes to change the place at which his business shall in future be carried on, may apply to the local authority for a certificate authorising such removal; and if it is refused, he can appeal to the Administrator, who may issue the necessary certificate under the hand of the Provincial Secretary, if he is satisfied, after due enquiry, that it was refused without reasonable cause.

In case of the death or insolvency of the holder of any licence, the widow or executor of the deceased person, or the trustee in the insolvent estate, as the case may be, may carry on the business under the same licence; and may renew the licence, when it has expired, for further period of one year, without obtaining any certificate which may otherwise be required.

NATAL.

137. Under the Licensing Laws of Natal, the principal of which is Act No. 18 of 1897, Licensing Officer is appointed by the Town Council or Town Board to issue the annual licence (not being liquor licences) required in the borough or township by wholesale or retail dealer.

Licences required for places elsewhere than in a borough or township are issued by a Licensing Officer for the whole province, appointed by the Administrator.

A Licensing Officer has absolute discretion to issue or refuse the licence applied for; and his decision is not liable to review, reversal or alteration by any Court of Law.

But the applicant, or any other person having an interest in the question, has a right of appeal from the decision of the Licensing Officer to the Town Council or the Town Board if the licence is sought for in a Borough or Township.

In the case of licences sought for elsewhere, the appeal lies to a special board of three persons appointed by the Administrator.

This Board, as well as the Licensing Officer appointed to issue licences for places elsewhere than in a Borough or Township, have their headquarters at Maritzburg, and deal with appeals from the decision of that officer regarding all applications for licences, outside Boroughs or Townships throughout the Province.

138. In 1909 special provision was made by Act 22 of 1909 for an appeal to the Supreme Court or Circuit Court, in cases of applications for *renewals* of licences, from the decision of Town Council, Town Board or Licensing Board; the last named having been, previous to 191

the appellate body for applications for licences outside Boroughs and Townships, before the establishment of the special Board above referred to.

That Act was passed in accordance with an arrangement arrived at between the Government of India and the Natal Government in that year, by which it was agreed that the emigration of indentured labourers from India to Natal would be allowed to continue for a further period not exceeding one year from the 2nd December, 1909, if such a provision were made. The emigration of indentured labour to Natal was, however, not finally prohibited by the Government of India until the 1st July, 1911.

In case an appeal is noted from the decision of a Licensing Officer he must forward to the Appellate body the record of the application and the proceedings therein, together with the reasons for his decision, all of which are to be open to inspection by the appellant and respondent.

139. No licence can be granted to any person who, when required thereto, fails to show to the satisfaction of the Licensing Officer, or to the Town Council or Town Board, as the case may be, that he is unable to fulfil the conditions of the Insolvency Law as regards the keeping of such books of account in the English language as are usual and proper in the business to be carried on.

But, according to the decision of the Courts, it is not necessary for the applicant himself to be able to keep his books in the English language; it is sufficient if they are kept for him in that language by some other person.

No licence can be issued in respect of premises which are unfit for the intended trade or unprovided with proper sanitary arrangements or suitable accommodation for clerks and servants, apart from the stores or rooms in which goods are kept, in cases where premises are used for both purposes.

These are the only two grounds of refusal, imperative in terms, which are specially provided by the Act 18 of 1897; but the Licensing Officer of the Province (outside Boroughs and Townships) informed the Commission that, in the exercise of the discretion allowed him, he refuses new licences also on the ground that there are already sufficient licences of the kind in the area applied for.

140. The question of transfer of licences is dealt with by section 15 of Act 43 of 1898, which provides that, subject to regulations that may be made by the Governor, and to the payment of a stamp duty of five shillings on each transfer, "licences may be transferred so as to authorise:—

- "(a) The same person to carry on the same occupation, or do the same act on or at another place within the same Municipality, Township or Magisterial Division.
- "(b) The carrying on of an existing occupation, or the continuance of an act by another person on or at a place already licensed, in respect of which occupation or act the transferee has acquired the rights of the prior holder of the licence."

From this it would appear that a Licensing Officer would not be entitled to refuse transfer of a licence from the holder to another person, or from the licensed premises to other premises, unless, in the latter case, the applicant fails to satisfy him that the new premises are suitable for the purposes of the proposed business, both as regards situation and character, as required by Section 8 of Act 18 of 1897 and Section 27 of Ordinance No. 11 of 1911. But in practice the Licensing Officers seem to treat applications in respect of both classes of transfer as applications for new licences.

ORANGE FREE STATE.

141. In the Orange Free State Province Asiatics and other coloured persons are, by the laws of the former Republic which are still in force, prohibited from trading or carrying on business of any description whatever.

A discussion of the Licensing Laws of that Province would, therefore, not seem relevant to the subject of our enquiry. But, for the purpose of comparison with those of the other three provinces, it may be useful to set out their main provisions.

Licences to trade are issued by the Magistrates or Assistant Magistrates of the various districts.

But no new licence can be issued except upon production by the applicant of a licence certificate from the licence certificate board of the district.

That board consists of the "licence officer" of the district (or in his absence such person as the Administrator shall appoint) as chairman, and four other members appointed by the Administrator. Of these four one is nominated by the several Chambers of Commerce and one by the several Town Councils and Village Management Boards in the district.

The Board issues certificates on which all new trading licences are granted, but does not deal with renewals, which are granted as a matter of course by the licence officers.

If a licence certificate is refused the Board cannot consider an application from the same applicant within six months of such refusal.

Transfer of a trade licence from one person to another is made by endorsement in the presence of a Magistrate; but a transfer to other premises is regarded as a new licence.

The Board, in arriving at its decision on any application for a licence Certificate, must have regard to:—

- (a) the character of the applicant;
- (b) the nature of the premises;
- (c) the position of the premises as regards any place of public worship, school or hospital, or the like;
- (d) the manner in which the applicant has conducted any licensed business in the past.

They must briefly record the evidence adduced for or against the granting of any application, and, in case of refusal, also the reason for so refusing.

ASIATIC QUESTION IN NATAL PROVINCE.

HISTORICAL.

142. The Asiatic problem in Natal differs greatly in many respects from that in the Transvaal. The total Asiatic population in the latter province is equal only to about 2½ per cent. of the Europeans; in the former it somewhat exceeds the European population. In the Transvaal the Asiatics are mostly engaged in trade; in Natal the large majority are labourers, but the minority includes professional men, merchants, small traders, farmers, artisans, clerks and others employed in various occupations.

This large Asiatic population in Natal consists almost entirely of British Indians. The merchants and principal traders are, as a rule, Bombay Mahomedans, who are here also often spoken of as "Arabs." The labourers are invariably Madrassi, and the other occupations above mentioned are chiefly filled by the descendants of immigrants of that class who originally came to Natal as indentured labourers.

143. Unlike their compatriots in the Transvaal the Asiatics in Natal have always enjoyed the same rights and privileges as to ownership of land as Europeans. The same Licensing Laws are applicable to both Asiatics and Europeans, but the former complain of unjust treatment at times in the administration of those laws.

During our enquiry in Natal, therefore, the Indian community were mainly on the defensive. They came chiefly to combat any attempts or proposals to deprive them of the rights and privileges which they and their forbears have possessed since their first arrival in the country some sixty years ago.

In the Transvaal they did not confine their energies to the preservation of their existing privileges, but fought for greater rights, by demanding to be placed in the same position, both as to land ownership and trading, as their fellow-countrymen in Natal and the Cape Province.

144. The history of the emigration of indentured labourers from India to Natal, which commenced in 1860 and ended in 1911, was recounted by the Solomon Commission of 1914 and need not therefore be repeated in detail.

The Indian Community lay stress upon the fact that it was only upon the urgent request of the Government and inhabitants of Natal that the Government of India was induced to allow such emigration. It is, however, a fact that at the inception of the movement the Government of India regarded it with favour as affording an outlet for their surplus population. When emigration ceased for a few years after 1866, the sugar industry suffered so seriously that, after further representations and appeals from Natal, it was resumed in 1874 and continued without material interruption until 1911.

The sugar planters had discovered that Indian indentured labour was indispensable for their industry. Native labour was unsatisfactory and unreliable, and in those days was practically unobtainable.

That difficulty was, moreover, enhanced in subsequent years by the demand for labour from the various native territories in South Africa, as the Kimberley Diamond Fields and Transvaal Gold Mines became developed.

145. It was also emphasized that every inducement was held out to the indentured coolies, both by their employers and the Government, to renew their indentures when completed, and subsequently to remain in the country as free labourers. Many thousands of them did so; and having brought their wives with them they reared families in Natal, which now extend in some cases to the fourth generation. Statistics show that over 50 per cent. of the Indians of the indentured class at present in Natal were born in South Africa. The Natal Government established a school system for the children of the indentured coolies; and in course of time the younger generation showed the results of that education by engaging in many of the ordinary pursuits of Europeans.

These South African born Indians form an intelligent, well-educated and energetic element of the Indian community both in Natal and the Transvaal; and they took a prominent part in placing the Indian case before us in both Provinces.

In support of their contention, Sir Benjamin Robertson pointed out that the Natal Authorities at the outset actually encouraged the permanent settlement of immigrants by offering them grants of land in lieu of a return passage to India; but this lasted for a short period only, and very little land was so given out. Until 1895 the terms of indenture provided that the immigrant should remain in the Colony for five years after the expiry of his indenture. Afterwards, however, as the number of free Indians settled in the Colony increased, public opinion demanded that measures should be taken to secure the return of the indentured labourers as soon as their indentures expired.

146. In considering the position of Indians in Natal it should be borne in mind that, at all events until 1893, the form of Government precluded the general body of the people from giving adequate effect to their views. In that year Natal ceased to be a Crown Colony and Responsible Government was established; but the distribution of seats in the Legislature appears to have been unsatisfactory, and large sections of the people objected that they did not enjoy their full share in shaping the policy of the Colony. An Indian Immigration Board was created in 1874, and the Government contributed an annual grant of £10,000 until 1894 towards the expense of introducing indentured labourers. In 1891, when speaking on the motion to discontinue that grant the late Right Hon. Harry Escombe stated that in 1876 the number of Indian immigrants was 10,336; in 1899, 30,355, or an increase of 200 per cent. in 13 years, and observed:—

“Worried as the Law is, this thing year after year is creeping further and further all over the Colony, until, if the neglect of which we have been guilty in the past is still continued, the whole of the Indian population will become part and parcel of this Colony, and will make the reform impossible which at the present moment is difficult.”

Again, in 1895, in moving the Second Reading of the Indian Immigration Law Amendment Bill, Mr. Escombe said “there is no obligation on an Indian immigrant to remain under indenture in this Colony after the expiry of the contracted term or to return to India, as is understood to be the general wish of the Colony.”

The feeling in Natal against the ingress of the Indians came to a head in 1896–1897 when the people rose at Durban and by force prevented the landing of several hundred free Indian labourers from two steamers, the “Naderi” and “Courland,” until the Government of the day undertook to introduce the Bills which subsequently became the Licensing and Immigration Restriction Laws of 1897. In introducing these Bills, Mr. Escombe, then the Prime Minister, said:—

“unless an arrestation was put upon the introduction of immigrants from India, the whole of the social polity of this country would be disturbed. . . . Having regard to the character of the people who were coming into the country (deck passengers as a rule, who paid only £2 or so for their passage, and who were, therefore, seemingly in no very flourishing condition of life) it was easy for the whole of the population of this country to be, as it were, submerged by the new arrivals, entailing a competition which was simply impossible as far as Europeans were concerned, whether in trade or agriculture, on account of the different habits of life.”

Indentured labour was, however, allowed to continue, but without any monetary assistance from the Government.

147. Finally in 1908 the Government of India decided to prohibit the further emigration of indentured labour to Natal. The reason for that decision was that they were dissatisfied with the manner in which Indians were treated by the Natal authorities under the Licensing Laws, and the continued failure to secure the necessary amendment of those laws. They felt that, so long as Natal maintained that attitude, they would not be justified in permitting the continuance of a system of emigration which must have the effect of increasing the number of Indians who might ultimately be affected by the measures adopted by the Colony.

Subsequently, however, on the earnest representations of the Natal Government, the Secretary of State for India, on behalf of the Government of India, agreed to permit the emigration of indentured Indians for a further period not exceeding one year, on condition that a law was enacted allowing a right of appeal to the Supreme Court against a refusal to renew a dealers' licence. The Natal Act No. 22 of 1909, providing for such an appeal, was in consequence passed; and the emigration of indentured labour was then permitted until the 1st July, 1911, when it finally ceased.

148. The grievances and objections raised against the Indian community by the Europeans in Natal were on much the same lines as in the Transvaal, so far as the social and economic aspects of the question are concerned.

There can be no doubt that, although the Government of Natal, urged thereto by those interested in the sugar and other industries, were always eager to ensure the continuance of the system of the immigration of indentured labourers from India, a strong opposition to that policy gradually developed amongst the European inhabitants of the Colony.

149. So far back as the year 1885 the question of the continuance of the system of immigration was referred by the Natal Government to a Commission presided over by Mr. Justice Wragg, which reported in 1887.

The following extracts from their report may be quoted :—

“ Our enquiries have satisfied us that there is in this Colony an undoubted preponderance of opinion that the Indian immigrant should remain under indenture during the whole period of his residence within the Colony. The majority of white colonists are strongly opposed to the presence of the free Indian as a rival and competitor, either in agricultural or commercial pursuits.

“ Some angrily demand that the introduction of Indian emigrants shall forthwith cease, and that the Kafirs resident in the Colony shall be forced to work.

“ Others are content that emigration should continue, but they insist that immigrants shall be sent back to India at the end of five years' indentured service, unless they be willing to reindenture for the further period of their residence in the Colony.

“ Others, again, do not object to the present system, if the status of the free Indian be reduced to a lower level, by depriving him of a portion of the capacity of exercising all the rights at the present attached to his status.”

150. It appears from this report that originally the Indian retail shops in Durban and other places were kept either by free Indians whose indentures had expired or by those who came as free Indians. But this class gradually became supplanted by the “ Arab ” traders, who exhibited keener intelligence and greater business acumen.

It is against this latter class of Mahomedan trader that the present agitation in Natal, as well as in the Transvaal, is mainly directed. In fact, many of the witnesses candidly stated that they had no objection to the presence of the Indian so long as he remains a labourer and does not embark upon commercial or other pursuits.

151. It is interesting to note that, in the very year that Law 3 of 1885 was passed in the Transvaal Republic, a movement was on foot in Natal to deal with Asiatics on lines similar to the provisions of that law; for we find that the Wragg Commission of 1885-7 referred in their Report to a petition which was presented to the Legislative Council of Natal by the Maritzburg Chamber of Commerce, dated the 15th July, 1885, and which, they state, illustrated the bitter feeling against these Arab traders. In that petition the Chamber prays, *inter alia*, that legislation may be introduced prohibiting Arabs or Asiatics from living or trading in any part of the town except in such quarter as may be set apart by the Corporation or local authorities for that purpose.

OWNERSHIP OF LAND AND PROPERTY.

152. As regards the question of ownership of land a very strong feeling undoubtedly prevails at the present time, especially amongst the farming community, that some restriction should be placed upon the right of Asiatics to acquire land in Natal in the future.

Upon this point urgent representations were made to the Commission by several deputations from the Natal Agricultural Union, the Richmond Agricultural Society, Eston-Beaumont Farmers' Society and other similar associations, as well as by prominent farmers in the Northern districts of the Province. These gentlemen all appeared to be representative and responsible men, whose views, expressed with great earnestness, are undoubtedly entitled to serious consideration.

153. The Natal Agricultural Union has its headquarters at Maritzburg and consists of 70 or 80 affiliated societies scattered all over the province. It has about 4,000 members, including all classes of farmers and sugar planters.

The deputation from that Union submitted to the Commission a series of resolutions which had been unanimously passed at its annual conference held at Maritzburg on the 13th April, 1920, only a week or two before they tendered their evidence at Durban.

These resolutions were in the following terms :—

This Conference would record its considered opinion that the Asiatic problem presents a serious menace to the Union of South Africa and recommends :—

- (a) While recognising that the existing tenure of land by Asiatics should not be interfered with, no further acquisition of land by purchase, lease or other means by Asiatics shall be allowed.

- (b) No new licences shall under any circumstances be issued to Asiatics.
- (c) No transfer of any existing licences to any Asiatics shall be permitted, but at the expiry of any licence held by an Asiatic by death of holder, reasonable compensation for land and trading stock shall be paid.
- (d) That the Government shall legislate on most drastic lines against the holding by any European or other person of a licence on behalf of any Asiatic.
- (e) At such future date as shall be fixed by legislation, all Asiatic licences now held by Companies shall expire and compensation shall be paid to such holders.
- (f) The urgency of this matter calls for immediate settlement by legislation.

Resolutions of a similar character were submitted at Maritzburg by the Richmond Agricultural Society and other farmers' associations beforementioned.

154. It was represented to the Commission, by the members of these deputations and other individual farmers, that during recent years Asiatics have been acquiring farms in the upland districts of Natal. It is said that for various reasons they are able to give a higher price for land than Europeans and valuable properties are being transferred to Asiatics.

There seems to be a widespread fear that if Asiatics once get a footing in the farming districts, away from the sugar areas on the coast, land in their neighbourhood will depreciate in value, and European owners will sell out. The result would be that their properties will be acquired by other Asiatics, and thus eventually a very large proportion of the land in the Colony would fall into the hands of men of that race.

Some of the farmers who gave evidence are descendants of the British settlers of 1820, and they view the prospect with serious misgivings. They foresee the possibility of the land in this country, of which their forefathers were the pioneers, being passed on to Asiatics instead of to their descendants.

155. One of the members of the deputation from the Natal Agricultural Union, who is himself a farmer in the division of Dundee and had evidently made a study of the question, pointed out that there are no Crown lands in Natal of any value which could be procured by Indians, and that, since the passing of Act No. 27 of 1913, land which natives have acquired by purchase, and are therefore alienable by them, can only be sold to natives. The only method, therefore, by which an Indian can now acquire land in Natal is by purchasing it from a European farmer, whom he displaces; and that is regarded as most undesirable from an economic point of view.

The same witness quoted details of several instances in his own district, in which Indians had acquired land from natives before the passing of the Act of 1913. Some of these farms were bought for speculative purposes. Shops were erected on them from which business was done with the natives; but no attempt was made at improvement, and the land was left lying idle, in the hope of an eventual sale to the neighbouring colliery companies. On others attempts were made to make them productive, which ended in failure owing to the incapacity of the Indian owners. These were subsequently acquired by Europeans, who converted them into valuable properties.

The acquisition of land by Asiatics in the upland districts of Natal is not widespread, and accordingly the fear of a large influx into these districts is based upon an apprehension of what may happen in the future.

156. It appears from the evidence given in Natal that Indians as a rule are not successful at ordinary agricultural or stock farming, although in certain parts they purchase cattle to a large extent for speculative purposes, which they graze on land owned by them. But they are said to have a marked aptitude for cultivating land in the coast districts, where they are principally engaged in growing sugar cane, tobacco, mealies, fruit and vegetables. This is no doubt to a great extent due to the experience gained by them as indentured labourers on the sugar and other estates on the coast.

Evidence of an interesting character upon this point was given by Mr. A. J. S. Maritz, Magistrate of the Lower Tugela division, whose residence is at Stanger, a sugar and tea planting district. He stated that there are large numbers of small Indian farmers of that class in his district, many of whom possess their own land. He finds, however, that they gradually get squeezed out as the sugar industry expands. Originally they acquire waste land, and, after cultivating and developing it, they eventually dispose of it at a good price to European sugar planters. Then they go further afield and purchase cheaper land elsewhere; and thus they are continually opening up new land, which Europeans would not find payable. But, by cultivating it on a small scale and in an economical manner, they manage to improve their holdings and render them attractive to European planters.

Some Indians, however, carry on sugar planting on a fairly extensive scale themselves. The same magistrate gave an instance of an Indian in his district who owned 900 acres of land all under sugar cane. He had come to Natal originally as an indentured labourer and died last year leaving an estate of the declared value of £100,000. His five sons are now carrying on the business.

157. Similar evidence was given by another old resident of the Stanger district, Colonel Friend Addison, a retired sugar planter. He stated that it is only since immigration was stopped in 1911 that Indians have purchased land to any extent. Before that their wages were so low that they could not save money for the purpose. But wages went up so rapidly after immigration ceased that an Indian labourer was able to save £30 to £40 in two or three years and acquire a plot of land. They grow sugar cane and send it to the mill for treatment. The only land fit for cane growing in that district is within four miles of the railway on both sides of the line; and Colonel Addison estimated that about one per cent. of it is owned by Indians. But it appears that a considerable number of Indians are what are termed "squatters"; that is, tenants of small parcels of land which they hold subject to six months' notice. The farmers representing the Natal Agricultural Union suggested that these leaseholds should be allowed to continue during the lifetime of the present holders, but that no new cases should be granted to Indians.

158. The members of the Commission were somewhat surprised and disappointed that practically no evidence was tendered on behalf of the sugar planters in Natal. Not a single individual planter or representative of the numerous companies owning sugar estates along the coast came forward as a witness. It is possible that they felt little interest in the particular subjects of our inquiry, as publicly announced, namely, the rights of land ownership and trading enjoyed by Asiatics. They may therefore have thought that the question of repatriation of Indians, in which they would naturally be deeply interested, was beyond the scope of our reference.

But the sittings of the Commission were held in public, and fairly extensive reports of that proceedings and evidence were published daily in the press. They showed that repatriation was frequently suggested as a remedy against Asiatic predominance by various witnesses, and was freely discussed between them and the members of the Commission.

The deputation from the Natal Agricultural Union, indeed, stated that they represented the sugar planters, many of whom were members of the Union.

159. It is true that the main purpose of the resolutions passed at the Conference of that Union, and submitted to the Commission, was to prevent further acquisition of land or trading licences by Asiatics in the future. But the members of the deputation, as well as many other representative farmers, expressed very strong views as to the desirability of "eliminating the Asiatic" from the country, which they admitted was the object aimed at by their representations.

It is difficult to believe that the sugar planters' interests would be served by such a policy of elimination, unless it is to be confined to the land owning and trading classes. But it was urged by some of the farming community, notably at Maritzburg, that even the labourers should be got rid of, and native labour substituted on the sugar plantations.

160. There were a few witnesses who incidentally gave evidence in support of the interests of the sugar industry; but they were not, at present at any rate, sugar planters themselves. The principal of these was Colonel Addison, before referred to. He is a retired sugar planter and came forward really in order to see justice done to the Indian community. In doing so he gave very valuable information as to the services they have rendered to the industries of Natal during the 40 years that he has been in touch with them.

It appears that for the first ten years, during which he employed native labour only, Colonel Addison could scarcely make sugar planting pay, while his neighbours managed to do so with Indian indentured labour. After that period he followed their example and became a successful planter.

He was emphatic in asserting that Indian labour made the sugar industry of Natal, which could never have been built up with native labour. He added that it was not cheaper than native labour. The Indian labourer received less wages than the native, but his keep, and the other provisions that had to be made for him, brought his cost to far more than that of the native. But he is more regular in his work and more reliable than the native. The Indian, being away from his country, has no interests beyond the place where he is working, and can therefore be relied upon to stick to his work, while natives are apt to break off in the middle of "crushing," and go off on a beer drink to their kraals for an indefinite period.

161. We gathered from the evidence of this witness that a large number of Natal born Indians, descendants of the original indentured immigrants, are at the present time employed on the sugar plantations. They generally work under contracts for specified periods, usually one year, and often engage in family groups under the same employer from time to time. Their children get free education at the Government schools. These children are later employed as ploughmen, mule drivers, engine drivers, sugar boilers, and so on. Being of the Madrassi class they do not go in for trading so much as the Mahomedans; but they take up such trades as cabinet-making, tank building, and leather working.

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162. Important evidence was also given by Colonel Addison as to the wages earned by Indian labourers on the sugar plantations. Originally it was only 10s. per month, together with rations, housing, etc. It increased by 1s. per month every year, so that in the fifth or last year of his indentureship the labourer received 14s. per month. That was the scale which prevailed up to 1911, when the last batch of indentured Indians arrived.

At the present time the ordinary wages of the field hands (cultivators) are 37s. 6d. per month. That is the lowest paid hand on the estate. Next comes the mule driver along the tram lines, who brings in the cane from all over the plantation; he gets from £2 10s. to £3 per month. Above him are the sirdars or overseers, who receive £6 per month. The engine driver earns from £3 to £8 per month according to the class of engine he drives. Then there is the sugar boiler, who receives from £10 to £25 per month, according to his capacity or ability. All these wages are paid in addition to rations, housing and medical attendance.

These Indians in course of time become skilled in the particular branches of their work, and there is great competition for their labour. The consequence is that wages have increased considerably during recent years, and the labourer has been enabled to purchase a small plot of land with his savings; whereas originally he returned to India at the expiration of his indenture, refusing to continue to work at 14s. a month.

163. Closely allied to the subject of the acquisition by Asiatics of land in the country districts there is the equally burning question of their encroachment in the boroughs and townships, by acquiring fixed property for business and residential purposes in the midst of Europeans. The latter is regarded with as much concern and disquietude by the townsman as the former is by the farmer.

The only detailed evidence obtained by the Commission regarding the ownership of town properties by Asiatics related to the Municipalities of Durban and Maritzburg. The Durban valuation rolls before 1914 were not available, but in that year the total valuation of all properties in the municipality was £10,404,500; in October, 1919, it was £13,546,030, an increase of 30 per cent. in five years. The total valuation of properties in Durban owned by Asiatics at intervals of ten years was given as follows:—

1888/9	..	..	..	..	..	..	..	..	£28,840
1898/9	..	..	..	..	..	..	..	..	200,880
1908/9	..	..	..	..	..	..	..	..	501,750
1918/19	..	..	..	..	..	..	..	..	652,880
31.3.1920	..	..	..	..	..	..	..	..	856,218

The Licensing Officer at Durban produced a statement showing that in that town 137 properties were transferred to Asiatics by Europeans at a total purchase price of £281,465 during a period of 2½ years, from the 1st January, 1918, to the 31st March, 1920.

Of these, 63 were situated in what is described as European residential districts. The higher individual values ranged from £5,000 to £10,000, and in three cases they were £18,000, £26,000 and £27,000 respectively.

164. In comparing the above figures it must not be forgotten that the value of property has increased enormously since 1888, owing to the great development and advance of the port and township of Durban.

In the absence of exact figures it is impossible to speak with accuracy; but it seems probable that the value of property owned by Asiatics, as compared with that held by Europeans, is not substantially greater to-day than it was a quarter of a century ago.

Various explanations of the extraordinary amount of property transferred to Asiatics during the 2½ years ending on the 31st March, 1920, may be put forward. It may have been due to a desire to secure as much fixed property as possible in anticipation of their rights being restricted by the Legislature in view of the increasing anti-Asiatic feeling throughout the country. Again, it may be accounted for by the fact that, owing to the abnormal conditions in the markets of the world during the war period, Asiatics as well as Europeans realised large profits in business which they invested in fixed property.

165. The position in Pietermaritzburg was stated in a memorandum submitted by the Town Clerk as follows:—

Of the total rateable value of immovable property in Pietermaritzburg (£3,472,730) Europeans own £2,922,397, or 84·15 per cent; Asiatics, £98,548, or 2·84 per cent.; natives, £8,970, or 0·28 per cent.; Government, £442,815, or 12·75 per cent.

During the past five years the value of property purchased by Europeans from Asiatics in Pietermaritzburg was £1,408; and of property purchased by Asiatics from Europeans £32,236.

The Asiatic population in 1887 was 1,654; in 1919 it was 7,618, showing an increase of 360·5 per cent.

The European civilian population in 1887 was 7,257; in 1919 it was 16,746, showing an increase of 130·7 per cent.

ASIATIC TRADING IN NATAL.

166. The number of Asiatic traders in Natal—almost entirely Indians—is naturally far greater than in the Transvaal, owing chiefly to the very large Asiatic population and length of time during which they have been settled in that province. They also carry on business, both wholesale and retail, on an extensive scale. The wealthier Indian merchants are found principally at Durban. Their establishments have gradually become grouped in certain particular streets where Indian businesses are to some extent concentrated. But a great many are scattered all over the town and suburbs, while some few are still located in the main European business centres.

167. The Commission received scarcely any objections or grievances as regards Asiatic trading from the leading European merchants of Natal; the Durban and Maritzburg Chambers of Commerce, for instance, made no representations on the subject. The complaints came chiefly from Chambers of Commerce in the smaller towns, and from individual traders and members of the public.

At the same time, the result of Asiatic competition in trade, especially in the smaller towns and villages, is apparently felt as keenly in Natal as in the Transvaal.

In places like Verulam, Tongaat and others along the coast which were visited by the Commission, the trade appears to be almost entirely in the hands of Indians. That is no doubt due to the large Indian population employed on the sugar estates in those parts. But similar encroachment of Asiatic traders was complained of at Dundee, Ladysmith and other up-country towns, while at Maritzburg the number of trading licences held by Asiatics as compared with Europeans is, according to the statistics, proportionately about the same as at Durban.

It is difficult, however, to suggest any remedy for that state of affairs, in view of the fact that Indians have enjoyed free and unrestricted rights of trading ever since their introduction into Natal sixty years ago, more especially as the further recruitment of Indian labourers for Natal from time to time is said to have been assented to by the Government of India on the distinct understanding that those rights would not be interfered with.

168. An attempt was made by the Natal Legislature in 1908 to meet the difficulty by passing two drastic measures on the 27th August, 1908, one of which was designed to stop the issue of any new trading licences to Asiatics forthwith. The other provided, *inter alia*, that :—

- (a) After the 31st day of December, 1918 (*i.e.* 10 years after the passing of the Act), no licence shall be issued or transferred to or be capable of being held by or on behalf of an Asiatic.
- (b) An Asiatic who on the 31st day of December, 1918, holds a licence, and who is by this Act prevented from obtaining a renewal thereof, shall be entitled to be compensated from the public revenue of the Colony for the loss resulting from the discontinuance of the licence, in manner and subject to the provisions of this Act.

The Imperial Government, however, refused their assent to those Acts.

169. The draft bills were submitted to the Imperial Government in May, 1908, prior to their introduction, and in a despatch dated 22nd July, 1908, the Secretary of State communicated the views of the Imperial Government to the Natal Government in the following forcible and interesting terms :—

“ Your Ministers will recognise that, even if for the moment account is not taken of the question of the relations between His Majesty’s Government and the Indian Empire, the position of His Majesty’s Government with regard to the Indians in Natal is one of peculiar responsibility. The grant of self-government to the colony was not made until 1893, and many of the Indians now within its borders were introduced before that date, while the Colony was still administered under the direct authority of the Crown. The principle followed by His Majesty’s Government in dealing with recent Asiatic legislation in the Transvaal has been to defer with reluctance to the feeling in favour of excluding further Asiatic immigrants, but at the same time to aim at securing fair and proper treatment for Asiatics already in the country. His Majesty’s Government are under an especial obligation to ensure that this principle should be upheld in Natal.

“ The effect of the system of indentured Indian immigration is that at the present time according to the latest report of the Protector of Immigrants, there is a free Indian population in Natal of 61,441, and that there are no less than 22,788 Natal born Indians, a large proportion of whom presumably have no other home. There appear to be no statistics in the possession of this Department showing what portion of this population is engaged in licensed trades, but it would seem that it must be very considerable. By the second bill it is proposed to prevent the whole of this section of the Indian community from developing their own businesses or engaging their children in the same class of trade; by the third to evict them in

“ten years time from the businesses which they have already built up, and, in order to enable them to start afresh in unfamiliar and uncongenial occupations, to provide compensation on a most exiguous scale. The proposed legislation affects not only the trading class, but the whole of the Indian community in Natal, whose wants are most adequately and naturally supplied by traders of their own nationality.

“It would be a matter of the greatest difficulty to enumerate any conditions under which it would be possible to justify the interdiction of a particular class in the State from engaging in normal, legitimate and necessary occupations; and it would be still harder to justify dispossessing them from their existing means of livelihood, however liberal might be the terms of compensation. But the imposition of such disabilities on a class which owes its presence in the Colony to the Colony's own necessities and whose numbers have been augmented by the voluntary action and, indeed, the settled policy of successive Colonial Governments, over a period of 15 years since the advent of self-government, would appear on its merits to constitute a hardship of a specially grievous character.

“I feel bound to inform you that the inherent defects to which I have referred will make it impossible for me to advise His Majesty to assent to these Bills in the event of their being passed by the Colonial Legislature.”

Trading Statistics.

170. The following summary of the statistics show the licences issued in Durban by the Licensing Officer there :—

	1915. New Licences and Renewals.		1919. New Licences and Renewals.	
	European.	Asiatic.	European.	Asiatic.
Butcher	55	9	55	10
Dairy	54	30	67	33
Refreshment Room	52	21	79	10
Retail Dealer	667	184	764	229
Wholesale Dealer	132	25	219	25
Wholesale and Retail Dealer	172	88	191	110
Miscellaneous	225	158	309	211
	1,357	515	1,684	628

In the miscellaneous trades are included dyer and cleaner, hawker, laundry, manufacturer, miller, native eating house, photographer, tea room and warehouse.

In those trades in which they come into competition with Europeans, Asiatics held 515 licences in 1915 as against 1,357 held by Europeans; and in 1919 Asiatics held 628 as against 1,684 held by Europeans.

The Licensing Officer explained the position as follows :—

“The growth in Durban of the Asiatic licences has been very small. I think on the whole very few licences have been granted, and it is only because we restrict the number that there are not a lot more. . . . We do what we can to restrict further Indian licences. . . . A European licence is granted almost always as a matter of course, whereas the Indian licence is refused as a matter of course, if it is a new one.”

In Pietermaritzburg in 1914, 312 European and 68 Asiatic dealers licences were issued as against 317 European and 119 Asiatic licences in 1919.

171. At Newcastle in 1914, 22 European and 9 Asiatic retail licences were in existence, and in 1920, 27 European and 15 Asiatic. At Dundee no new Asiatic retail licence has been issued since 1915, and the existing licences are as follows :—

Number of Existing Licences in Dundee on 30th April, 1920.

	European.	Asiatic.
Wholesale and Retail	9	7
Retail Dealers	30	3
Fruiterers	1	2
Native Eating Houses	—	5
Boarding Houses	1	—
Bakers	2	1
Butchers	2	2
Refreshment Rooms	5	—
	50	20

172. The Licensing Officer for Natal issues all licences outside the following places :—

Municipalities.

Pietermaritzburg, Durban, Ladysmith, Dundee, Newcastle, Vryheid, Estcourt, Greytown.

Local Boards.

Weenen, Charlestown, South Shepstone, Paulpietersburg, Utrecht, South Barrow, Harding, Verulam, Eshowe, Howick.

He has supplied the following return of licences renewed :—

	1909.		1915.		1919.	
	European.	Asiatic.	European.	Asiatic.	European.	Asiatic.
Wholesale	1	3	2	3	3	5
Retail	406	458	452	470	400	563
Butchers	—	—	83	29	74	42
Bakers	—	—	58	10	38	19
Native Eating House	—	3	26	28	23	49
Indian Eating House	—	—	—	—	—	6
Manufacturers ..	—	—	7	56	29	110
Miller	—	—	54	11	50	8
Hawker	4	26	2	44	4	33
Agent	—	—	7	1	4	1
Malt	—	—	—	—	24	117
Stationer	—	—	2	—	1	—
Old Metal	4	—	4	—	3	—
	415	490	697	652	653	953

The large increase in Asiatic Licences is explained by the Licensing Officer as follows :—

“ In 1913 Ordinance No. 5 was passed amending an exemption which permitted unlicensed trading in colonial produce, and that brought a very big increase in the number of applications for new licences. Then came the war, and a large number of Europeans carrying on stores in the country districts sold their businesses for the purpose of going away to the front, and they found that the man willing to pay the highest price for a store was the Asiatic trader ; that accounted for the increase in the number of Asiatic Licences during the war.”

“ The Ordinance of 1914 enacted that licences must be held by Manufacturers, and 466 such licences have been issued. Another new licence created in 1917 was the malt dealer's. Europeans only hold 48, whereas Asiatic Malt Dealers' licences numbered 326 in the same period.”

From the statement of new Licences granted and refused by the Licensing Officer for Natal the following statistics have been taken :—

	Granted. 1909 to 1919.		Refused. 1909 to 1919.	
	European.	Asiatic.	European.	Asiatic.
Wholesale	13	14	—	9
Retail	667	221	81	634
Butchers	175	70	7	84
Bakers	74	12	—	13
Native Eating House	63	47	15	102
Indian Eating House	—	9	—	5
Manufacturers ..	89	221	2	55
Millers	155	20	4	—
Hawkers	88	116	1	173
Agents	18	1	—	—
Malt	33	143	7	74
Stationers	7	—	—	—
Old Metal Dealer ..	10	—	—	3
	1,392	874	117	1,152

From a return of transfers made by the Licensing Officer for Natal for the period 1909 to 1919 it appears that 99 licences were transferred from Europeans to Asiatics, and that 104 of such applications were refused ; while six Asiatics transferred their licences to Europeans.

173. Some confirmation of the statement made by Asiatics, that trade jealousy is at the root of the opposition to their trading operations, is obtained from the following return furnished by the Licensing Officer for Natal ; but the return goes to show that trade jealousy is not confined to the white races ; on the contrary, it appears that in 1919 out of 102 opposed applications by Asiatics 71 were opposed by Asiatic competitors only.

Opposed Asiatic Applications.

Year.	1914 to 1919.				
	Number Applications.	Opposed by Asiatics.	Opposed by Europeans.	Opposed by Europeans and Asiatics.	Opposed by Europeans, Natives and Asiatics.
1914	102	52	36	13	1
1915	97	60	23	13	1
1916	71	31	21	18	1
1917	110	59	30	21	—
1918	106	74	22	9	1
1919	102	71	20	11	—
	588	347	152	85	4

The Licensing Officer for Durban also stated that, although the objectors were generally rival traders, in the majority of cases Asiatic applications were opposed by Asiatics.

ASIATIC COMPETITION IN SKILLED TRADES.

174. The chief complaints in Natal as to Asiatic competition in the skilled trades came from some of the furniture makers in Durban, although, as previously stated, a certain number of the descendants of indentured labourers who have acquired some education engage in such trades, both in the towns and on the sugar estates.

It was stated that furniture makers generally employ Indians, with the result that European lads cannot be induced to apprentice themselves, owing to their objection to work alongside of Asiatics.

It appeared, however, from other evidence that Indians are not adapted to such trades, and that the furniture and other articles which they produce are generally of an inferior character, and such as are purchased only by the poorer class.

175. The question was investigated by the Economic Commission in 1914 ; and in confirmation of the view that in the skilled trades Asiatics do not seriously come into competition with Europeans, the following extract from the report may be quoted :—

“ In the skilled trades the efficiency of the Indians is distinctly beneath that of the white men, and there is doubt as to the extent to which they undertake work for white people. So far as they labour for their own people, objection to their advancement is not even plausible. That they perform tasks of a not very expert kind in painting, carpentering, bricklaying and so forth, on the direct order of white consumers, is beyond dispute, but it would seem impossible to determine the extent of the work in question, and how far the white man is affected by it. Much of the work is evidently that of the handy-man rather than that of the expert artisan. Again there was conflict of testimony as to the amount of skilled work performed by Indians indirectly for white consumers. Skilled Indians work for shops kept by Indians, but the degree of recourse to these shops by whites it is hopeless to attempt to measure. It was alleged further, that work, such as the making up of clothes, was put out by white shopkeepers to Indian skilled workers, but certain Indian witnesses examined by your Commissioners declared that the bulk at any rate of this work was done for Indian shops to the best of their knowledge. Again, the extent of the trade done among other Indians, by Indian manufacturers employing Indians only, is unknown, but it seems likely that in cheap tinware, especially for natives, it is relatively considerable. It may be added that skilled Indians either bring their knowledge from India or pick it up through being employed for rough work where skilled whites pursue their avocations. Your Commissioners failed to discover evidence proving that white skilled labour has suffered seriously from the competition of Indians.”

According to Sir Benjamin Robertson experience in India confirms the conclusions of the Economic Commission as regards the skilled trades, and one of the greatest obstacles to the industrial development of India to-day is the inability of the Indian artisan to become a skilled workman of the highest class.

It may be doubted whether this branch of Asiatic activities, affecting as it does the artisan rather than the trader, comes, strictly speaking, within the ambit of our reference. But, in any case, it is obvious that any interference with the right of the Indian community in Natal to engage in such trades cannot be recommended.

ASIATIC POPULATION.

176. The total Asiatic population in Natal in 1904 and 1911 was as follows :—

Year.	Males.	Females.	Total.
1904	63,497	37,421	100,918
1911	80,490	52,949	133,439

That shows an increase of about 32 per cent. in the seven years.

The Asiatics are practically all Indians. Indentured emigration continued until 1911 ; and in the last year special efforts were made by the sugar planters to import as many labourers as possible.

No census of non-European persons having been taken since 1911, the total Asiatic population at the present time cannot be ascertained with accuracy. But according to the records of the Protector of Immigrants the number of *indentured* Indians and their descendants in Natal was 115,515 in 1919 as against 113,192 in 1911. That shows an increase of only about 2 per cent. in eight years ; the small increase is probably due to the stoppage of further immigration of indentured labourers, and the drift back to India.

The figures for 1919 are classified as follows :—

	Males.	Females.	Total.
Born in India	37,493	19,203	56,696
Born in Natal	29,252	29,567	58,819
Totals	66,745	48,770	115,515

The rest of the Indians in Natal, who are estimated at about 20,000 are for the most part Mahomedan traders and their families who originally came as free emigrants in the wake of the indentured labourers.

Adding these to the number of Indentured Indians and their descendants, it brings the total Indian population in 1919 to about 135,500 ; while according to a census taken 1918 the total European population of Natal was then 122,008.

It may be assumed, therefore, that at the census due to be taken in 1921 the total Asiatic population of Natal will probably be found to exceed the European population by about 10 per cent.

177. It may here be noted that while the increase in the Asiatic population since 1911 appears to have been comparatively slight, the European population has increased by nearly 25 per cent., namely, from 98,114 in 1911 to 122,008 in 1918.

Amongst the indentured Indians there is a fair sex ratio and births exceed deaths. Since 1911 the average birth-rate has been 45 per thousand and the death-rate 19 per thousand. Against this, considerable numbers have returned to India permanently in accordance with the terms of their indentures or under the provisions of the Indians Relief Act of 1914.

In 1915, when the Relief Act first began to operate there were 116,451 indentured Indians and their descendants in Natal. Since then returns to India have rather more than counter-balanced the excess of births over deaths, and there has been a net decrease of about 1,000. There is no doubt, however, that in the course of time, as the floating Indian population becomes more settled, returns to India are likely to be fewer, and the normal excess of births over deaths will assert itself. Since 1916 the annual number of returns has dwindled from 5,585 to 1,691 in 1919. These numbers have undoubtedly been affected by outside causes, such as shortage of shipping, the prohibition on the export of gold and so on. And, as previously stated, there is evidence to show that there are still many who would leave the country, if they were given opportunity and encouragement. As a general principle, however, it may be taken that the longer the Indian immigrant stays in Natal the less will he be inclined to return to India. In the second and third generation the drift back to India will become less and less until it almost ceases.

As has already been explained, the indentured Indians and their descendants are mainly agriculturists. The Mahomedan traders are of the same class as the traders of the Transvaal and the Cape, and the same causes are operating to restrict their numbers. But being estab-

lished in the midst of a large Indian community, they are probably more inclined to regard South Africa as their permanent home.

According to the following figures furnished by the Principal Immigration Officer at Durban the number of new entrants under Section 3 of the Indians Relief Act, 1914, has been comparatively small :—

Year.	Wives.	Children.	Total.
1915	54	61	115
1916	76	61	137
1917	60	88	148
1918	57	87	144
1919	86	148	234

NORTHERN DISTRICTS OF NATAL.

178. In the districts of Vryheid, Utrecht and Paulpietersburg, which originally formed portion of the Transvaal and are now commonly known as the Northern districts of Natal, Law 3 of 1885 (Transvaal) still applies, having been specially retained as one of the terms of their annexation to Natal. Asiatics cannot therefore possess land in those districts except as provided by the law in question. *i.e.* in certain areas reserved for Asiatics.

The Natal Dealers Act (18/1897) applies as regards licences, but the Local Boards of Utrecht and Vryheid have hitherto declined to issue trading licences to Asiatics. The former Board sent a communication to the Commission of which the following is an extract :—

“ This annexed Territory objected to the annexation principally on the Indian question, knowing the terrible situation in which old Natal had brought itself by the importation of Indians, and the Chairman of this Board was at that time one of the strongest objectors ; and it was only on the distinct assurance that Indians would be excluded that the population was calmed.”

The Indian community regard it as a great grievance that they are practically precluded from trading in these Northern districts, owing to the attitude adopted by the local authorities in administering the Dealers Act of Natal. On the other hand, the Mayor of Vryheid and other residents from these districts entered the most vehement protests against any steps which might result in the introduction of Asiatic traders.

In the circumstances we do not recommend that there should be any interference with the application of Law 3 of 1885 (Transvaal) to those districts. But as regards trading, the general Licensing Laws, if amended in accordance with the recommendations of this Commission, would have to apply to them, as the present Dealers Act does.

ZULULAND.

179. From information given to the Commission by counsel for the Indian community at Durban, it appears that there is nothing to debar Asiatics from owning land in Zululand, as some Indians actually own land in that territory. But it is said they can neither reside nor trade on that land.

An enquiry addressed to the Surveyor-General of Natal elicited the reply that no law upon the subject of land ownership by Asiatics could be traced.

Trading rights in Zululand are regulated by Act 31 of 1905 (Natal), which includes the following provisions :—

- (1) No new or renewed licence, whether it be a licence under the Liquor Act, 1896, or a trading licence of any kind shall be granted within the Province of Zululand unless the approval of the Colonial Secretary to the application therefor is produced to the licensing authority.
- (2) The giving or withholding of such approval shall be in the absolute discretion of the Colonial Secretary, from whose decision there shall be no appeal to any court of law or authority.

The functions of the Colonial Secretary as above set out now devolve upon the Administrator of the Province of Natal.

In view of the peculiar circumstances prevailing in Zululand, which is an extensive native area, with a very large native population, we are not prepared to recommend any alteration of the existing laws affecting that territory.

ASIATIC QUESTION IN CAPE PROVINCE.

180. The sittings of the Commission were commenced at Cape Town, but, although a good deal of evidence was taken there, it soon became evident that in the Cape Province there is no acute Asiatic problem.

As previously stated, Asiatics in that province possess both the parliamentary and municipal franchise ; and as to ownership of land and trading rights they are on an equality with Europeans. From the evidence before the Commission it appears that there is no disposition on the part of the European inhabitants of the Province to deprive them of those rights, except in so far as such a desire may be reflected in the attempts made by some municipalities to restrict the number of Asiatic traders.

181. The only serious grievance ventilated by Asiatics related to the treatment they received at the hands of certain municipalities in the administration of the Licensing Laws. They complained that certificates for licences are frequently refused to Asiatics by those municipalities for the sole reason that the applicants are Asiatics. No special grounds are laid down in the Cape Licensing Ordinance upon which municipalities can refuse the necessary certificate for a licence ; and it has been held by the Courts in several cases that they are not bound to give reasons for their decisions, from which there is no appeal. This is regarded as a great injustice by the Indian community, and they would prefer that these certificates should be issued by magistrates ; but, if it is to be left in the hands of municipalities, they ask that grounds similar to those prevailing in the Transvaal should be specified by the Legislature for the refusal of the certificate, and that municipalities should be bound to give their reasons for such refusal. They moreover ask that there should be an appeal from the decision of the municipality to the Supreme Court.

182. There was clear evidence before the Commission that there were substantial grounds for this complaint. Some of the Indian witnesses stated that they were fairly well treated by the Municipality of Cape Town, but that in the Wynberg Municipality it is practically impossible for an Indian to obtain a new licence or a certificate authorising a removal to other premises.

As regards the Cape Town Municipality, strong evidence was given by Dr. Abdurahman, who is a member of the Licensing Committee and Chairman of the Health Committee of the Cape Town City Council. He quoted several instances in which, to his personal knowledge, the Licensing Committee had refused certificates to applicants on the ground that they were Indians, and for no other reason. He was very positive in asserting that such occurrences frequently take place. In support of his statement he produced statistics showing the number of new applications granted and refused to applicants of various nationalities during the past five years.

Similar statistics were supplied to the Commission by the Chairman of the Licensing Committee of the Capetown City Council. They were as follows :—

General Dealers—New Applications.

	1914.		1915.		1916.		1917.		1918.	
	Applica- tions	Re- fusals.	Applica- tions	Re- fusals.	Applica- tions	Re- fusals.	Applica- tions	Re- fusals.	Applica- tions	Re- fusals.
British	113	—	189	4	169	1	176	1	136	1
Naturalized British	32	1	85	7	72	2	73	—	97	3
Russian	47	—	76	2	65	7	38	2	49	1
Other Nationality	23	1	49	2	31	4	24	3	17	4
Indian	42	40	45	41	33	26	30	19	39	24
Cape Coloured ..	11	4	55	15	52	8	33	5	13	1
	268	46	499	71	422	48	374	30	351	34

Butchers—New Applications.

	1914.		1915.		1916.		1917.		1918.	
	Applica- tions	Re- fusals.	Applica- tions	Re- fusals.	Applica- tions	Re- fusals.	Applica- tions	Re- fusals.	Applica- tions	Re- fusals.
British	8	—	12	—	10	—	2	—	6	—
Nat. British ..	—	—	8	—	1	—	3	—	1	—
Russian	3	—	4	2	2	—	1	—	1	—
Other Nationality	—	—	—	—	1	1	—	—	—	—
Indian	7	7	6	5	9	8	2	2	4	3
Cape Coloured ..	5	1	5	1	8	1	7	3	3	—
	23	8	35	8	31	10	15	5	15	3

Greengrocers—New Applications.

	1914.		1915.		1916.		1917.		1918.	
	Applica- tions	Re- fusals.	Applica- tions	Re- fusals.	Applica- tions	Re- fusals.	Applica- tions	Re- fusals.	Applica- tions	Re- fusals.
British	30	—	54	5	55	1	72	1	32	1
Nat. British ..	5	—	21	2	12	2	17	—	6	—
Russian	3	—	21	—	17	1	3	—	2	—
Other Nationality	9	1	35	7	33	3	18	2	7	—
Indian	53	39	103	86	25	14	28	21	18	12
Cape Coloured ..	18	1	109	31	85	13	73	10	39	—
	118	41	343	131	227	34	211	34	104	13

183. From the above returns it appears that, whatever the reason or explanation may be, a much larger proportion of applications from Indians were refused during the years specified than from applicants of any other nationality.

At the same time the following table indicates that, comparing the European with the Indian population, the latter held a considerable proportion of the trade licences issued in Capetown during the year 1919.

	General Dealers Approx. Licences.	Butchers Approx. Licences.	Bakers Approx. Licences.	Greengrocers Approx. Licences.
British	1,160 = 40%	58 = 31%	27 = 62%	109 = 21.8%
Nat. British ..	319 = 11%	20 = 10%	1 = 2%	26 = 5.2%
Russian	446 = 15%	17 = 9%	8 = 18%	39 = 7.8%
Other Nationality	203 = 7%	3 = 1%	4 = 9%	56 = 11.2%
Indian	667 = 23%	73 = 39%	1 = 2%	121 = 24.2%
Cape Coloured ..	86 = 2%	15 = 8%	2 = 4%	149 = 29.8%
	2,881	186	43	500

184. Cogent evidence upon this point was given as to the action of the Wynberg Municipality by an Indian named Mahomed Yoosof, the Chairman of the Cape British Indian Council. He has held a General Dealers licence at Wynberg for ten years. In 1919 he purchased another property in Wynberg for business purposes. He applied for the usual certificate for the issue to him of a General Dealers Licence for those premises but received a peremptory refusal from the Municipality. He then applied for a certificate for a Butchers Licence to be carried on in the same premises, but met with a similar refusal. In neither case was any reason given for the decision. The witness stated that he could come to no other conclusion than that the only reason why he was refused a certificate was because he was an Indian, as he had the highest testimonials from leading merchants and favourable reports from the Police Authorities and the Medical Officer of Health. The result was that, at the time he gave his evidence, the premises had been standing empty for five months. He further stated that his was not an isolated case, that being the usual way in which Indians were treated by the Wynberg Municipality. He also mentioned cases in which that Municipality had refused applications for the removal of licences, which were subsequently granted by the Administrator on appeal.

After hearing this and other evidence of a similar nature, the Secretary of the Commission was instructed to communicate with the Town Clerk of Wynberg inquiring whether the Municipality desired to submit any evidence on the question; and in reply it was stated that the Municipal Council did not wish to give evidence before the Commission.

Instances were given of similar treatment of Indians by the Port Elizabeth Municipality, but no such complaints were received as regards the Municipal Council at Kimberley.

185. The allegations made by the witnesses were confirmed by the reports of several cases in the Supreme Court to which the Commission were referred by their Counsel. The Courts have repeatedly held that it is illegal for Licensing Authorities to refuse a licence on the ground of the applicant's nationality.

The Cape Licensing Ordinance provides for an appeal to the Administrator in case of the refusal by a Municipality of a certificate for the removal of a business to other premises. According to the evidence of the Provincial Secretary there were only five or six such appeals dealt with by the Administrator during the last three years, and all those were allowed.

In our opinion the request of the Indian community that Municipalities should be bound to give satisfactory reasons for the refusal of a certificate, and that there should be an appeal from their decision, is perfectly reasonable. The question will be further dealt with when the recommendations of the Commission as regards the Licensing Laws of the several Provinces are discussed.

ASIATIC POPULATION.

186. According to the Census figures the Asiatic population in the Cape Province in 1904 totalled 10,242 (9,316 males and 926 females); in 1911 it was 7,690 (6,605 males and 1,085 females); that shows a reduction of 25 per cent. from 1904 to 1911. The above figures include 766 Chinese in 1911.

No complete Census has since been taken, but it is estimated that the present Asiatic population would not greatly exceed the 1911 Census figure.

They are mainly resident in the chief commercial centres, such as the Cape Peninsula, Port Elizabeth, East London and Kimberley, where they are engaged principally in the fruit and vegetable trade; but in Capetown there are a certain number of grocers and general dealers, the large majority of whom carry on small retail businesses only.

A considerable amount of general mercantile business is, however, carried on by Indians in some of the up-country towns, such as Vryburg and Mafeking.

187. In the Cape Province, except in a few up-country places, Asiatics do not appear to engage in agricultural pursuits to any extent, although they have an unrestricted right to acquire land. This is attributed to the fact that the price of land in the vicinity of Capetown and other large centres is too high for market gardening purposes, which is the only form of agriculture for which the Asiatics in the Province are said to be adapted.

188. No complaints were received, as in Natal, of any tendency on the part of Asiatics to encroach on the residential quarters of Europeans. In most cases they reside on the premises on which their businesses are situated, and frequently in the same buildings, several of them occupying one room for sleeping purposes. According to the evidence of the Medical Officer of Health they are in that respect as objectionable in Cape Town as they are in the Transvaal and Natal.

In the Transvaal, Indian witnesses attributed their overcrowding and insanitary habits to their inability to acquire fixed property; but their compatriots at the Cape, though they enjoy full rights of land ownership, have apparently not been cured of these defects. At the same time the Medical Officer of Health admitted that there has been a great improvement in the conditions of life amongst the Asiatic population in Cape Town since he assumed his office in 1902. This is no doubt due to more active sanitary and other municipal supervision.

On the whole, it may be said that the Indian community in the Cape Province are very well satisfied with their position. They seem to be more concerned about a possible curtailment of their existing rights and privileges than the ventilation of grievances.

TRANSKEIAN TERRITORIES.

189. By Proclamation 264 of 1904 it is not lawful for any Arab, Indian or other Asiatic of whatsoever nationality, to enter any of the Transkeian Territories without a special permit signed by a Resident Magistrate and approved by the Chief Magistrate of the Native Territories. The following are the districts to which the proclamation applies:—

- (1) The Transkei, including Galekaland.
- (2) Tembuland, including Emigrant Tembuland and Bomvaneland.
- (3) Pondoland, including East and West Pondoland.
- (4) Port of St. John's.
- (5) Griqualand East.

No evidence was received relating to these territories, and we do not recommend an alteration of the provisions contained in the above proclamation.

ASIATIC QUESTION IN ORANGE FREE STATE PROVINCE.

190. In the Orange Free State also there is, for reasons previously mentioned, no Asiatic problem.

As Asiatics are debarred from trading or acquiring land in that Province, the consideration of its Laws does not fall within the scope of our reference. We were, however, favoured by the courtesy of the Provincial Secretary, with copies of the Orange Free State Licensing Laws, which are summarized in paragraph 141 of this Report.

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GENERAL CONCLUSIONS.

191. In submitting the views of the Government of India on the Asiatic question to the Commission, Sir Benjamin Robertson emphasized that they have always felt a peculiar responsibility for the welfare of Indians in South Africa, and could not but acknowledge special obligations to a community which originated from an organized system of recruitment to which they assented. Nor have they been able to distinguish between the labourer who was directly recruited and the trader who followed him. They have always held that the case of all the Indians in South Africa must be regarded as one. This is shown by their negotiations with South African Governments from time to time in regard to the emigration of Indian labourers, of which two instances may be quoted.

In 1899 and again in 1903 the Government of India pressed *inter alia* for an amendment of the Natal trade-licensing law, so as to allow an appeal to the Supreme Court against refusal of a licence, as a condition of the supply of indentured labour. Further, in 1903, when it was desired to recruit Indian labour for the Transvaal, the Government of India refused to agree to such recruitment unless the restrictions imposed upon Indians generally in the Transvaal were substantially modified.

192. Sir Benjamin Robertson also pointed out that their responsibility appears to the Government of India to be especially heavy in those Provinces where Indians have not been granted political rights. In the Cape Province, where Indians enjoy the parliamentary franchise, it is felt that they should find a remedy for their grievances by constitutional methods through the exercise of the vote. In Natal, again, where they have the municipal franchise, Indians have some means of protecting themselves against abuse of the powers exercised by Municipalities in the granting of trade licences. But in the Transvaal, where Indians are politically helpless, the Government of India have felt bound to defend their interests by every possible means.

The Government of India place great reliance upon the assurances given by General Smuts and Mr. Burton, Ministers representing the Union Government at the Imperial Conferences which were held in London in 1917 and 1918. At the former Conference, in referring to the difficulties which had arisen in the past in South Africa with the Indian population, General Smuts took a somewhat optimistic view of the future. He regarded the Immigrants' Regulation Act of 1913 as having had the effect of removing the fear, by which many of the inhabitants were obsessed, that the country was going to be flooded by unlimited immigration from India; and he expressed the conviction that all the other questions that remained would be considered subsidiary, and would become easily soluble.

193. At the Conference of 1918 a Memorandum was presented by Lord Sinha in which the principal grievances of South African Indians were set out; chief amongst these were their inability to own fixed property in the Transvaal, and their unfair treatment by Municipalities in the administration of the Licensing Laws in the various provinces. It was urged that Law 3 of 1885 (Transvaal) should be repealed, and that Transvaal Indians ought not to be compelled to regard themselves as possessing an inferior status, in respect to land ownership, to their compatriots resident in the coast provinces. As a remedy against arbitrary action on the part of municipalities in the refusal of licences, it was suggested that full rights of appeal against their decisions to the Supreme Court should be provided for.

A resolution was passed recommending these, amongst many other questions covered by the Memoranda presented to the two conferences by the representatives of India, to the various Governments concerned with a view to their early consideration.

In accepting the resolution on behalf of the Union Government, Mr. Burton referred to the difficulty and delicacy of the problems involved, but he also did not despair of satisfactory solutions being arrived at. He spoke of the Indian population in South Africa as good, law-abiding and quiet citizens who should be treated "as human beings, with feelings like our own, and in a proper manner."

Finally, in concluding his remarks, he said "as far as we are concerned in South Africa, we are in agreement with this resolution, and also with the proposal referring the Memorandum to the consideration of our Government; and we will give it the most sympathetic consideration we can, certainly."

194. In addition to these utterances, as pointed out by Sir Benjamin Robertson, Governments in South Africa have from time to time given undertakings and assurances that Indians who are lawfully settled in the country will be fairly treated, and their existing rights safeguarded.

As regards Natal, it was submitted on behalf of the Government of India that it would be inequitable to deprive indentured Indians or their descendants of rights which were open to them at the time of their introduction to the Colony, and were in effect conditions of their recruitment.

Finally, it was strongly urged by Sir Benjamin Robertson that the repressive legislation which so many witnesses have recommended is no solution of the problem. Fresh restrictions would be regarded not only by the Indian community in South Africa, but also by the Govern-

ment and the people of India, as a breach of the settlement of 1914, which was universally accepted as a guarantee that the status which the Indian community had acquired in 1914 would at least be maintained.

195. We regret having to admit that we have not found the questions submitted for our consideration so easy of solution.

Sixteen years ago, not long after the close of the Anglo-Boer War, the Lieutenant-Governor of the Transvaal, in dealing with the Asiatic question in his despatch to the Secretary of State before referred to, said "in my opinion we are face with a most difficult problem of "modern civilisation." At that time the trouble was mainly caused by protests from the European population against the influx of Asiatic traders into the Transvaal. There was no corresponding agitation on the part of the Indian community. They had gradually been returning, upon the permits granted to them under the Peace Preservation Ordinance, to the habitations and occupations which they had evacuated at the outbreak of the war. The pressure came solely from the side of the Europeans. The attitude of Lord Milner and Sir Arthur Lawley in proposing the somewhat drastic legislation which they submitted for the consideration of the Imperial Government can, in the circumstances, be readily appreciated. And there can be little doubt that, if their advice and recommendations could have been followed and carried out at that time, the difficulties surrounding the Asiatic problem would have been very materially reduced. At the same time, it must be admitted that, as pointed out by the Secretary of State in his answering despatch, the Imperial Government could not reasonably have been expected to assent to the proposed legislation, in the face of their previous determined and continual protests against similar legislation in regard to British Indians on the part of the Republican Government of the Transvaal.

196. The difficulties connected with a satisfactory solution of the problem have increased tenfold since 1904; for the agitation is no longer confined to the European population. Since that time the Indian trading community have firmly established themselves in the Transvaal, and have acquired considerable wealth. They have formed associations for the protection of their existing rights and the improvement of their status in the province. And they are now as eager and persistent in asserting their claims in those respects, as their European opponents are in their demands for the elimination of Asiatic traders from the country.

Moreover, during the interval the situation has been aggravated by upheavals such as industrial strikes amongst Indian labourers and "passive resistance" movements. Protracted negotiations have been carried on by the Government with influential representatives from India on behalf of the local Indian community.

In addition to legislation dealing with immigration, registration and other matters affecting Asiatics, Courts of Law have frequently been resorted to for the purpose of obtaining an adjustment of some of the disputes that have arisen.

All these matters have tended greatly to complicate the question, and to render it far more difficult of solution than ever before.

197. The fear which General Smuts referred to at the London Conference of 1917, as having formerly obsessed the minds of many of the European inhabitants of the Transvaal, has not been removed by the passing of the Immigrants Regulation Act of 1913. A great many witnesses before the Commission insisted that there is still a large and continual influx of Asiatics into the country, in spite of that Act. Some of their assertions were of a most extravagant character and were generally based on hearsay; they were probably due to reports spread around the country districts by interested or irresponsible propagandists. But the impression was not confined to witnesses from the smaller towns and country districts, whose views might be influenced by the migration of Indian traders or hawkers from one town to another. Similar apprehensions appeared to be entertained by witnesses from the larger centres; and even Counsel for the South Africans' League rejected the assurances given upon the subject by the officials of the Immigration Department, and expressed his conviction that there have been frequent evasions of the laws restricting immigration.

We are, however, as previously stated, satisfied that there are no substantial grounds for those apprehensions, and that, if there is any leakage at all at the present time into the Transvaal, it is entirely negligible.

We deem it most important that the public mind should be disabused of that obsession, for it undoubtedly lies at the root of a great deal of the alarm about the "Asiatic menace."

IEWS AND RECOMMENDATIONS OF COMMISSION.

OWNERSHIP OF LAND.

198. The Commission recommend that Law 3 of 1885 (Transvaal) which prohibits the ownership of land by Asiatics, except in certain special places set apart for them, should remain in force.

Sir Benjamin Robertson informed the Commission that neither the Imperial Government nor the Government of India is now prepared to press for the repeal of that Law, although

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it was asked for at the London Conference of 1918. The difficulty of amending Law 3 of 1885 or the Gold Law of the Transvaal in the present state of public opinion is recognised; especially as it would be a reversal of the decision of Parliament, as expressed in Act No. 37 of 1919, which, in our opinion, should also remain in force.

If our recommendations as to the establishment of separate areas in every town for Asiatics, both for residential and trading purposes, are carried out, they would have the right to own fixed property in such areas and any substantial hardship entailed by the retention of Law 3 of 1885 would thus be removed.

199*. As regards Natal, it has been suggested that no great hardship would be suffered if the rights of Asiatics to acquire land were restricted to the Coast Belt—extending from (say) twenty to thirty miles inland.

It is admitted that while Indians are very successful as agriculturists along the coast belt, where the climate and system of agriculture are best suited to them, they are not adapted to ordinary up-country farming, which comparatively few of them have hitherto attempted; and their exclusion as landowners from the uplands would go a long way towards allaying the strong feeling upon the subject which exists amongst the farming population of the inland districts.

In the circumstances, we would recommend that such a restriction should be provided for by legislation. It must, however, be confined to ownership of land for farming or agricultural purposes, outside of the townships. The chief obstacle would be the difficulty of getting land in the coast belt either in freehold or leasehold on reasonable terms.

If such a provision is made, Indian agriculturists who are not in a position to purchase properties should be granted facilities for acquiring long leases of land, instead of having to be content with short leases as at present. It has been found that as soon as the Indian holder of a lease on short notice has improved the waste land, the European landlord steps in and drives the Indian further afield by giving him notice to quit.

ALLOCATION OF SEPARATE AREAS.

200. In dealing with the remedies suggested in the Transvaal for the removal of the grievances arising out of Asiatic trading, we have (in paragraphs 120 to 131) fully discussed the question of segregation, and given the outlines of our proposals concerning that vital matter. It is unnecessary to repeat them here, but we would strongly recommend that some system of separate areas, based on the lines of those suggestions, should be introduced both in the Transvaal and Natal.

It is fully recognised that its introduction will not have the effect of ridding European traders of Asiatic competition. That object cannot be attained unless trading by Asiatics is either absolutely prohibited or relegated to locations outside the towns, where it would practically be restricted to dealing with members of their own race. And, for reasons before mentioned, we are unable to recommend either of those courses. It is deemed essential that the Asiatic quarter for trading purposes should be located within the town, and with due regard to the situation of existing businesses. But such a scheme will, at any rate, tend to ensure the removal of Asiatics from the immediate vicinity of European traders. And the social grievance arising from contiguity of Asiatic residences with those of Europeans will also be obviated.

201. In order to avoid any possible suspicion that trade rivalry might in some instances influence the selection of those areas, it would be advisable that their allocation, for both trading and residential purposes, should be entrusted to special boards consisting of three or more members appointed for the purpose by the Administrator of the Province. They might include the Magistrate of the District, the Surveyor-General and other persons, not necessarily local residents, of reliable and independent judgment.

These Boards should, however, act in close consultation with the Municipal Authorities, as well as with the leaders of the Asiatic community.

No steps should be taken for the allocation of such separate areas in any town, except upon the special request of the Municipal Council or other local authority.

202. There should be little difficulty in introducing such a system in Natal, at any rate as far as trading is concerned; for in some towns of that Province it has already been adopted to some extent. We gathered from the evidence of the Licensing Officer of the Pietermaritzburg Municipality and other witnesses that in that city there is a special area, known as the Indian quarter, for which applications for new licences by Indians are granted without any question; whereas they are withheld from localities which are regarded as European districts of the town. In Durban also the policy of the local Licensing Officer has always been to confine Asiatic trading to particular sections of the town as far as possible.

*See Mr. Duncan Baxter's reservation at end of Report.

The Commission received very useful evidence upon this point at Maritzburg from Mr. F. A. Hathorn, an old resident, who had evidently given much thought to the question, and had tendered similar evidence in 1885 before the Wragg Commission. He deprecated the action of Natal Municipalities in "trying to achieve the impossible by kicking against the law, and "endeavouring to discriminate between the Asiatic and the European, with the result that "they find themselves to-day no nearer a solution than before."

The solution, in his opinion, lies in equal justice to all; and he strongly advocated that Municipal corporations should have powers to include in their Bye-laws regulations as to European, Asiatic, Coloured and Native quarters; and particularly for the regulating of trading licences in such quarters.

203. Complaints were laid before the Commission by residents of Malvern, Sydenham and other suburbs of Durban, regarding the large number of small tenements occupied by Indians which are scattered about in the midst of valuable European properties in those localities. They consist generally of unsightly and insanitary hovels occupied by Indians of the lowest type. The dwelling often stands in a small plot of ground on which vegetables are grown. Unfortunately they are situated beyond the limits of the Durban Municipality; and the sanitary supervision of the locality is in the hands of a District Inspector, in the service of the Government, who pays it only periodical visits.

What is evidently urgently needed is the creation of an efficient local authority to deal with the insanitary conditions complained of.

ALTERATION OF LICENSING LAWS.

204. In paragraphs 132 to 141 of this Report we have set out in detail those provisions of the respective Licensing Laws of the four Provinces of the Union which are relevant to our enquiry.

If the recommendations of the Commission are to be effectually carried out, and some of the legitimate grievances of the Indian community removed, it will be necessary to make material alterations in the Licensing Laws of the Cape, Transvaal and Natal Provinces. We have already shown that the Orange Free State Province is not directly concerned in the Asiatic problem; nor can it reasonably be expected that that Province would readily assent to a radical alteration of its legislative measures, which are said to have given general satisfaction. On the other hand there can be no doubt that a uniform license law throughout the Union would be of great advantage. If this cannot be achieved, then as regards the other three provinces, where Asiatic traders are found in considerable numbers, we are of opinion that their respective laws relating to the issue of trade licences should be assimilated in a comprehensive consolidating Act of Parliament. Inasmuch as the state of licensed premises, and the suitability of certain classes of trade or business to particular localities, fall peculiarly within the province of Municipalities responsible for the sanitary condition and good government of the town, the local Authority should likewise be charged with the granting of trading licenses.

205. With that end in view we would recommend as follows:—

- (1) The granting of all licenses to trade (not being liquor licenses), or of certificates authorising their issue by a Receiver of Revenue, should in the towns and villages be entrusted to the Local Authorities exercising Municipal functions, with the right however to delegate their powers to a Committee and (or) a licensing officer against whose decisions an appeal should lie to the delegating body;
- (2) for localities outside the limits of those Municipal bodies, to Divisional Councils in the Cape Province; but in those Provinces where no such Councils exist, to special licensing officers appointed for the several districts of those provinces by the Administrator;
- (3) Renewals of existing licences should be granted as a matter of course, subject to No. 9 hereof.
- (4) the various grounds upon which an application for a new licence to trade can be refused by the Licensing body or officer should be specified in the Act or Ordinance;
- (5) the grounds embodied in the Transvaal Ordinance No. 9 of 1912 might be followed as a basis; but it should be made clear that the Licensing body or Officer has the right to refuse such application on any of the following grounds:—
 - (a) That the premises in respect of which the licence is applied for are not suitable;
 - (b) That the class of business proposed to be carried on in them is not suited to the locality applied for.
 - (c) That the applicant is not a fit and proper person to hold such a licence or carry on such business.
- (6) The reasons for the refusal of any licence or certificate should be recorded, together with any evidence that may have been given for or against the application;

- (7) There should be no appeal from any decision of such Licensing body or Officer on grounds 5 (a) and 5 (b); but
- (8) On ground 5 (c), referring to objections to the applicant personally, there should be a final appeal from all Licensing authorities to a special Appeal Board, consisting of three persons of independent judgment appointed by the Administrator of the Province.
- (9) Renewals should be refused by the issuer of licences if he receives notice from the Licensing Authority that the original certificate for its issue has been cancelled or withdrawn on any of the following grounds :
 - (a) that the premises have become unsuitable ;
 - (b) that the business is unsuitable for the locality ;
 - (c) that the business has been conducted in an improper and unsatisfactory manner ;
 - (d) that the holder is a prohibited immigrant ;
 - (e) that the holder is no longer *bona fide* interested in the licence.
- (10) Objections to renewals may be lodged with the Licensing Authority by any member of the public, as well as by the police or health officers ; but before any decision is arrived at, notice of such objections should be given to the licence holder, who must be granted an opportunity of submitting evidence to refute them ;
- (11) Transfer of a licence to another person or to other premises should be granted as a matter of course ; unless the proposed transferee is objected to as not being a fit and proper person to hold the licence, or the new premises are considered unsuitable or are situated in a locality for which the particular business is deemed not to be suited.
- (12) There should be an appeal to the Appeal Board against decisions under (9) and (10) and that portion of (11) which relates to objections personal to the licence holder.
- (13) Except with the consent of the Licensing Authority an applicant for a new licence which has been refused should not be allowed to make another application for a licence for the same premises until the expiration of twelve months from the original application.
- (14) In case of the death of the licence holder, his widow or the legal representative of his estate, and in the case of his insolvency or the assignment of his estate, the trustee or assignee, should be allowed to carry on the business under the same licence, and to renew it, on its expiration, for one year, without obtaining any certificate which may otherwise be required ;
- (15) Municipal bodies should have the right to prohibit the licence holder, his servants or any other person from residing in any shop, store or other place of business.
- (16) The applicant for a new licence to trade (except hawkers' licences) should before obtaining the licence satisfy the Licensing body or Officer that he can read and write in one or other of the official languages.

206. Notwithstanding the objections of some of the witnesses representing Municipalities, we are strongly of opinion that Licensing Authorities should be bound to give their reasons for the refusal of a licence on grounds which are personal to the applicant, and that there should be an appeal from their decision to some independent tribunal. That appears to be absolutely necessary, in order to obviate the course adopted by some Municipal Councils of refusing licences to Asiatics on the sole ground of their nationality.

In the Cape Province, at present, no reason whatever need be given, and there is no appeal from the decision ; in the Transvaal, there is an appeal to the Magistrate, but Municipal Councils shield themselves under the vague and general terms of the Transvaal Ordinance by merely stating that " in the opinion of the Council the applicant is not a desirable person to hold such licence " ; the real reason being the invalid one that he is an Asiatic. In the absence of any provision in the law prohibiting Asiatics from holding licences to trade, such tactics are wholly indefensible.

At the same time, we do not recommend that there should be an appeal from a decision on the two other main grounds, relating to the condition of the premises and the suitability of the business to the particular locality ; for those are matters regarding which Municipal bodies, as representatives of the public, acting on the advice of their Health Officers and other Officials, would be the best judges.

207. The constitution of the Appeal Board recommended is based on that of the existing board in Natal, which consists of a retired Judge of the Supreme Court, an ex-Attorney General and an ex-Magistrate.

It has been in existence since 1916 and has given general satisfaction.

It would probably be found sufficient to appoint one such Appeal Board for each province, with its headquarters at the capital ; although in the Cape Province it may be desirable to have a second board at Grahamstown for the Eastern districts.

There should be no difficulty in finding for that purpose suitable men of independent character and with judicial experience amongst the retired Magistrates and other Government Officials who are generally found resident at those centres.

The duties of such a board are not likely to be heavy, as the appeals would not be very numerous. The mere fact that a right of appeal exists, coupled with the obligation to give reasons for their decision, would suffice to ensure caution on the part of Licensing Authorities.

It is, moreover, obvious that, in places where the system of separate trading areas which we have recommended is adopted, the difficulties connected with the administration of the Licensing laws, so far as Asiatics are concerned, will eventually be greatly diminished, if they do not entirely disappear.

208. We do not recommend any further appeal from the decisions of the appeal Boards, which should be regarded as final. But it may be found necessary in Natal to retain the provision in Act No. 22 of 1909, that, in cases where the renewal of an existing licence is refused, the appeal shall be taken to the Supreme Court. That provision having been inserted in the Act under a special agreement between the Natal Government and the Government of India, it could presumably not be repealed without the assent of the latter Government. As, however, there would now be an appeal to an independent Board from the decisions of all Licensing authorities in Natal, both within and outside the Municipalities, it is not anticipated that there will be any difficulty in obtaining such assent; especially as the cases in which renewals are refused would be comparatively few in number.

209. The suggested provision, that Municipalities should have the right to prohibit licence holders or other persons from residing in any place of business is regarded by the Commission as most important. Our inspection of premises occupied by Asiatics at various places convinced us of the absolute necessity for such a provision. It would prevent overcrowding and greatly improve the sanitary conditions of the business places of Asiatics, thus removing some of the most serious grievances urged against them. It would also tend to raise the standard of living of the Asiatic.

210. The recommendation that in future no new licence to trade should be issued, unless the applicant is able to read and write in one of the official languages, would, like all other provisions of the Licensing Laws, apply to Europeans as well as Asiatics, and coloured persons generally. It cannot be regarded as unreasonable that a trader, whatever his nationality, (unless he is merely a hawker or pedlar), should submit to such an elementary education test.

As far as Asiatics are concerned, a large proportion of future applications for new licences would probably be made by South African born Indians, who have received a certain amount of education.

211. In the Transvaal, Municipal Councils have the right to exercise control over licences to deal in foodstuffs only. These are issued by the Councils and must be held by the trader in addition to his general dealer's licence obtained from the Receiver of Revenue. But the right to issue such licences is optional, and comparatively few Municipal Councils have hitherto availed themselves of the privilege. The Johannesburg Municipality, for instance, according to the evidence of its Licensing Officer, only issues licences "determined by health considerations and street trading," such as licences for tearooms, eating houses, laundries, hawkers, and so on. It does not concern itself with butchers' and grocers' licences, which are included in the general dealer's licence issued by the Receiver of Revenue.

In the Cape Province, a general dealer's licence is included amongst those for which a certificate is required from the Municipality before it can be issued by the Receiver of Revenue.

In Natal all annual licences to trade within the Municipality (not being liquor licences), are issued by a Licensing Officer appointed by the Municipal Council; and that is the system which, we think, will prove most satisfactory, with the safeguards as to appeal and otherwise which we have detailed.

MINIMUM WAGE.

212. In certain centres representations were made that, in order to prevent to some extent the underselling of European traders by Asiatics, a minimum wage for assistants should be enforced and legislation introduced for the purpose. In the course of a lengthy statement submitted to us by the Transvaal British Indian Association, they say "if the complaint of unfair competition be sincere, and thought to be at all deserved, our community is prepared to recommend and conform to legislation regulating the principle of minimum profit and wage on an equitable basis for all ranks of labour."

Apart from other important considerations, compulsion of this kind could be easily evaded if there is a common desire on the part of employees and employers to do so. European witnesses were clearly of opinion that collusion of this nature would be general in the case of Asiatics, particularly owing to the custom prevailing amongst Indian traders of including

board and lodging in the remuneration of their employees. Again, any system of minimum wage would leave untouched the large number of small Indian traders who carry on business either alone or with the assistance of their families.

The purpose of the proposal is obviously not to ensure that the Asiatic employee be paid a living wage, but that he be paid not less than European assistants. It is a frank call for the protection of the European with his higher standard of living against the Asiatic. The subject bristles with difficulties and opens up questions of high policy; for, if the proposal be sound in regard to store assistants, there is clearly no reason why it should not be extended to other occupations, where natives and others are either actual or potential competitors with Europeans.

The object of a minimum wage is to ensure that the wage-earners are paid sufficient to enable them to live in decency and reasonable comfort and in circumstances that will make them good citizens. It is not infrequently advocated with a view to preserving certain occupations for Europeans. To fix a minimum wage with the European standard of living only in view is in effect to exclude from employment other classes with a lower state of efficiency and earning capacity. Minimum wage scales, to be just to all classes and to give effect to their primary object, should therefore be adjusted with due regard to the economic requirements of each of these classes and to their earning capacity. A minimum wage based on the needs of the highest types employed must lead either to the unemployment or to the extravagant pay of people not approaching that standard. These considerations run counter to the idea underlying the proposal put forward by the European traders, and sufficiently explain why we refrain from making any recommendation on a subject which has ramifications far beyond the Asiatic question.

CHINESE TRADERS.

213. In the Cape Province, where the movements of Chinese are very strictly controlled by the Chinese Exclusion Act of 1904, as amended in 1906, no representatives of that race appeared before the Commission, and no representations in regard to them were received. They appear to be a diminishing factor; for, while there were 1,321 adults on the Chinese Register in 1904, only 655 remained at the end of 1919. Of these 264 are resident at Port Elizabeth, 98 at Cape Town, 96 at Kimberley, 38 at Uitenhage, 19 at Wynberg and 11 at Somerset East; the balance being distributed in twos and threes in various other towns. They are generally shopkeepers on a small scale, but a considerable number of them are engaged in laundry work.

214. In the Transvaal, a representative of the Transvaal Chinese Association, who is himself a retail provision merchant on an extensive scale in Johannesburg, gave evidence before the Commission. He urged on behalf of that Association that, as subjects of an important Foreign Power, the Chinese were entitled to the same civil rights as are enjoyed by all other aliens. No objection was raised to the restrictions on Chinese immigration; all that was desired in that respect was to secure the position of their countrymen already in the Transvaal. They claimed that owing to their keen competition they conferred the greatest benefit on the purchasing public. Their request was supported by a petition signed by wholesale merchants, bankers, other business firms and members of the public.

The Chinese also ask that when licences are refused by Municipalities they should be bound to give reasons for their decision, and that in all such cases there should be a right of appeal to the Supreme Court.

215. Further representations were made on behalf of the Chinese community by Mr. L. W. Ritch, an attorney practising at Johannesburg. According to a statement submitted by him, there are about 1,100 Chinese (men, women and children) in the Transvaal occupied as follows:—

Wholesale and retail storekeepers	(about)	500
Laundries	„	100
Vegetable Gardeners	„	40
Kaffir Eating House Keepers	„	100

The remainder are engaged in various callings, such as shop assistants, and so on. Of the above total, which includes approximately 100 families, about 900 are resident in Johannesburg, and 100 in Pretoria; the balance, with the exception of 8 at Potchefstroom, being scattered among the townships along the Reef.

The trading stores are distributed as follows:—

Krugersdorp	11
Potchefstroom	5
Boksburg	9
Pretoria	55
Roodepoort	13
Germiston	2
Benoni	3
Johannesburg	221
	<hr/>
	319
	<hr/>

The money invested is approximately :—

In Stores	£200,000
In Laundries	10,000
In Vegetable Gardens	7,000
	£217,000

A good deal of the evidence given by Mr. Ritch was directed against the administration of the Immigration Act, and does not come within the scope of the Commission's reference.

216. In Natal there are very few Chinese. According to the 1911 Census there were only 163, and their number cannot have increased to any great extent. The Chinese community in Durban, numbering about 50 persons, presented a petition praying that the Commission would advise the Government not to curtail their existing rights.

Although there is no restriction against ownership of land by Asiatics in Natal, it was stated that there was only one case in which a member of the Chinese community had acquired his own business premises; and no property has been acquired by them for residential purposes.

We are not prepared to make any recommendation with regard to the position of Chinese in any of the Provinces of the Union.

GENERAL.

217. A great many allegations of a general character were made as to the dishonest habits of Asiatic traders; they were accused of habitually evading the laws relating to the sale of foodstuffs, giving short weight, and so on; and they were said to be adepts at defrauding their creditors, and contravening the provisions of the Insolvency Laws.

No comparative statistics of convictions for any of the above offences were produced in support of those allegations, and there was an extraordinary conflict of evidence upon the question. A great many European witnesses of repute testified to the honesty and fair dealing of Indian traders, and a considerable number of well-known wholesale merchants described them as thoroughly reliable men to deal with. In fact, complaints were made by European retail traders that Asiatics have an advantage over them, in being able to secure better terms from wholesale merchants.

The only statistics regarding Insolvency were furnished by the Licensing Officer for Natal, which gave particulars of 900 Insolvent estates in that province between 1909 and 1919 (612 Europeans and 288 Asiatics), including 56 European and 156 Asiatic storekeepers. He gave the totals of the assets and liabilities in the 900 estates, from which it appeared that the assets, in proportion to the liabilities, were larger in the estates of Asiatics than in those of Europeans.

If the allegations referred to are correct, the only remedy for the grievances arising from such dishonest practices would seem to be greater vigilance on the part of the authorities in prosecuting offenders.

218. There is more substance in the complaint that the presence of an Asiatic depreciates the value of property in his neighbourhood; although even as to that there was some conflict of evidence amongst European witnesses. But there can be little doubt that as a rule it has that effect; though probably more in the residential than in the trading areas, owing to the strong prejudice prevailing amongst Europeans in this country against living in the immediate vicinity of any of the coloured races.

But, although we heard of a few Indians of a superior class occupying houses on the Berea at Durban, the evidence shows that the general tendency is for Indians of the same social standing to live in the same quarter. As Mr. Renaud pointed out in his evidence previously quoted, they prefer residing amongst their countrymen of the same class as themselves, instead of amongst Europeans who regard them as helots. And if the arrangements which we have recommended as to allocating attractive residential sites for different classes of Asiatics, and concentrating their trading premises, can be carried out successfully, there should be little cause for such complaints in the future.

219. More active steps should be taken to deal with prohibited immigrants who are successful in evading Immigration Officers. At the ports of the Union their detection is comparatively easy; but they generally land at some Portuguese port on the East Coast, and pass surreptitiously through the Transvaal into the Cape Province and Natal; although they do not risk remaining in Transvaal territory, owing to the system of registration which prevails there.

The question of introducing compulsory registration in the Cape Province was mooted at the sittings of the Commission at Cape Town; but the Indian Community strongly objected to the proposal, unless it were made to apply to all races without discrimination.

In Natal, with its large Indian population, its introduction would not be practicable.

[U.G. 4—'21.]

In our opinion, however, illicit immigration could be reduced to a minimum, even in Natal and the Cape, without registration of Asiatics, by a stricter and more drastic administration of the Immigration Acts. For that purpose it will be necessary to invoke more assistance from the Police and Railway Officials, and to increase the staffs of the Principal Immigration Officers.

220. In the Transvaal the senior Police Officer in each town is appointed an Immigration Officer ; he receives strict written instructions specifying his duties in connection with Asiatics, and as opportunities arise an official from the Immigration office visits the towns. On these visits the Police Officials are instructed as to their functions and powers in connection with prohibited immigrants. The other two Principal Immigration Officers, at Cape Town and Durban, are so pressed with work in connection with European and other immigration at the Ports that with their present staffs these special steps cannot be taken.

Sub-section (1), Section eight of Act 22 of 1913 provides that " No prohibited immigrant shall be entitled to obtain a licence to carry on any trade or calling in the Union or (as the case may be) in any province wherein his residence is unlawful or to acquire therein any interest in land, whether leasehold or freehold, or in any other immovable property."

In the Transvaal measures are taken to obtain from all trade-licensing authorities a copy of every application form made by an Asiatic for a trade licence, and we were informed that the examination of these licence forms provided a very efficient check on illicit immigration.

Similar steps should be taken in Natal and the Cape, and in all of the provinces the Registrar of Deeds should before passing transfer ascertain from the Immigration Department whether purchasers of land are prohibited immigrants.

221. In the course of his statement, submitted to the Commission, Sir Benjamin Robertson said :—

" It has been the object of the present deputation to impress on the Indian community in South Africa that they should look to the Government of the country in which they live for redress of their grievances, and should loyally co-operate with the Union Government in any measures which may be taken for their welfare. At the same time, if the need for a more constructive policy is accepted, it may perhaps be permitted to suggest that more direct personal relations would be desirable. It is recommended that the administration of the Asiatic policy of the Union Government should be entrusted to a responsible official in whom the Indian community has confidence."

He also suggested that there should be an Asiatic department with an officer in the Transvaal and another in Natal to superintend Asiatic affairs.

In addition to his wide and life-long experience as a distinguished official of the Government of India, Sir Benjamin Robertson, during his two visits to South Africa in 1914 and 1920 as the representative of that Government, acquired an intimate knowledge of all the aspects of the Asiatic question ; at the same time he gained to a remarkable degree the esteem and respect of the whole Indian community, who placed unbounded confidence in him. His views generally are therefore entitled to the serious and anxious consideration which we have given to them ; and they have indeed been of the greatest assistance to us in our deliberations, although we have not always been able to give effect to them in our recommendations. But on this question, at any rate, we are in entire agreement with him.

222. We would accordingly recommend that the administration of the Asiatic policy of the Union Government should be placed in the hands of one official, under whose charge would come all administrative functions, together with the official records relating to Asiatics. This officer should also be entrusted with the duty of securing full statistics regarding Asiatics in the Union and of the arrivals in and departures from South Africa. Details of all applications for trade licences, and transactions in connection with the purchase of land and property made by Asiatics throughout the Union, should be sent to him in order to ensure the enforcement of the provisions of Section eight of Act 22 of 1913, above set out.

On the other hand, he should keep in close touch with the various sections of the Indian community, see that the laws are applied in a just manner, give a ready ear to any complaints or grievances and generally safeguard their interests.

223. A certain amount of discretionary authority is entrusted to the Minister in charge of the Immigration Department by the Immigrants Regulation Act No. 22 of 1913. Sub-section (1) of Section twenty-five of that Act authorises the Minister to issue a temporary permit to any prohibited immigrant to enter and reside in the Union or any particular province upon such conditions as may be lawfully imposed by regulation.

Under the regulations the temporary permit . . . " shall entitle such person to enter the Union or any particular Province or to tranship to another vessel, or to pass through the Union or any particular Province to some destination beyond, or to reside temporarily in the Union or any particular Province for some approved purpose."

The section quoted is rather vaguely expressed, and it is said to have received a somewhat liberal interpretation during recent years, by permitting the residence in the Cape Province of a number of prohibited immigrants.

The exercise of such indulgence was no doubt considered necessary or expedient in view of the peculiar and extraordinary circumstances which prevailed during the war period.

But we would suggest that in order to remove the doubts, as to the effectual prevention of illicit entry into the Union by Asiatics, which are apparently entertained by a considerable section of the public, the various provisions of the Immigrants Regulation Act should be rigidly enforced; and that the discretionary powers conferred upon the Minister by the Act should in future be sparingly used.

224. It would be vain to expect that the recommendations which we have made will satisfy either the Asiatic community as a whole or their opponents amongst the European population; but it is hoped that they will meet with approval from moderate and reasonable men of both races, who are willing to be guided by a calm consideration of the facts and circumstances connected with this most difficult problem.

Repatriation being out of the question, and further immigration of Asiatics being prohibited, the serious and important problem must be faced, how to deal with those who are domiciled in the country and have the right to remain in it.

Their numbers are limited and cannot increase in any Province of the Union to any material extent, except by the normal excess of births over deaths; for by the Immigrants Regulation Act of 1913 immigration is barred not only from overseas but also from one Province to another.

The Indian community have accepted the restrictions on inter-provincial migration, and do not ask for their removal.

In the Transvaal, the evidence and statistics which have been summarised in this Report should go far to remove the misconception and allay the ill-founded alarm prevailing amongst some sections of the community regarding the "Asiatic menace."

It seems inconceivable that, in the circumstances mentioned, the few thousands of Asiatics in that Province and their descendants could ever succeed in swamping the European population, as has been so frequently and emphatically asserted.

We find ourselves wholly unable to support the policy of repression which was advocated by some of the witnesses. Indiscriminate segregation of Asiatics in locations and similar restrictive measures would result in eventually reducing them to helotry. Such measures, apart from their injustice and inhumanity, would degrade the Asiatic and react upon the European.

SUMMARY OF RECOMMENDATIONS.

225. The following is a summary of the various recommendations which appear throughout this Report:—

- (1) Law 3 of 1885 (Transvaal); the Gold Law of the Transvaal (Act No. 35 of 1908) and Act No. 37 of 1919 should not be repealed (paragraph 198).
- (2) There should be no compulsory repatriation of Asiatics (paragraph 118); but
- (3) Voluntary repatriation should be encouraged as outlined in our Interim Report submitted in May, 1920 (paragraph 119).
- (4) There should be no compulsory segregation of Asiatics; but
- (5) A system of voluntary separation should be introduced under which municipalities should have the right, subject to certain conditions
 - (a) to lay out residential areas for Asiatics;
 - (b) to set aside certain streets or portions of the town for Asiatic traders, to which existing licence holders should gradually be attracted.
- (6) These areas should be selected and allocated by a board of independent persons, in consultation with the Municipal Council and Asiatic community (paragraphs 120 to 131 and 200-201).
- (7) In Natal the right of Asiatics to acquire and own land for farming or agricultural purposes, outside townships, should be confined to the coast belt, say, 20 to 30 miles inland (paragraph 199).
- (8) Law 3 of 1885 (Transvaal) should remain applicable to the Vryheid, Utrecht and Paulpietersburg districts of Natal (paragraph 178).
- (9) The existing laws relating to Asiatics in Zululand and the Transkeian Territories should remain unaltered (paragraphs 179 and 189).
- (10) A uniform "Licence Law" applicable to all the Provinces of the Union should, if possible, be enacted. If that is impracticable, the laws relating to the issue of

Trade Licences in the Cape Province, the Transvaal and Natal should be assimilated in a comprehensive consolidating Act of Parliament providing, *inter alia* :—

- (a) That the granting of all licences to trade (not being liquor licences) shall be entrusted to municipal bodies within the area of their jurisdiction; outside those areas, to Divisional Councils in the Cape Province, and in the other Provinces to special Licensing Officers appointed by the Administrator.
 - (b) The grounds upon which an application for the grant of a new licence may be refused.
 - (c) That the reasons for the refusal to grant any licence shall be recorded, together with any evidence tendered for or against the application.
 - (d) That, in the case of the refusal of a licence on the ground that the applicant is not a fit and proper person to hold the same or to carry on the proposed business, there shall be a final appeal to a Special Appeal Board, appointed by the Administrator.
 - (e) That municipal bodies shall have the right to prohibit the licence holder, or any other person, from residing in any shop, store or other place of business (paragraphs 204 to 211).
- (11) There should be no relaxation in the enforcement of the Immigration Laws, and more active steps should be taken to deal with prohibited immigrants who have evaded the provisions of those laws (paragraphs 219 to 223).
- (12) The administration of the Asiatic policy of the Government should be placed in the hands of one official with duties as set out in paragraph 222.

226. In conclusion, we desire to express our appreciation of the assiduity and efficiency with which the Secretary to the Commission discharged his duties.

JNO. H. LANGE,
Chairman.

JAS. S. WYLIE (a)

H. J. HOFMEYR.

W. DUNCAN BAXTER.

Cape Town,

3rd March, 1921.

(Subject to reservation below.)

RESERVATION BY MR. BAXTER.

I dissent from the recommendation contained in paragraph 199 of this Report, viz.: that the right of Asiatics to acquire land in Natal for farming and agricultural purposes should be restricted to the Coast Belt. It seems to me a retrograde proposal, inconsistent with other recommendations in the Report, which are founded on the idea of voluntary separation and not compulsory. It is also a restriction of existing rights of ownership, and, in the case of ex-indentured Indians and their descendants, a breach of the conditions of recruitment, which I think should be scrupulously adhered to in the interests of good feeling and the sense of fair-play, so necessary in our relations with the Indians in South Africa and the Government of India.

With a policy of attracting Indians to the Coast Belt by good treatment and security of tenure I am in agreement. I go further and believe that it would be an act of wisdom on the part of the Government to acquire land in that part of Natal and lease it on favourable terms to Indians. The climate and agriculture of the Coast Belt are admittedly those best suited to Indian enterprise, and if such a policy were effectively carried out, it would not only be to the advantage of the Indian cultivators and the consuming public, but it would tend also to relieve the fear of an Indian "invasion" held by European farmers in the uplands of Natal.

W. DUNCAN BAXTER.

(a) General Wylie left for England after hearing the evidence and discussing with the other Members of the Commission the main recommendations contained in this Report. A copy of the Draft Report was subsequently sent to him in England. It received his concurrence and he authorised the Chairman to append his signature.



Statement made by Sir Benjamin
Robertson before the Asiatic Enquiry

:: :: :: Commission. :: :: ::

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II

PART I.

Historical.

The Indian community in South Africa has its origin in the indentured labour which was introduced by Natal between 1860 and 1911 for the development of her industries, and more especially for the sugar and tea plantations. This indentured labour came in two streams, one from Madras and the other from Upper India through the port of Calcutta. It was recruited mainly from the agricultural labouring classes; and the majority of the immigrants who have settled in the country on the expiry of their indentures, and their descendants, are still connected with agriculture, being either employed by planters and farmers or settled on their own land as market gardeners. A considerable number, however, have taken to other occupations, such as household service, industrial labour, both skilled and unskilled, employment on railways and under Municipalities, clerical work, trading, and even the learned professions. With few exceptions, the Indians of this class are confined to Natal. South Africa is now their home. Few of the Colonial-born have seen India, and an ever increasing number can scarcely speak or understand any Indian language.

Origin of the Indian community in South Africa. (a) Indentured labour.

It should be emphasised that there has never been any spontaneous emigration of the labouring classes from India to South Africa. Those who came were recruited with difficulty, and not infrequently by methods which were commonly known in India as "coolie catching."

2. In the wake of the indentured labourer came the trader, who is generally a Mahomedan from the Bombay Presidency and is commonly mis-named "Arab" in South Africa. He came first to supply the wants of the indentured labourer; but when once established here, he quickly extended his dealings to natives and Europeans. These Bombay Mahomedans have for centuries traded along the East Coast of Africa and up the Persian Gulf as well as in Burma and the further East. They are men of considerable enterprise; and until ingress was prohibited, they spread into the Transvaal and the Cape Province, finding a peculiarly favourable field for their activities in the pioneer development of the Transvaal which followed the gold rush. Generally they maintain a close connection with India, which they still regard as their permanent home.

(b) The traders.

Here again the recruiting ground is limited. Indeed, a considerable proportion of these Mahomedan traders come from the single district of Surat, at the mouth of the river Tapti, which was formerly an important port on the west coast of India, but has sunk into comparative insignificance as commerce has concentrated on Bombay and Karachi. It is largely the traders of this decayed port and its neighbourhood who have found an outlet in South Africa.

3. The Government of India have always felt a peculiar responsibility for the welfare of the Indians in South Africa. Apart from the interest which the Government of any country must feel for its nationals overseas, they could not but acknowledge special obligations to a community which originated from an organised system of recruitment to which they had assented. Nor have the Government of India been able to distinguish between the labourer who was directly recruited, and the trader who followed him. They have always held that the case of all the Indians in South Africa must be regarded as one. Thus, for instance, in 1899 and again in 1903 they pressed *inter alia* for an amendment of the Natal trade-licensing law, so as to allow an appeal to the Supreme Court against refusal of a licence, as a condition of the supply of indentured labour; and the Natal Act No. 22 of 1909 was actually passed as consideration for the postponement of the prohibition of further immigration. Again, in 1903, when it was desired to recruit Indian labour for the Transvaal, the Government of India refused to agree to such recruitment unless the restrictions imposed upon Indians generally in the Transvaal were substantially modified.

Responsibility of the Government of India.

4. Their responsibility appears to the Government of India to be especially heavy in those Provinces where Indians have not been granted political rights. In the Cape Province, where Indians enjoy the parliamentary franchise, it is felt that they should find a remedy for their grievances by constitutional methods through the exercise of the vote. In Natal, again, where they have the municipal franchise, Indians have some means of protecting themselves against abuse of

the powers exercised by Municipalities in the granting of trade licences and so on. But in the Transvaal, where Indians are politically helpless, the Government of India have felt bound to defend their interests by every possible means. At the Imperial Conferences of 1917 and 1918, it was submitted that the true remedy for this controversy regarding trading rights was the grant of the franchise, or at least of the municipal franchise, which would enable the Indian community to work out their own salvation as subjects of the Union. The Government of India recognise that such a remedy would not at present be acceptable to the majority of the electorate. But, at the same time, it may be observed that in the Cape Province there are practically neither Indian grievances nor anti-Indian agitation; and that the difficulties which have led to the appointment of this Commission have been forced by a Transvaal Municipality.

Attitude of the Government of India towards emigration to South Africa.
(a) Emigration under indenture.

5. The Government of India were at first not averse to the emigration of indentured labour to Natal. It was believed that it would relieve the congested districts of India, and would offer the emigrant a wider and more prosperous career. At that time, it should be observed, the Natal authorities actually encouraged permanent settlement by offering grants of land in lieu of a return passage to India; and until 1895 the terms of indenture provided that the immigrant should remain in the Colony for five years after the expiry of his indenture. Afterwards, however, as the number of free Indians settled in the Colony increased, public opinion demanded that measures should be taken to secure the return of the indentured labourers as soon as their indentures expired. The history of the negotiations which followed, is summarised in the Report of Sir William Solomon's Commission, and shows that the Government of India were prepared to go far to meet the wishes of Natal in discouraging permanent settlement. In doing so, the Government of India abandoned the objects for which the emigration of indentured labourers had first been approved. Their object now was to secure fair treatment for the Indians already settled there. As they put it in their despatch, dated the 14th May 1903, to the Secretary of State for India:

"We are constrained to recognise the fact that if emigration is to continue, and if reasonable treatment is to be secured for Indian settlers in Natal, measures must be taken to prevent that rapid increase in the numbers of the settlers which has been so marked in recent years. We realise that if those numbers should continue to increase greatly, the Colonial anti-Indian feeling would become intensified and would be more difficult to control, especially in the towns. The irritation excited against the Indian might take shape in measures or action which would cause increased ill-feeling and resentment in this country, and might even become a source of embarrassment to the Imperial Government."

The Government of India were now indeed completely disillusioned of the benefits which might accrue to India from the emigration of indentured labour to South Africa. Their attitude at this time is clear from a note, dated the 23rd May 1904, by Lord Curzon regarding the supply of indentured Indian labour for the Transvaal railways, which was being pressed upon the Government of India strongly as an Imperial need:—

"He (Lord Milner) regards it as 'deeply to be deplored that the Government of India should refuse to permit its subjects of the labouring class to come to this country.' The fact is that we are not in the least anxious for the Indian to go to the Transvaal at all. The relief thereby given to our Indian problem is infinitesimal: and we only lay up for ourselves a crop of troubles in the future. Outside the Government of India itself, where the Imperial sentiment is strong, I know of no class, community or individual in India who wants the Indians to have anything to do with the Transvaal. The bitter example of Natal is before them."

Finally, in 1908 the Government of India decided to prohibit the further emigration of indentured labour to Natal. The reasons for this decision were stated in Mr. (now Sir B.) Robertson's letter, dated the 18th December 1908, as follows:—

"It is more particularly in view of the continued failure to secure the necessary amendment of the Dealers' Licences Act that the question of prohibiting emigration to Natal has again been raised. After giving their best consideration to all the issues involved, the Government of India have formed the conclusion that emigration to Natal should be stopped. So long as Natal maintains her present attitude, they consider that they would not be justified in permitting the continuance of a system which must have the effect of increasing the number of Indians who may ultimately be affected by the measures adopted by the Colony. With a constantly increasing free Indian population, the divergence between the Indians' and the Colonists' standpoints will necessarily become more marked, the points of friction with the Colonial authorities must inevitably be multiplied, and the difficulties which have to be faced in ensuring fair treatment will similarly be aggravated."

Subsequently, however, on the earnest representations of the Natal Government the Secretary of State for India, on behalf of the Government of India,

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agreed to permit the emigration of indentured Indians for a further period not exceeding one year, on condition that a law was enacted allowing a right of appeal to the Supreme Court against a refusal to renew a dealer's licence. The Natal Act No. 22 of 1909 was in consequence passed, and the Secretary of State for India then gave the following assurance to the Colonial Office in the India Office letter, dated the 2nd December 1909 :—

"I am to say that as the Government of Natal have passed an Act amending the Dealers' Licenses Act, so as to give a right of appeal to the Supreme Court against the withdrawal of licenses, the Secretary of State in Council gives an assurance that the emigration of indentured Indians will not be stopped until the Union Government has come into existence and decided on its future policy in the matter. It is understood that the duration of this period will not exceed one year from the present date."

The emigration of indentured labour to Natal was finally prohibited by the Government of India with effect from the 1st July 1911.

6. The attitude of the Government of India towards free emigration has been guided by similar considerations. They regretted the necessity for restrictions which excluded British Indian subjects from South Africa, but they accepted the prohibition of further immigration in order to secure the fair treatment of those who were already lawfully settled there. Thus the Secretary of State for India in his despatch, dated the 21st July 1897, while accepting the Natal Immigration Restriction Act of 1897, considered himself "entitled to demand fair and equitable treatment, involving complete equality before the law," for those Indians who had already been allowed to settle in Natal or who might hereafter under the new Immigration law be permitted to do so. The Cape Immigration Acts of 1902 and 1906 followed. The Transvaal Immigrants Restriction Act of 1907 was commended to the Secretary of State for India in the Colonial Office letter, dated the 5th January 1906, in the following terms :—

"I am to state that it appears to Lord Elgin (then Colonial Secretary) that, in order to secure the fair treatment of the Indians now in the Colony, Lord Selborne (then Governor of the Transvaal) suggests that His Majesty's Government should be prepared to approve legislation having the practical effect of excluding Asiatics from entering the Transvaal in future. Lord Elgin regards this as the only possible course to adopt in the circumstances."

The Secretary of State for India in a letter, dated the 31st January 1906, replied as follows :—

"The Secretary of State for India in Council, while regretting the necessity for a step which entails the practical exclusion of natives of India from a British Colony, agrees with Lord Elgin that the compromise proposed by Lord Selborne is likely to afford the only practicable solution of this difficult question."

The Union Immigrants Regulation Act, 1913, was regarded as a continuation of the same policy.

8. It will appear from the assurance given by General Smuts at the Imperial Conference of 1917 that the Union Government on their side understood and accepted the position of the Government of India. General Smuts then said :—

"I wish to say a few words, Mr. Chairman, on this subject, especially as the matter of the treatment of Indian immigration in South Africa, as you know, has been a cause of constant trouble, not only between us and the Empire of India, but between us and the Colonial Office and the India Office. I agree with the former speakers that a departure has been made in this Conference, in bringing the representatives from the Empire of India to this Conference, which will go far to obviate the recurrence of such troubles in the future. In South Africa there has been this fundamental trouble, that the white community have been afraid of opening the door too wide to Indian immigration. We are not a homogeneous population. We are a white minority on a black continent, and the settlers in South Africa have for many years been actuated by the fear that to open the door to another non-white race would make the position of the few whites in South Africa very dangerous indeed. It is because of that fear, and not because of any other attitude towards the question of Asia, that they have adopted an attitude which sometimes, I am bound to admit, has assumed the outward form, although not the reality, of intolerance. Luckily we have got over these difficulties. The visit of the late Mr. Gokhale to South Africa did an enormous amount of good. His visit was followed later by the visit of Sir Benjamin Robertson, a distinguished public servant of India, who also assisted the Government to overcome great difficulties on this point some years ago. The result has been the passage of legislation to which both the white and the Indian communities in South Africa agreed. There is still a difference of opinion on administrative matters of detail, some of which are referred to in the memorandum which is before us, but I feel sure, and I have always felt sure, that, once the white community in South Africa were rid of the fear that they were going to be flooded by unlimited immigration from India, all the other questions would be considered subsidiary and would become easily and perfectly soluble. That is the position in which we are now—that the fear which formerly obsessed the settlers there has been removed: the great principle of restricting immigration for which they have contended is on our Statute book with the consent of the Indian population in South Africa and the Indian authorities in India, and,

General Smuts' assurance at the Imperial Conference of 1917.

that being so, I think that the door is open now for a peaceful and statesmanlike solution of all the minor administrative troubles which occurred and will occur from time to time. Of course the main improvement has been the calling of India to the Council Chamber of the Empire. Here, if any question proves difficult of treatment, we can discuss it in a friendly way and try to find in consultation a solution, and I am sure we shall ever find it. I for one do not consider that amongst the multitudinous problems which confront us in our country, the question of India will trouble us much in the future."

The Reciprocity Resolution of the Imperial Conference of 1918.

9. This understanding was confirmed at the Imperial Conference of 1918, when a Reciprocity Resolution was accepted by both parties. This Resolution runs as follows:—

"1. 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.

"2. British citizens domiciled in any British country, including India, should be admitted into any other country for visits, for the purpose of pleasure and commerce, including temporary residence for the purpose of education. The conditions 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 country.

"(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 *visa* 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.

"3. Indians already permanently domiciled in the other British countries should be allowed to bring in their wives and minor children on condition, (a) that not more than one wife and her children shall be admitted for each such Indian and (b) that each individual so admitted shall be certified by the Government of India as being the lawful wife or child of such Indian.

"4. The Conference recommends the other questions covered by the memoranda presented this year and last year to the Conference by the representatives of India in so far as not dealt with in the foregoing paragraphs of this Resolution, to the various Governments concerned with a view to early consideration."

The memorandum presented in 1918, which is referred to in paragraph 4 of the Resolution, specifically considers some of the questions which are now before the Commission, and an extract of the portions which are relevant to the Commission's enquiries, is added as Appendix A to this statement.

Mr. Burton, on behalf of the Union of South Africa, accepted the Resolution in the following words:—

"The matters which were raised by Sir Satyendra Sinha and the Maharajah (the Indian representatives) in connection with this question, present, I suppose, some of the most difficult and delicate problems which we have had to deal with, and which it is our duty as statesmen to attempt to solve satisfactorily if the British Empire is to remain a healthy organisation. I am sure we all feel, as far as we are concerned—I have told Sir Satyendra myself that my own attitude has been, and I am sure it is the attitude of my colleagues—sympathetic towards the Indian position generally. There are, of course, difficulties, and it would be idle to disguise the fact that many of these difficulties are of substantial importance, which have to be faced in dealing with this matter. But I do not despair of satisfactory solutions being arrived at.

"Sir Satyendra Sinha has been good enough to refer to the attitude adopted by Canada and ourselves in discussing this matter in Committee, and I think it is only right from our point of view to add that the possibility of arriving at a satisfactory solution on this occasion has been due very largely indeed to the reasonable and moderate attitude which the Indian representatives themselves have adopted. But for that, of course, the difficulties would have been ever so much greater. As far as we are concerned, it is only fair to say—and it is the truth—that we have found that the Indians in our midst in South Africa, who form in some parts a very substantial portion of the population, are good, law-abiding, quiet citizens, and it is our duty to see, as he himself expressed it, that they are treated as human beings, with feelings like our own, and in a proper manner.

"As to the details, I need not go into all of them. Paragraph No. 3 embodies, as a matter of fact, the present law of the Union of South Africa. That is our position there, so that our agreement as to that is no concession. I pointed out to Sir Satyendra when we were in Committee that in some of these points which he brought up as affecting South Africa, I thought in all probability, if he were in a position to investigate some of them himself, he would find that the complaints had been somewhat exaggerated. I cannot help feeling that that is the case, but I will not go into these matters now. As far as we are concerned in South Africa, we are in agreement with this Resolution, and also with the proposal referring the Memorandum to the consideration of our Government, and we will give it the most sympathetic consideration we can, certainly."

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10. The Government of India have thus agreed that further immigration of Indians into the Union should be prohibited. They themselves stopped indentured emigration to Natal, and they refused to allow indentured emigration to the Transvaal. They accepted the various Immigration Restriction Acts passed by the Colonies before Union. They accepted the Union Immigrants Regulation Act of 1913. They accepted the Resolution of the Imperial Conference of 1918 that each community of the British Commonwealth should enjoy complete control of the composition of its own population by means of restriction on immigration from any of the other communities. They have gone further than this, for they have acquiesced in the extension of the principle of the Resolution to the different Provinces of the Union; and they do not ask for any relaxation of the laws regulating inter-provincial migration until the Provinces themselves are satisfied that such relaxation will not be harmful.

Position of the
Government of
India.

11. On their side, Governments in South Africa have from time to time given undertakings and assurances that Indians who are lawfully settled in the country, will be fairly treated, and their existing rights safeguarded. The assurances given by General Smuts in 1917 and by Mr. Burton in 1918 have already been quoted. Previous undertakings in regard to particular laws are summarised below. In addition, there was the so-called Smuts-Gandhi agreement of 1914, to which the Government of India were not a party but were in a sense a witness. Recently there appears to have been a tendency to narrow unduly the application of this agreement; and in the Transvaal it seems to have been construed as an undertaking by the Indians there that they would apply for no new trading licences. The correct interpretation of the agreement in regard to trading in the Transvaal is examined in more detail later on. It is desired to emphasise here that the agreement is of general application to the whole of the Union. As reported to the Government of India, it is embodied in two letters, both dated the 30th June 1914, exchanged between Mr. Gorges, then Secretary to the Department of the Interior, and Mr. Gandhi. The Union Government undertook to give relief on the points in issue in the passive resistance movement, and in consideration of this undertaking passive resistance was ended. One of the points in issue, as stated by Mr. Gandhi in his letter dated the 21st January 1914 to the Minister of the Interior, was "an assurance that existing laws especially affecting Indians will be administered justly and with due regard to vested rights." The required assurance was given by Mr. Gorges in his letter, dated the 30th June 1914, in the following terms:—

Position of the
Union Government.
The Smuts-Gandhi
agreement.

"With regard to the administration of existing laws, the Minister desires me to say that it always has been and will continue to be the desire of the Government to see that they are administered in a just manner and with due regard to vested rights."

The Government of India interpret this undertaking as implying that no new law would be passed imposing fresh restrictions on Indians. An undertaking to administer existing laws in a just manner appears to them to be meaningless, if the rights which Indians are entitled to exercise under those laws can be restricted at will by fresh legislation. The writer of a South African article in the March number of the "Round Table" has stated that this was generally admitted in South Africa at the time. "It would probably be fair to say," he writes, "that all reasonable men in South Africa at that time recognised that new difficulties would arise and would have to be met; and that in meeting them they would be bound by no obligation except that of at least maintaining the Indian in the status which he acquired in 1914."

12. In addition to the general undertakings applicable to the Union as a whole, special obligations have been incurred by particular Provinces. The memorandum which has been placed before the Commission by the Natal South Coast Indians is a clear and cogent statement of the peculiar claims of the indentured Indians and their descendants in Natal. It will be admitted that it would be inequitable to deprive them or their descendants of rights which were open to them at the time of their introduction into the Colony, and were in effect conditions of their recruitment.

Provincial under-
takings.
(a) Natal.

Again, as has already been stated in paragraph 5, the Natal Act No. 22 of 1909, providing for an appeal to the Supreme Court against refusal to renew a dealer's licence, was the condition on which indentured emigration was permitted for another year. Natal has received full consideration for this Act, and is not now free to repeal it.

(b) Transvaal.

13. The history of the Transvaal legislation relating to land and trading rights is complex, and has not always been clearly understood. It may be admitted at once that Transvaal Governments from 1885 onwards have desired to take legal power to restrict Asiatic trading and to compel Asiatics to reside in locations. It is common ground that Asiatic trading has not been effectively restricted, nor do Asiatics ordinarily reside in locations. It is the contention of the representatives of the South Africans' League who have appeared before the Commission, that Asiatics have systematically evaded or ignored the restrictive laws which have from time to time been passed. This, however, is not the reason for the divergence between the apparent intention and the actual operation of the laws. The true position is this. Article XIV of the Convention of London of 1884 secured for all persons, other than natives, the right to reside in any part of the Transvaal, the right to trade, and the right to hire or possess houses and business premises. The British Government objected to any law aimed at Asiatics which appeared to violate the spirit of this Article; and later, they consistently asked for assurances, both from the Crown Colony and the Responsible Government, that the existing rights of Indians were safeguarded, before assenting to any legislation which appeared to affect those rights. It is admitted that the assurances given from time to time may have been open to misunderstanding; and laws, which have been assented to as sanitary or police measures, are capable of being used to restrict trading. But with rare exceptions they have not been so used by the Government; and it was not until the Municipalities established their *locus standi* before the Courts, that the position became acute.

14. A detailed account of this legislation is given in Appendix B to this statement. A summary will be sufficient here:—

(1) Law No. 3 of 1885, as amended by the Volksraad Resolution of 1886, was accepted by the British Government as a *sanitary* measure; and it was understood that it would not apply to traders and other persons of a superior mode of life (not being coolies) whose relegation to locations was not necessary on sanitary grounds.

Subsequently, the Republican Government claimed that the law applied—

(a) to all Asiatics alike;

(b) to business premises as well as to residences.

In 1895 the dispute was referred to the arbitration of Mr. Melius de Villiers, then Chief Justice of the Orange Free State, who held that the interpretation of the law should be left to the ordinary courts.

In 1898, in Tayob Hadji Mohammed Khan's case, it was held that the law covered a merchant's place of business. This decision was reversed in 1904 in Habib Motan's case. It was then held that the law did not apply to the business places, but only to the residences of Asiatics, and that the Government had not the power under that law to refuse to grant to Asiatics licences to trade in places outside locations.

(2) The Gold Law of 1898, No. 15 of 1898—

(a) by section 92 prohibited any but white persons from being the holders of stands granted under that section;

(b) by section 133 prohibited coloured persons from holding licences, such as diggers' and claims' licences, or from being in any way connected with working of the diggings.

But—

(a) it did not prohibit coloured persons from acquiring and exercising leasehold rights to such stands;

(b) it did not prohibit coloured persons from holding licences to trade on the diggings.

This is the law as it was interpreted in Khotas' case in 1909 and confirmed in Tamblin's case in 1911. And this is the law as it was actually administered, for otherwise the Khotas and Tamblin cases would not have arisen.

(3) The Vrededorp Stands Ordinance, No. 31 of 1906, as amended by the Vrededorp Stands Act, No. 27 of 1907, prohibited Asiatics, natives or coloured persons from residing on or occupying stands in the township of Vrededorp.

This legislation was assented to on the ground that these stands had been granted by President Kruger to indigent burghers for their personal occupation, and hence occupation by an Asiatic would be a breach of the conditions of the grant. This was regarded as a special case, and it followed by implication that this restriction did not extend beyond the stands in the township of Vrededorp.

(4) The Gold Law of 1908, No. 35 of 1908, and the Townships Amendment Act, No. 34 of 1908, together have the general effect of prohibiting coloured persons from residing on or occupying any land proclaimed as a public digging. Before assenting to this legislation, the British Government obtained the following assurances :—

(a) that any rights which coloured persons might at that time have of occupying land in mining areas, were safeguarded ;

(b) that no right or privilege which a coloured person had at that time, was taken away by the new Act ;

(c) that the powers reserved to the Mining Commissioner would enable him in the future to exempt Asiatics of superior class from living in bazars, locations or compounds.

As the value of these assurances is sometimes obscured by disputes as to the precise meaning which should be attached to the word "rights," it is important to notice that the Colonial Secretary in his telegram dated the 11th December 1908, definitely enquired, with special reference to the former Gold Law, No. 15 of 1898, whether the new law would "deprive those coloured persons who had not actually acquired vested rights on gold fields, of power to acquire rights which were open to them before." The intention of the Law of 1908, as explained by the Attorney General in his report, dated the 3rd October 1908, was—

(i) to continue the existing law which reserved for white persons the right to acquire mining title or privileges incidental thereto ;

(ii) as a matter of sound police and sanitary legislation to regulate the residence of coloured persons in the populous mining areas of Witwatersrand.

The word "trading" or its equivalent does not occur in the report. It has been seen that Law No. 15 of 1898 did not prohibit Asiatics from trading in mining areas. If, therefore, the Law of 1908 is now used to prohibit Asiatics from trading in mining areas, then either it is being used for a purpose which is contrary to its intention, or else that intention was not made clear to the British Government when their assent was obtained.

(5) The indirect ownership of property by Asiatics dates from 1888, when the Republican Government permitted one Mohamed Ismail to register certain stands which he had purchased at a Government sale at Klerksdorp, in the name of the Mining Commissioner as trustee. It is understood that there were subsequently other cases in which the Mining Commissioner was appointed as trustee, and in one case certainly, under Crown Colony Government, the trustee was the Colonial Secretary. Indirect ownership through a private person as nominal trustee also became common. The trustee frequently passed a mortgage bond in favour of the real purchaser and also gave him an irrevocable power of attorney. From 1909, when the Transvaal Companies Act, No. 31 of 1909, was passed, Indians began to form themselves into limited liability companies for the purpose of acquiring fixed property, and in recent years this method of ownership has generally been preferred to the old practice of ownership through a nominal trustee.

Value of past undertakings.

15. Much of the evidence recorded by the Commission ignores altogether the undertakings and assurances which have been given in the past. In the Transvaal it is apparently considered that the alleged evasion of the Smuts-Gandhi agreement, which is discussed in paragraphs 54 to 58 below, is a sufficient reason for denouncing all obligations, whether to the Indians in South Africa or to the Government of India or to the British Government. Elsewhere not even this pretext has been put forward; and one view would seem to be that self-preservation justifies the repudiation of any undertaking. As a representative of the Natal Agricultural Union put it:

“When relations between two nations reach breaking point, documents are torn up as was instanced in the late war, and it appears to me that in connection with this question relations are reaching breaking point.”

It is assumed that the recommendations of this Commission will be framed on the understanding that these undertakings and assurances will not be dishonoured.



PART II.

The Present Situation.

16. It is unnecessary to traverse in detail the indictment which has been framed against the Asiatics. Some of the charges are trivial or refer to matters which can be dealt with under the ordinary laws. Others, again, are mutually destructive. It is alleged, for instance, that Asiatics are dishonest as traders and are specialists in offences against the insolvency laws : but it is also complained that the wholesale merchants give better terms to Asiatic than to white retail dealers. Again, it is objected in the Transvaal that the high proportion of males in the Asiatic population is unhealthy : and yet there is an outcry that they are allowed to bring their wives from India. It is complained that their trading promotes an undesirable intimacy which may even lead to "miscegenation" : and simultaneously it is objected that they are a foreign community which will not assimilate with the South African people. The Asiatic is condemned as a bad citizen who has no interest in the public affairs of South Africa : but his aspirations for civic and political rights are regarded as a threat to the white community, and his success in trade is dreaded as a channel through which his influence grows and expands. He is blamed as a poor spender : but any attempt to find an outlet for expenditure is either resented or prohibited. He is told that he ought to invest more money in the country : but he is prevented from acquiring fixed property by special legislation in the Transvaal, while in Natal his investments are a menace for which the only remedy is expropriation. In the Transvaal he is abused as an unproductive parasite, who does not add to the wealth of the country by farming or starting factories : but at the same time the public are warned that, if his progress as a trader is maintained, he will inevitably claim the right to manufacture what he sells ; and the one Indian farm in the Province is regarded as a portent. He is condemned by the Natal Agricultural Union as an inefficient agriculturist who allows farms, which in European hands are fine properties, to lie waste and unproductive ; but he is dreaded by the Richmond Agricultural Society because he produces too much and can beat the European at farming as he beats him at trading. And so on.

The case against the Asiatics.

17. It will be sufficient to examine the more important aspects of the case. At the back of everything is the question of numbers. The present agitation against Asiatics started in the Transvaal ; and it is clear from the evidence that this agitation springs from the fear, which is sedulously fostered by propagandists, that the white population in the Transvaal is being swamped by Asiatics. The position is summed up in the statement of the Chairman of the Ventersdorp Municipality before the Commission : "The Immigration officers do not stop them from coming in. I hear that they are pouring over the border. "It is in the South Africans' League handbook."

Numbers. (a) Transvaal.

The statistical value of this authority can be judged from the following extract from the address of the Chairman, of the League, printed on page 13 of Handbook No. 2 :—

"The point is how many succeeded in getting in. From every town in the Transvaal the same report comes that Indians have noticeably increased in numbers in recent years. In Johannesburg where a few years ago you noticed an Indian as something more or less exceptional, to-day you may see him by the score."

Now, one of the few authentic figures available is the special census of Asiatics in Johannesburg which was taken by the Republican Government in 1896. At that time there were 4,556 Asiatics in Johannesburg. From the evidence available, the number of Indians in Johannesburg does not appear to have increased materially, if at all, since that date, while the white population of the town has probably quadrupled. The suggestion that there has been a marked increase in the ratio of Indians to the rest of the population is palpably absurd. Yet these vague assertions are spread broadcast and believed.

18. In estimating the present number of Indians in the Transvaal, it would be unsafe to deduce too much from the statistics furnished by the Immigration Department. As Mr. Cousins has said, the only real index figures which can be taken are the census figures for 1904 and 1911. For the Transvaal the figures for all Asiatics are :—

Year.	Males.	Females.	Total.
1904	9,799	1,522	11,321
1911	9,018	2,054	11,072

It is understood that these numbers include about 1,000 Chinese. The rest are Indians, the majority of whom are Mahomedan traders.

The causes which operated to keep the Indian population from increasing between 1904 and 1911, may be summarised as follows :—

- (1) The exclusion of new immigrants ;
- (2) The low sex ratio ;
- (3) The drift back to India.

The first two causes have been relaxed to some slight extent by section 3 of the Indians Relief Act, 1914, which permits the entrance of the wives and children under 16 of Indians already domiciled in the Province. This is an inevitable sacrifice to the advantage which accrues from encouraging domiciled Indians to live a wholesome home life ; and the principle has been confirmed by paragraph 3 of the Reciprocity Resolution of 1918, quoted in paragraph 9 above.

19. No exact return is available of the number of persons thus admitted to the Transvaal since the Act of 1914 was passed. The estimate given by the Principal Immigration Officer, Pretoria, based on the assumption that all women and children arriving from India *via* Delagoa Bay are new admissions, cannot, it is submitted, be accepted as correct. Women resident in the Transvaal pay visits to India and children born in the Province are sent to India for their education and return to South Africa, the usual port of arrival in such cases being Delagoa Bay. A better index is the figures of new registrations (*i.e.*, of male resident children reaching the age of eight years or of children returning from India after that age), the numbers being as follows :—

Year.					Number Registered.
1914	..	..	..	..	484
1915	..	..	..	..	532
1916	..	..	..	..	303
1917	..	..	..	..	355
1918	..	..	..	..	359
1919	..	..	..	..	374

Against these new registrations must be set off the decrease from natural causes, and the drift back to India which still continues. The card record of migration which has been maintained by the Census Office since 1918, gives the following figures for the Transvaal :—

Year.				Arrivals.	Departures.	Net Decrease.
1918	..	..	..	594	1,019	—425
1919	..	..	..	1,065	1,359	—294

20. The general conclusion of the Immigration Department is that there has been no material increase in the number of Indians in the Transvaal since 1911. It is contended, however, that there is a continuous influx of illicit immigrants usually estimated in "shiploads," who elude the Immigration Department altogether. The officers of the Department deny this.* They say that their watch on the frontier is vigilant, and they argue with force that the life of an unregistered Indian in the Transvaal is too precarious and too constricted to be attractive. He cannot, in any case, get a licence to trade, for the fingerprints of every applicant for a licence are taken and sent to the Immigration Department for check. He cannot even get decent employment. To quote Mr. Dobson's words :—

"A man who comes here illegally is an outlaw. Unless he enters the country properly, life is not worth living for him. He cannot get any permanent employment or work as a trader, because there is the Shop Inspector always coming in to examine the register under the Shop Hours' Act, and there is the Factory Inspector going round and the police, so that I do not place much credence in this idea that there are crowds of these people roaming about. I think their numbers are quite negligible."

21. It may be said that this does not explain how it is that responsible witnesses from all parts of the Transvaal are obviously convinced that the num-

*It has since been ascertained by personal enquiry in Rhodesia that there is no immigration of Indians into the Union through Rhodesia.

ber of Indians in their midst has increased enormously in the last few years. It may be that Indians are now tending to migrate from populous towns on the Reef, where they are lost in the crowd, to country towns where their presence is more conspicuous. But it is also suggested that this idea of a recent influx is the result, rather than the cause, of the anti-Asiatic agitation. The Asiatic looms large because attention is focussed on him. It is difficult to arrive at hard facts, but when facts are forthcoming, they do not indicate a noticeable influx. For instance, the present population of Pietersburg, according to a recent census taken by the municipal officials, is given as 2,250 whites and 147 Indians; but it was reported by Sir A. Lawley in his letter, dated the 13th April 1904, that there were then in the town 1,684 whites and 135 Indians. And again, the deputation from Zeerust, which gave evidence before the Commission, said: "If you go into our town, you will see that it looks like a coolie location." But the latest figures, which were subsequently quoted by the deputation, showed that the white population is between 1,300 and 1,400, while there are 33 adult-male Indians, 7 women and 8 children.

The conclusion is that the number of Indians in the Transvaal, though relatively important in the distributing trade, is insignificant in itself. It has been almost stationary since 1904. Further immigration is stopped; the sex ratio is still unequal, and the effect of the Indians Relief Act of 1914 does not appear materially to have augmented the natural increase. On the other hand, the drift back to India continues. It may be taken as certain that the number of domiciled Indians is not increasing in the same ratio as the white population.

22. The number of Asiatics in the Cape Province in 1904 and 1911 was as follows:— (b) Cape Province.

Year.	Males.	Females.	Total.
1904	9,316	926	10,242
1911	6,605	1,085	7,690

These figures include about 1,000 Chinese. The number of Indians in the Cape Province in 1911 was given by the Medical Officer of Health, Cape Town, as follows:—

Males	5,590
Females	1,016
Total	6,606

They are of mixed occupations, small traders and fruit hawkers predominating. There is some immigration from the other Provinces of the Union under the so-called "Cape entry" right. But this right is strictly limited by head (3) of Mr. Gorges' letter, dated the 30th June 1914, which forms part of the Smuts-Gandhi settlement and runs as follows:—

"In administering the provisions of section 4 (1) (a) of the Union Immigrants Regulation Act, No. 22 of 1913, the practice hitherto existing at the Cape will be continued in respect of South African born Indians who seek to enter the Cape Province, so long as the movement of such persons to that Province assumes no greater dimensions than has been the case in the past; the Government, however, reserves the right, as soon as the number of such entrants sensibly increases, to apply the provisions of the Immigration Act."

On the other hand, the Medical Officer of Health, Cape Town, gave evidence that the birth-rate was small owing to the low proportion of females, that Indians were peculiarly susceptible to any illness or epidemic, and that here also there was a drift back to India. The statistics furnished show that 1,158 Indian births and 1,280 deaths have been registered since 1913.

Indians in the Cape Province are concentrated at large centres, such as Cape Town, Kimberley, Port Elizabeth and East London. There is no evidence of any increase in recent years.

23. It is in Natal that the real problem arises. The Asiatic population in 1904 and 1911 was as follows:— (c) Natal. Total population.

Year.	Males.	Females.	Total.
1904	63,497	37,421	100,918
1911	80,490	52,949	133,439

Practically all are Indians. Indentured immigration continued until 1911 : and in the last year special efforts were made by the planters of Natal to import as many labourers as possible.

Indentured Indians and their descendants.

24. According to the records of the Protector of Immigrants, in 1911 there were 113,192 indentured Indians and their descendants in Natal : and at the end of 1919 there were 115,515, classified as follows :—

	Males.	Females.	Total.
Born in India	37,493	19,203	56,696
Born in Natal	29,252	29,567	58,819
Total	66,745	48,770	115,515

There is a fair sex ratio, and births exceed deaths. Since 1911 the average birth-rate has been 45 per mille and the death-rate 19 per mille. Against this, considerable numbers have returned to India permanently in accordance with the terms of their indentures or under the provisions of the Indians Relief Act of 1914.

In 1915, when the Relief Act first began to operate, there were 116,451 indentured Indians and their descendants in Natal. Since then, returns to India have rather more than counterbalanced the excess of births over deaths, and there has been a net decrease of about 1,000. It must be admitted, however, that in the course of time, as the floating Indian population becomes more settled, returns to India are likely to be fewer, and the normal excess of births over deaths will assert itself. Since 1916 the annual number of returns has dwindled from 5,585 to 1,691. These numbers have undoubtedly been affected by outside causes, such as shortage of shipping, the prohibition on the export of gold and so on. And there is evidence to show that there are still many who would leave the country, if they were given opportunity and encouragement. As a general principle, however, it may be taken that the longer the Indian immigrant stays in Natal, the less will he be inclined to return to India. In the second and third generation the drift back to India will become less and less until it almost ceases.

Other Indians.

25. As has already been explained, the indentured Indians and their descendants are mainly agriculturists. The rest of the Indians in Natal, numbering about 20,000, are for the most part the Mahomedan traders and their families, who originally came as free immigrants in the wake of the indentured labourers. They are of the same class as the traders of the Transvaal and the Cape, and the same causes are operating to restrict their numbers. But being established in the midst of a large Indian community, they are probably more inclined to regard South Africa as their permanent home. According to the figures furnished by Mr. Dick, the Immigration Officer at Durban, the number of new entrants under section 3 of the Indians Relief Act, 1914, has been comparatively trifling :—

Year.	Wives.	Children.	Total.
1915	54	61	115
1916	76	61	137
1917	60	88	148
1918	57	87	144
1919	86	148	234

26. The conclusion is that in the Transvaal and the Cape there is no possibility that the white population will be swamped by sheer force of numbers. The total number of Asiatics in these two Provinces is insignificant in itself, it has remained stationary or has tended to decrease in the past, and there is no reason to expect any considerable increase in the future. In Natal the number of Indians is large : and though there is evidence to show that there are many who do not wish to settle permanently in the country, it will undoubtedly remain large. Natal, however, deliberately decided in the past that an Indian element in her population was essential for her economic development, and she cannot now disclaim responsibility for this decision.

The economic problem.

27. The problem now before the Commission is primarily economic. The difficulty on which a large part of the evidence has been directed, is that the

Asiatic by reason of his lower standard of living competes on unfair terms with the white man, and is already excluding him from certain avenues of employment. The occupations which are stated to be especially threatened are :—

- (a) Retail trade ;
- (b) Wholesale trade ;
- (c) Agriculture ;
- (d) Skilled labour.

It is proposed to examine the conditions of the problem under each of these four heads.

28. The case of the retail dealer has taken up the greater part of the Commission's time ; and although deeper issues have now been raised, it will probably be admitted that the present agitation was originally inspired by the grievances of the small shopkeepers against their Indian competitors. Only a year ago so reliable an authority as Mr. J. A. Nesor said in his evidence before the Select Committee : " The farming population and the consumers generally were in favour of the Asiatics, with whom they did a large amount of business. " It still applies to the present day. . . . The trading community has always been " up against them and the agitation against them has always come from the " trading community. " At a time when profiteering has been one of the main issues at a recent general election, it is somewhat paradoxical to complain that the middleman's profits are unfairly reduced. The reduction of the middleman's profits is advantageous to the consumer and to the community as a whole. And this view, which is supported by ample evidence from the consumers themselves, and more especially from the Dutch farmers in the Transvaal, might perhaps be regarded as a sufficient answer to the complaint of the retail dealers.

(a) Retail trade.

29. The precise extent of the Asiatic invasion into retail trade is by no means clear. Except in Natal and in Cape Town, generally speaking, no authentic figures have been placed before the Commission to show how many Asiatic shops there are now, or to compare present numbers with the numbers in previous years. The number of dealers' licences held by Asiatics in the Cape and Natal has scarcely increased in recent years, except in so far as the law has been altered to require dealers in colonial produce to take out licences. In the Transvaal, some local bodies have put in comparative figures ; but present figures have been somewhat disingenuously swollen by the inclusion of the large number of new general dealers' licences which were taken out by Indians in 1919 as a precautionary measure when restrictive legislation was threatened, and have never been exercised. For instance, there are said to be 101 general dealers' licences now held by Asiatics in Krugersdorp ; but the number of general dealers on the 31st March 1919, according to the memorandum laid before the Select Committee by the Krugersdorp Municipality was only 14, or including Burghershoop and District Township, 32 ; and the number of new licences issued between the 1st July 1914 and the 31st March 1919, was only 2. Again, it is asserted by the Chairman of the South Africans' League, in direct conflict with the evidence of the Principal Immigration Officer, that the number of licences now held by Indians in Johannesburg is nearly 5,000 ; and the conviction is expressed that, if the present rate of progress made by the Indians in Johannesburg is maintained for the next 25 years, the very large bulk of the trade of the Reef will be in their hands. But the statement in Schedule B appended to the Select Committee's Report shows that the total number of new general dealers' licences issued to Indians between 1914 and 1919 on Proclaimed Gold Fields, excluding Boksburg and Germiston where Indians are confined to locations, was :—

Krugersdorp	..	..	..	2
Johannesburg	..	..	..	1
Heidelberg ..	..	..	..	7
				—
		Total	..	10
				—

30. Even if the number of shops were known, it would convey no idea of the volume of trade. In Natal the Licensing Officer of the Province, Mr. Wynne-Cole, considered that there had been no increase in recent years in the volume

of Asiatic trade in the country stores. In the Transvaal towns which were inspected by the Commission, it was obvious that many of the Indian shops were petty concerns. So far as is recollected, the Commission were not shown a single large Indian store which had been established in recent years. The spread of the Indian trader into the country towns of the Transvaal is represented as a new peril; but so long ago as 1904 Sir A. Lawley, in his letter dated the 13th April 1904, described Pietersburg as a typical country town of the Transvaal in the following terms:—

“While the town supports a few substantial wholesale merchants, almost the entire retail trade is in the hands of the Indians. There are a few large stores belonging to European merchants, which are the retail depots of wholesale establishments. In addition to these, there is one retail store in the hands of a small English trader. With these exceptions, and leaving aside hair dressers, chemists and shops of a special nature, the whole of the retail trade round the square is in the hands of the Indian.”

In none of the towns of the Transvaal which the Commission visited, it is submitted, can such conditions be said to exist to-day.

31. The Indian trader specialises in groceries, soft goods, and the distribution of fruit and vegetables, for which he admittedly shows a special aptitude. These are the lines of business in which he has been trained for generations, and he has not shown much enterprise in going beyond them. By cutting down his overhead charges, and more especially by living with his assistants on his business premises, he is frequently able to undersell his white competitor; but this necessarily reacts on the class of custom which he attracts, and he caters especially for the consumer who cannot afford to pay for window-dressing. The difference in price does not appear from the evidence to be marked; but on the other hand it is shown that the Indian attracts business by his civility and consideration, especially towards poor customers and natives. He has a peculiar economic value to the rural community, which may be briefly summed up from the evidence as follows:—

- (1) He plays a useful part in the development of isolated districts by establishing small stores in places where the turnover is insufficient to support a European business.
- (2) He is more considerate than his Jewish rival in his dealings with the farmer, gives longer credit in times of scarcity, and is content to regard trade as an end in itself and not as a means of foreclosing on his customer's land.
- (3) He studies the requirements of the native population more carefully than the white trader does.

On the other hand, the Indian shop scarcely competes at all with the better class of European shop in the large towns. No Chamber of Commerce from any large centre has given evidence before the Commission. It is understood, moreover, that in South Africa as in other places, the retail trade of the country districts is being attracted more and more to large shopping centres; and big retail firms are now paying special attention to the development of their postal business. Experience in India, where the postal system of distribution has been established for years, has shown that the Indian trader cannot compete in this class of business with the big European store.

It has frequently been stated in evidence that many European storekeepers have been compelled to close their business owing to Indian competition. But there appears to be a tendency to attribute the closure of any European business to Indian competition, whatever may have been the real cause. For instance, Mr. Russouw, the Mayor of Zeerust, stated that the firm of Messrs. John Reid & Co. of Zeerust, which closed business in 1911, could not contend with Indian competition. But he subsequently admitted that it was not on account of Indian competition that Mr. Reid, who is understood to be a wealthy man, retired from business; and he further admitted that he himself had been Mr. Reid's assistant, and had started in business on his own account as a general dealer when Mr. Reid retired.

The Assistant Master of the Supreme Court at Pretoria has also stated in evidence that in the last eight years not a single instance is recollected in which an insolvent has attributed his failure to Indian competition; and he added that there has been no appreciable difference in the number of insolvencies in the country districts during the last ten years.

32. The Indian trader in South Africa is generally a retail dealer ; but there are also a certain number of wholesale merchants, some of whom have extensive businesses. These wholesale businesses were probably established in the first instance to supply the Indian retail dealers, but now do a considerable trade with Europeans also. It has not been suggested that the Indian wholesale merchant undersells the European, or competes with him on unfair terms. On the contrary the evidence is that the Indian trader, both wholesale and retail, has the support of the European merchant. No leading Chamber of Commerce has joined in the anti-Asiatic agitation. (b) Wholesale trade.

33. Competition in agriculture is an issue only in Natal. The majority of the indentured labourers were recruited from Indian districts where holdings are small and cultivation is intensive. They have introduced the same system of agriculture into Natal, and the Coast belt, where they are numerous, is now the most intensively cultivated part of South Africa. The area held by Indians is comparatively small. Two or three have acquired considerable sugar estates ; but generally speaking in Natal, as in their own country, their holdings are small and closely cultivated. According to the evidence of Mr. Maritz, Magistrate of Stanger, the 20,000 Indians in his district have only about 20,000 acres in their hands. There is no evidence that the Indian cultivator is ousting the European farmer. On the contrary, both Mr. Maritz and Mr. Renaud have stated that the Indian reclaims waste land ; and when it is developed, he is not infrequently pushed out by the European. Indeed, the suggestion is that his inability to get a reasonable tenure prejudices his efficiency as a cultivator and his value to the country. (c) Agriculture.

On the other hand, excluding the planters who rely mainly on Indian labour, the European is a mixed farmer, grazing and cultivating extensively large areas on the uplands. The Indian who has come to Natal is not accustomed to this kind of farming ; and the evidence of the Natal Agricultural Union is that, where he has attempted it, he has generally failed.

Generally speaking, it would appear that the Indian cultivator and the European farmer in Natal are complementary to each other and not in competition.

34. Competition in the skilled trades is also mainly a Natal question. The only skilled trades which have given evidence before the Commission on the subject are the furniture makers of Durban and the tailors of Johannesburg. The last authoritative pronouncement on the relations of Indian and European skilled labour is contained in the Report of the Economic Commission published in 1914 :— (d) Skilled labour.

“In the skilled trades the efficiency of the Indians is distinctly beneath that of the white men, and there is doubt as to the extent to which they undertake work for white people. So far as they labour for their own people, objection to their advancement is not even plausible. That they perform tasks of a not very expert kind in painting, carpentering, bricklaying and so forth, on the direct order of white consumers, is beyond dispute, but it would seem impossible to determine the extent of the work in question, and how far the white man is affected by it. Much of the work is evidently that of the handy-man rather than that of the expert artisan. Again there was conflict of testimony as to the amount of skilled work performed by Indians indirectly for white consumers. Skilled Indians work for shops kept by Indians, but the degree of recourse to these shops by whites it is hopeless to attempt to measure. It was alleged, further, that work, such as the making up of clothes, was put out by white shopkeepers to Indian skilled workers, but certain Indian witnesses examined by your Commissioners declared that the bulk at any rate of this work was done for Indian shops to the best of their knowledge. Again, the extent of the trade done among other Indians, by Indian manufacturers employing Indians only, is unknown, but it seems likely that in cheap tinware, especially for natives, it is relatively considerable. It may be added that skilled Indians either bring their knowledge from India or pick it up through being employed for rough work where skilled whites pursue their avocations. Your Commissioners failed to discover evidence proving that white skilled labour has suffered seriously from the competition of Indians.”

The Commission went on to remark on the fact that “new licences to trade or manufacture for sale have been generally, if not invariably, refused to Asiatics in Natal, though old licences have been renewed,” and added that the drastic course adopted in Natal was harsh and imprudent.

Experience in India corroborates the Commission's conclusions as regards the skilled trades. One of the greatest obstacles to the industrial development of India to-day is the inability of the Indian artisan to become a skilled workman of the highest class.

The drain.

35. There is one other economic question which has figured prominently in this enquiry ; and that is the so-called drain of gold from South Africa to India through Indian remittances. It will be admitted that it would be unreasonable to suggest that the indentured labourer, returning to India, should leave his savings behind him in South Africa. Nor is it reasonable to object because the trader, who is discouraged as a permanent settler, maintains his family in India. But the matter goes deeper than this. In 1918 the imports from India into the Union were valued at £3,388,117, while the exports from the Union to India (excluding specie) were valued at only £89,148. It is not easy for the Union to finance her Indian purchases, which include articles such as jute bags which are necessary for the development of her own industries. To quote *Trade of South Africa in 1918* : " Throughout the war the difficulty of financing India's exports "steadily increased and the high prices which many of these attained, notably raw "cotton and jute goods, only served to accentuate the difficulties." It is understood that these difficulties still continue. In these circumstances, it is for consideration whether Indian remittances do not serve a purpose in redressing the adverse balance of trade. It is not desired to press the point; but it is suggested that expert financial opinion should be taken before the theory of the "drain" is accepted.

The social problem.

36. The social evils arising from the presence of Asiatics in South Africa, have been stated under four main heads :—

- (a) Trading relations lead to an undesirable intimacy with the white population, and more especially with white women.
- (b) The influence of Asiatics on the native population is bad.
- (c) They penetrate into the residential quarters of the white population.
- (d) They are insanitary.

(a) Intimacy with white population.

37. It may be admitted that white people who trade with Indians probably come into more friendly relations with them than they would otherwise do. It is a matter of opinion and prejudice whether such relations are objectionable. The suggestion that there are undesirable intimacies between Indian traders and white women has, it is submitted, in no way been substantiated. It may be added that in all the years of the British occupation of India no such suggestion has ever been made there.

(b) Influence on the native population.

38. It has been alleged that familiarity between the European and the Indian destroys the respect of the native for the European ; and further that the privileges which the Indian enjoys are resented by the natives. These allegations have been specifically denied by witnesses like Mr. Eugene Marais and Mr. Leary of Zeerust, who have special knowledge of the subject.

On the other hand such an authority as the late Mr. Maurice Evans deprecates " Kafir store-keeping " as an occupation for the white man, and regards with misgiving its effect on the relations between the white and the black population. He discusses the question at length on page 290 of his " Black and White in South-East Africa." " The very fact," he writes, " of his catering for the "wants and desires of the members of an inferior race placed the white man in "a false racial setting. . . . The white man was, after all, there in the position of "one asking favours or seeking clients from whom he expects benefits, and the "black man knew it, and his behaviour and conduct, though it might not be contemptuous, was that of one for the time being in the superior position." Mr. Evans draws a picture of the wife and daughters of the white married storekeeper standing behind the counter of the store, " often crowded with naked "natives of both sexes, who feeling that it existed for their convenience, although " respectful, were not delicate nor restrained in language or behaviour." Even more dubious was the position of the unmarried white man, who too often " became for life a white Kaffir." So far as the native question is concerned, Mr. Evans does not regret the displacement of the white storekeeper by the Indian trader, and he adds : " One other point must be scored to the credit of "the Indian trader. As a Mahometan he is an abstainer from intoxicants and, "keen trader as he is, does not pander to the cravings of the native for strong "drink."

(c) Penetration into white residential quarters.

39. Two or three Indians are occupying houses on the Berea at Durban. But the general tendency is for Indians of the same social standing to live, as far as possible, in the same quarter ; and the evidence given before the Commission shows that this is as marked a characteristic of the Indian in South Africa as it is in his own country.

The statements which have been made that Indians in India are not permitted to live in the European quarter, are incorrect. There is no legal prohibition; but in practice Indians show no desire to live amongst Europeans unless they have had a European upbringing.

40. The insanitary habits of Indians, of which so much has been heard, are largely the result of overcrowding, and are seen at their worst in such places as the Vrededorp and Germiston locations. The Municipalities appear to be somewhat lax in enforcing sanitary bye-laws; but this is partly, at any rate, due to recognition of the fact that no better accommodation is available. ^{(?) Insanitary habits.}

The indentured labourer came to South Africa with a low sanitary standard; and generally speaking, his habits do not appear to have been improved during the years which he spent in an estate barracks. The conditions under which the majority of the ex-indentured labourers and their descendants are now living in Natal, are admittedly discreditable.

It has not been found that Indians of the better class, when they live apart, fail to observe sanitary regulations. But the habit of living on business premises, to which reference will subsequently be made, leads to overcrowding.

41. It has been pressed upon the Commission in the Transvaal that the Indian Mahomedans are likely to spread Islam amongst the native population and undermine the work of the Christian Missionaries. But not a single case of conversion to Islam has been quoted. The Mahomedan trader does not proselytise. ^{The religious problem.}

On the other hand, a large number of Indians in Natal are Christians.

42. It is in evidence that the leaders of the anti-Asiatic movement in the Transvaal regard Indian activity in trade as only a means to an end. Mr. Phillips, the Chairman of the South Africans' League, stated his position before the Commission as follows:— ^{The political problem.}

"I take it that I am here to-day representing not only a desire, but a determination on the part of the white people that this country shall remain a country for white people. That is the whole of my intention in appearing here to-day. I am not here representing traders. I do not care a snap of my fingers for traders in this matter. I am here as representing this question of trade to you merely as a channel through which the Indians' influence grows and expands."

In his address to the Pretoria Congress of the League, which has also been put in as evidence, Mr. Phillips forecasted the future in the following terms:—

"This watchful interest of the Indian Government is of extreme importance, and unless the people of South Africa wake up to the effect of the Indian invasion upon this country, unless they convince our own Government that they are alive to it, we shall see the influence which produced the recent Act (No. 37 of 1919) grow in strength from year to year, until at last South Africa, gripped in a strangle-hold from which there is no freeing herself, will be forced to accept the position that this sub-continent will become an expansion ground for the Indian Empire."

43. The process of expansion is explained more precisely by Mr. J. Dougall of Pretoria in the evidence which he has placed before the Commission:—

"But there is to-day much more involved in this question of securing their right to dwell and carry on business in the Transvaal. Information gleaned from the English and British Indian press and other sources near at hand, clearly shows that the Aga Khan, Mr. Gandhi and their English, Indian and South African associates are planning and pressing with full determination by virtue of large purchases of fixed property in town and country to secure full rights to the franchise and all the privileges of citizenship in South Africa. And once this is secured, the gradual influx of two or three millions of British Indians, judiciously placed in residences and businesses in the towns and country districts throughout the Union, would mean South Africa in course of time becoming an annex to India."

44. As the Commission is aware, the government and to a great extent the commerce of India have been controlled for over a hundred years by a handful of Europeans. The suggestion now is that a few thousand Indian shopkeepers from the decayed port of Surat will do in South Africa what the British have done in India. Further, they are to achieve by virtue of their inferior civilisation what the British achieved in India by their superior civilisation

PART III.

Suggestions and Recommendations.

Need for a calmer atmosphere.

46. Such, in outline, is the case which the Commission is asked to consider. It is submitted that the first condition of a wise solution of the problem is a calmer atmosphere than that which now prevails. It is difficult for one who has heard the evidence given before the Commission, not to feel that some of the witnesses and those whom they represent have lost all sense of proportion. As the Commission is aware, grave national issues are involved; and in a matter of such vital importance the Government of India feel that they have a right to expect that public opinion should be formed, not by organised agitation, but by calm consideration of the facts. The first step should be to clear the air of misconception, misrepresentation and unreasoning alarm.

Determination of the alleged influx.

47. Firstly, it is suggested that the Commission should ascertain and verify, as far as possible, the true extent of the alleged Asiatic influx into the Union, and particularly into the Transvaal. The number of Asiatics in the different Provinces of the Union cannot be exactly determined until the figures of the next census are forthcoming. In Part II of this statement, however, an attempt has been made to deal with the information that is now available. Except in Natal, there is no trace of any tendency for the number of Asiatics substantially to increase; the Immigration authorities cannot discover it; the Indian shopkeepers outside Natal complain of difficulty in finding shop assistants now that immigration has been closed; and the loose statements that Asiatics are pouring into the Union are, it is submitted, without any valid foundation. As the allegation comes almost solely from the Transvaal, it is suggested that there should be a thorough investigation of the facts in selected towns of that Province where the influx is said to be noticeable. The Indian population might be classified, its origin ascertained, and the increase in recent years compared with the corresponding increase in the white population.

It should also be emphasised that further immigration is barred, not only from overseas, but also from one Province to another. The Government of India have accepted this. The representatives of the Transvaal British Indian Association have not only given an undertaking to the Union Government that they will not countenance any illegal entry into the Union; they have also stated in evidence before the Commission that they have accepted the restrictions on inter-provincial migration.

Determination of the alleged increase in Asiatic trading.

48. Secondly, it is suggested that the Commission should ascertain, as far as possible, the true extent of the increase in Asiatic trading in recent years. It has not been contended that there has been any marked increase in the Cape Province and Natal. In places like Cape Town and Durban it is admitted that the licensing laws have been deliberately administered so as to restrict Asiatic trading. In the Transvaal, however, where general dealers' licences are issued by the Receiver of Revenue to any applicant on payment of a prescribed fee, more definite and more detailed information is required. It has been explained in paragraph 29 that the increase in the number of licences issued to Asiatics in 1919 is meaningless, for practically none of the new licences which were issued have been exercised. What is wanted is more accurate information regarding the increase in the actual number of Asiatic shops in recent years, as compared with the increase in the number of European shops in the same period. Even this does not go far enough. Comparative figures of turnover will alone prove or disprove the allegation that the Asiatic is ousting the white trader. The difficulty of obtaining such figures is recognised. But it is suggested that detailed enquiries might at least be made in selected towns of the Transvaal, where the growth of Asiatic trading is said to have been especially rapid. At the same time, where specific instances are given of white traders having been ruined by Asiatic competition, the circumstances under which their businesses were closed might be examined. A more precise investigation of conditions in the Transvaal is especially important; partly because the agitation against Asiatic trading originated there, and still more perhaps because the facts which would be disclosed would indicate the natural expansion of Asiatic trading when there is no artificial restriction on the issue of licences. Here again, as in the matter of the alleged influx, there is need of facts. The issue is too serious to be decided by mere assertions.

The alleged disregard of laws and undertakings

49. Thirdly, it is necessary to consider the charge made against the Indian community that they are "perverse and inveterate breakers of the law", and

have "flouted and broken" their own undertakings. This charge is in direct conflict with Mr. Burton's testimony at the Imperial Conference of 1918: "As far as we are concerned, it is only fair to say—and it is the truth—that we have found the Indians in our midst in South Africa, who form in some parts a very substantial portion of the population, are good, law-abiding, quiet citizens." And this testimony has been amply corroborated by evidence before the Commission. The more specific charge against the Indians of the Transvaal that they have evaded certain restrictive laws and have disregarded the terms of the settlement of 1914, has been met by them in a way which should satisfy reasonable men. But the charge is still reiterated, and is in the forefront of the petition which has recently been presented to Parliament by the South Africans' League: "That the avowed and publicly expressed contempt for and continued and persistent evasion and disregard of our laws by Asiatics cast a serious reflection upon the Administration and tend to instil into the minds of the large native population a lack of respect for the laws and institutions of this country." And it is beyond question that this accusation, which has been persistently repeated until it is generally believed to be true, has seriously prejudiced the Indian case.

50. The particular laws and undertakings which the Indians are said to have disregarded, are understood to be:—

- (a) Law No. 3 of 1885,
 - (1) by acquiring fixed property by methods of indirect ownership;
 - (2) by refusing to reside in locations;
- (b) Sections 130 and 131 of the Gold Law, No. 35 of 1908, by residing on or occupying proclaimed land;
- (c) The Smuts-Gandhi agreement, as defined in Mr. Gandhi's letter to Mr. Gorges, dated the 7th July 1914,
 - (1) by applying for new licences to trade;
 - (2) by forming limited liability companies under the provisions of Act No. 31 of 1909 for the purpose of owning fixed property.

It is unnecessary to repeat at length what has been said in paragraphs 13 and 14 and in Appendix B to this statement. It will be sufficient to summarise the salient points, and to consider how far it is fair to say that the Indians have disregarded these laws and undertakings.

51. Clause 2 (b) of Law No. 3 of 1885 prohibits the ownership of fixed property by Asiatics, "except only in such streets, wards and locations as the Government for purposes of sanitation shall assign to them to live in." The Republican Government, however, permitted indirect ownership anywhere, but direct ownership nowhere. Indirect ownership was, in fact, first suggested to the Indian community in 1888 by the Republican Government, which authorised the Mining Commissioner to be registered as nominal trustee. No steps were taken to prevent the indirect acquisition of fixed property until 1919. At the same time, as they have already stated at the Imperial Conference of 1918, the Government of India agree that these indirect methods of acquiring property are objectionable, not only because they are cumbersome, but because they "tend to foster insincerity on all sides"; and it is for this reason that they asked that the law should be repealed.

52. Clause 2 (d) empowers the Government for purposes of sanitation to assign to Asiatics certain streets, wards and locations to live in, but it provides no penalty for residing outside such locations. This law was referred to the British Government under Article XIV of the London Convention of 1884, and was accepted by them only on the understanding that it would not apply to traders and other persons of a superior mode of life (not being coolies), whose relegation to certain areas was not necessary on sanitary grounds. The Republican Government did not enforce the law strictly, even against Indians of the lower classes. On one or two occasions, however, they attempted to restrict Indians of superior class to locations. Such attempts were resisted by the Indian community by the advice and with the support of the British Agent. It was always the view of the British Government that the application of the law to Indians of superior class would be a contravention of the terms of Article XIV of the London Convention; and, as is well known, the grievances of British Indians in the Transvaal were among the causes which led to the outbreak of war in 1899.

After the war when the new Government proposed fresh legislation for restricting Indians to locations, the British Government refused to agree in the following terms:—

“His Majesty’s Government hold that it is derogatory to national honour to impose on resident British subjects disabilities against which we had remonstrated, and to which even the law of the late South African Republic rightly interpreted did not subject them, and they do not doubt that when this is perceived, the public opinion of the Colony will not any longer support the demand which has been put forward.”

It will at least be conceded that the Indians who have refused to reside in locations, have only followed the interpretation which the British Government, from the time when they assented to it, have always placed on the law. The Indian community cannot fairly be condemned on this account as “perverse and inveterate breakers of the law”.

(b) The Gold Law. 53. Sections 130 and 131 of the Gold Law of 1908 were accepted by the British Government on the explicit assurance that they did not deprive Indians of any rights which they enjoyed under the Gold Law of 1898. These rights, included:—

- (1) the right to acquire and exercise leasehold rights to stands granted under section 92 of the Law of 1898;
- (2) the right to hold general dealers’ licences to trade on diggings.

The quotation in Mr. Gandhi’s letter to Mr. Gorges, dated the 7th July 1914, shows that he knew the terms of the Attorney-General’s report on the Law of 1908. The Indian community cannot reasonably be blamed for acting on the assumption that the assurance which was given to the British Government would be respected.

Further, it does not seem to be sufficiently realised that the application of sections 130 and 131 of the Gold Law of 1908 is limited, viz.:—

- (1) Section 130, in accordance with the ruling in Tamblin’s case, does not apply to stands covered by section 77 of the Act, that is, to stands outside townships, which had been laid out under the Mining laws prior to 1908;
- (2) Section 131 does not apply—
 - (i) under sub-section (1) to stands on which the Mining Commissioner may permit coloured persons to reside;
 - (ii) under sub-section (3) to coloured persons who at the commencement of the Act were lawfully in occupation of premises.

It must be emphasised that the occupation of proclaimed land by Indians is not necessarily a breach of the Gold Law. They have a legal right to occupy any stand, outside a township, which was laid out before 1908. Further, the express object of section 131 (1) was to enable the Mining Commissioner to exempt Indians of superior class from being required to live in bazars, locations or compounds.

In point of fact, until the case of Krugersdorp Municipal Council vs. T. W. Beckett & Co. (which was undefended) in 1919, the Gold Law was never used to prohibit the occupation of proclaimed land by Indians; and at the Imperial Conference of 1918 it was not included in the list of Indian disabilities.

(c) The Smuts-Gandhi agreement. 54. Mr. Gandhi’s letter, dated the 7th July 1914, relates only to a side-issue in the settlement of 1914. As is clear from the opening sentences of Mr. Gandhi’s letter, his definition of “vested rights” referred to such rights *only in connection with the Gold Law and Townships Amendment Act*. The Smuts-Gandhi agreement, as reported to the Government of India, consists of the two letters of the 30th June 1914; and the letter of the 7th July was not made known to them until it was published in the report of the Select Committee of 1919. Its meaning, however, seems clear enough.

The amendment of the Gold Law and the Townships Amendment Act was not an issue in the passive resistance movement. They fell within the category of existing laws which the Union Government undertook to administer “in a just manner and with due regard to vested rights”. General Smuts promised that he would endeavour to protect vested rights as defined by Mr. Gandhi. Mr. Gandhi accordingly submitted the following definition *in connection with these two particular laws* in his letter of the 7th July:—

“By vested rights I understand the right of an Indian and his successor to live and trade in the township in which he was living and trading, no matter how often he shifts his residence or business from place to place in the same township.”

The Government of India understand this to mean that any such trader *who might be occupying land in contravention of the Gold Law or the Townships Amendment Act*, would not be evicted. Section 1 of Act No. 37 of 1919 gives legal validity to General Smuts' promise, and by extending the period until the 1st July 1919 more than fulfils the undertaking which was given in 1914.

55. On the other hand, the Government of India can find nothing in the letter, either expressed or implied, to suggest that the Indian community undertook to refrain from applying for new licences to trade or from acquiring fixed property according to the procedure which was then open to them. The letter nowhere refers to the licensing laws or to Law No. 3 of 1885. The Indians had established by Motan's case in 1904 their legal right to apply for and obtain licences to trade. Even after the legislation of last year, this right remains unimpaired, for Colonel Collins' amendment, which would have empowered a licensing authority to refuse the application of any Asiatic without reason assigned, was deleted by the Senate. Again, in 1914 they had a legal right to acquire fixed property by indirect methods, which were first suggested to them by the Republican Government, and had not then been questioned by any subsequent Government. They were only deprived of this right by legislation *ad hoc* in 1919. Further, they had established, by Tamblin's case in 1911, their legal right to occupy any stand on proclaimed land, outside a township, which had been laid out before 1908; and under Section 131 (1) of the Gold Law they had the legal right to reside on proclaimed land in whatever place the Mining Commissioner might permit. The object of the passive resistance movement and of the agreement which ended it, was to better the position of the Indian community, not to worsen it. The suggestion that the Indians, as part of the settlement, renounced their established legal rights cannot, it is submitted, be sustained.

56. There is one further point, however, on which stress has been laid in this enquiry. It has been disputed whether the first limited liability company formed by Indians for the purpose of owning fixed property was registered before or after the agreement of 1914. The point is only important because on it depends the allegation that the Indians have broken the agreement. "You will remember," said Mr. Blackwell on behalf of the South Africans' League, "that was our chief claim as to how the Smuts-Gandhi agreement was violated. "I am speaking of the Company device to evade the Smuts-Gandhi agreement." The return of Companies of which the shareholders are all Indians, is given in Schedule E of the Select Committee's report as follows:—

Year.					No. of Companies registered,
1913	..	..	..	..	3
1914	..	..	..	..	9
1915	..	..	..	..	38
1916	..	..	..	..	103
1917	..	..	..	..	91
1918	..	..	..	..	114
1919 (to 31-3-19)	..	..	..	..	12

In point of fact, however, the first Indian limited liability company which was registered in the Transvaal for the purpose of owning fixed property, was the "Land and Trading Company, Limited". It was registered in June 1909, Register folio No. 226, and it obtained transfer of stand No. 205, Prinsloo Street, Pretoria, on the 19th October, 1909.

It seems fairly clear that the practice began in 1909, immediately after the passing of the Transvaal Companies Act, No. 31 of 1919, but only became common in 1916 when its legality was confirmed by Mr. Justice Ward's decision in the case of Reynolds *vs.* Oosthuizen.

57. In any case, however, this dispute about dates does not appear to be of much consequence. The principle of indirect ownership dates from 1888, and was recognised, and indeed suggested, by the Republican Government. The method adopted does not affect the principle. In some of the cases into which the Commission has enquired, the same property was registered first in

the name of a white trustee, and afterwards in the name of a Company. In other words, the Companies Act was merely used as an alternative for the nominal trustee. Whether the first company was formed before or after 1914, the practice cannot reasonably be regarded as an evasion of the Smuts-Gandhi agreement. The matter was not in issue in 1914; and it was admitted by the Secretary for the Interior before the Select Committee of 1919 that the Government took no steps to inform the Indian community that they regarded the practice as an evasion of the agreement of 1914.

58. At the least, it must be admitted that the interpretation which has been placed by the Secretary for the Interior and others on Mr. Gandhi's letter of the 7th July 1914, is not obvious. The Government of India for one would not accept it; and it would not be reasonable to say that the Indian community had "flouted and broken the agreement in the most flagrant fashion" because they had construed it differently. Further than this, it is in evidence that the letter of the 7th July was regarded by the Union Government as confidential, and was not made generally known to the Indian community until 1919. Mr. Phillips' statement before the Commission that he himself had seen a copy of "Indian Opinion", dated some time in 1915, in which the letter of the 7th July was published, is mistaken. It was not published in "Indian Opinion" until the 13th June 1919.

Moreover, Mr. Gandhi's farewell message to his fellow countrymen, which was circulated through Reuter's Agency and published in the *Rand Daily Mail* of the 20th July 1914, contains the following passage:—

"But I have also assured them 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 the 30th ultimo) for the removal of other disabilities which the community will still suffer from under the Gold Law, Townships Act, and Law 3 of 1885 of the Transvaal and the Trade licences 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 those 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 resident Indian population from South Africa."

The people to whom this message was publicly addressed, could scarcely be expected to regard the agreement of 1914 as a final settlement of the question of trading and ownership of fixed property in the Transvaal.

Voluntary repatriation.

59. The last proposal which it is desired to make, with a view to restoring a calmer atmosphere, is that the number of Indians in the Union should as far as possible be reduced by a well-organised scheme of voluntary repatriation. It has been seen that for many years the Government of India have been compelled to recognise that it was necessary to restrict the number of Indians in South Africa in order to secure fair treatment for those who are permanently settled there. It must be obvious to anyone visiting Natal that the condition of many of the Indians there is far from satisfactory; and it is believed that it is in the interests of everyone to encourage and facilitate the repatriation of those who are willing to return to India. It will be better for those who go, it will be better for those who remain. It will moderate the agitation which has been aroused by the supposed influx of Asiatics, and will prepare the way for a peaceful and reasoned settlement.

60. It is unnecessary to discuss in detail a proposal which the Commission has already recommended in an interim report. It is only desired to emphasise two points. Firstly, many Indians of the poorer class cannot be expected to leave the country unless they are allowed to take with them their legitimate savings in gold. Secondly, whatever is done should be done with the advice and assistance of the leading Indians who represent the interests of their various communities.

It is also suggested that it would be wise to look beyond the possibilities of re-emigration to India alone. There are other parts of the Empire which welcome the Indian immigrant, and it is suggested that it would be well to enter into communication with the Governments of those countries, which might offer the Indian who is accustomed to colonial life a wider and more attractive field for self-development.

61. It must be anticipated, however, that the majority of those Indians who have made their homes in this country will prefer to remain here. How are they to be treated? The Government of India would urge most strongly that the repressive legislation which so many witnesses have recommended, is no solution of the problem. Fresh restrictions would be regarded not only by the Indian community in South Africa, but also by the Government and the people of India, as a breach of the settlement of 1914, which was universally accepted as a guarantee that the status which the Indian community had acquired in 1914 would at least be maintained. As has already been said, an undertaking to administer existing laws in a just manner is meaningless, if the rights which Indians are entitled to exercise under those laws, can be restricted at will by fresh legislation. Any attempt to impose new restrictions would revive at once the unhappy struggle which was ended by the settlement of 1914. To quote Mr. Naidoo's own words to the Commission:—

The Indians remain. Rept. sion no remedy.

“We respect the laws of the land, except such laws as are brought up to oppress us. It is human nature to resist any oppressive measure. Any oppressive measure will be resisted by any human being, because we cannot help but resist those laws.”

62. The Commission will doubtless also consider the inevitable effect of a repressive policy on the white population of this country. It would be impertinent for the representative of the Government of India to dwell on this aspect of the case. The spirit animating much of the evidence must have impressed the Commission as forcibly as it has impressed him. But it may perhaps be permitted to quote the words which a South African, the late Mr. Maurice Evans, has written on the restrictive licensing laws of Natal:—

Effect on the white population.

“With all this, through the legislature he (the white man) endeavoured to reduce their numbers and hoped by refusing to grant any more licences, and gradually eliminating those at present held, to get entirely rid in time of the Indian trader. Some of the legislation passed to this end was advanced by specious argument, and it would be difficult to defend it on the score of justice, and the violation of conscience engendered by this course of action has been felt by many in the colony, though any defence of these men was exceedingly unpopular. It followed on the false step of introducing Indian coolies, which has directly and indirectly committed South-East Africa to many social difficulties and led to action, apparently dictated by motives of self-preservation, which could not be justified. It has been a case of taking the lower road, the line of least resistance which though apparently at first clear and open, leads invariably into jungle and morass. The gods will not be deceived.”

Page 293 “Black and White in South-East Africa.”

63. For good or ill, the Indian has been brought to South Africa, and it remains to consider what his future is to be. The right road has been pointed out by a Natal witness, Mr. Leon Renaud, whose evidence throughout shows a remarkable insight into the Indian character.

The right road.

“If you approach them and talk to them,” he said, “there is no man more easily influenced than the average Indian. It is extraordinary how they are influenced by people with whom they come in contact. . . . The Indian is not easily forced, but if fairly treated he is easily led. If he is told that there is anything forcible, he will be a martyr. He will submit to anything, rather than to force. He is not very strong physically but morally he is strong. He does not like to be driven, but if fairly treated he is easily led.”

Repression will not succeed; and the future will be embittered by the memory of the struggle. But it should be possible now, by fair and sympathetic treatment, to make the Indians who remain here useful and contented subjects of the Union.

64. Before considering the means by which such a policy might be carried out, it is necessary to examine in more detail the remedies which have been suggested by different witnesses. They fall roughly into two categories, compulsory repatriation and compulsory segregation. Compulsory repatriation, which would be preceded by expropriation, has been rejected as impossible by Mr. Blackwell on behalf of the South Africans' League. It is not rejected by him on account of the cost or the difficulty of inducing other Provinces to agree to facing the cost. Nor is it rejected on account of the difficulties which would arise with the Imperial and Indian Governments, though it is admitted that these would be very real. It is rejected by him because it would be essentially unjust, and would react on the national life and character. Compulsory repatriation may well be left at that.

Remedies suggested. Compulsory repatriation.

65. Compulsory segregation in the eyes of many of its supporters is merely a means to an end. The ultimate aim is to force the Indians, and more especially the better class Indians, to leave the country. The deputation from

Compulsory segregation.

Zeerust, for instance, gave the following evidence before the Commission :—

(Mr. Wilsenach). "It is the superior class that we most dread. I think they would rather go back to India than go into a bazar. I admit that in handling this question we must treat the Indian fairly and justly. Our suggestion is to place them all in bazars. . . . Of course we would really prefer giving them a ticket to return to India rather than put them into a bazar, but we do not suggest that You suggest that he must be provided with the means to earn a living. Well, he can come and work for me in the future, if he likes I think they would probably prefer to go away rather than go into a location (Mr. Ziervogel). Personally, I most strongly support the attitude taken by the (South Africans') League. I am representing our Church (the Dutch Reformed Church) in the League, and I helped to draw up that petition. What I think is, and what I tried to bring out in the Committee is, that our main object is to get the Indians out of this country ; that, I think, must be our ultimate object Therefore I say that as a means to that end I support segregation, but only as a means to that end."

Compulsory segregation, as interpreted by such witnesses, differs only from compulsory repatriation in that it avoids the expense of expropriation and repatriation. Such evidence is, at any rate, useful as indicating the spirit in which a policy of segregation might be administered.

Similar evidence was given in Natal by the deputation representing the Natal Agricultural Union, who also considered that their proposals were humane and just :—

"Our idea is that, if legislation were carried out on proper lines, the number of Indians would greatly diminish as a result of the number who would voluntarily emigrate, when they saw that their future was blocked in this country."

66. There are, however, other witnesses who are convinced that the separation of the races is essential for the welfare of the community as a whole, and honestly desire to minimise the hardship and injustice that must ensue. It will be for the Commission to consider whether the proposals which have been put before it are practicable. Difficult questions such as the provision of land, payment of compensation for removal, the administration of the Asiatic area, and so on, have not always been fairly faced. It will be sufficient here to examine more generally the principles and the probable effect of such a policy. It is not desired to dwell on the racial stigma which compulsory segregation implies, or the resentment and resistance which it would inevitably arouse. Nor is it desired to emphasise unduly that restrictive legislation would be regarded as a breach of the settlement of 1914 and subsequent assurances. It is desired first of all to consider the proposal on its merits from the point of view of the white, as well as the Indian, community.

67. Segregation as advocated by these witnesses can be distinguished under two heads, viz. :—

- (a) Economic ;
- (b) Social.

(a) Segregation of Asiatic trading.

Economic segregation has usually meant no more than the restriction of Asiatic trading to certain specified areas or "bazars." Its primary object is to prevent unfair competition with white traders, whose running expenses are greater on account of their higher standard of living. But if the customer has equal access both to the European and to the Asiatic areas, it is obvious that segregation will fail of its object. The divergence between the methods of business will become more marked ; competition will be keener ; and the centre of trade will shift to the Asiatic area. Segregation for this purpose will only be successful if it acts as a deterrent to the customer ; that is, if Asiatic trading is relegated to a distant or unattractive locality. This would be an artificial restraint on trade, which, on the face of it, is indefensible.

68. At the same time it may readily be admitted that Asiatic trading as frequently carried on in this country has objectionable features. The premises are sometimes inadequate and unsightly. The "living-in" system is bad in itself, and may lead to under-payment of shop assistants and breaches of the shop hours' regulations. There is over-crowding and neglect of sanitation. The Asiatic is not altogether to blame, for it may be difficult for him to get sufficient land on a good title. Nor is the Asiatic the only offender. However that may be, it may be conceded that the welfare and general amenities of a town may require that businesses which are conducted on such lines, should not be established in the principal streets. There could be no objection to regulations which compelled a person trading in certain quarters to maintain a certain standard of business. But the criterion should be his standard of business, and not his nationality.

69. In Natal, however, economic segregation in a much wider sense has been suggested. The proposals which have been put before the Commission have not always been clearly thought out, but the general idea is that the large Indian agricultural population should be concentrated in one area. To an outside observer it would appear that any such hard and fast line of demarcation would be impracticable. Round Durban, for instance, Indian market gardens and European suburban residences are everywhere intermingled; and it is difficult to see how either the one or the other could be expropriated. It must also be repeated that any restriction on their existing right to acquire, own and occupy land anywhere in the Province, would not only be resisted as such, but in the case of the ex-indentured Indians and their descendants would be regarded as a breach of the conditions of their recruitment. It may be agreed, however, that it would be advantageous to attract the Indian population as far as possible to the Coast belt, provided that their existing right to acquire, own and occupy land elsewhere was in no way diminished. The climate and system of agriculture in the Coast belt are best suited to Indian enterprise. The white farmer of the uplands would be relieved of the fear of an Indian invasion. And from the point of view of the general community, if Indian activities were given fair scope, the Coast belt might become one of the richest and most intensively cultivated tracts in the world. So far as has been ascertained, the difficulty of getting land on reasonable tenure is the chief obstacle to Indian settlement in the Coast belt. It is suggested that it should be earnestly considered how far this obstacle might be overcome by Government intervention.

Settlement of Natal Indians in the Coast belt.

70. Social segregation, as proposed to the Commission, means that all Indians would be compelled to reside in certain specified areas or "locations." There is no evidence that the Indians have shown a desire to settle in European residential quarters. In many places it has been objected that Indian traders and their families reside on their business premises in the principal streets; and it may be admitted that there is much that is objectionable in this practice. But it is not necessary on this account to compel all Indians to reside in a location. The remedy is to prohibit "living-in."

(b) Residential segregation.

71. It should not be impossible to meet the natural desire of Indians of the same class to live near one another. But any attempt at compulsion would at once be resisted. It is easy to say that this is contempt of the law. But it is not believed that the attitude of any self-respecting people would be different. Nor is it a mere matter of sentiment. The members of the Commission have visited the Vrededorp and Germiston locations and can judge for themselves what compulsory segregation means. They will have realised the irony of segregation "for sanitary purposes." It is idle to say that the admitted evils of the Transvaal locations can be cured by better administration. There is no guarantee that the administration will be better in the future than it has been in the past. Mr. Blackwell himself has admitted that the Municipalities are not to be trusted, and has recommended that "the Registrar of Asiatics should be entrusted with the duty of periodic inspection and constant supervision to see that the requisite facilities are maintained." It may be permitted to doubt whether such inspection would be effective. The segregation of a community which has no political power will always mean ghetto conditions. Freedom to reside elsewhere is the only safeguard that the Indian quarter will be decently administered.

72. To conclude: as things now are, voluntary separation may be wise. But there should be no legislative barrier. The case against the Indians is that their standard of living is lower than the white standard, and that their civilisation will not coalesce with the western civilisation of South Africa. Compulsory segregation would depress still further their standard of living, and perpetuate and intensify their easternism. The remedy would merely aggravate the disease.

73. The basis of the economic problem is that the Asiatic by reason of his lower standard of living competes on unfair terms with the white man.

The logical solution.

The only logical solution is to raise the Asiatic's standard of living to the white man's level.

The basis of the social problem is that the Asiatic by reason of his easternism is not assimilated into the western civilisation of South Africa.

The only logical solution is to westernise the Asiatic, and help him to fit into his environment.

It is submitted, moreover, that this is not merely the logical solution, but a moral claim. To quote again the South African writer in the March number of the "Round Table" :—

"As long as any Indians remain in South Africa, they have a claim to positive justice from the Government of the country. In the negative justice of discouraging all views and practices tinged with passion and prejudice, and of respecting vested rights, neither the Government nor the Parliament of the Union has been wanting. But this is surely not enough. If Indians by their standard of living endanger the white population, they should be encouraged and assisted to raise that standard."

Its practicability.

74. It will be said, no doubt, that east is east and west is west. But it should not be assumed that heredity is stronger than education and environment. Some of the Colonial-born Indians of the second and third generation, even with the limited opportunities now open to them, are already comparatively westernised. At the same time, the difficulties are admittedly great; and it will perhaps be helpful to indicate briefly the lines of progress, which, it is submitted, would lead towards the goal.

Suggested lines of progress.

(1) Education.

75. The first need is education. It is certain that a sound western education in a western environment would have far-reaching results. There is a widely expressed desire among the Indians settled in South Africa that facilities for education should be provided for them: such facilities are at present admitted to be inadequate. Primary education should be compulsory for Indian boys as it is for white children. Wealthy Indians might be encouraged to found institutions for higher education. Experience in India has shown that a purely literary education gives the Indian boy too narrow an outlook, and tends to overcrowd the clerical and learned professions. Facilities for technical and agricultural instruction are also required. Games should not be neglected. Cricket, football and hockey, for which Indian boys have a great liking, are a powerful influence on the formation of character. They teach good sportsmanship and western ideas of fair play.

76. Even more important perhaps is the education of Indian girls. Here again Mr. Renaud's evidence may be quoted, for it goes straight to the point :—

"It is the influence of the mother that makes you want all sorts of comforts and improvements. I suppose myself that the influence of the mother produces to a great extent the improvements in the homes and general living conditions. Where the women are closeted and have not developed, there you will find that the general living conditions lag behind: but where the women have had education, there you will find the development in the home. I have noticed that myself. There is that drawback, but that will disappear in time. Of course it is very difficult for them to assimilate European education and civilisation at once; their old habits and customs have been ingrained in them for many centuries. I know some Mahomedans whose daughters are very highly educated; at first they were looked down upon by the others, but now that spirit is dying out. The other day, for instance, I was visiting one of my clients, and I heard a girl playing the piano very well, and I enquired and she was brought in; she was his daughter. I advocate that very much. I advocate that assimilation and emulation of European habits and customs; and if we can get them to follow along the lines of such development, a lot of the feeling of antipathy that exists will die away. However, the development will have to be gradual, although I think the improvement that has been made so far is very great; and the further we go, the greater will be the improvement."

Patience and caution will be necessary. Different creeds and castes have different prejudices, which should be respected. But the results will justify the effort.

(2) Improvement of wages.

77. Secondly, the wages of Indian employees should be improved. It may be admitted that the wages which are now frequently paid to Indians, are unfair not only to them, but also to the white wage-earners with whom in certain spheres they compete. When the effect of education begins to be felt, the Indian workers will automatically increase their demands in order to support the higher standard of living to which they will have been trained. But meanwhile some external action may be required. The remedy rests primarily with the white Unions. As the writer of the "Round Table" article, which has already been quoted, has pointed out: "The Trade Union, if like the Amalgamated Society of Engineers "it adopts the only rational attitude of admitting coloured members and insisting "on their being paid the same wages as Europeans with like qualifications, offers "a means of raising the coloured man to the European standard of life." In other words it is open to the white Unions to give practical effect to their doctrine of equal pay for equal work.

78. It is understood that the problem has been solved on these lines in Australia and New Zealand. In Durban there is already a movement in the

same direction. There are now nine Indian Unions in Durban, namely, Hotel employees, Shop Assistants, Dock workers, Railway workers, Municipal employees, Tobacco workers, Furniture workers, Master bakers' vanmen, and Printers, as well as a Teachers' Society. There is also an Indian representative on the Central Council of the Shop Assistants' Union. At present, however, the Indian workers generally are not strong enough to bargain on fair terms with their employers. It is understood that they would welcome the appointment of an independent Wages Board ; and it is suggested that it should be considered whether it would not be possible to improve their position by fixing a legal minimum wage.

79. Better wages alone will not raise the standard of living. As experience in India and elsewhere has shown, a higher scale of wages may merely reduce the output of work. The Indian must be systematically taught to find an outlet for his increased earnings. It is unnecessary here to elaborate a scheme of welfare work. Night schools, reading-rooms and games at once suggest themselves. An effort should also be made to improve domestic hygiene.

(3) Welfare work

80. Fourthly, sanitary and industrial laws, which should be based on the white standard of living, should be more strictly enforced. It will be admitted that Indians are sometimes permitted by the sanitary authorities to live under conditions which are degrading to themselves and intolerable to their neighbours. This laxity is partly a consequence of the low scale of wages which Indians are now earning, for it is felt that they cannot afford to live otherwise. In the Transvaal also it must be recognised that the restrictions on the ownership of fixed property lead to overcrowding. But Indians who are anxious for the welfare of their community, would welcome a stricter administration of the sanitary laws, provided always that the means to live decently are not denied them.

(4) Enforcement of sanitary and industrial laws.

In particular, shopkeepers and their assistants should, as far as possible, be prohibited from residing on their business premises. Many arguments have been urged with force against this practice. But perhaps the most serious objection is its effect on the Indians themselves. The trader who resides on his business premises is never away from his work. Even when his shop is closed, he is immersed in his books and correspondence ; he becomes absorbed in money making ; he has no outside interests ; mentally and physically his growth is stunted.

81. Lastly, in Natal, where Indians of the cultivating class are numerous, they should be given reasonable opportunities for agricultural development. The advantages of an Indian settlement in the Coast belt have already been suggested.

(5) Development of agriculture.

82. It would seem to be necessary to appoint an administrative authority to carry out the policy which has been outlined. In its petition to Parliament the South Africans' League has said :—

Need for an administrative authority.

“That your petitioners are convinced of the failure of central administration and urge upon Government to decentralise such administration by entrusting to Municipalities the duties of enforcing the laws appertaining to Asiatics which are already in existence in this Province.”

It is not necessary to discuss whether such decentralisation would be consistent with section 147 of the South Africa Act, which reserves to the Governor-General in Council the control and administration of matters specially or differentially affecting Asiatics throughout the Union. It is clear from the evidence which has been given before the Commission that the attitude of the Municipalities towards Asiatics is essentially repressive. It would not be possible, for the present at any rate, to rely on them to carry out a progressive policy.

It has been the object of the present deputation to impress on the Indian community in South Africa that they should look to the Government of the country in which they live for redress of their grievances, and should loyally co-operate with the Union Government in any measures which may be taken for their welfare. At the same time, if the need for a more constructive policy is accepted, it may perhaps be permitted to suggest that more direct personal relations would be desirable. It is recommended that the administration of the Asiatic policy of the Union Government should be entrusted to a responsible official in whom the Indian community has confidence.

83. It is feared that this memorandum has gone beyond the strict terms of reference to this Commission. But, as the Commission has already recognised, the right to trade and the right to own land cut deep into the social and economic life of the community. The problem with which the Commission is confronted is primarily economic and social. An attempt has been made to indicate the lines on which a solution might be found. It remains to consider the manner in which the law relating to trading licences and the ownership of land should be amended. It is unnecessary to discuss details here. It will be sufficient to state the general principles for which the Government of India would contend.

The law relating
to trading licences.

84. In the Transvaal a general dealer's licence is issued to any applicant by the Receiver of Revenue on payment of the prescribed fee. But under section 90 of the Transvaal Local Government Ordinance, No. 9 of 1912, a Municipal Council is empowered to refuse a licence to sell articles of food and drink for human consumption for any of the reasons specified in that section, subject to an appeal to the magistrate. Comparatively few Municipal Councils appear to have exercised this power. In the Cape Province and Natal every application for a licence to trade is considered by the local authority or by a special licensing officer, who may grant or refuse the application at discretion.

85. Economically it does not seem sound that a Municipal Council should be able at its discretion to restrict the natural development of trade and commerce. Nor does it seem fair to the applicant that his case, as must often happen, should be adjudicated by his trade rivals. In particular, it is clear from many cases which have come before the Courts, that Municipal Councils refuse an application from an Indian merely because he is an Indian, although it has repeatedly been held that this is not a fair exercise of discretion within the limit of the Statute. The Municipal Licensing Officer at Durban frankly admitted before the Commission that it was his policy to discriminate against Asiatics, although discrimination is not permitted by the law. "If," he said, "you refuse a man a licence in West Street because he is an Indian, you do not put it on this ground; you have to cover it up to a certain extent."

However, Sir William Solomon's Commission in 1914 concluded that "any recommendation to deprive the Municipality of the control of licences would be opposed to public opinion and would, therefore, be wholly ineffective." And it must be conceded that public opinion on this question has not changed. At the same time, it will be admitted that it is unfair to the Indian traders that their businesses should be at the mercy of a licensing authority which evades or disregards the law. It leads to perpetual litigation between Indians and the Municipalities, which is a constant source of irritation and expense. And if it may be permitted to say so, it does not appear to be in the public interest that the law should be deliberately disregarded by the authority which is responsible for its administration.

86. It is hoped therefore that the licensing law will be amended so as to give effect to the following principles. Firstly, it should not be possible for the licensing authority, whatever it may be, to refuse a licence arbitrarily. Secondly, it should not be lawful for the licensing authority to refuse a licence on the ground of the applicant's nationality. If these principles are accepted, it would appear to be necessary to lay down by statute the grounds on which a licence may be refused, to require the licensing authority to give the reasons for refusal, and to provide for an appeal to an independent and impartial tribunal.

It is presumed that the first principle is common ground. It is in the interest of the white trader, as much as the Asiatic, that a licence should only be refused for reasons recognised by law. It is in the interest of the whole community that trade should not be arbitrarily restricted.

It must be admitted, however, that the second principle is opposed to a strong body of public opinion. In fact, the House of Assembly last year inserted a clause in the Asiatics (Land and Trading) Amendment Bill empowering any licensing authority in the Transvaal to refuse, without reasons assigned, the application of any Asiatic who was not on the first of May 1919 carrying on business in the area for which such authority issued licences. And many people who are willing to protect existing Asiatic businesses, feel that something should be done to prevent the issue of any new licences. It must be repeated that any new restriction on Asiatics as such would be regarded, not only by the Indian community in South Africa but also by the Government and people of India, as a breach of the Smuts-Gandhi agreement, and as incompatible with the assurances which were given at the Imperial Conferences of 1917 and 1918.

87. In the Cape Province and Natal there are no restrictions on the ownership of land by Asiatics. Regarding the Transvaal, the views of the Government of India are contained in the memorandum which was laid before the Imperial Conference of 1918 :—

The law relating to the ownership of land.

“ On the contrary, the prohibition against Indian ownership of fixed or landed property should be repealed by Parliament, on the grounds that it tends to foster insincerity on all sides, to deprive Indians of some of the elementary rights and responsibilities of citizenship, which are not denied even to the aboriginal natives and other non-Asiatic coloured peoples of the Province, and which are possessed by their compatriots in the Coast Provinces, and especially in Natal, where the bulk of the Indian population of the Union is to be found. Transvaal Indians ought not to be compelled to regard themselves as possessing an inferior status, in this respect, to their compatriots residing in the Coast Provinces, and such a statute as Law 3 of 1885 is an anachronism and opposed to the spirit of modern legislation.”

As has already been stated, the restrictions on the occupation of proclaimed land by Indians which are imposed by the Gold Law, had not been enforced in 1918, and were not then discussed. It will be understood that the right to own fixed property naturally implies the right to occupy.

88. It is hoped that this memorandum will now receive the sympathetic consideration which was promised in 1918. The difficulty of amending Law No. 3 of 1885 or the Gold Law in the present state of public opinion is recognised. It must indeed be admitted that it would be a reversal of the decision of Parliament, as expressed in Act No. 37 of 1919. But if the policy which has been outlined in this statement is accepted, it is urged that the Transvaal laws relating to the ownership and occupation of land should be brought into consonance with that policy. It has been pressed that the only logical solution of the problem before the Commission is to raise the Asiatic's standard of living. It is a condition of this solution that the Asiatic should be permitted to own and occupy land. It is not possible for him to raise his standard of living if he is continually obstructed by insecurity of tenure and by the difficulty of obtaining land for residential, business or other purposes.

Experience has emphasised the danger of any divergence between policy and the law. Understandings have led only to misunderstandings. Law No. 3 of 1885 which was accepted by the British Government as a sanitary measure, and the provisions of the Gold Law which were represented by the Attorney-General to be “ a matter of sound police and sanitary legislation,” are now avowedly being used by the Municipalities to restrict Indian trading. The Indians, who have only done what they were permitted to do, have been accused of evading and disregarding the laws. And the Union Government has been blamed for apathy in administration. The Indians, on their side, feel that the assurances which were given when these laws were passed, have not always been respected ; and an unexpected decision of the Courts has now forced a crisis to which the Government of India cannot be indifferent. It is submitted that it is in the interests of everyone that the law should conform to policy, and administration should conform to the law.

APPENDIX A.

EXTRACT FROM THE MEMORANDUM PRESENTED BY SIR S. P. (NOW LORD) SINHA TO THE IMPERIAL WAR CONFERENCE OF 1918.

The following would appear to be some of the principal grievances of South African Indians:—

- (1) *Trading Licences*.—It is necessary to obtain a licence in order to be able to carry on any trade or business in South Africa. Each Province has its own trading licence legislation, and the tendency recently has been in every Province to transfer the control of licences from the Government to municipalities. Although there is a system of appeals from the decision of the municipalities, e.g., in Natal to Town Councils or to Licensing Appeal Boards, the right of appeal to the Courts is extremely limited. Thus, in Natal, against refusals of application for new licences there is a right of appeal in matters of procedure, but not of facts, to the Provincial Division of the Supreme Court, whereas, in cases of refusal to renew licences there is a right of appeal on facts also. It is generally contended that the municipalities arbitrarily refuse to grant licences to Indians with the improper and indirect object of destroying Indian trade, and the Indian newspapers are full of such instances. The trading rights of Indians in South Africa are a vital issue. If the Indian community remain at the mercy of their European rivals in respect of the right of their members to earn an honest livelihood by trade, it is only a question of time for the whole community to become impoverished and be reduced to industrial helotry. The remedy seems to be to give the fullest right of appeal in all cases of refusal of licences to the Provincial Division of the Supreme Court—on questions of fact as well as of procedure.
- (3) *The Ownership of Land*.—Unlike their compatriots in Natal and at the Cape, Transvaal Indians, under the old Republican Law 3 of 1885, remain under the disability that they are denied the right to own fixed property, i.e., from having the legal ownership registered in their own names. The system of indirect ownership, in other words nominal European ownership, originally suggested by the Republican Government themselves, prevailed until quite recently, and is still occasionally adopted. The process is roundabout, cumbrous, and expensive, but the facts are notorious, and the circumstances are legally recognised by the Courts.

Since about the year 1914, the practice has grown up of forming and registering, under the Transvaal Companies Act, 1909, small private companies, with limited liability, whose members are all Indians (frequently an Indian and his wife), and possessing an independent legal *persona* for the purpose, amongst other things, of acquiring fixed property. All these transactions have recently received judicial recognition. It is said that attempts are now being made by interested parties to deprive Indians of this right of indirect ownership of fixed property. Recently a question was put on the subject in Parliament, and the Government spokesman replied that it was intended to examine into the question when the new companies law was under consideration. Advantage has frequently been taken by Indians of these indirect, but quite legal, methods to open businesses in townships whose private regulations prohibit the sale of stands to Indians, which, in themselves, are intended indirectly to compel Indians to reside and trade in special locations, which, again, would mean financial ruin to most of them, and against which attempt the Indian community has fought since long before the Boer War.

On the contrary, the prohibition against Indian ownership of fixed or landed property should be repealed by Parliament, on the grounds that it tends to foster insincerity on all sides, to deprive Indians of some of the elementary rights and responsibilities of citizenship, which are not denied even to the aboriginal natives and other non-Asiatic coloured people of the Province, and which are possessed by their compatriots in the coast Provinces, and especially in Natal, where the bulk of the Indian population of the Union is to be found. Transvaal Indians ought not to be compelled to regard themselves as possessing an inferior status, in this respect, to their compatriots resident in the coast Provinces, and such a statute as Law 3 of 1885 is an anachronism and opposed to the spirit of modern legislation.

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APPENDIX B.

THE TRANSVAAL LAW No. 3 OF 1885.

Article XIV of the Convention of London of 1884 provides as follows :—

All persons, other than natives, conforming themselves to the laws of the South African Republic, The Convention of London of 1884.

- (a) will have full liberty, with their families, to enter, travel or reside in any part of the South African Republic ;
- (b) will be entitled to hire or possess houses, manufactories, warehouses, shops, and premises ;
- (c) may carry on their commerce either in person or by any agents whom they may think fit to employ.

2. *Law No. 3 of 1885 in its original form was objected to by the British Government as Law No. 3 of 1885. being a contravention of the terms of Article XIV of the Convention of London. It was accordingly amended to meet this objection by the Volksraad Resolution of the 12th August 1886, and as finally promulgated it provided as follows :—

- (a) Persons belonging to one of the native races of Asia, including the so-called coolies, Arabs, Malays, and Mahomedan subjects of the Turkish Empire, cannot obtain the burgher right of the South African Republic.
- (b) They cannot be owners of fixed property in the Republic except only in such streets, wards, and locations as the Government for purposes of sanitation shall assign to them to live in.
- (c) Those who settle in the Republic for the purpose of carrying on any trade or otherwise shall be bound to have their names entered in a register on payment of a prescribed fee.
- (d) The Government shall have the right, for purposes of sanitation, to assign to them certain streets, wards, and locations to live in (ter bewoning).

3. The present enquiry is not directly concerned with burgher rights. In regard to the remaining provisions of the law, the following points are of importance :—

- (1) Its object was *sanitary*, not economic.
- (2) It was accepted by the British Government on the understanding that, as being a sanitary measure, it "would not apply to traders and other persons of a superior mode of life (not being coolies), whose relegation to certain districts was not necessary on *sanitary* grounds."
- (3) It permitted the acquisition of fixed property by Asiatics in the streets, wards and locations assigned to them.
- (4) It recognised the right of Asiatics to settle in the Republic for the purpose of carrying on trade.
- (5) Power was only taken to assign streets, wards and locations "to live in," and not for business premises.
- (6) The assignment of streets, wards and locations "to live in" was optional and not compulsory, and no penalty was provided for living outside locations.

4. After the law had been passed, however, the Government of the South African Republic claimed

- (1) that it applied to all Asiatics alike ; and
- (2) that it gave power to compel Asiatics not only to reside, but also to carry on business, in the streets, wards and locations assigned to them.

5. In 1895 the matter was referred to the arbitration of Mr. Melius de Villiers, then Chief Justice of the Orange Free State, who held that the Government of the South African Republic was entitled to give full force and effect to Law No. 3 of 1885 as amended by the Volksraad Resolution of 1886, "subject to sole and exclusive interpretation in the ordinary course by the tribunals of the country." The arbitration of 1895.

The effect of this award was to leave the question in issue for decision by the Courts.

6. In 1898, in the test case of Tayob Hadji Mohammed Khan, the High Court of the Republic held by a majority of two to one that the words "ter bewoning" in Law No. 3 of 1885 covered a merchant's place of business as well as a place of residence. Tayob Hadji Mohammed Khan's case.

7. The law, however, was not strictly enforced by the Republican Government. Indians were permitted not only to trade, but also to reside outside locations. In 1898 (Government Notice No. 621), however, "the coolies and other Asiatic persons who do not as yet dwell and carry on business in locations" were ordered "to proceed to dwell and carry on business in the locations appointed for that purpose." The order was repeated in 1899 (Government Notice No. 208). Law not strictly enforced by the Republican Government. (a) Residing and trading outside locations.

*For the history of these negotiations, see letter dated the 20th July 1904, from the Secretary of State for the Colonies to the Governor of the Transvaal.

Pretoria, did not comply ; and no effect appears to have been given to these Notices prior to the outbreak of war in October 1899.*

(b) Ownership of fixed property outside locations through nominal white trustees. 8. Indians were also permitted to own fixed property outside locations through nominal white trustees. The practice of the Republican Government was thus described by Mr. Eugene Marais in his evidence before the Commission :—

“ It is a fact that the late Republican Government appointed trustees to hold fixed property for Indians. On the Gold fields where Indians acquired land, either the Mining Commissioner or someone else was appointed to hold land in trust for Indians. That was also the practice among the natives when General Joubert was Superintendent of Natives.”

The first known case is that of Mahomed Ismail, who in 1888 purchased certain stands at Klerksdorp at a Government sale, and was permitted by the Government to register his purchase in the name of the Mining Commissioner as trustee.

The practice was continued under the Crown Colony Government. In 1903, Mr. W. E. Davidson, the Colonial Secretary, who was holding erf No. 84 at Pietersburg in trust for Ayob Ibrahim and Co., gave transfer to A. Mahomed and E. Tayob trading as Ayob Ibrahim and Co. (deed of transfer No. 10078). Indirect ownership through a private person as nominal trustee also became common. In such cases the trustee frequently passed a mortgage bond in favour of the real purchaser and also gave him an irrevocable power of attorney.

Habib Motan's case. 9. In 1904 the decision given in 1898 in the case of Tayob Hadji Mohammed Khan was reversed by the Transvaal Supreme Court in the case of Habib Motan. It was then held that Law No. 3 of 1885 did not apply to the business places, but only to the residences of Asiatics, and that the Government, therefore, had not the power under that law to refuse to grant to Asiatics licences to trade in places outside the boundaries of the locations assigned to them. In his judgment the Chief Justice, Sir James Rose-Innes, emphasised the fact that “ the mischief “purported to be aimed at (by Law No. 3 of 1885) was an insanitary mode of life in the midst “of a European population, not an inconvenient competition with the European trader.”

Legislation proposed by the Crown Colony Government. 10. In the same year, in consequence of the agitation against Asiatics and especially against Asiatic competition in retail trade, the Transvaal Government proposed to introduce legislation providing :—

- (1) That those Asiatics who satisfy the Colonial Secretary of the Colony that their mode of living is in accordance with European ideas should be allowed to live, with their servants, outside locations, but not to trade outside locations unless they fall under (2) ;
- (2) That those Asiatics who had established business outside locations before the war should not be disturbed ;
- (3) That with the two exceptions mentioned above all Asiatics should be required to live and trade in locations, and should be prohibited from holding land outside : this provision not to apply to land now set aside and used for religious purposes.

Reply of the Imperial Government. 11. The Colonial Secretary, in his despatch dated the 20th July 1904, replied in the following terms :—

“ Every rational precaution to safeguard the health of the community and of the British Indians themselves must, of course, be taken, and regulations securing this end with respect to their residence, and to the general treatment of the lower classes, carefully prescribed.

“ But an apprehended trade competition from the British Indians now in the country, whose number is now comparatively small and will under the proposed restrictions on immigrants be in a diminishing proportion, cannot be accepted as sufficient reason for the legislation proposed. His Majesty's Government have steadily declined to allow this fear to influence their views in the past. On the contrary, for many years they repeatedly protested before the Empire and the civilised world against the policy and laws of the late South African Republic in relation to this subject.

“ These laws were indeed only partially enforced, yet His Majesty's Government is now asked not merely to sanction their strict enforcement, but to set aside by legislation a judgment of the Supreme Court which has given to the British Indian rights for which His Majesty's Government have strenuously contended.”

12. It was accordingly requested that the proposed Ordinance, which was to take the place of Law No. 3 of 1885, should be amended as follows :—

- (1) Those required to live in locations should be so required for sanitary reasons in each case, while those of a superior class should be exempted and allowed to reside anywhere ;
- (2) Those who were entitled to reside outside locations should at least have the right to acquire property in the premises which they occupied for business purposes ;
- (3) The right of those already in the country to obtain licences to trade outside locations, should not be interfered with ;
- (4) The right of newcomers in respect of trade should not be limited unless and until it was proved that the proposed Immigration Restriction Ordinance had failed to limit the influx to a minimum.

*NOTE.—The Government Notices of 1898 and 1899 provided for the exemption of those who had entered into long leases or obtained transfer.

The proposed legislation was then dropped, and Law No. 3 of 1885 was allowed to remain as it stood.

13. In 1909 the Transvaal Companies Act, No. 31 of 1909 was passed; and in accordance with its provisions Asiatics began to form themselves into limited liability companies for the purpose of acquiring fixed property. The legality of such acquisition was tested in 1916 in the case of *Reynolds vs. Oosthuizen*, when Mr. Justice Ward held that a company had an independent legal *persona*, that it had no nationality, and that it was not competent for him to enquire into the nationality of the shareholders. The Transvaal Companies Act of 1909.
Reynolds vs. Oosthuizen.

In 1919, however, in the case of *Krugersdorp Municipal Council vs. Dadoo Ltd.*, the Division of the Supreme Court held that the formation of such companies for the purpose of acquiring fixed property was a contravention of the law prohibiting the acquisition of land by Asiatics, and that all transfers so obtained were *in fraudem legis*. Krugersdorp Municipal Council vs. Dadoo Ltd.

This decision was reversed in 1920 by the Appellate Division.

14. In 1918, Sir S. P. (now Lord) Sinha, as the representative of India, placed before the Imperial Conference a memorandum on certain disabilities of Indians in the self-governing Dominions, which referred *inter alia* to the Transvaal Law No. 3 of 1885; see Appendix A. It was represented that Law No. 3 of 1885 should now be repealed. The Conference passed a Resolution recommending the questions covered by this memorandum to the various Governments concerned; and Mr. Burton, the representative of South Africa, accepted the Resolution in the following terms:— The Imperial Conference of 1918.

“As far as we are concerned in South Africa, we are in agreement with this Resolution, and also with the proposal referring the memorandum to the consideration of our Government, and we will give it the most sympathetic consideration that we can, certainly.”

15. At the beginning of 1919, arising out of the case of *Krugersdorp Municipal Council vs. T. W. Beckett and Co.* under sections 130 and 131 of the Gold Law (see below), the Member for Cape Town, Castle, moved for the appointment of a Select Committee with a view to remedial legislation. The Minister of the Interior moved an amendment extending the scope of the Committee's enquiry so as to cover the alleged evasion of Law No. 3 of 1885 by the formation of limited liability companies or otherwise. The motion was agreed to as amended. The Select Committee of 1919.

16. As a result of the Select Committee's Report, the Asiatics (Land and Trading) Amendment Act, No. 37 of 1919, was passed. Section 2 enacted that, as from the 1st May 1919, Law No. 3 of 1885 should be construed as prohibiting The Asiatics (Land and Trading) Amendment Act of 1919.

- (1) the registration of a mortgage over fixed property in favour of an Asiatic otherwise than as security for a *bona fide* loan or investment; and
- (2) the ownership of fixed property by a company in which one or more Asiatics have a controlling interest.

The legality of ownership by Asiatic companies before the 1st May 1919 was left for the Courts to decide. Such ownership has now been held by the Appellate Division to be legal in the case of *Krugersdorp Municipal Council vs. Dadoo Ltd.*; see paragraph 13 above.

It is understood that the primary object of this amendment Act was not sanitary, but economic, that is, to restrict Asiatic trading.

THE TRANSVAAL GOLD LAWS.

Law No. 3 of 1885 restricts the *ownership* of fixed property by Asiatics to the streets, wards and locations assigned to them. But it permits *occupation*, on lease or otherwise, anywhere, Relation of the Gold Laws to Law No. 3 of 1885.

- (a) for residence, by persons who are not required for purposes of sanitation to reside in locations;
- (b) for business purposes, by anyone.

The Gold Laws impose additional restrictions on the *occupation of proclaimed land* by Asiatics.

2. Section 92 of the Gold Law No. 15 of 1898 runs as follows:— Law No. 15 of 1898.

“Every white person who wishes to erect a shop, or houses or dwelling on a proclaimed field, but not in stand townships, shall make application to the Mining Commissioner for one or more stand licences and produce a diagram clearly indicating the locality. The Mining Commissioner shall decide whether such application shall be granted or not.”

Section 133 says:—

“No coloured person may be a licence holder, or in any way be connected with the working of the diggings, but shall be allowed only as a workman in the service of whites.”

3 In 1909, in the case of *Khotas*, these sections were interpreted by the Transvaal Supreme Court as follows:— Khotas' case.

- (1) The fact that section 92 of the Gold Law of 1898 prohibited any but white persons from being the holders of stands granted under the section, does not prevent coloured persons from acquiring and exercising leasehold rights to such stands.
- (2) Section 133, prohibiting coloured persons from being licence holders or from being in any way connected with the working of the diggings, refers only to such licences as diggers' and claim licences, and does not prohibit such persons from holding general dealers' licences to trade on diggings.

Thus there is nothing in the Gold Law of 1898, as interpreted by the Courts, which restricts either occupation on lease or trading by Asiatics.

The Vrededorp Stands Act. 4. The Vrededorp Stands Ordinance, No. 31 of 1906, as amended by the Vrededorp Stands Act, No. 27 of 1907--

- (1) by section 4 entitled the registered holder of a stand in the township of Vrededorp to obtain a freehold title, subject to the conditions that it should not be transferred or sublet to any Asiatic, native or coloured person, and that after the expiry of four years the owner should not permit any Asiatic, native or coloured person (other than the *bona fide* servant of a white person for the time being residing on the stand) to reside on or occupy the stand or any part of it ;
- (2) by section 13 declared that after a period of four years it should not be lawful for any Asiatic, native or coloured person to reside on or occupy a stand in the township of Vrededorp ;
- (3) by section 14 expressly enacted that every transfer of such a stand and every agreement to transfer or sublet to an Asiatic, native or coloured person, if made after the 5th August 1907, should be null and void.

The Imperial Government assented to this legislation as a special case on the ground that these stands had been granted by President Kruger to indigent burghers for their personal occupation, and hence occupation by, or transfer or sublease to, an Asiatic or coloured person would be a breach of the conditions of the grant.

It followed by implication that these restrictions did not extend beyond the stands in the township of Vrededorp.

The Colonial Secretary, while conveying the assent of the Imperial Government in his letter, dated the 21st December 1906, added :—

“ I cannot allow it to be supposed that the perpetuation of the restriction of the existing law (*i.e.*, Law No. 3 of 1885) which prevents British Indians from holding land, is acquiesced in by me, for I share the view expressed by my predecessor in his despatch of 20th July 1904, that, besides being permitted to own land in the locations set apart for Asiatics, British Indians who are entitled to reside outside locations should have the right to acquire property in the premises which they occupy for business purposes.”

The legislation of 1908. 5. In 1908 the Townships Amendment Act, No. 34 of 1908, and the Precious and Base Metals Act, or “Gold Law”, No. 35 of 1908, were passed. They apply to “proclaimed land,” that is, to land proclaimed as a public digging.

Act No. 34 of 1908. 6. Under section 60 of Act No. 34 of 1908 a leasehold in a Government township on proclaimed land can be converted into a freehold, and under section 62 the Governor can lay down the conditions of such conversion. One of the standard conditions is :—

“ The lot or any portion of it shall not be transferred, leased, or in any other manner assigned or disposed of, to any coloured person ; and no coloured person, other than the domestic servants of the registered owner or his tenant, shall be permitted to reside thereon or in any other manner occupy the same.”

This was assented to on the ground that the disability on Asiatics applied only in respect of premises which it was desired to transfer from leasehold to freehold, and such transfer was not obligatory. An assurance was also given that it was not proposed to interfere with vested rights which were acquired by individuals prior to the date of the grant of freehold. See letter from the Colonial Office to the India Office, dated the 12th January 1912.

Act No. 35 of 1908. 7. The important sections of the Gold Law of 1908 are sections 130 and 131, which impose the following restrictions on coloured persons :—

Section 130 :

- (1) No right under the Act may be acquired by a coloured person except as provided in section 24 for native locations.
- (2) The holder of a right shall not transfer 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.

Section 131 :

In the mining districts of the Witwatersrand no coloured person shall be permitted to reside on proclaimed land except in bazars, locations and mining compounds. But—

- (1) the Mining Commissioner is empowered to relax this restriction ;
- (2) the section does not apply
 - (a) to coloured persons in the employ of a white person in so far as they live on the premises where they are employed ; or
 - (b) to coloured persons who at the commencement of the Act were lawfully in occupation of premises.

8. Before the Bill was passed, the Under Secretary for the Colonies was asked in the House of Commons on the 13th May 1908, whether “ the effect of the proposed new law will be to deprive coloured persons including British Indians of the right which they now possess to trade or reside in the mining districts, and compel them to remove for both trade and residence into compounds,

"locations and bazars." The matter was referred to the Transvaal Government, and the Attorney-General, Mr. Jacob de Villiers, in his note dated the 3rd October 1908, reported as follows:—

"In every previous mineral law of the Transvaal the right to acquire mining title or privileges incidental thereto has specially been withheld from persons who do not belong entirely to European races, and, certainly, public sentiment in this Colony would not tolerate a departure from the practice of withholding such a right from coloured persons. The Act (*i.e.*, No. 35 of 1908), therefore, throughout specially provides for the issue of prospecting permits, prospecting and diggers' licences, stand licences, and other privileges to white persons only; but no right or privilege which a coloured person has at the present time is taken away by the new Act."

Section 131 was justified on the following grounds:—

"Section 131, which before the Bill was introduced into Parliament, formed the subject of questions in the English House of Commons, and of despatches from the Secretary of State to the Governor, has been amended in Committee so as to safeguard any rights which a coloured person may at the present time have of occupying land in mining areas. But as a matter of sound police and sanitary legislation, the power to regulate the residence of coloured persons in the populous mining areas of the Witwatersrand is most essential. By the legislation passed under the Crown Colony administration the residence of such persons inside municipalities is confined to the bazars and locations set aside by the Town Council, as the coloured mine employees have always as a matter of convenience been housed in special quarters provided by their employers. But there are parts of the Witwatersrand which are not within municipalities, and it is important in the interests of public health, morality, and good order, that unauthorised and unsupervised congregations of coloured persons—many of them idlers and loafers—should not be allowed to exist so as to be a danger and nuisance to the community."

9. The Colonial Secretary, in his telegram dated the 11th December 1908, noted the assurance that no right or privilege which a coloured person then had was taken away by the new Gold Law. But he was not satisfied that the new law might not "deprive those coloured persons who had not actually acquired vested rights on gold fields, of power to acquire rights which were open to them before," *i.e.*, under the Gold Law of 1898; and he asked for a further explanation.

On receiving a further assurance, in the Governor's telegram dated the 17th December 1908, that section 130 of the new law "carried out the spirit of section 133 of the Gold Law of 1898," the Secretary of State replied on the 28th December 1908 that His Majesty would not be advised to exercise his power of disallowance. In conveying this intimation, he expressly noted three points:—

- (1) that section 131 (3) safeguarded any rights which coloured persons might at that time have of occupying land in mining areas;
- (2) the assurance of the Attorney-General that no right or privilege, which a coloured person had at that time, was taken away;
- (3) that by the use of the words "other places" in section 131 (1), the powers vested in the Mining Commissioner enabled him in the future to exempt coloured persons, including Asiatics of superior class, from being required to live in bazars, locations or compounds.

10. Thus the Gold Law of 1908 was assented to on the explicit assurance that it did not deprive coloured persons, including Asiatics, of any right which they enjoyed under the Gold Law of 1898. These rights, according to the ruling in Khotas' case included—

- (1) the right to acquire and exercise leasehold rights to stands granted under section 92 of the Law of 1898;
- (2) the right to hold general dealers' licences to trade on diggings.

Further, the intention of the Law of 1908, as explained by the Attorney-General in his report dated the 3rd October 1908, was not to restrict Indian trading, but—

- (1) to continue the existing law which reserved for white persons "the right to acquire mining title or privileges incidental thereto";
- (2) as a matter of sound police and sanitary legislation to regulate the residence of coloured persons in the populous mining areas of the Witwatersrand, and more especially outside municipalities.

In fact, the restrictions on the residence of coloured persons purported to be aimed, not at Indian traders, but at "idlers and loafers"; and special powers were reserved to the Mining Commissioner to enable him to permit respectable Indians to reside outside locations.

In actual practice, it is understood that Receivers of Revenue continued to issue to Indians licences to trade on premises on proclaimed land without discrimination.

11. In 1911, a Mr. Tamblin was convicted by the Assistant Resident Magistrate, Krugersdorp, and sentenced to a fine of £2 or 10 days imprisonment under section 130 of Act No. 35 of 1908 for renewing the lease of a stand to certain Asiatics, which had expired in January 1909. On appeal, the Transvaal Division of the Supreme Court held that section 77 of Act No. 35 of 1908, which provides that all the rights and obligations attaching at the commencement of the Act to a stand outside a township and acquired under Law No. 15 of 1898 or a prior law should remain in force, created an exception to section 130 of the Act, and safeguarded all rights attaching to stands under any previous Gold Law. Hence, as it had been held in Khotas' case that coloured persons could acquire and exercise leasehold rights to stands granted under section 92 of Law No. 15 of 1898, it followed that no restriction was imposed by Act No. 35 of 1908 on the letting to Asiatics of any stand, outside a township, which had been laid out under the Mining Laws prior to 1908.

Tamblin's case

The Gold Law not enforced by Government. 12. After this decision, it is understood that orders were issued to Mining Commissioners to take no action in matters connected with Asiatics without previous reference to the Department of Mines. No further action was taken by the Government under sections 130 and 131 of Act No. 35 of 1908; and as was admitted by the Minister of the Interior in the debate in the House of Assembly on the 21st March 1919, it was never contemplated that any person or body of persons except the Government could enforce the Act.

Attitude of the Government of India. 13. The Government of India were not given an opportunity of expressing their opinion on Acts Nos. 34 and 35 of 1908 until after they had been assented to. In their despatch, dated the 11th April 1912, they said that the Acts appeared to them to be opposed to the principles enunciated in previous despatches, and in particular in Mr. Lyttelton's despatch to the Governor of the Transvaal, dated the 20th July 1904; but as assent had already been given, they considered that they were precluded from making any protest against their operation, unless evidence was adduced of their unfair administration.

Krugersdorp Municipal Council vs. T. W. Beckett & Co. 14. At the beginning of 1919, however, the Krugersdorp Municipal Council took action under sections 130 and 131 of Act No. 35 of 1908, and obtained an order from the Transvaal Division of the Supreme Court interdicting Messrs. T. W. Beckett & Co. from permitting the residence of coloured persons on a stand in Krugersdorp, which had been leased by them to an Indian tailor for a shop. The Indian was not made a party to the action, which was undefended.

Act No. 37 of 1919. 15. Certain leading Indians then petitioned the House of Assembly for relief. A Select Committee was appointed, and on its report Act No. 37 of 1919 was passed. The first section of the Act deals with the Gold Law, and enacts as follows:—

Those provisions of sections 130 and 131 of Act No. 35 of 1908, which relate to the residence on or occupation of ground held under a stand licence on proclaimed land by coloured persons, and any similar provisions contained in a deed of grant or a freehold title in a Government township issued under Act No. 34 of 1908, shall not apply—

(a) to any British Indian who on the 1st May 1919 was, under the authority of a trading licence lawfully issued, carrying on business on proclaimed ground or on any stand or lot in such township, or to his lawful successor in title; or

(b) to any person *bona fide* in his employment

so long as he carries on business in the same township.

Krugersdorp Municipal Council vs. Dadoo and Garda. It has since been held in the case of Krugersdorp Municipal Council vs. Dadoo and Garda that Indian traders and their employees who fall within the terms of this section, are legally entitled to reside anywhere in the township in which they are carrying on business.

The Madrasa case. 16. As previously explained, since the Transvaal Companies Act, No. 31 of 1909, was passed, Indians have frequently formed themselves into companies for the purpose of owning fixed property. The legality of such ownership has now been confirmed by the Appellate Division in the case of Krugersdorp Municipal Council vs. Dadoo Ltd.

The position of such companies in regard to *occupation* has been before the Courts in the case of Johannesburg Municipal Council vs. Madrasa Anjuman Islamia under section 4 of the Vrededorp Stands Act, No. 27 of 1907. It was held by the Appellate Division that a company is incapable of being physically present at any place, and that the occupation of the stand in question, therefore, was by the employees of the company within the meaning of the statutory conditions. The decision is now under appeal to the Privy Council.

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III 1

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UNION OF SOUTH AFRICA.

**Areas Reservation and Immigration and Registration
(Further Provision) Bill.**

(To be read a Second Time on Monday, 22nd February, 1926.)

BILL

TO

Make provision for the reservation of residential and trading areas in urban areas for certain persons having racial characteristics in common ; to amend the Immigrants Regulation Act, 1913 (No. 22 of 1913), the Indians Relief Act, 1914 (No. 22 of 1914), and the Asiatic Registration Amendment Act, 1908 (Transvaal) (No. 36 of 1908) ; and to repeal the Chinese Exclusion Act, 1904 (Cape) (No. 37 of 1904) and Act No. 28 of 1897 (Natal).

(Introduced by the MINISTER OF THE INTERIOR.)

3

UNIE VAN ZUID-AFRIKA.

**Terzijdezetting van wijken en verdere voorziening
voor immigratie en registratie Wetsontwerp.**

(Vir die Tweede Maal gelees te word op Maandag, 22 Februarie 1926.)

WETSONTWERP

OM

Voorziening te maken voor de terzijdezetting van woon- en bezigheidswijken in stadsgebieden voor zekere personen, die gemeenschappelijke raseigenschappen hebben ; om de Wet tot regeling van Immigratie, 1913 (No. 22 van 1913), de Indiërs Verlichting Wet, 1914, (No. 22 van 1914), en de Aziaten Registratie Wijzigings Wet, 1908 (Transvaal) (No. 36 van 1908) te wijzigen ; en om de Wet op Uitsluiting van Chinezen, 1904 (Kaap) (No. 37 van 1904) en Wet No. 28 van 1897 (Natal) te herroepen.

(Ingedien deur die MINISTER VAN BINNELANDSE SAKE.)

[A.B. 23—'26.]

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(To be read a Second Time on Monday, 22nd February, 1926.)

BILL

To make provision for the reservation of residential and trading areas in urban areas for certain persons having racial characteristics in common; to amend the Immigrants Regulation Act, 1913 (No. 22 of 1913), the Indians Relief Act, 1914 (No. 22 of 1914), and the Asiatic Registration Amendment Act, 1908 (Transvaal) (No. 36 of 1908); and to repeal the Chinese Exclusion Act, 1904 (Cape) (No. 37 of 1904) and Act No. 28 of 1897 (Natal.)

(Introduced by the MINISTER OF THE INTERIOR.)

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

CHAPTER I.

RESERVATION OF AREAS.

Request by urban local authority for application of Chapter 1.

1. (1) Whenever an urban local authority intimates to the Minister—

- (a) that any area within its jurisdiction is wholly or for the greater part occupied for residential or trading purposes or both such purposes by a particular class of persons; and
- (b) that it is desirable that the provisions of this Chapter should be applied in respect of such area,

the Minister may appoint a commission consisting of not more than three persons (hereinafter called the commission) to investigate and report upon the desirability of applying to such area and to the jurisdiction of the urban local authority within which it is situated the provisions of this Chapter.

(2) One of the members of the commission shall be designated by the Minister as the chairman thereof, and the Minister may make rules for the conduct of the business of the commission and governing the tenure of office of the members. In the event of the commission consisting of three members, two members shall form a quorum.

Duty and powers of commission.

2. (1) It shall be the duty of the commission to enquire into and report to the Minister upon the following matters:—

- (a) the extent and nature of the area which was the subject of intimation under section one;
- (b) the number, dimensions, situation and nature of sites occupied in such area for residential or trading purposes or both such purposes, as the case may be;
- (c) whether such area affords proper and adequate facilities for residences or trading sites or both, as the case may be, for the particular class of persons concerned;
- (d) whether due and proper provision exists or is assured for water, lighting, sanitary and other necessary services within such area;
- (e) whether it is desirable that the provisions of this Chapter should be applied in respect of such area;
- (f) whether there is, within the jurisdiction of the urban local authority concerned, any other area which is wholly or for the greater part occupied for residential or trading purposes or both such purposes by the

WETSONTWERP

Om voorsiening te maken voor de terzijdezetting van woon- en bezigheidswijken in stadsgebieden voor zekere personen, die gemeenschappelijke raseigenschappen hebben; om de Wet tot regeling van Immigratie, 1913 (No. 22 van 1913), de Indiers Verlichting Wet, 1914 (No. 22 van 1914) en de Aziaten Registratie Wijzigings Wet, 1908 (Transvaal) (No. 36 van 1908) te wijzigen; en om de Wet op Uitsluiting van Chinezen, 1904 (Kaap) No. (37 van 1904) en Wet No. 28 van 1897 (Natal) te herroepen.

(Ingedien deur die MINISTER VAN BINNELANDSE SAKE.)

ZIJ HET BEPAALD door Zijn Majesteit de Koning, de Senaat en de Volksraad van de Unie van Zuid Afrika, als volgt:—

HOOFDSTUK I.

5 TERZIJDEZETTING VAN WIJKEN.

1. (1) Wanneer een stedelik plaatselik bestuur aan de Minister mededeling doet—
- 10 (a) dat een wijk binnen zijn gebied geheel of voor het merendeel door een biezondere klasse van persoon gebruikt wordt voor woon- of bezigheidsdoeleinden of beide zulke doeleinden; en
- (b) dat het wenselik is dat de bepalingen van dit Hoofdstuk toepassing zouden vinden ten opzichte van zulk een wijk,
- 15 kan de Minister een kommissie bestaande uit niet meer dan drie personen (hierna genoemd de kommissie) aanstellen om naar de wenselikheid om de bepalingen van dit Hoofdstuk toe te passen op zulke wijk en op het gebied van het stedelik plaatselik bestuur waarin hij gelegen is onderzoek te doen en
- 20 daaromtrent verslag uit te brengen.
- (2) Een van de leden van de kommissie wordt door de Minister als de voorzitter daarvan aangewezen, en de Minister kan regels maken voor het beleid van de werkzaamheden van de kommissie en betrekkelik de ambtsbekleding van de leden.
- 25 In het geval dat de kommissie uit drie leden bestaat vormen twee leden een kworum.
2. (1) Het is de plicht van de kommissie om onderzoek te doen naar en verslag te doen aan de Minister omtrent:—
- 30 (a) De grootte en aard van de wijk waaromtrent mededeling geschiedde overeenkomstig artikel een;
- (b) het aantal, de grootte, ligging en aard van de percelen in gebruik of beschikbaar in die wijk voor woon- of bezigheidsdoeleinden of beide zodanige doeleinden naar het geval mocht zijn;
- 35 (c) of die wijk behoorlike en voldoende gelegenheid biedt voor woonhuizen of bezigheidspercelen of beide, naar het geval mocht zijn, voor de betrokken biezondere klasse van personen;
- (d) of er behoorlike en voldoende voorsiening bestaat of zal gemaakt worden in zulke wijk voor water, verlichting, reinigings en andere noodzakelike diensten;
- 40 (e) of het wenselik is dat de bepalingen van dit Hoofdstuk toegepast zouden worden ten opzichte van zulke wijk;
- 45 (f) of er binnen het gebied van het betrokken plaatselik stedelik bestuur een andere wijk is die geheel of voor het merendeel gebruikt wordt voor woondoeleinden of bezigheidsdoeleinden of beide zulke doeleinden
- [A.B. 23—'26.]

Verzoek
door
stedelik
plaatselik
bestuur om
Hoofdstuk I
toe te
passen.

Plichten en
bevoegd-
heden van
kommissie.

particular class of persons concerned, and if there is such other area, the extent and nature thereof, and the number, dimensions, situation and nature of sites occupied in such other area for residential or trading purposes or for both such purposes as the case may be ;

- (g) whether any other area within the jurisdiction of the urban local authority concerned is available for the exclusive occupation for residential or trading purposes or both such purposes by the particular class of persons concerned ; and
- (h) any other matter which the Minister or the commission may deem necessary or desirable.

(2) The commission shall have all such powers, jurisdiction and privileges as were conferred upon the commission referred to in Ordinance No. 30 of 1902 of the Transvaal, and all and several the provisions of that Ordinance shall *mutatis mutandis* apply in respect of the commission and its proceedings.

Proclamation of class areas.

3. (1) At any time within six months after the receipt of the report of the commission, the Governor-General may by proclamation in the *Gazette* declare that, on and after a date to be mentioned in the proclamation, the area defined in the proclamation shall be a class residential area or a class trading area, or a class residential and trading area within the jurisdiction of the urban local authority concerned.

(2) More than one area within such jurisdiction may, by any such proclamation, be defined as class residential areas, or as class trading areas, or as class residential and trading areas, as the case may be.

(3) Notwithstanding anything contained in the Precious and Base Minerals Act of the Transvaal (Act No. 35 of 1908) or any amendment thereof, or in any other law, a class trading area or a class residential and trading area may be established under this Chapter on land within the jurisdiction of an urban local authority which, in terms of the said Act No 35 of 1908, or any amendment thereof, is proclaimed land or land held under mining title.

Acquisition of immovable property in class areas.

4. (1) Save as is provided in sections *eleven* and *twelve*, whenever a proclamation establishing a class residential area within the jurisdiction of an urban local authority has been issued under this Chapter no person shall, after the date of such establishment, for residential purposes acquire or hire, or take over, or as lessee renew the lease of, any immovable property situate—

- (a) within such area unless such person belongs to the class of persons in respect of which such area was established, or
- (b) elsewhere within such jurisdiction than within such area if such person belongs to such class.

(2) Save as is provided in sections *eleven* and *twelve*, whenever a proclamation establishing a class trading area within the jurisdiction of an urban local authority has been issued under this Chapter, no person shall, after the date of such establishment, for trading purposes acquire or hire, or take over, or as lessee renew the lease of, any immovable property situate—

- (a) within such area unless such person belongs to the class of persons in respect of which such area was established, or
- (b) elsewhere within such jurisdiction than within such area if such person belongs to such class.

(3) Save as is provided in sections *eleven* and *twelve*, whenever a proclamation establishing a class residential and trading area within the jurisdiction of an urban local authority has been issued under this Chapter, no person shall, after the date of such establishment, for any purpose acquire or hire, or take over, or as lessee renew the lease of, any immovable property situate—

- (a) within such area unless such person belongs to the class of persons in respect of which such area was established ; or

- door de betrokken bijzondere klasse van personen, en indien er zulk een wijk is, de grootte en aard daarvan en het aantal, de grootte, ligging en aard van percelen in gebruik in zulke andere wijk voor woon of bezigheidsdoeleinden, of beide zodanige doeleinden naar het geval mocht zijn ;
- 5 (g) of een andere zodanige wijk binnen het gebied van het betrokken plaatselijk stedelijk bestuur beschikbaar is voor het gebruik voor woon- of bezigheidsdoeleinden of beide zodanige doeleinden door de
- 10 betrokken klasse van bijzondere personen ; en
- (h) enig ander punt dat aan de Minister of de commissie noodzakelijk of wenselijk voorkomt.
- (2) De commissie heeft alle zulke bevoegdheden jurisdictie
- 15 en voorrechten als aan de commissie bedoeld in Ordonantie No. 30 van 1902 van de Transvaal verleend werden, en al de onderscheidene bepalingen van die Ordonantie zijn *mutatis mutandis* toepasselijk ten opzichte van de commissie en zijn verrichtingen.
- 20 3. (1) Te eniger tijd binnen zes maanden na de ontvangst van het verslag van de commissie kan de Gouverneur-generaal bij proklamatie in de *Staatskoerant* verklaren dat op en na een in de proklamatie te vermelden datum, de daarin bepaalde wijk een klasse-woonwijk of een klasse-bezigheidswijk of een
- 25 klasse woon- en bezigheidswijk is binnen het gebied van het betrokken plaatselijk stedelijk bestuur.
- (2) Bij zulke proklamatie kunnen meer dan een wijk binnen dat gebied bepaald worden als klasse-woonwijken of als klasse-bezigheidswijken of als klasse woon- en bezigheidswijken naar
- 30 het geval mocht zijn.
- (3) Niettegenstaande de bepalingen vervat in de Edele en Onedele Metalen Wet van de Transvaal (Wet No. 35 van 1908) of een wijziging daarvan of in een andere wet, kan een klasse bezigheidswijk of een klasse-woon- en bezigheidswijk
- 35 worden krachtens dit Hoofdstuk op grond in het gebied van een stedelijk plaatselijk bestuur, die in termen van de gezegde Wet No. 35 van 1908 of een wijziging daarvan geproklameerde grond of grond bezeten krachtens mijnbrief is.
4. (1) Behoudens het bepaalde bij artikels *elf* en *twaalf*, mag niemand, wanneer een proklamatie ingevolge dit Hoofdstuk uitgevaardigd is waarbij een klasse-woonwijk in het gebied van een stedelijk plaatselijk bestuur gevestigd wordt, na de datum van die vestiging ter bewoning enig vast eigendom verkrijgen, huren of de huur ervan overnemen of vernieuwen,
- 40 *Verkrijging van vast eigendom in klassewijken.*
- 45 indien dat eigendom gelegen is—
- (a) in die wijk, tenzij hij behoort tot de klasse van personen ten opzichte waarvan die wijk gevestigd werd ;
- of
- (b) elders in dat gebied dan in die wijk, indien hij tot die
- 50 klasse behoort.
- (2) Behoudens het bepaalde bij artikels *elf* en *twaalf*, mag niemand, wanneer een proklamatie ingevolge dit Hoofdstuk uitgevaardigd is waarbij een klasse-bezigheidswijk in het gebied van een stedelijk plaatselijk bestuur gevestigd wordt
- 55 na de datum van die vestiging voor bezigheid enig vast eigendom verkrijgen, huren of de huur ervan overnemen of vernieuwen, indien dat eigendom gelegen is—
- (a) in die wijk, tenzij hij behoort tot de klasse van personen ten opzichte waarvan die wijk gevestigd werd ;
- 60 of
- (b) elders in dat gebied dan in die wijk, indien hij tot die klasse behoort.
- (3) Behoudens het bepaalde bij artikels *elf* en *twaalf*, mag niemand, wanneer een proklamatie ingevolge dit Hoofdstuk uitgevaardigd is, waarbij een klasse-woon- en bezigheidswijk in het gebied van een stedelijk plaatselijk bestuur gevestigd wordt, na de datum van die vestiging voor enig doel enig vast eigendom verkrijgen, huren of de huur ervan overnemen of vernieuwen, indien dat eigendom gelegen is—
- 65
- 70 (a) in die wijk, tenzij hij behoort tot de klasse van personen ten opzichte waarvan die wijk gevestigd werd ;
- of

(b) elsewhere within such jurisdiction than within such area if such person belongs to such class.

(4) Nothing in this section contained shall apply to the renewal of a lease of immovable property where the right of renewal was created by a written lease prior to the first day of August, 1925. 5

Trading in
class trading
area or
class
residential
and trading
area.

5. (1) From and after the date mentioned in any proclamation issued under this Chapter establishing a class trading area or a class residential and trading area within the jurisdiction of any urban local authority, it shall not be lawful for any licensing court, board or authority, or for any person authorized to grant or issue licences or permits to carry on any trade or business within such jurisdiction—

- (a) to grant or issue to any person other than a person of the class concerned any licence, permit or other authority to carry on any trade or business within the class trading area or class residential and trading area, as the case may be; or 15
- (b) to grant or issue to any person of the class concerned any licence or permit to carry on any trade or business within such jurisdiction elsewhere than in the class trading area, or class residential and trading area, as the case may be : 20

Provided that if the Governor-General is satisfied that it is in the general interests of the public that it should be permitted to— 25

- (i) persons of the class concerned or any restricted number of such persons to carry on any particular trade or business within such jurisdiction elsewhere than in the class trading area or class residential and trading area, as the case may be; or 30
- (ii) persons other than person of the class concerned or any restricted number of such other persons to carry on any particular trade or business in the class trading area or class residential and trading area, as the case may be, 35

he may, by proclamation in the *Gazette* for such period as he may therein fix, exempt such persons or a restricted number of such persons from the operation of paragraph (a) or (b) of this sub-section in respect of that particular trade or business. 40

(2) No person holding, at the date mentioned in any proclamation issued under this Chapter establishing a class trading area or a class residential and trading area within the jurisdiction of any urban local authority, any licence, permit, or other authority to carry on any trade or business, which is actually being carried on, shall be deemed to be prevented by anything contained in this section from being granted a renewal of such licence, permit or other authority. 45

Extension
or reduction
of class
areas.

6. (1) Whenever, in the opinion of the urban local authority concerned, any area established under this Chapter as a class residential area or a class trading area or a class residential and trading area, proves inadequate or more than adequate for, or unsuitable either wholly or in part to, the requirements of the population of that class within the jurisdiction of such local authority and such local authority deems it desirable to extend or reduce any such area or to alter the boundaries thereof, or to create a new class residential area or class trading area or class residential and trading area, such local authority may communicate its opinion to the Minister, who thereupon may take all such steps as he may take upon receipt of an intimation under section one. 50 55 60

(2) All and several the powers exercisable under this Chapter in respect of the establishment of a class residential area or a class trading area or a class residential and trading area shall be exercisable in respect of the creation of a new area

(b) elders in dat gebied dan in die wijk, indien hij tot die klasse behoort.

(4) Het bepaalde bij dit artikel is niet van toepassing op een vernieuwing van de huur van vast eigendom waar het vernieuwingsrecht vóór de eerste dag van Augustus 1925 tot stand kwam in een schriftelijk huurkontraakt.

5. (1) Vanaf en na de datum vermeld in een proklamatie uitgevaardigd krachtens dit Hoofdstuk, waarbij een klasse-bezigheidswijk, of een klasse-woon- en bezigheidswijk gevestigd wordt in het gebied van een stedelijk plaatselijk bestuur, is het verboden aan een licentiehof, raad of autoriteit of een persoon gemachtigd om licenties of permitten om bezigheid te drijven of een ambacht uit te oefenen in dat gebied uit te reiken—

Drijven van bezigheid in klasse-bezigheidswijken of in klasse-woon- en bezigheidswijken.

15 (a) om aan een andere persoon behalve een die tot de betrokken klasse behoort, een licentie, permit of andere machtiging om een bezigheid te drijven of ambacht uit te oefenen, in de klasse-bezigheidswijk of klasse-woon- en bezigheidswijk, naar het geval mocht zijn, te verlenen of uit te reiken; of

20 (b) om aan een persoon behorende tot de betrokken klasse een licentie of permit om een bezigheid te drijven of ambacht uit te oefenen in dat gebied elders dan in de klasse-bezigheidswijk of klasse-woon- en bezigheidswijk, naar het geval mocht zijn, te verlenen of uit te reiken:

25 Met dien verstande dat indien de Gouverneur-generaal overtuigd is dat het in het belang van het publiek is dat het toegestaan behoort te worden—

30 (i) aan personen behorende tot de betrokken klasse of aan een beperkt aantal van zulke personen om binnen dat gebied maar elders dan in de klasse-bezigheidswijk of klasse-woon- en bezigheidswijk, naar het geval mocht zijn, een bijzondere bezigheid te drijven of ambacht uit te oefenen; of

25 (ii) aan andere personen dan die van de betrokken klasse of aan een beperkt aantal van zulke andere personen, om een bepaald ambacht of bepaalde bezigheid uit te oefenen in de klasse-bezigheidswijk of klasse-bezigheids- en woonwijk (naar het geval mocht zijn);

40 hij bij proklamatie in de *Staatskoerant* gedurende zulk een tijdvak als hij daarbij mocht bepalen die personen of een beperkt aantal van zulke personen kan vrijstellen van de uitvoering van paragraaf (a) of (b) van dit sub-artikel ten opzichte van die

45 bijzondere bezigheid of ambacht.
(2) Het bepaalde bij dit Hoofdstuk belet niet dat aan iemand die op de datum vermeld in een krachtens dit Hoofdstuk uitgevaardigde proklamatie waarbij een klasse-bezigheidswijk of een klasse-woon- en bezigheidswijk gevestigd wordt, de

50 houder is van een licentie, permit of andere machtiging om een bezigheid of ambacht uit te oefenen, welke ook werkelijk uitgeoefend wordt, een vernieuwing van zulke licentie, permit of andere machtiging verleend wordt.
6. (1) Wanneer naar het oordeel van het betrokken stedelijke plaatselijke bestuur, een wijk gevestigd krachtens dit Hoofdstuk als een klasse-woonwijk, of een klasse-bezigheidswijk, of een klasse-woon- en bezigheidswijk, onvoldoende of meer dan voldoende of hetzij geheel of gedeeltelijk ongeschikt blijkt voor de behoeften van de bevolking van die klasse in het

Uitbreiding of verkleining van klassewijk.

60 gebied van dat stedelijk plaatselijk bestuur, en dat stedelijke plaatselijke bestuur het wenselijk acht om zulke wijk uit te breiden of te verkleinen of de grenzen daarvan te veranderen of een nieuwe klasse-woonwijk of klasse-bezigheidswijk of klasse-woon- en bezigheidswijk te vestigen kan het stedelijke

65 plaatselijke bestuur zijn oordeel daaromtrent te kennen geven aan de Minister die daarop alle zulke stappen kan nemen als hij kan doen bij ontvangst van een mededeling krachtens artikel

70 een.
(2) Al de onderscheidene bevoegdheden uitoefenbaar krachtens dit Hoofdstuk ten opzichte van de vestiging van een klasse-woonwijk, of een klasse-bezigheidswijk of een klasse-woon- en bezigheidswijk kunnen uitgeoefend worden in verband met de vestiging van een nieuwe wijk of de uitbreiding of

or the extension or reduction of any existing area of like character or the alteration of the boundaries thereof.

(3) Nothing in this section contained shall be deemed to affect in any manner whatever any right to the renewal of a lease of immovable property where such right was held under a written lease existing on the first day of August, 1925, nor shall any person holding at the date mentioned in any proclamation issued in pursuance of this section any licence, permit, or other authority to carry on any trade or business which is actually being carried on, be deemed to be prevented by anything contained in this section from being granted a renewal of such licence, permit or other authority.

Suspension
of provisions
of Act.

7. (1) If at any time the Governor-General is satisfied that a class residential area or a class trading area or a class residential and trading area established under this Chapter is inadequate for, or wholly or partly unsuitable to, the requirements of the population of that class within the jurisdiction of the urban local authority concerned, and that, by reason of the delay which would necessarily take place in removing the causes of the inadequacy or unsuitability, serious prejudice would be suffered by that population unless the provisions of this Chapter in respect of such inadequate or unsuitable area be suspended, he may, by proclamation in the *Gazette* declare that, from and after a date to be therein mentioned, the provisions of this Chapter shall be suspended in respect of the class residential area or class trading area or class residential and trading area concerned.

(2) From and after such date the provisions of this Chapter shall in all respects cease to apply to the area deemed to be inadequate or unsuitable, and, in respect of such inadequate or unsuitable area, to the other parts of the jurisdiction of the urban local authority within which it is situated.

(3) The Governor-General may, whenever he deems fit, re-proclaim as a class residential area or a class trading area or a class residential and trading area, as the case may be, any area which has been the subject of a suspending proclamation under sub-section (1) of this section, or proclaim as a class residential area or a class trading area or a class residential and trading area under this Chapter any area which wholly or partly includes any area which has been the subject of a suspending proclamation under sub-section (1) of this section.

Class area
for Asiatics
to be deemed
to be area
in which
under Law
No. 3, 1885
(Transvaal)
Asiatics may
own fixed
property.

8. Any class residential area, or class trading area, or class residential and trading area established under this Chapter for any Asiatic race shall, for the purposes of section *two (b)* of Law No. 3 of 1885 of the Transvaal, be deemed to be an area within which, in terms of that law, fixed property may be acquired and owned by Asiatics.

Class
advisory
board.

9. (1) For every class residential area, or class trading area, or class residential and trading area established under this Chapter there shall be established an advisory board consisting of not less than three persons of the class concerned resident within the jurisdiction of the urban local authority concerned, in addition to a chairman who in the case of a non-European class area may be a European or white person. The mode of election or selection of members of any such board, the period and conditions of office of members, and the procedure of the board shall be defined by regulations made by the urban local authority concerned and approved by the Minister.

(2) It shall be the function of an advisory board established under this section to advise the urban local authority concerned in respect of any matter referred to it by such authority for advice, and no by-laws or regulations particularly affecting

verkleining van een bestaande wijk van gelijke soort of de verandering van de grenzen daarvan.

(3) Geen bepaling van dit artikel wordt geacht op enigerlei wijze inbreuk te maken op het recht van vernieuwing van een huurkontrakt van vast eigendom waar dat recht bezeten werd krachtens een op de eerste dag van Augustus 1925 bestaand schriftelijk huurkontrakt, en het bepaalde bij dit artikel belet niet dat aan iemand die op de datum vermeld in een proklamatie uitgevaardigd ingevolge dit artikel een licentie, permit of andere machtiging bezit om een ambacht of bezigheid uit te oefenen welke ook werkelijk uitgeoefend wordt, een vernieuwing van zulke licentie, permit of andere machtiging verleend wordt.

7. (1) Indien te eniger tijd de Goeverneur-generaal overtuigd is dat een klasse-woonwijk of een klasse-bezigheidswijk of een klasse-woon- en bezigheidswijk gevestigd krachtens dit Hoofdstuk onvoldoende of hetzij geheel of gedeeltelijk ongeschikt is voor de behoeften van de bevolking van die klasse in het gebied van het betrokken plaatselijk stedelijk bestuur en dat tengevolge van de vertraging die de verwijdering van de oorzaken van de onvoldoende of ongeschiktheid, noodzakelijkerwijze veroorzaken ernstig nadeel zou ondervonden worden door de klasse bevolking tenzij de bepalingen van dit Hoofdstuk opgeschort worden ten opzichte van zulke onvoldoende of ongeschikte wijk, kan hij bij een proklamatie in de *Staatskoerant* verklaren, dat, vanaf en na een daarin vermelde datum, de bepalingen van dit Hoofdstuk ten opzichte aan de betrokken klasse-woonwijk, of klasse-bezigheidswijk, of klasse-woon- en bezigheidswijk opgeschort worden.

(2) Vanaf en na zulke datum houden de bepalingen van dit Hoofdstuk in alle opzichten op toepassing te vinden op de onvoldoende of ongeschikt geachte wijk en in verband met zulk een onvoldoende en ongeschikte wijk op de andere gedeelten van het gebied van het stedelijk plaatselijk bestuur waarin hij ligt.

(3) De Goeverneur-generaal kan wanneer hij zulks goed acht, een wijk in verband waarmee een opschortende proklamatie krachtens sub-artikel (1) van dit artikel uitgevaardigd was, herproklameren als een klasse-woonwijk of een klasse-bezigheidswijk of een klasse-woon- en bezigheidswijk naar het geval mocht zijn, of een wijk als een klasse-woonwijk of klasse-bezigheidswijk of als een klasse-woon- en bezigheidswijk krachtens dit Hoofdstuk vestigen die geheel of gedeeltelijk een wijk insluit in verband waarmee een opschortende proklamatie krachtens sub-artikel (1) van dit artikel uitgevaardigd was.

8. Een klasse-woonwijk of klasse-bezigheidswijk, of klasse-woon- en bezigheidswijk gevestigd krachtens dit Hoofdstuk voor een Aziaties ras, wordt voor het doel van artikel twee (b) van Wet No. 3 van 1885 van de Transvaal geacht een wijk te zijn waarin volgens die Wet vast eigendom door Aziaten bezeten of verkregen mag worden.

Opschorting van bepalingen van Wet.

Klasse wijk voor Aziaten geacht een wijk te zijn waarin Aziaten vast eigendom mogen bezitten krachtens Wet No. 3 van 1885 (Transvaal).

55

9. (1) Voor elke klasse-woonwijk of klasse-bezigheidswijk of klasse-woon- en bezigheidswijk gevestigd krachtens dit Hoofdstuk wordt er een adviserende raad ingesteld bestaande uit niet minder dan drie personen behorende tot de betrokken klasse en die woonachtig zijn binnen het gebied van het betrokken stedelijk plaatselijk bestuur boven en behalve de voorzitter die in het geval van een niet-blanke klasse-wijk een Europeaan of blanke kan zijn. De wijze van verkiezing of aanstelling van leden van zulke een raad, de duur en voorwaarden van ambtsbekleding van leden en de procedure van de raad worden vastgesteld bij regulaties door het betrokken stedelijk plaatselijk bestuur gemaakt en door de Minister goedgekeurd.

Klasse adviserende raad.

(2) De werkring van een adviserende raad ingesteld ingevolge dit artikel bestaat in het adviseren aan het betrokken stedelijk plaatselijk bestuur ten opzichte van een aangelegenheid aan hem door zodanig bestuur voor advies voorgelegd en

the interests of the class of persons concerned shall be made, amended or withdrawn by an urban local authority unless the advise of such advisory board has first been obtained in respect of the making, amendment or withdrawal, as the case may be, of such by-law or regulation. 5

Prohibition of acquisition of immovable property in the Cape of Good Hope and Natal by certain persons.

10. (1) Save as provided in sections *eleven* and *twelve*, and in respect of the renewal of leases in sub-section (4) of section *four*, the Governor-General may by proclamation in the *Gazette* declare that from and after a date therein specified, not being earlier than the first day of August, 1925, no person 10 of any class indicated in such proclamation shall—

(a) anywhere within the Union, hire or take over, or, as lessee, renew the lease of any immovable property for a period exceeding five years; or

(b) in the provinces of the Cape of Good Hope and Natal 15 acquire any immovable property,

save for residential purposes in a class residential area or for trading purposes in a class trading area, or for any purpose in a class residential and trading area established for the class of persons indicated in a proclamation issued under section *four*. 20

(2) Notwithstanding anything contained in sub-section (1), the Governor-General may by proclamation in the *Gazette* declare that from and after a date to be specified therein a person of any class indicated therein may in the coast belt acquire immovable property or hire or renew the lease of 25 immovable property from a person of the same class, but from no other person: Provided that where the immovable property is situate within a class area established under this Chapter within the coast belt, the provisions of section *four* shall apply in lieu of the provisions of this sub-section. 30

(3) From and after the date specified in any proclamation issued under sub-section (2), no person of any class indicated in such proclamation shall, by testamentary disposition, acquire any land or interest in land or the right to hire or occupy any immovable property in the coast belt, except 35 from a person of the same class: Provided that where such land or immovable property is situated within a class area established under this Chapter within the coast belt the provisions of section *four* shall apply in lieu of the provisions of this sub-section. 40

(4) For the purposes of this section "the coast belt" means so much of the province of Natal as lies between the coast and a line to be defined by the Governor-General by proclamation in the *Gazette*, corresponding as far as practicable with the coast and drawn at an approximate distance of thirty miles 45 therefrom, but shall not include any part of Zululand.

(5) Nothing in this section contained shall be deemed to affect the operation within the coast belt of any other provision of this Chapter.

Savings.

11. Subject to the provisions of sub-section (3) of section 50 *three*, section *eight* and sub-section (3) of section *ten* of this Chapter, nothing in this Chapter contained shall be deemed—

(a) to affect the operation of Law No. 3 of 1885 of the Transvaal or any amendment thereof; of section *two* of Act No. 18 of 1913; of Act No. 37 of 1919; of 55 Chapter CXIII of the Orange Free State Law Book, or any amendment thereof; or of any other law prohibiting, restricting, regulating or in any way affecting the ownership or occupation of immovable property or trading by persons of non-European 60 descent; or

(b) to prohibit the acquisition by the Government or any urban local authority for educational, municipal or any other public purpose of the ownership or occupation of any immovable property; or 65

geen verordening of regulatie welke de belangen van de betrokken klasse van personen bijzonderlijk raakt wordt door een stedelijk plaatselijk bestuur gemaakt, gewijzigd of ingetrokken tenzij het advies van zulk en adviserende raad eerst 5 verkregen is ten opzichte van het maken, wijzigen of intrekken, naar het geval mocht zijn, van zulk een verordening of regulatie.

10 (1) Behoudens het bepaalde bij artikels *elf* en *twaalf*, en met betrekking tot een huurvernieuwing bij sub-artikel (4) van artikel *vier* kan de Goueverneur-generaal bij proklamatie in de *Staatskoerant* verklaren dat vanaf een daarin vastgestelde dag, maar niet eerder dan de eerste dag van Augustus 1925, niemand die behoort tot een in die proklamatie genoemde klasse—

Verkrijging van vast eigendom in Kaap de Goede Hoop en Natal door zekere personen is verboden.

15 (a) ergens in de Unie enig vast eigendom mag huren, of de huur ervan mag overnemen of als huurder de huur ervan vernieuwen voor een langere termijn dan vijf jaar; of

(b) in de provincies de Kaap de Goede Hoop en Natal enig vast egendom mag verkrijgen;

20 behalve ter bewoning, in een klasse-woonwijk, of voor bezigheid in een klasse-bezigheidswijk of voor enig doel in een klasse-, woon-en bezigheidswijk gevestigd voor de klasse van mensen vermeld in een proklamatie uitgevaardigd ingevolge artikel *vier*.

25 (2) Niettegenstaande de bepalingen van sub-artikel (1) kan de Goueverneur-generaal bij proklamatie in de *Staatskoerant* verklaren dat vanaf een daarin vastgestelde dag iemand die behoort tot een daarin genoemde klasse, in de kuststrook vast eigendom mag verkrijgen of huren of de huur ervan mag vernieuwen van iemand van dezelfde klasse maar van niemand anders: Met dien verstande dat waar het vaste eigendom gelegen is in een klasse-wijk ingevolge dit Hoofdstuk in de kuststrook gevestigd, de bepalingen van artikel *vier* in stede van de bepalingen van dit sub-artikel van toepassing zijn.

30 (3) Vanaf de dag vastgesteld in een ingevolge sub-artikel (1) uitgevaardigde proklamatie, mag niemand die behoort tot een in de proklamatie vermelde klasse, grond of rechten op grond in de kuststrook of het recht om vast eigendom daarin te huren of te bezitten, krachtens testamentaire beschikking van iemand anders verkrijgen dan van iemand van dezelfde klasse: Met dien verstande dat waar die grond of dat vaste eigendom gelegen is in een klasse-wijk ingevolge dit Hoofdstuk in de kuststrook gevestigd, de bepalingen van artikel *vier* in stede van de bepalingen van dit sub-artikel van toepassing zijn.

35 (4) Voor de doeleinden van dit artikel betekent "de kuststrook" dat gedeelte van de Provincie Natal dat ligt tussen de kust en een lijn, door de Goueverneur-generaal bij proklamatie in de *Staatskoerant* te worden vastgesteld, die zo veel doenlik met de kust overeenstemt en op een afstand van omstreeks 40 dertig mijl daarvan getrokken is, maar het sluit geen deel van Zululand in.

(5) Het bepaalde bij dit artikel heeft geen invloed op de toepassing, in de kuststrook, van enige andere bepaling van dit Hoofdstuk.

55 11. Met inachtneming van de bepalingen van sub-artikel (3) van artikel *drie*, artikel *acht* en sub-artikel (3) van artikel *tien* van dit Hoofdstuk, wordt geen bepaling van dit Hoofdstuk geacht—

Voorbehoudsbepalingen.

60 (a) inbreuk te maken op de werking van Wet No. 3 van 1885 van Transvaal of een wijziging daarvan; van artikel *twee* van Wet No. 18 van 1913; van Wet No. 37 van 1919; van Hoofdstuk CXIII van het Oranje-Vrijstaatse Wetboek of een wijziging daarvan; of van enige andere wet die het eigendomsrecht of de okkupatie van vast eigendom of het handeldrijven door personen van niet-europese afstamming verbiedt, beperkt, regelt of anderszins daarop inbreuk maakt; of

70 (b) de verkrijging van het eigendomsrecht of de okkupatie van vast eigendom door de Regering of een stedelijk plaatselijk bestuur te verbieden voor onderwijs-, municipaliteits- of andere publieke doeleinden; of

- (c) to prohibit the acquisition at any time of land or interests in land or the lease or occupation of any immovable property by devolution, or succession on death whether under will or on intestacy from a person of the same class ; or 5
- (d) to prohibit any executor of a deceased estate or any trustee in insolvency, or any assignee under the law relating to insolvency, from holding any immovable property or trading under any licence where power to do any such thing is conferred upon him by any law ; 10
or
- (e) to invalidate or affect in any manner whatever any agreement or other transaction for the sale or purchase of land lawfully entered into prior to the first day of August, 1925. 15

Exemptions. 12. (1) The Governor-General may grant to any person a certificate exempting him either wholly or for such period as he may therein specify from all or any of the provisions of this chapter, and such person shall either wholly or for such period, as the case may be, be so exempted. 20

(2) Nothing in this chapter contained shall be deemed—

- (a) to affect any person who is duly accredited to the Union by or under the authority of His Majesty or the Government of any foreign state, or the wife, family, staff or servants of any such person ; 25
- (b) to refer to natives as that term is defined in section *twenty-nine* of the Natives (Urban Areas) Act, 1923 (Act No. 21 of 1923) ;
- (c) to refer to—
 - (i) persons born in the Union and ordinarily resident 30
in the Province of the Cape of Good Hope who are members of the class or race known as “ Cape Coloured ” or of the class or race known as “ Cape Malays ” ;
 - (ii) persons born in the Union and ordinarily resident 35
in the Union elsewhere than in the Province of the Cape of Good Hope who would if resident in that Province, be regarded as members of either of the classes or races known as “ Cape Coloured ” or “ Cape Malays ” ; or 40
 - (iii) persons who are members of the class or race known as “ Mauritius Creoles ” or St. Helena persons or their descendants born in the Union.

(3) Notwithstanding anything contained in this Chapter all Europeans or white persons shall be regarded as having, 45
common racial characteristics.

**Interpre-
tation of
terms.**

13. In the Chapter unless inconsistent with the context—
- “ class ” or “ class of persons ” includes any persons having in the opinion of the Minister, common racial characteristics ; 50
 - “ person of a class ” includes any company or association of persons whether registered under any law or not in which one or more persons of the class referred to have a controlling interest ;
 - “ Minister ” means the Minister of the Interior or any 55
other Minister to whom the Governor-General may assign the administration of this Chapter ;
 - “ urban local authority ” means any municipal council, borough council, town council or village council, or any town board, village management board, 60
local board or health board.

- (c) de verkrijging te eniger tijd van grond of rechten op grond of de huur of de okkupatie van vast eigendom door toevalling of erfopvolging bij overlijden, hetzij ingevolge een testament of versterfrecht van een persoon van dezelfde klasse; of
- 5 (d) een eksekuteur in de boedel van een overleden persoon of een kurator in een insolvente boedel of een boedelredder ingevolge de wet op insolventie te verbieden vast eigendom te bezitten of handel te drijven ingevolge een licentie waar de bevoegdheid om zulk een ding te doen aan hem bij de wet verleend is; of
- 10 (e) om op enigerlei wijze een overeenkomst of andere transaktie voor de verkoop of koop van grond wettig aangegaan vóór de eerste dag van Augustus 1925 ongeldig te maken of daarop op enigerlei wijze inbreuk te maken.
- 15

12. (1) De Gouverneur-generaal kan aan een persoon een Uitzonderingscertifikaat verlenen hem, hetzij geheel en al of gedurende zulk tijdvak als hij daarin mocht bepalen, vrijstellende van een of meer van de bepalingen van dit Hoofdstuk en zulke persoon is dan, hetzij geheel en al of voor zulk tijdvak, naar het geval mocht zijn, aldus vrijgesteld.

20

(2) Geen bepaling van dit Hoofdstuk wordt geacht—

- (a) een persoon te raken die behoorlijk bij de Unie geakkrediteerd is door of op gezag van Zijn Majesteit of de Regering van een vreemde staat of de vrouw, familie, het personeel of de bedienden van zulk een persoon;
- 25 (b) betrekking te hebben op naturellen zoals die term gedefinieerd is in artikel *negen en twintig* van de Naturellen (Stadsgebieden) Wet, 1923 (Wet No. 21 van 1923);
- 30 (c) betrekking te hebben op—
- (i) personen geboren in de Unie en hun vaste woonplaats hebbende in de provincie de Kaap de Goede Hoop die behoren tot de klasse of het ras bekend als "Kaapse-kleurlingen" of van de klasse of het ras bekend als "Slamaaiers";
- 35 (ii) personen geboren in de Unie en hun vaste woonplaats hebbende in de Unie elders dan in de provincie de Kaap de Goede Hoop, die, indien woonachtig in de provincie beschouwd zouden worden als behorende tot de klassen of rassen bekend als "Kaapse-kleurlingen" of "Slamaaiers"; of
- 40 (iii) personen die behoren tot de klasse of het ras bekend als Kreolen van Mauritius of personen van St. Helena of hun afstammelingen geboren in de Unie.
- 45

(3) Niettegenstaande de bepalingen van dit Hoofdstuk worden alle Europeanen of blanken geacht gemeenschappelijke raseigenschappen te hebben.

50

13. Tenzij in strijd met de samenhang wordt in deze Wet verstaan onder—

Woordbepaling.

- "klasse" of "klasse van personen" tevens personen die naar het oordeel van de Minister gemeenschappelijke raseigenschappen bezitten;
- 55 "persoon van een klasse" tevens een maatschappij of vereniging van personen, hetzij al dan niet ingevolge een of andere Wet geregistreerd waarin een of meer personen van de bedoelde klasse een kontrolerend belang hebben.
- 60 "Minister" de Minister van Binnenlandse Zaken of een andere Minister aan wie de Gouverneur-generaal de uitvoering van dit Hoofdstuk opdraagt;
- 65 "stedelik plaatselik bestuur" een municipaliteitsraad, stadsraad of dorpsraad, of een stadsbestuur, of dorpsbestuurraad of plaatselik bestuur of gezondheidsraad.

CHAPTER II.

IMMIGRANTS REGULATION.

Amendment of section two of Act No. 22 of 1913. 14. Section *two* of the Immigrants Regulation Act, 1913, (hereinafter in this Chapter called the principal Act) is hereby amended by the deletion from sub-section (7) of the words: "sufficient in the opinion of the Minister" and the substitution therefor of the following words: "fixed by the immigration officer not exceeding one hundred pounds." 5

Amendment of section three of Act No. 22 of 1913. 15. Section *three* of the principal Act is hereby amended—
 (a) by the addition at the end of sub-section (2) of the 10 words: "From any such opinion there shall be an appeal to the Appellate Division of the Supreme Court";
 (b) by the deletion from sub-section (3) thereof of the following words: "and 'a superior court having 15 jurisdiction' shall mean the Provincial Division of the Supreme Court which has jurisdiction where the board was sitting or any judge of such division or the Eastern Districts Local Division having such jurisdiction or any judge thereof." 20

Amendment of section four of Act No. 22 of 1913. 16. Section *four* of the principal Act is hereby amended—
 (a) by the addition to paragraph (*f*) of sub-section (1) after the words "have been stolen" of the following words: "incest, sodomy, bestiality, any offence under the law relating to insolvency"; and 25
 (b) by the deletion of paragraph (*a*) of sub-section (2); and
 (c) by the insertion of the following new sub-section (5):
 "For the purpose of this section the Northern Districts of Natal, as described in section *three* of The 30 Northern Districts Annexation Act, 1902' (Act No. 1, of 1903, Natal) shall be deemed to be included in the Province of the Transvaal."

Amendment of section five of Act No. 22 of 1913. 17. Section *five* of the principal Act as amended by section *three* of the Indians Relief Act, 1914, is hereby amended by 35 the deletion of paragraph (*e*) and (*g*) and the substitution therefor of the following new paragraphs:—

- (e) any British subject who was born in any part of South Africa included in the Union and whose parents were at the time of his birth lawfully resident therein 40 and were not at that time restricted to temporary or conditional residence therein by any law then in force: Provided that any person who, if he were a prohibited immigrant, would be included within any class of persons which has, in terms of paragraph 45
 (a) of sub-section (1) of section *four*, been deemed by the Minister to be unsuited to the requirements of the Union or any province thereof, shall lose the protection accorded by this paragraph if he has acquired or shall acquire a domicile in a province of 50 the Union other than that in which he was born;
 (g) any person who is proved to the satisfaction of an immigration officer or in the case of an appeal to the satisfaction of the board, to be the wife, or the child under the age of sixteen years, of any person exempted 55 by paragraph (*f*) of this section:

Provided—

- (i) that the wife or child (as the case may be) is not such a person as is described in paragraph (*d*), (*e*), (*f*), (*g*) or (*h*) of sub-section (1) of section *four* or 60 any amendment thereof; and
 (ii) that where the exempted person belongs to any class of persons which has in terms of paragraph (*a*) of sub-section (1) of section *four* been deemed by the Minister to be unsuited to the requirements of the 65 Union or any province thereof, the wife or child

HOOFDSTUK II.

REGELING VAN IMMIGRATIE.

14. Artikel *twee* van de Wet tot Regeling van Immigratie, Wijziging 1913 (hierna in dit Hoofdstuk genoemd de Hoofdwet), wordt ^{van artikel} bij deze gewijzigd door de schrapping uit sub-artikel (7) van ^{twee van Wet} de woorden "dat naar het oordeel van de Minister voldoende ^{No. 22 van} is," en de indeplaatsstelling daarvoor van de volgende woorden "dat door de immigratie beambte vastgesteld wordt, de som van een honderd pond niet tebovengaande."
15. Artikel *drie* van de Hoofdwet wordt bij deze gewijzigd— ^{Wijziging} ^{van artikel} ^{drie van Wet} (a) door de toevoeging aan het einde van sub-artikel (2) ^{No. 22 van} van de woorden: "Van zulk oordeel ligt er een ^{1913.} appèl naar de Afdeling van Appèl van het Hoog-gerechtshof";
- 15 (b) door de schrapping uit sub-artikel (3) daarvan van de volgende woorden: "en wordt onder 'bevoegd hogerhof' verstaan de Provinciale Afdeling van het Hooggerechtshof die bevoegd is ter plaatse waar de raad zitting houdt of een rechter van zodanige Afdeling of de Plaatselijke Afdeling van de Oostelijke Distrikten die alzo bevoegd is of een rechter daarvan."
- 20 16. Artikel *vier* van de Hoofdwet wordt bij deze gewijzigd— ^{Wijziging} ^{van artikel} ^{vier van Wet} (a) door de toevoeging aan paragraaf (f) van sub-artikel (1) ^{No. 22 van} na de woorden "gestolen is" van de volgende woorden ^{1913.} "bloedschande, sodomie, bestialiteit en enige overtreding van de Wet op Insolventie"; en
- 25 (b) door de schrapping van paragraaf (a) van sub-artikel (2); en
- 30 (c) door de invoeging van het volgende nieuwe sub-artikel (5): "Voor het doel van dit artikel worden de Noordelijke distrikten van Natal, zoals beschreven in artikel *drie* van 'The Northern Districts Annexation Act, 1902' (Wet No. 1, 1903, Natal), geacht in de provincie Transvaal ingesloten te zijn."
- 35 17. Artikel *vijf* van de Hoofdwet zoals gewijzigd door ^{Wijziging} ^{van artikel} ^{vijf van Wet} artikel *drie* van de Indiërs Verlichting Wet, 1914, wordt bij ^{No. 22 van} deze gewijzigd door de schrapping van paragrafen (e) en (g) ^{1913.} en de indeplaatsstelling daarvoor van de volgende nieuwe paragrafen:—
- 40 (e) een Britse onderdaan die in een of ander deel van Zuid Afrika ingesloten in de Unie, geboren was en wiens ouders ten tijde van zijn geboorte wettig aldaar woonachtig waren en te dien tijde niet beperkt waren tot tijdelijk of voorwaardelijk verblijf aldaar door een of andere wet te dien tijde van kracht: Met dien verstande dat een persoon, die, indien hij een verboden immigrant was, onder een klasse van personen zou vallen, die in termen van paragraaf (a) van sub-artikel (1) van artikel *vier* door de Minister geacht is niet te voldoen aan de eisen van de Unie of een provincie daarvan, de bescherming bij deze paragraaf verleend verliest, indien hij een domicilie verkregen heeft of verkrijgt in een provincie van de Unie, niet zijnde die waarin hij geboren was;
- 55 "(g) een persoon die naar genoegen van een immigratie beambte, of in het geval van een appèl naar genoegen van de raad bewezen wordt de vrouw of het kind onder de leeftijd van zestien jaar te zijn van een persoon vrijgesteld bij paragraaf (f) van dit artikel:
- 60 Mits—
- (i) dat de vrouw of het kind (naar het geval mocht zijn) niet een zodanige persoon is als beschreven wordt in paragrafen (d), (e), (f), (g) en (h) van sub-artikel (1) van artikel *vier* of een wijziging ervan; en
- 65 (ii) dat waar de vrijgestelde persoon behoort tot een van de klassen van personen welke volgens het oordeel van de Minister krachtens paragraaf (a) van sub-artikel (i) van artikel *vier* niet voldoen aan de eisen van de Unie of een provincie ervan, de vrouw of het kind (naar het geval mocht zijn) de Unie binnenkomt
- 70

(as the case may be) enters the Union within five years after the first day of August, 1925, or within ten years after the date of the first entry of the person so exempted into the Union, whichever period may be the longer. 5

In the interpretation of this paragraph "the wife" shall include any one woman between whom and the exempted person mentioned there exists a union recognised as a marriage under the tenets of an Indian religion notwithstanding that by those tenets the union of that exempted person with other women at the same time would also be recognised as a marriage: Provided that no woman shall be deemed to be the wife of such exempted person— 15

(i) if such a union exists between him and any other woman who has under any law relating to immigration or to Asiatic registration been recognised within the Union as the wife of such person and has resided or resides or is domiciled in any province; or 20

(ii) if such exempted person has offspring resident or domiciled in any province by any woman who is still living, 25

and a union shall not for the purposes of this section be deemed to have ceased to exist by reason only of the fact that according to the tenets of an Indian religion it has been dissolved.

"The child under the age of sixteen" shall mean a child who is the offspring of the exempted person and the wife as herein defined or the child of the exempted person and a deceased woman who if she had been alive could have been recognised at the time of the birth of the child as the wife (as herein defined) or whose union with the exempted person could have been registered at the time of the birth of the child as a marriage under section two of the Indians Relief Act, 1914: Provided such exempted person has no offspring resident or domiciled in any province by any other woman. 35 40

Amendment
of section
ten of Act
No. 22 of
1913.

18. Section *ten* of the principal Act is hereby amended by the addition at the end thereof of the following words:—

Any such prohibited immigrant shall be dealt with in 45 terms of section *nineteen* of this Act. If he is in possession of a registration certificate or a certificate of domicile, or any other document authorizing him to remain in the Union or any province, it shall be competent for any board to which he may appeal, if it is proved to the 50 satisfaction of the board that such certificate or other document was obtained by fraudulent representations by him or on his behalf, to order that such certificate or other document be cancelled and that he be dealt with in terms of this Act. Provided that if he fails to appeal to a board 55 the Principal Immigration Officer concerned may exercise all such powers as to the cancellation of any certificate or other document as are by this section conferred upon a board.

Amendment
of section
twenty-two
of Act No.
22 of 1913.

19. Section *twenty-two* of the principal Act is hereby amended 60 by the addition, after paragraph (c), of the following new paragraph:—

(d) for any offence under section *twenty* of this Act for which imprisonment is imposed without the option of a fine. 65

binnen vijf jaar na de eerste dag van Augustus 1925 of binnen tien jaar na de datum van de eerste binnenkomst van de aldus vrijgestelde persoon in de Unie, welk tijdvak van die twee het langste is”.

5 Bij de uitleg van deze paragraaf wordt onder “de vrouw” tevens verstaan een vrouw tussen wie en de voormelde vrijgestelde persoon een vereniging bestaat die als een huwelijk erkend wordt volgens de leerstellingen van een indiese godsdienst, niet-
10 tegenstaande dat volgens die leerstellingen de vereniging van die vrijgestelde persoon met andere vrouwen terzelfdertijd mede erkend zou zijn als een huwelijk: Met dien verstande dat geen vrouw geacht wordt de vrouw van zulke vrijgestelde
15 persoon te zijn—

(i) indien zulk een vereniging bestaat tussen hem en een andere vrouw die volgens een of andere wet op immigratie of op registratie van Aziaten binnen de Unie erkend is als de
20 vrouw van zulke persoon en verblijf gehouden heeft of verblijft of gedomicilieerd is in een provincie; of

(ii) indien zulke vrijgestelde persoon kinderen heeft, die in een provincie verblijven of
25 gedomicilieerd zijn bij een andere vrouw die nog in leven is;

en een vereniging wordt voor de doeleinden van dit artikel niet geacht opgehouden te hebben te bestaan om de enkele reden van het feit dat hij volgens de
30 leerstellingen van een indiese godsdienst ontbonden is.

Onder “het kind onder de ouderdom van zestien jaar” word verstaan een kind dat het kind is van
35 de vrijgestelde persoon en de vrouw zoals hierin bepaald of het kind van de vrijgestelde persoon en een overleden vrouw, die indien zij in leven was, erkend zou kunnen zijn ten tijde van de geboorte van het kind als de vrouw (zoals hierin gedefinieerd) of wiens vereniging met de vrijgestelde persoon
40 geregistreerd zou kunnen zijn ten tijde van geboorte van het kind als een huwelijk ingevolge artikel twee van de Indiërs Verlichting Wet, 1914, mits die vrijgestelde persoon geen kind heeft met een andere vrouw, dat in een of andere provincie verblijft of gedomicilieerd is.
45

18. Artikel tien van de Hoofdwet wordt bij deze gewijzigd door de toevoeging aan het einde ervan van de volgende woorden—

Wijziging van artikel tien van Wet No. 22 van 1913.

50 “Met een zodanige verboden immigrant kan gehandeld worden krachtens artikel negentien van deze Wet, en indien zulke persoon in bezit is van een registratie-certificaat of een certificaat van domicilie of een ander dokument hem machtigende om in de Unie of een provincie te blijven, is een raad naar wie hij mocht appelleren bevoegd, indien
55 naar genoegen van de raad bewezen wordt dat zulk certificaat of ander dokument verkregen was door bedriegelijke voorstellingen door hem of te zijnen behoeve gedaan, om te bevelen zulk certificaat of ander dokument in te trekken en dat met hem volgens deze Wet gehandeld
60 wordt: Met dien verstande dat indien hij verzuimt naar een raad te appelleren, de betrokken hoofd-immigratie-beambte al zulke bevoegdheden met betrekking tot de intrekking van een certificaat of ander dokument als bij dit artikel aan een raad verleend zijn, kan uitoefenen.”

65 19. Artikel twee en twintig van de Hoofdwet wordt bij deze gewijzigd door de toevoeging na paragraaf (c) van de volgende nieuwe paragraaf—

Wijziging van artikel twee en twintig van Wet No. 22 van 1913.

70 “(d) wegens een overtreding ingevolge artikel twintig van deze Wet waarvoor gevangenisstraf opgelegd wordt zonder alternatief van boete.”

Amendment of section thirty of Act No. 22 of 1913. 20. Section *thirty* of the principal Act is hereby amended by the deletion of the definition of the term "domicile," and the substitution therefor of the following definition:—

"domicile" shall mean the place in which a person has his present permanent home or present permanent residence, or to which he returns as his present permanent abode, and not for a mere special or temporary purpose; and a person shall not be deemed to have a domicile within the Union or any province (as the case may be) for the purposes of this Act unless he has lawfully resided therein for a continuous period of three years, otherwise than under terms of conditional or temporary residence permitted by this Act or any other law, or as a person under detention in prison, gaol, reformatory or mental hospital, and a person shall be deemed for the purposes of this Act to have lost his domicile within the Union or any province (as the case may be) if he absents himself from the Union or that province (as the case may be) and does not return to the Union or that province (as the case may be) within three years from the date of departure therefrom, or in the case of a person who absented himself from the Union or any province (as the case may be) prior to the 1st August, 1925, does not return to the Union or that province (as the case may be) before the 1st August, 1928: Provided that in cases where a person proceeds overseas for a special or temporary purpose the Minister may authorize the issue of a certificate of identity under the provisions of sub-section (2) of section *twenty-five* of this Act, allowing the person concerned to return to and resume his residence in the province named within the period specified in such certificate or any extension thereof, not exceeding ten years in all.

Amendment of section six of Act No. 22 of 1914. 21. Section *six* of the Indians Relief Act, 1914, is hereby amended by the insertion after the words "any port in India" of the words "or elsewhere."

CHAPTER III.

REGISTRATION OF ASIATICS.

Surrender of Asiatic registration certificate. 22. A registration certificate issued under the provisions of the Asiatic Law Amendment Act, 1907, of the Transvaal (Act No. 2 of 1907), or the Asiatics Registration Amendment Act, 1908, of the Transvaal (Act No. 36 of 1908), may be surrendered by the holder to the Registrar of Asiatics, and such surrender shall be conclusive evidence that such holder has abandoned any right of or incidental to entry, residence or domicile in the Transvaal Province.

Circumstances in which application for Asiatic registration certificate may be made. 23. If an Asiatic, who has failed to make application for registration in accordance with the provisions of paragraph (2) of section *five* of the Asiatics Registration Amendment Act, 1908, of the Transvaal, satisfies the Registrar of Asiatics that such failure was due to some good and sufficient cause, the Minister of the Interior may, in his discretion, authorize the Registrar to receive an application for registration from such Asiatic, and the application shall be dealt with in all respects as if it had been made in accordance with the provisions of the said section and all the provisions of Act No. 36 of 1908 of the Transvaal as amended by this Act which would have applied if the application had been so made shall apply accordingly.

20. Artikel *dertig* van de Hoofdwet wordt bij deze gewijzigd door de schrapping van de definitie van de uitdrukking "domicilie" en de indeplaatsstelling daarvoor van de volgende definitie—
- 5 "domicilie" betekent de plaats waar een persoon zijn tegenwoordig vast huis heeft of tegenwoordige vaste verblijfplaats of waarheen hij terugkeert als zijn tegenwoordig vast adres en niet slechts voor een bijzonder of tijdelijk doel; en een persoon wordt niet geacht een domicilie in de Unie of een provincie (naar het geval mocht zijn) voor de doeleinden van deze Wet te hebben tenzij hij aldaar wettig verblijf gehouden heeft gedurende een ononderbroken tijdvak van drie jaar, anders dan in termen van een voorwaardelijke of tijdelijke verblijfplaats door deze Wet of een andere wet toegestaan of als een persoon onder bewaring in een tronk, gevangenis, verbetergesticht of hospitaal voor geestelijk gekrenkten; en een persoon wordt voor de doeleinden van deze Wet geacht zijn domicilie in de Unie of een provincie (naar het geval mocht zijn) verloren te hebben indien hij uit de Unie of die provincie (naar het geval mocht zijn) vertrekt en niet naar de Unie of die provincie (naar het geval mocht zijn) binnen drie jaar vanaf de datum van zijn vertrek daaruit terugkeert, of in het geval van een persoon die uit de Unie of een provincie (naar het geval mocht zijn) voor de eerste dag van Augustus 1925 vertrok, niet naar de Unie of die provincie (als het geval mocht zijn) vóór de eerste dag van Augustus 1928 terugkeert: Met dien verstande dat in de gevallen waar een persoon overzee gaat voor een speciaal of tijdelijk doel de Minister de uitreiking van een certificaat van identiteit kan machtigen ingevolge de bepalingen van subartikel (2) van artikel *vijf en twintig* van deze Wet waarbij de betrokken persoon veroorloofd wordt om terug te keren en zijn verblijf in de genoemde provincie te hervatten binnen het in zulk certificaat vermelde tijdvak of een verlenging daarvan van alles te samen genomen ten hoogste tien jaren.
- 40 21. Artikel *zes* van de Indiërs Verlichting Wet, 1914, wordt bij deze gewijzigd door de invoeging na de woorden "een haven in Indië" van de woorden "of elders".

Wijziging van artikel *dertig* van Wet No. 22 van 1913.

Wijziging van artikel *zes* van Wet No. 22 van 1914.

HOOFDSTUK III.

REGISTRATIE VAN AZIATEN.

- 45 22. Een registratie certificaat uitgereikt ingevolge de bepalingen van de Aziaten Wet Wijzigings Wet, 1907, van de Transvaal (Wet No. 2 van 1907) of de Aziaten Registratie Wijzigings Wet, 1908, van de Transvaal (Wet No. 36 van 1908) kan door de houder aan de Registrateur van Aziaten teruggegeven worden, en zulke teruggeving is afdoende bewijs dat die houder al zijn rechten van of in verband met binnenkomst, verblijf of domicilie in de provincie Transvaal opgegeven heeft.
- 55 23. Indien een Aziaat die verzuimd heeft om applicatie om registratie te maken overeenkomstig de bepalingen van paragraaf (2) van artikel *vijf* van de Aziaten Registratie Wijzigings Wet, 1908, van Transvaal, de Registrateur van Aziaten overtuigt dat zulk verzuim ten gevolge van een goede en voldoende reden plaats vond, kan de Minister van Binnenlandse Zaken naar zijn goedgevoelen de Registrateur machtigen om een applicatie om registratie van zulke Aziaat te ontvangen, en met de applicatie wordt gehandeld in alle opzichten alsof hij overeenkomstig de bepalingen van het gezegd artikel gemaakt was en alle bepalingen van Wet No. 36 van 1908 van de Transvaal zoals gewijzigd door deze Wet, die van toepassing zouden geweest zijn indien de applicatie aldus gemaakt was, zijn dienovereenkomstig van toepassing.

Teruggave van Aziaten registratie certificaat.

Omstandigheden waaronder applicatie om Aziaten registratie certificaat gemaakt kan worden.

Amendment of section *seven* of Act No. 36 of 1908 of Transvaal. 24. Section *seven* of the Asiatics Registration Amendment Act, 1908, of the Transvaal, is hereby amended by the deletion of the words "save as in the next succeeding section is provided."

Amendment of section *nine* of Act No. 36 of 1908 of Transvaal. 25. Section *nine* of the Asiatics Registration Amendment Act, 1908, of the Transvaal, is hereby amended by the deletion of the last sentence thereof.

CHAPTER IV.

SUPPLEMENTARY.

Repeal of laws. 26. The laws mentioned in the Schedule to this Act are hereby repealed to the extent set out in the fourth column of that Schedule.

Short title. 27. This Act may be cited as the Areas Reservation and Immigration and Registration (Further Provision) Act, 1926.

Schedule.

Province.	No. and year of law.	Title or subject of law.	Extent of repeal.
Natal ..	Act No. 28 of 1897.	To protect uncovenanted Indians from arrest in mistake for absconding indentured Indian servants.	The whole.
Cape ..	Act No. 37 of 1904.	The Chinese Exclusion Act, 1904.	The whole.
Transvaal	Act No. 36 of 1908.	The Asiatics Registration Amendment Act, 1908.	Sections <i>three, four five</i> (paragraph one), <i>six, eight, sixteen, seventeen</i> (paragraphs five and six).
Union ..	Act No. 22 of 1914.	Indians Relief Act, 1914	Section <i>three</i> .

24. Artikel *zeven* van de Aziaten Registratie Wijzigings Wet, 1908, van de Transvaal, wordt bij deze gewijzigd door de schrapping van de woorden " behalve zoals in het eerstvolgende artikel is bepaald ". Wijziging van artikel *zeven* van Wet No. 36 van 1908.

5 25. Artikel *negen* van de Aziaten Registratie Wijzigings Wet, 1908, van Transvaal, wordt bij deze gewijzigd door de schrapping van de laatste zinsnede ervan. Wijziging van artikel *negen* van Wet No. 36 van 1908 van Transvaal.

HOOFDSTUK IV.

AANVULLENDE BEPALINGEN.

10 26. De wetten opgenoemd in de Bijlage van deze Wet worden bij deze herroepen in de omvang uiteengezet in de vierde kolom van die Bijlage. Herroeping van wetten.

27. Deze Wet kan voor alle doeleinden aangehaald worden als de Wet op Terzijdezetting van Wijken en Verdere Voorziening voor Immigratie en Registratie, 1926. Korte titel.

Bijlage.

Provincie.	No. en jaar van Wet.	Titel van onderwerp van Wet.	Omvang van herroeping.
Natal ..	Wet No. 28 van 1897.	Om Indiërs die niet onder overeenkomst werken bij vergissing voor deserterende Indiëse bedienden onder kontrakt gehouden tegen arrestatie te beschermen.	Geheel.
Kaap ..	Wet No. 37 van 1904.	De Uitsluiting van Chinezen Wet, 1904.	Geheel.
Transvaal	Wet No. 36 van 1908.	De Aziaten Registratie Wijzigings Wet, 1908.	Artikels <i>drie</i> , <i>vier</i> , <i>vijf</i> (paragraaf <i>een</i>), <i>zes</i> , <i>acht</i> , <i>zes-tien</i> , <i>zeventien</i> (paragrafen <i>vijf</i> en <i>zes</i>).
Unie ..	Wet No. 22	Indiërs verlichting Wet, 1914.	Artikel <i>drie</i> .

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MEMORANDUM submitted to the Honourable Minister of the Interior, by the SOUTH AFRICAN INDIAN CONGRESS, with reference to the

1. Immigration and Indian Relief (Further Provision) Bill, and
2. Asiatics in the Northern Districts of Natal, Bill, now before Parliament, and to be read a second time on the 27th and 25th April, 1927, respectively.

We, the undersigned, Honorary General Secretary and Joint Honorary Treasurer of the South African Indian Congress, and the representatives of the affiliated bodies, and as such representing the Indian Community of South Africa, beg to submit the views and observations of our Congress in regard to the above two Bills, which have been introduced by the Honourable Minister of the Interior, thus giving legislative effect to a part of the Settlement arrived at between the Union Government and the Government of India on the South African Indian Question; and would request a reply which might be kept along with this Memorandum among our Congress records.

IMMIGRATION AND INDIAN RELIEF (FURTHER PROVISION) BILL.

In regard to this Bill which seeks to amend certain sections of the Immigration Regulation Act No.22, of 1913, we beg to refer to Section 4, Subsection (a) which does not give a clear meaning of what is intended by the addition of the words to paragraph (e) of Section 5 of the Principal Act. If it is intended that a child born after the Commencement of the Principal Act outside the Union should enter the Union within three years from the date of his birth, it becomes a physical impossibility to do so, as it is some

14 years now since the passing of the Principal Act, and any child born soon after the passing of the Principal Act cannot enter the Union unless it seeks to do so under Subsection (g) of Section 5 of the Principal Act. We would therefore ask the reason for the insertion of this new provision and also whether subsection (g) is in any way modified by it and whether there is not an apparent contradiction between (e) and (g).

Since it is the intention of the Government to give effect to Paragraph 3 of the Reciprocity Resolution of the Imperial Conference of 1918, which intended that an Indian should be enabled to live a happy family life in the Country in which he is domiciled, we beg to point out that by Proclamation No. 264 of 1904, Cape, wives of domiciled Indians and of Indians born in the Transkeian territories are refused admission. We therefore beg to submit that the said Proclamation be withdrawn or such relief afforded as will enable the lawfully resident Indians in the Transkeian territories to come under the operation of Section 5, Subsection (g) of the Principal Act. We would ask that the same permission be granted if any similar cases arise in any other territory under Union jurisdiction.

With reference to Section 10 of the Bill which defines the term "domicile", we beg to submit, that if it is intended that all persons, who are now absent from the Union, and who do not return within three years from the date of departure, should lose their domicile, then it would be a hardship on those who to-day possess either the Transvaal Registration Certificate or Natal Domicile Certificate and who have remained outside the Union for more than three years relying on the validity of, and the protection afforded by these certificates. We therefore would ask that

a Clause be added giving such persons sufficient time after the passing of the Bill within which to return to the Union.

Again, supposing a person married a South African born woman and divorced her while in India, and the woman by virtue of her birth in the Union returns thereto with her offspring, the person cannot bring into the Union another wife as he is precluded by the definition of the term "wife" as appears in Section 3, Subsection 2, paragraph (b) of the Indian Relief Act No.22 1914. We therefore suggest that in the said paragraph (b) after the word "living" be added the words "other than a woman whose marriage with such exempted person has been dissolved to the satisfaction of the Minister" (Vide Round Table Conference Conclusions Entry of Wives and Children, para.c.)

Further, the right of a woman returning to South Africa who is innocent and obtains a divorce against her husband should be protected.

While this opportunity has been afforded us to submit our views on the proposed Amendments, of the Act, we beg leave to refer to some of the minor points which could be administratively or otherwise given relief to, and which are as follows:-

1. When an Immigrant has once filled in a D.I.90 Form, he should on subsequent occasions be only asked to fill in a supplementary form, giving such further particulars as are necessary.
2. Since the proposed Bill makes it an offence to illegally enter another Province within the Union, the deposit of £10, should be dispensed with, wherever the Immigration Officer is satisfied with the educational, commercial, professional or social standing of the Applicant.

3. That in view of the liberty of the subject being involved in Immigration cases, sittings of the Immigrants Appeal Board should take place in the Court House, and every facility be given for the attendance of the public and for the publication of its proceedings.

4. That in any cases hereafter where the record in the Immigration Office with regard to an Indian returning to or entering the Union does not agree with the record sent over from India, a further reference be made to the Government of India before the case is brought to the Appeal Board and settled upon the evidence already in hand.

5. That the Hon. the Minister assure our Congress that those Indians who are subjects of the Native States of India and who are lawfully domiciled in the Union, would be for all purposes regarded as British subjects, notwithstanding the decision of the Courts.

It is our wish that, while we do not anticipate for the present any hardships provided this Act and the Amendments thereto being sympathetically administered, the Minister may be pleased in the future to redress any legitimate grievance or hardship that we may suffer, and if need be to amend the law in order to render a peaceful working of the Settlement now arrived at.

ASIATICS ON THE NORTHERN DISTRICTS OF NATAL BILL.

The definition of the term "Asiatic" in Section 16 is incorrect, as the words "and includes a coolie, an Arab and a Malay" carry no meaning and are inappropriate and reproachable. We respectfully ask that these words be eliminated altogether.

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We therefore venture to submit that the Honourable the Minister of the Interior would be pleased to favorably consider our representations and to give us, in answer to this Memorandum, assurance on the points above mentioned.

We beg to remain,

Sir,

Your obedient Servants

(Signed) A.S.Kajee

Hon. General Secretary.

(Sgd.) V.S.C.Pather

Joint Hon. Treasurer.

SOUTH AFRICAN INDIAN CONGRESS.

Representatives:

- | | | |
|--------|---------------|----------------------------------|
| (Sgd.) | V.S.C. Pather | Natal Indian Congress |
| " | N.A. Camay | Transvaal British Indian Assocn. |
| " | A.Ismail | Cape British Indian Council. |

AFFILIATED BODIES OF THE S.A.I.C.

Countersigned by:

(Sgd.) C.F.Andrews

Headquarters:

175 Grey Street
DURBAN

7, Buitencingle
CAPE TOWN

23rd April, 1927.

DOCUMENTS

RELATING TO

THE NEW ASIATIC BILL AND THE ALLEGED BREACH OF FAITH.

Collected by C. F. ANDREWS.

To be obtained from all Booksellers.
Price One Shilling.

PRINTED BY CAPE TIMES LIMITED, CAPE TOWN.

[NOTE.—The following papers have been collected with a view to present in a handy form the chief documents bearing on the Asiatic Bill and the alleged Breach of Faith, about which much has been written in the public press.]

UNION OF SOUTH AFRICA.

Areas Reservation and Immigration and Registration (Further Provision) Bill.

BILL

To make provision for the reservation of residential and trading areas in urban areas for certain persons having racial characteristics in common; to amend the Immigrants Regulation Act, 1913 (No. 22 of 1913), the Indians Relief Act, 1914 (No. 22 of 1914), and the Asiatic Registration Amendment Act 1908 (Transvaal) (No. 36 of 1908); and to repeal the Chinese Exclusion Act 1904 (Cape) (No. 37 of 1904) and Act No. 28 of 1897 (Natal).

(Introduced by the Minister of the Interior.)

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

CHAPTER I.

RESERVATION OF AREAS.

1. (1) Whenever an urban local authority intimates to the Minister—
- (a) that any area within its jurisdiction is wholly or for the greater part occupied for residential or trading purposes or both such purposes by a particular class of persons; and
- (b) that it is desirable that the provisions of this Chapter should be applied in respect of such area,

Request by urban local authority for application of Chapter I.

the Minister may appoint a commission consisting of not more than three persons (hereinafter called the commission) to investigate and report upon the desirability of applying to such area and to the jurisdiction of the urban local authority within which it is situated the provisions of this Chapter.

(2) One of the members of the commission shall be designated by the Minister as the chairman thereof, and the Minister may make rules for the conduct of the business of the commission and governing the tenure of office of the members. In the event of the commission consisting of three members, two members shall form a quorum.

2. (1) It shall be the duty of the commission to enquire into and report to the Minister upon the following matters:—

Duty and powers of commission.

- (a) The extent and nature of the area which was the subject of intimation under section one;
- (b) the number, dimensions, situation and nature of sites occupied in such area for residential or trading purposes or both such purposes, as the case may be;
- (c) whether such area affords proper and adequate facilities for residences or trading sites or both, as the case may be, for the particular class of persons concerned;
- (d) whether due and proper provision exists or is assured for water, lighting, sanitary and other necessary services within such area;
- (e) whether it is desirable that the provisions of this Chapter should be applied in respect of such area;

- (f) whether there is, within the jurisdiction of the urban local authority concerned, any other area which is wholly or for the greater part occupied for residential or trading purposes or both such purposes by the particular class of persons concerned, and if there is such other area, the extent and nature thereof, and the number, dimensions, situation and nature of sites occupied in such other area for residential or trading purposes or for both such purposes as the case may be;
- (g) whether any other area within the jurisdiction of the urban local authority concerned is available for the exclusive occupation for residential or trading purposes or both such purposes by the particular class of persons concerned; and
- (h) any other matter which the Minister or the commission may deem necessary or desirable.

(2) The commission shall have all such powers, jurisdiction and privileges as were conferred upon the commission referred to in Ordinance No. 30 of 1902 of the Transvaal, and all and several the provisions of that Ordinance shall *mutatis mutandis* apply in respect of the commission and its proceedings.

Proclamation of class areas.

3. (1) At any time within six months after the receipt of the report of the commission, the Governor-General may by proclamation in the *Gazette* declare that, on and after a date to be mentioned in the proclamation, the area defined in the proclamation shall be a class residential area, or a class trading area or a class residential and trading area within the jurisdiction of the urban local authority concerned.

(2) More than one area within such jurisdiction may, by any such proclamation, be defined as class residential areas, or as class trading areas, or as class residential and trading areas, as the case may be.

(3) Notwithstanding anything contained in the Precious and Base Minerals Act of the Transvaal (Act No. 35 of 1908), or any amendment thereof, or in any other law, a class trading area or a class residential and trading area may be established under this Chapter on land within the jurisdiction of an urban local authority which, in terms of the said Act No. 35 of 1908 or any amendment thereof, is proclaimed land or land held under mining title.

Acquisition of immovable property in class areas.

4. (1) Save as is provided in sections *eleven* and *twelve*, whenever a proclamation establishing a class residential area within the jurisdiction of an urban local authority has been issued under this Chapter no person shall, after the date of such establishment, for residential purposes acquire or hire, or take over, or as lessee renew the lease of, any immovable property situate—

- (a) within such area unless such person belongs to the class of persons in respect of which such area was established, or
- (b) elsewhere within such jurisdiction than within such area if such person belongs to such class.

(2) Save as is provided in sections *eleven* and *twelve*, whenever a proclamation establishing a class trading area within the jurisdiction of an urban local authority has been issued under this Chapter, no person shall, after the date of such establishment, for trading purposes acquire or hire, or take over, or as lessee renew the lease of, any immovable property situate—

- (a) within such area unless such person belongs to the class of persons in respect of which such area was established; or
- (b) elsewhere within such jurisdiction than within such area if such person belongs to such class.

(3) Save as is provided in sections *eleven* and *twelve*, whenever a proclamation establishing a class residential and trading area within the jurisdiction of an urban local authority has been issued under this Chapter, no person shall, after the date of such establishment, for any purpose acquire or hire, or take over, or as lessee renew the lease of, any immovable property situate—

- (a) within such area unless such person belongs to the class of persons in respect of which such area was established; or
- (b) elsewhere within such jurisdiction than within such area if such person belongs to such class.

(4) Nothing in this section contained shall apply to the renewal of a lease of immovable property where the right of renewal was created by a written lease prior to the first day of August, 1925.

Trading in class trading area or class residential and trading area.

5. (1) From and after the date mentioned in any proclamation issued under this Chapter establishing a class trading area or a class residential and trading area within the jurisdiction of any urban local authority, it shall not be lawful

for any licensing court, board or authority, or for any person authorized to grant or issue licences or permits to carry on any trade or business within such jurisdiction—

- (a) to grant or issue to any person other than a person of the class concerned any licence, permit or other authority to carry on any trade or business within the class trading area or class residential and trading area as the case may be; or
- (b) to grant or issue to any person of the class concerned any licence or permit to carry on any trade or business within such jurisdiction elsewhere than in the class trading area or class residential and trading area, as the case may be:

Provided that if the Governor-General is satisfied that it is in the general interests of the public that it should be permitted to—

- (i) persons of the class concerned or any restricted number of such persons to carry on any particular trade or business within such jurisdiction elsewhere than in the class trading area or class residential and trading area, as the case may be; or
- (ii) persons other than person of the class concerned or any restricted number of such other persons to carry on any particular trade or business in the class trading area or class residential and trading area, as the case may be,

he may, by proclamation in the *Gazette* for such period as he may therein fix, exempt such persons or a restricted number of such persons from the operation of paragraph (a) or (b) of this sub-section in respect of that particular trade or business.

(2) No person holding, at the date mentioned in any proclamation issued under this Chapter establishing a class trading area or a class residential and trading area within the jurisdiction of any urban local authority, any licence, permit, or other authority to carry on any trade or business, which is actually being carried on, shall be deemed to be prevented by anything contained in this section from being granted a renewal of such licence, permit or other authority.

6. (1) Whenever, in the opinion of the urban local authority concerned, any area established under this Chapter as a class residential area or a class trading area or a class residential and trading area, proves inadequate or more than adequate for, or unsuitable either wholly or in part to, the requirements of the population of that class within the jurisdiction of such local authority, and such local authority deems it desirable to extend or reduce any such area or to alter the boundaries thereof, or to create a new class residential area or class trading area or class residential and trading area, such local authority may communicate its opinion to the Minister, who thereupon may take all such steps as he may take upon receipt of an intimation under section one. Extension or reduction of class areas.

(2) All and several the powers exercisable under this Chapter in respect of the establishment of a class residential area or a class trading area or a class residential and trading area shall be exercisable in respect of the creation of a new area or the extension or reduction of any existing area of like character or the alteration of the boundaries thereof.

(3) Nothing in this section contained shall be deemed to affect in any manner whatever any right to the renewal of a lease of immovable property where such right was held under a written lease existing on the first day of August, 1925, nor shall any person holding at the date mentioned in any proclamation issued in pursuance of this section any licence, permit, or other authority to carry on any trade or business which is actually being carried on be deemed to be prevented by anything contained in this section from being granted a renewal of such licence, permit or other authority.

7. (1) If at any time the Governor-General is satisfied that a class residential area or a class trading area or a class residential and trading area established under this Chapter is inadequate for, or wholly or partly unsuitable to, the requirements of the population of that class within the jurisdiction of the urban local authority concerned, and that, by reason of the delay which would necessarily take place in removing the causes of the inadequacy or unsuitability, serious prejudice would be suffered by that population unless the provisions of this Chapter in respect of such inadequate or unsuitable area be suspended, he may, by proclamation in the *Gazette* declare that, from and after a date to be therein mentioned, the provisions of this Chapter shall be suspended in respect of the class residential area or class trading area or class residential and trading area concerned. Suspension of Provisions.

(2) From and after such date the provisions of this Chapter shall in all respects cease to apply to the area deemed to be inadequate or unsuitable, and, in respect of such inadequate or unsuitable area, to the other parts of the jurisdiction of the urban local authority within which it is situated.

(3) The Governor-General may, whenever he may deem fit, reproclaim as a class residential area or a class trading area or a class residential and trading area, as the case may be, any area which has been the subject of a suspending proclamation under sub-section (1) of this section, or proclaim as a class residential area or a class trading area or a class residential and trading area under this Chapter any area which wholly or partly includes any area which has been the subject of a suspending proclamation under sub-section (1) of this section.

Class area for Asiatics to be deemed to be area in which under Law No. 3, 1885 (Transvaal), Asiatics may own fixed property.

8. Any class residential area, or class trading area, or class residential and trading area established under this Chapter for any Asiatic race shall, for the purposes of section two (b) of Law No. 3 of 1885 of the Transvaal, be deemed to be an area within which, in terms of that law, fixed property may be acquired and owned by Asiatics.

Class advisory board.

9. (1) For every class residential area, or class trading area, or class residential and trading area established under this Chapter there shall be established an advisory board consisting of not less than three persons of the class concerned resident within the jurisdiction of the urban local authority concerned, in addition to a chairman who in the case of a non-European class area may be a European or white person. The mode of election or selection of members of any such board, the period and conditions of office of members, and the procedure of the board shall be defined by regulations made by the urban local authority concerned and approved by the Minister.

(2) It shall be the function of an advisory board established under this section to advise the urban local authority concerned in respect of any matter referred to it by such authority for advice, and no by-laws or regulations particularly affecting the interests of the class of persons concerned shall be made, amended or withdrawn by any urban local authority unless the advice of such advisory board has first been obtained in respect of the making, amendment or withdrawal, as the case may be, of such by-law or regulation.

Prohibition of acquisition of immovable property in the Cape of Good Hope and Natal by certain persons.

10. (1) Save as provided in sections eleven and twelve, and in respect of the renewal of leases in sub-section (4) of section four, the Governor-General may by proclamation in the *Gazette* declare that from and after a date therein specified, not being earlier than the first day of August, 1925, no person of any class indicated in such proclamation shall—

- (a) anywhere within the Union, hire or take over, or, as lessee, renew the lease of any immovable property for a period exceeding five years; or
- (b) in the provinces of the Cape of Good Hope and Natal acquire any immovable property,

save for residential purposes in a class residential area or for trading purposes in a class trading area, or for any purpose in a class residential and trading area established for the class of persons indicated in a proclamation issued under section four.

(2) Notwithstanding anything contained in sub-section (1), the Governor-General may by proclamation in the *Gazette* declare that from and after a date to be specified therein a person of any class indicated therein may in the coast belt acquire immovable property or hire or renew the lease of immovable property from a person of the same class, but from no other person: Provided that where the immovable property is situate within a class area established under this Chapter within the coast belt, the provisions of section four shall apply in lieu of the provisions of this sub-section.

(3) From and after the date specified in any proclamation issued under sub-section (2), no person of any class indicated in such proclamation shall, by testamentary disposition, acquire any land or interest in land or the right to hire or occupy any immovable property in the coast belt, except from a person of the same class: Provided that where such land or immovable property is situated within a class area established under this Chapter within the coast belt the provisions of section four shall apply in lieu of the provisions of this sub-section.

(4) For the purposes of this section "the coast belt" means so much of the Province of Natal as lies between the coast and a line to be defined by the Governor-General by proclamation in the *Gazette* corresponding as far as practicable with the coast and drawn at an approximate distance of thirty miles therefrom, but shall not include any part of Zululand.

(5) Nothing in this section contained shall be deemed to affect the operation within the coast belt of any other provision of this Chapter.

11. (1) Subject to the provisions of sub-section (3) of section *three*, section *eight* and sub-section (3) of section *ten* of this Chapter, nothing in this Chapter contained shall be deemed—

- (a) to affect the operation of Law No. 3 of 1885 of the Transvaal or any amendment thereof; of section *two* of Act No. 18 of 1913; of Act No. 37 of 1919; of Chapter CXIII of the Orange Free State Law Book or any amendment thereof; or of any other law prohibiting, restricting, regulating, or in any way affecting, the ownership or occupation of immovable property or trading by persons of non-European descent; or
- (b) to prohibit the acquisition by the Government or any urban local authority for educational, municipal or any other public purpose of the ownership or occupation of any immovable property; or
- (c) to prohibit the acquisition at any time of land or interests in land or the lease or occupation of any immovable property by devolution or succession on death whether under will or on intestacy from a person of the same class; or
- (d) to prohibit any executor of a deceased estate or any trustee in insolvency or any assignee under the law relating to insolvency from holding any immovable property or trading under any licence where power to do any such thing is conferred upon him by any law; or
- (e) to invalidate or affect in any manner whatever any agreement or other transaction for the sale or purchase of land lawfully entered into prior to the first day of August, 1925.

12. (1) The Governor-General may grant to any person a certificate exempting him either wholly or for such period as he may therein specify from all or any of the provisions of this Chapter, and such persons shall either wholly or for such period, as the case may be, be so exempted.

(2) Nothing in this Chapter contained shall be deemed—

- (a) to affect any person who is duly accredited to the Union by or under the authority of His Majesty or the Government of any foreign state, or the wife, family, staff or servants of any such person.
- (b) to refer to natives as that term is defined in section *twenty-nine* of the Native (Urban Areas) Act, 1923 (Act No. 21 of 1923);
- (c) to refer to—
 - (i) persons born in the Union and ordinarily resident in the Province of the Cape of Good Hope who are members of the class or race known as “Cape Coloured” or of the class or race known as “Cape Malays”;
 - (ii) persons born in the Union and ordinarily resident in the Union elsewhere than in the Province of the Cape of Good Hope who would if resident in that Province, be regarded as members of either of the classes or races known as “Cape Coloured” or “Cape Malays” or
 - (iii) persons who are members of the class or race known as Mauritius Creoles or St. Helena persons or their descendants born in the Union.

(3) Notwithstanding anything contained in this Chapter all Europeans or white persons shall be regarded as having common racial characteristics.

13. In the Chapter unless inconsistent with the context

“class” or “class of persons” includes any persons having, in the opinion of the Minister, common racial characteristics;

“person of a class” includes any company or association of persons whether registered under any law or not in which one or more persons of the class referred to have a controlling interest;

“Minister” means the Minister of the Interior or any other Minister to whom the Governor-General may assign the administration of this Chapter;

“urban local authority” means any municipal council, borough council, town council or village council, or any town board, village management board, local board or health board.

Interpretation of terms.

CHAPTER II.

IMMIGRANTS REGULATION.

Amendment of
section *two* of Act
No. 22 of 1913.

14. Section *two* of the Immigrants Regulation Act, 1913 (hereinafter in this Chapter called the principal Act) is hereby amended by the deletion from sub-section (7) of the words: "sufficient in the opinion of the Minister" and the substitution therefor of the following words: "fixed by the immigration officer not exceeding one hundred pounds."

Amendment of
section *three* of Act
No. 22 of 1913.

15. Section *three* of the principal Act is hereby amended—

- (a) by the addition at the end of sub-section (2) of the words: "From any such opinion there shall be an appeal to the Appellate Division of the Supreme Court";
- (b) by the deletion from sub-section (3) thereof of the following words: "and 'a superior court having jurisdiction' shall mean the Provincial Division of the Supreme Court which has jurisdiction where the board was sitting or any judge of such division or the Eastern Districts Local Division having such jurisdiction or any judge thereof."

Amendment of
section *four* of Act
No. 22 of 1913.

16. Section *four* of the principal Act is hereby amended—

- (a) by the addition to paragraph (f) of sub-section (1) after the words "have been stolen" of the following words: "incest, sodomy, bestiality, any offence under the law relating to insolvency"; and
- (b) by the deletion of paragraph (a) of sub-section (2); and
- (c) by the insertion of the following new sub-section (5): "For the purpose of this section the Northern Districts of Natal, as described in section *three* of 'The Northern Districts Annexation Act, 1902' (Act No. 1, of 1903, Natal) shall be deemed to be included in the Province of the Transvaal."

Amendment of
section *five* of Act
No. 22 of 1913.

17. Section *five* of the principal Act as amended by section *three* of the Indians Relief Act, 1914, is hereby amended by the deletion of paragraph (e) and (g) and the substitution therefor of the following new paragraphs:—

- (e) any British subject who was born in any part of South Africa included in the Union and whose parents were at the time of his birth lawfully resident therein and were not at the time restricted to temporary or conditional residence therein by any law then in force: Provided that any person who, if he were a prohibited immigrant, would be included within any class of persons which has, in terms of paragraph (a) of sub-section (1) of section *four*, been deemed by the Minister to be unsuited to the requirements of the Union or any province thereof shall lose the protection accorded by this paragraph if he has acquired or shall acquire a domicile in a province of the Union other than that in which he was born;
- (g) any person who is proved to the satisfaction of an immigration officer or in the case of an appeal to the satisfaction of the board, to be the wife or child under the age of sixteen years of any person exempted by paragraph (f) of this section:

Provided:

 - (i) that the wife or child (as the case may be) is not such a person as is described in paragraph (d), (e), (f), (g) or (h) of sub-section (1) of section *four* or any amendment thereof; and
 - (ii) that where the exempted person belongs to any class of persons which has in terms of paragraph (a) of sub-section (1) of section *four* been deemed by the Minister to be unsuited to the requirements of the Union or any province thereof, the wife or child (as the case may be) enters the Union within five years after the first day of August, 1925, or within ten years after the date of the first entry of the person so exempted into the Union, whichever period may be the longer.

In the interpretation of this paragraph "the wife" shall include any one woman between whom and the exempted person mentioned there exists a union recognised as a marriage under the tenets of an Indian religion notwithstanding

that by those tenets the union of that exempted person with other women at the same time would also be recognised as a marriage: Provided that no woman shall be deemed to be the wife of such exempted person—

- (i) if such a union exists between him and any other woman who has under any law relating to immigration or to Asiatic registration been recognised within the Union as the wife of such person and has resided or resides or is domiciled in any Province; or
- (ii) if such exempted person has offspring resident or domiciled in any Province by any woman who is still living;

and a union shall not, for the purposes of this section, be deemed to have ceased to exist by reason only of the fact that according to the tenets of an Indian religion it has been dissolved.

“ The child under the age of sixteen ” shall mean a child who is the offspring of the exempted person and the wife as herein defined or the child of the exempted person and a deceased woman who if she had been alive could have been recognised at the time of the birth of the child as the wife (as herein defined) or whose union with the exempted person could have been registered at the time of the birth of the child as a marriage under section *two* of the Indians Relief Act, 1914: Provided such exempted person has no offspring resident or domiciled in any province by any other woman.

18. Section *ten* of the principal Act is hereby amended by the addition at the end thereof of the following words:—

Amendment of
section *ten* of Act
No. 22 of 1913.

Any such prohibited immigrant shall be dealt with in terms of section *nineteen* of this Act. If he is in possession of a registration certificate or a certificate of domicile or any other document authorising him to remain in the Union or any province it shall be competent for any board to which he may appeal, if it is proved to the satisfaction of the board that such certificate or other document was obtained by fraudulent representations by him or on his behalf, to order that such certificate or other document be cancelled and that he be dealt with in terms of this Act: Provided that if he fails to appeal to a board the Principal Immigration Officer concerned may exercise all such powers as to the cancellation of any certificate or other document as are by this section conferred upon a board.

19. Section *twenty-two* of the principal Act is hereby amended by the addition, after paragraph (c), of the following new paragraph:—

Amendment of
section *twenty-two*
of Act No. 22 of
1913.

- (d) for any offence under section *twenty* of this Act for which imprisonment is imposed without the option of a fine.

20. Section *thirty* of the principal Act is hereby amended by the deletion of the definition of the term “ domicile ” and the substitution therefor of the following definition:—

Amendment of
section *thirty* of
Act No. 22 of 1913.

“ domicile ” shall mean the place in which a person has his present permanent home, or present permanent residence or, to which he returns as his present permanent abode and not for a mere special or temporary purpose; and a person shall not be deemed to have a domicile within the Union of any province (as the case may be) for the purposes of this Act unless he has lawfully resided therein for a continuous period of three years, otherwise than under terms of conditional or temporary residence permitted by this Act or any other law or as a person under detention in prison, gaol, reformatory or mental hospital, and a person shall be deemed for the purposes of this Act to have lost his domicile within the Union or any province (as the case may be) if he absents himself from the Union or that province (as the case may be) and does not return to the Union or that province (as the case may be) within three years from the date of departure therefrom or in the case of a person who absented himself from the Union or any province (as the case may be) prior to the 1st August, 1925, does not return to the Union or that province (as the case may be) before the 1st August, 1928: Provided that in cases where a person proceeds overseas for a special or temporary purpose the Minister may authorize the issue of a certificate of identity under the provisions of sub-section (2) of section *twenty-five* of this Act allowing the person concerned to return to, and resume his residence in the province named within the period specified in such certificate or any extension thereof not exceeding ten years in all.

Amendment of section *six* of Act No. 22 of 1914. **21.** Section *six* of the Indians Relief Act, 1914, is hereby amended by the insertion after the words "any port in India" of the words "or elsewhere".

CHAPTER III.

REGISTRATION OF ASIATICS.

Surrender of Asiatic registration certificate. **22.** A registration certificate issued under the provisions of the Asiatic Law Amendment Act, 1907, of the Transvaal (Act No. 2 of 1907), or the Asiatics Registration Amendment Act, 1908, of the Transvaal (Act No. 36 of 1908) may be surrendered by the holder to the Registrar of Asiatics and such surrender shall be conclusive evidence that such holder has abandoned any right of or incidental to entry, residence or domicile in the Transvaal Province.

Circumstances in which application for Asiatic registration certificate may be made. **23.** If an Asiatic who has failed to make application for registration in accordance with the provisions of paragraph (2) of section *five* of the Asiatics Registration Amendment Act, 1908, of the Transvaal, satisfies the Registrar of Asiatics that such failure was due to some good and sufficient cause, the Minister of the Interior may, in his discretion, authorize the Registrar to receive an application for registration from such Asiatic and the application shall be dealt with in all respects as if it had been made in accordance with the provisions of the said section and all the provisions of Act No. 36 of 1908 of the Transvaal as amended by this Act which would have applied if the application had been so made shall apply accordingly.

Amendment of section *seven* of Act No. 36 of 1908 of Transvaal. **24.** Section *seven* of the Asiatics Registration Amendment Act, 1908, of the Transvaal, is hereby amended by the deletion of the words "save as in the next succeeding section is provided".

Amendment of section *nine* of Act No. 36 of 1908 of Transvaal. **25.** Section *nine* of the Asiatics Registration Amendment Act, 1908, of the Transvaal, is hereby amended by the deletion of the last sentence thereof.

CHAPTER IV.

SUPPLEMENTARY.

Repeal of Laws. **26.** The laws mentioned in the Schedule to this Act are hereby repealed to the extent set out in the fourth column of that Schedule.

Short title. **27.** This Act may be cited as the Areas Reservation and Immigration and Registration (Further Provision) Act, 1926.

SCHEDULE.

Province.	No. & year of Law.	Title or Subject of Law.	Extent of Repeal.
Natal ..	Act No. 28 of 1897	To protect uncovenanted Indians from arrest in mistake for absconding indentured Indian servants.	The whole.
Cape ..	Act No. 37 of 1904	The Chinese Exclusion Act, 1904	The whole.
Transvaal	Act No. 36 of 1908	The Asiatics Registration Amendment Act, 1908.	Sections <i>three, four, five</i> (paragraph one), <i>six, eight, sixteen, seventeen</i> (paragraphs five and six).
Union	Act No. 22 of 1914	Indians Relief Act, 1914.	Section <i>three</i> .

THE ASIATIC BILL.

PROPOSED AMENDMENTS TO THE IMMIGRANTS REGULATION ACT.

For the convenience of the reader, there are given in parallel columns the various clauses as at present existing in the Immigrants Regulation Act, 1913, together with the alterations, additions and deletions proposed in the "Areas Reservation and Immigration and Registration (Further Provision) Bill":—

THE ACT AS IT EXISTS.

2. (7) No appeal shall be heard by a board unless notice thereof in the prescribed form has been given to the Immigration Officer by or on behalf of the person concerned within seventy-two hours after the refusal, detention, restriction, or arrest aforesaid, or, in case the appellant arrived by sea and the ship whereon he arrived is about to depart, unless such notice is given forthwith. In every case a deposit shall be made of an amount "sufficient, in the opinion of the Minister" to cover the detention expenses of the said person, the costs of bringing him before a board and of returning him to the place at which he was restricted if he desire to appear personally, and if he arrived by sea, the cost of his return passage by another ship to the place from which he came.

3. (2) A board may, of its own motion, and shall, at the request of the appellant or of an immigration officer, reserve for the decision of a superior court having jurisdiction, any question of Law which arises upon an appeal heard before such board under the last preceding section, and shall state such question in the form of a special case for the opinion of such court by transmitting such special case to the registrar thereof. The question so stated may be argued before such court which may call for further information to be supplied by the board if the court shall deem such information necessary and may give such answer on such case, supplemented by such information, if any, and may make such order as to the costs of the proceedings, as it may think right.

(3) For the purpose of this section—
"a question of law" shall, among other questions include a question of domicile, and "a superior court having jurisdiction" shall mean the provincial division of the Supreme Court which has jurisdiction where the board was sitting, or any Judge of such division, or the Eastern Districts Local Division having such jurisdiction or any Judge thereof, and "appellant" shall not include an alien.

4. (1) (a) Any person or class of persons deemed by the Minister on economic grounds or on account of standard or habits of life to be unsuited to the requirements of the Union or any particular Province thereof;

THE ACT AS PROPOSED TO BE AMENDED.

2. (7) The same, excepting the deletion of the words in black type, and the substitution of the following: "fixed by the immigration officer not exceeding one hundred pounds."

3. (2) The same, with the addition of the following words: "From any such opinion there shall be an appeal to the Appellate Division of the Supreme Court."

(3) For the purposes of this section—
"a question of law" shall, among other questions, include a question of domicile; and
"appellant" shall not include an alien.

(NOTE—Portion in black type in the opposite section is to be deleted.)

4. (1) (a) The same, with the addition of the following words: "Provided that for the purpose of this section the Northern Districts of Natal, as described in section three of "The Northern Districts Annexation Act, 1903" (Act No. 1, 1903, Natal) shall be deemed to be included in the Province of the Transvaal."

NOTE.—Act No. 1, 1903, provides for the annexation to the Colony of Natal of certain Territories forming a part of the Transvaal Colony. Section three referred to above is as follows:—

"From and after the taking effect of this Act the undermentioned Territories, situated Northwards of the Colony of Natal now forming a part of the Transvaal Colony, shall be annexed to and shall henceforth form a part of the Colony of Natal, that is to say: The District of Vryheid, the District of Utrecht, a portion of the District of Wakkerstroom lying south of a line drawn from the North-eastern corner of Natal, East of Volksrust to the headwaters of the Pongolo River, and thence along that river to the border of the Utrecht District.

"The aforesaid Territories are in this Act shortly referred to as the Northern Districts."

(f) Any person who has been convicted in any country of any of the following offences (unless he has received a free pardon therefor) namely, murder, rape, arson, theft, receiving stolen goods knowing the same to have been stolen; fraud, forgery or uttering forged documents knowing the same to have been forged, counterfeiting coin or uttering coin knowing the same to be counterfeit, housebreaking with intent to commit an offence, burglary, robbery with violence, threats by letter or otherwise with intent to extort or of any attempt to commit any such offence, and by reason of the circumstances connected with the offence, is deemed by the minister to be an undesirable inhabitant of or visitor to the Union.

(2) Nothing in sub-section (1) contained shall be construed—

(a) as enabling a person to be deemed a prohibited immigrant in the Cape of Good Hope or Natal, if, being at the commencement of this Act lawfully entitled to reside in any Province, he shows or has shown that he is able to comply with the requirements described in section three (a) of Act No. 30 of 1906 of the Cape of Good Hope, or of section five (a) of Act No. 30 of 1903 of Natal.

NOTE.—Section three (a) of Act No. 30 of 1906 of the Cape of Good Hope, referred to above reads as follows:—

(a) Any person who, when asked to do so by any duly authorised officer shall be unable through deficient education to himself write out and sign, in the characters of any European language an application to the satisfaction of the Minister; provided that for the purposes of this sub-section Yiddish shall be accepted as an European language.

Section five (a) of Act No. 30 of 1903 of Natal referred to in this section reads as follows:—

(a) Any person who, when asked to do so by any duly authorised officer shall be unable through deficient education to himself write out and sign, in the characters of some European language, an application to the satisfaction of the Minister.

5. The following persons or classes of persons shall not be prohibited immigrants for the purposes of this Act, namely:—

(e) any person born before the commencement of the Act in any part of South Africa included in the Union whose parents were lawfully resident therein and were not at that time restricted to temporary or conditional residence by any law then in force, and any person born in any place after the commencement of this Act whose parents were at the time of his birth domiciled in any part of South Africa included in the Union,

(g) any person who is proved to the satisfaction of an Immigration Officer or in case of an appeal to the satisfaction of the board, to be the wife, or the child under the age of 16 years, of any person exempted by paragraph (f) of this section, provided that the wife or the child (as the case may be), is not such a person as is described in sub-section (1) (d), (e), (f), (g) or (h) of the last preceding section.

(f) The same, with the addition after the words "have been stolen" of the following; "incest, sodomy, bestiality, any offence under the law relating to insolvency."

(2) (a) Deleted.

5. The following persons or classes of persons shall not be prohibited immigrants for the purposes of this Act, namely:—

(e) any British subject who was born in any part of South Africa included in the Union and whose parents were at the time of his birth lawfully resident therein and were not at that time restricted to temporary or conditional residence therein by any law then in force; Provided that any person who, if he were a prohibited immigrant, would be included within any class of persons which has, in terms of paragraph (a) of sub-section (1) of section four, been deemed by the Minister to be unsuited to the requirements of the Union or any province thereof shall lose the protection accorded by this paragraph if he has acquired or shall acquire a domicile in a province of the Union other than that in which he was born;

(g) any person who is proved to the satisfaction of an immigration officer or in the case of an appeal to the satisfaction of the board, to be the wife or child under the age of sixteen years of any person exempted by paragraph (f) of this section:

Provided:

(i) that the wife or child (as the case may be) is not such a person as is described in paragraph (d), (e), (f), (g) or (h) of sub-section (1) of section four; and

(ii) that where exempted person belongs to any class of persons which has in terms of paragraph (a) of sub-section (1) of section four been deemed by the Minister to be unsuited to the requirements of the Union or any province thereof the wife or child (as the case may be) enters the Union within five years after the first day of August, 1925, or within ten years after the date of the first entry into the Union, whichever period may be the longer, of the so exempted person.

NOTE.—Paragraphs (d), (e), (f), (g) and (h) of sub-section (1) of section four referred to in (i) deal with criminals and diseased persons, and paragraph (a) of sub-section (1) of section four referred to in (ii) is as follows—

(a) any person or class of persons deemed by the Minister on economic grounds or on account of standard or habits of life to be unsuited to the requirements of the Union or any particular Province thereof.

In the interpretation of this paragraph "the wife" shall include any one woman between whom and the exempted person mentioned there exists a union recognised as a marriage under the tenets of an Indian religion notwithstanding that by those tenets the union of that exempted person with other women at the same time would also be recognised as a marriage. Provided that no woman shall be deemed to be the wife of such exempted person—

- (i) if such a union exists between him and any other woman who has under any law relating to immigration or to Asiatic registration been recognised within the Union as the wife of such person and has resided or resides or is domiciled in any Province; or
- (ii) if such exempted person has offspring resident or domiciled in any Province by any woman who is still living;

and a union shall not for the purposes of this section be deemed to have ceased to exist by reason only of the fact that according to the tenets of an Indian religion it has been dissolved.

"The child under the age of sixteen" shall mean a child who is the offspring of the exempted person and the wife as herein defined or the child of the exempted person and a deceased woman who if she had been alive could have been recognised at the time of the birth of the child as the wife (as herein defined) or whose union with the exempted person could have been registered at the time of the birth of the child as a marriage under section two of the Indians Relief Act, 1914. Provided such exempted person has no offspring resident or domiciled in any province by any other woman.

10. No prohibited immigrant shall be exempt from the provisions of this Act or be allowed to remain in the Union, or in any Province wherein his residence is unlawful, or be deemed to have acquired a domicile therein, by reason only that he had not been informed that he could not enter or remain in the Union or (as the case may be) in that Province or that he had been allowed to enter or remain through oversight, misrepresentation or owing to the fact having been undiscovered that he was such a prohibited immigrant.

10. The same, with the following addition: "Any such prohibited immigrant shall be dealt with in terms of section *nineteen* of this Act if he is in possession of a registration certificate or a certificate of domicile or any other document authorizing him to remain in the Union or any Province it shall be competent for any board to which he may appeal, if it be proved to the satisfaction of the board that such certificate or other document was obtained by fraudulent representations by or on behalf of the holder, to order that such certificate or other document be cancelled and that he be dealt with in terms of this Act: Provided that if he fails to appeal to a board the Principal Immigration Officer concerned may exercise all such powers as to the cancellation of any certificate or other document as are by this section conferred upon a board."

22. Any person (not being a person born in any part of South Africa which has been included in the Union) who, whether before or after the commencement of this Act has been sentenced to imprisonment—

- (a) for a contravention of the provision mentioned in the first schedule to this Act or any provision hereafter amending that provision or substituted therefor or for any offence mentioned in sub-section 1 (f) of section four;
- (b) for selling, bartering, giving or otherwise supplying intoxicating liquor to any coloured person in contravention of any law; or
- (c) for dealing in or being in possession of unwrought precious metal or rough or uncut precious stones in contravention of any law, and who by reason of the circumstances connected with the offence, is deemed by the Minister to be an undesirable inhabitant of the Union, may be removed from the Union by warrant, and pending removal, may be detained in such custody as may be prescribed by regulation.

22. The same, with the addition of the following new paragraph:—

- (d) for any offence under section *twenty* of this Act for which imprisonment has been imposed without the option of a fine.

NOTE.—Section 20 above referred to reads as follows:—
Any person who—

- (a) aids or abets any person in entering or remaining within the Union or any Province in contravention of this Act, knowing that person to be prohibited from so entering or remaining;
- (b) aids or abets a person ordered to be removed from the Union or any Province in evading the order, or harbours any such person knowing him to be the subject of any such order;
- (c) for the purpose of entering the Union, or any Province in which he is a prohibited immigrant, or of facilitating or assisting the entrance of himself or any other person in contravention of the Act, commits any fraudulent act or makes any false representation by conduct, statement, or otherwise, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or, in default of payment to imprisonment with or without hard labour for a period not exceeding six months, or to such imprisonment without the option of a fine.

30. In this Act, and in the regulations made thereunder, unless inconsistent with the context—

“domicile” shall mean the place in which a person has his present home or in which he resides or to which he returns as his place or present permanent abode and not for a mere special or temporary purpose; and a person shall not be deemed to have a domicile within the Union or any Province (as the case may be) for the purposes of this Act unless he has resided therein for at least three years, otherwise than under terms of conditional or temporary residence permitted by this Act or any other law or as a person under detention in a prison, gaol, reformatory or lunatic asylum; and a person shall be deemed for the purposes of this Act to have lost his domicile within the Union or any Province (as the case may be) if he voluntarily go and reside outside the Union or the Province (except for a special or temporary purpose) with the intention of making his home outside the Union or that Province (as the case may be).

Section six of the Indians Relief Act, 1914:—

The Minister may in his discretion cause to be provided out of moneys appropriated by Parliament for the purpose of a free passage from any port in the Union to any port in India (with or without free conveyance by rail to such first mentioned port) for any Indian (other than an Indian who is or may become entitled under Law No. 25 of 1861—Natal—or any amendment thereof to such free passage), who makes a written request for such free passage, etc.

30. In this Act and in the regulations made thereunder, unless inconsistent with the context—

“domicile” shall mean the place in which a person has his present permanent home, or present permanent residence, or to which he returns as his present permanent abode and not for a mere special or temporary purpose; and a person shall not be deemed to have a domicile within the Union or any province (as the case may be) for the purposes of this Act unless he has lawfully resided therein for a continuous period of three years, otherwise than under terms of conditional or temporary residence permitted by this Act or any other law or as a person under detention in prison, gaol, reformatory or mental hospital, and a person shall be deemed for the purposes of this Act to have lost his domicile within the Union or any province (as the case may be) if he absents himself from the Union or that province (as the case may be) and does not return to the Union or that province (as the case may be) within three years from the date of departure therefrom or in the case of a person who absented himself from the Union or any Province (as the case may be) prior to the 1st August, 1925, does not return to the Union or that Province (as the case may be) before 1st August, 1928: Provided that in cases where a person proceeds overseas for a special or temporary purpose the Minister may authorize the issue of a certificate of identity under the provisions of sub-section (2) of section *twenty-five* of this Act allowing the person concerned to return to, and resume his residence in the Province named within the period specified in such certificate or any extension thereof not exceeding ten years in all.

Section six of the Indians Relief Act, 1914, remains, with the addition after the words “any port in India” of the words “or elsewhere.”

APPENDIX A.

Dr. Malan, Minister of Interior's Speech in introducing the Areas Reservation and Immigration and Registration (Further Provision) Bill in July, 1925.

Dr. Malan moved for leave to introduce a Bill to make provision for the reservation of residential and trading areas in the urban areas for certain persons having racial characteristics in common; to amend the Immigrants Regulation Act 1913 (No. 22 of 1913), the Indians Relief Act, 1914 (No. 22 of 1914), and the Asiatic Registration Amendment Act (Transvaal), 1908 (No. 36 of 1908); and to amend and repeal certain laws.

Dr. Malan said: The introduction of this Bill is, as hon. members will know, an undertaking on my part about a year ago during the last session of Parliament. During that session a motion was introduced dealing with the Asiatic question by the hon. member for Illovo, and replying on that occasion I undertook I would go into the whole of the Asiatic question during the recess as thoroughly as I could, and that I would introduce during this session of Parliament legislation dealing with that problem. I am very sorry I could not have the Bill ready before the very end of the session. I say I am sorry for that, because I realize, especially after having gone into the question personally, that the Asiatic problem is indeed a very pressing one in the country, and that delay will certainly, in future, not make the solution of the question easier for us.

On the other hand, I am not sorry that legislation is introduced at this late stage, because it is of course impossible to carry the Bill further than just the first reading now. In the meantime in the recess, before the Bill can be brought up again next session, the country as a whole will have the fullest opportunity of knowing what the policy of the Government is in regard to the Asiatic problem, and I personally, and the Government with me, will certainly follow the criticism, especially constructive criticism, which is brought forward in connection with this Bill, and I must say that personally I shall be very glad to adopt any helpful suggestions which may be brought forward during the recess.

I consider the Asiatic question, just as the Native question is, as a problem not for one political party, but a problem for the whole country, and a question which should be solved as far as possible above the arena of party strife. We should keep it as far as possible above party divisions. I am not going at this stage to make any second reading speech on this Bill, especially as the Bill is not yet in the hands of hon. members, but perhaps hon. members will allow me to make a few remarks of a general character.

In the first place I want to say that the Bill, as hon. members will have an opportunity of seeing later on, will certainly not satisfy extreme sections in the country. In this Bill I tried to steer the safe and sane middle course. The radical element in the country will certainly think that this Bill is too weak and moderate, and on the other hand that element in the country which is faint-hearted, or weak, will certainly think that this Bill is going quite too far, that it is too radical, and that in certain senses it will be oppressive.

INDIAN AS AN ALIEN.

I must say that the Bill frankly starts from the general supposition that the Indian, as a race in this country, is an alien element in the population, and that no solution of this question will be acceptable to the country unless it results in a very considerable reduction of the Indian population in this country.

But, on the other hand, the method of dealing with this question will not be the employment of any forcible means. The method which this Bill will propose will be the application of pressure to supplement, on the other hand, the inducement which is held out to Indians to leave the country. The Bill to a certain extent follows well-known lines. To a certain extent we go on the path which has been trodden before by my hon. friends opposite, but the Bill does not rest there, it goes a good deal further.

The Bill tries, to a much larger extent than was done by the Class Areas Bill of the previous Government, to carry out the recommendations of the Asiatic Inquiry Commission.

We are dealing in this Bill not only with residential or commercial segregation, but also with land ownership, especially in Natal.

In addition to that, the Bill proposes in certain respects to amend the Immigrants Regulation Act.

We find that there is a considerable influx of Indians still continually going on, especially the influx of Indian women, and the amendments which we propose in this Bill will go very far to put an effective stop to that.

There is one omission which I think certainly will be noted by hon. gentlemen when they read the Bill, and that is that this Bill, except in a general way, does not deal with the issue of trading licences. By another Bill which has passed, or which is being dealt with by Parliament just now, we will establish uniformity in regard to licences issued in this country, but that uniformity only consists in the fixing of the amount to be paid for these licences, and the issue of the licences to particular persons remains, as before, in the hands of the Provincial Administrations. So also the issue of trading licences to Asiatics will remain in the hands of the Provincial Administrations just as before.

I would just further make this general remark—that in this Bill we are trying to respect, as far as possible, the susceptibilities of the Indian population. We follow the example of legislation which has been passed by this House on previous occasions, and throughout the Bill we do not mention the name of the Asiatic as a class at all, except where it must be done in cases where we refer to existing laws which deal specifically with Asiatics as a class.

I must just conclude by making two points quite clear. I wish to be very clearly understood on these two points. The first is that the introduction of this Bill will not or must not be taken as closing the door to any negotiations or communications which may pass at present or in the future between the Union Government and the Government of India in regard to the Indian question.

ROUND-TABLE CONFERENCE.

As I have stated on a former occasion, this Government has been approached by the Government of India with a view to arranging between the two Governments a round-table conference on the treatment of Indians in South Africa. These negotiations are not yet closed, though they have taken a very definite course. The introduction at this stage of this proposed legislation must not be taken as closing the door to further communications between the two Governments about this particular point. On the contrary, I think that the statement, as embodied in this Bill, of the Asiatic policy of the present Government will very materially help further communications which there may be between the two Governments.

General Smuts: Can you tell us how far the negotiations have gone?

Dr. Malan: It is very difficult at this stage to make any statement on that point. I do not think it is to the public interests to do so just now.

IN OPERATION NEXT MONTH.

The other point upon which I wish to lay emphasis is this—and I give it as an intimation to everyone interested in the Bill—that according to the Bill as it stands now it will come into operation on August 1st of this year—within a fortnight's time. Whatever the time may be when this Bill may be passed by the Union Parliament, this order to come into operation on August 1st will stand. I think it is necessary, at this stage, to make this announcement because in the Bill certain vested interests are protected, and if the Bill does not come into operation or is made retrospective afterwards to come into operation on August 1, 1925, I am afraid there will be a general scramble amongst the Indian population for the creation of vested interests, and in that way the problem which we wish to solve will be made infinitely more complicated, and therefore I wish it to be understood that whenever this Bill is passed it will come into operation as from August 1st of this year. This, I think, is all I wish to say at this stage, and I move the first reading of the Bill.

The motion for leave to introduce the Bill was put and agreed to.

APPENDIX B.

SMUTS-GANDHI AGREEMENT OF 1914.

(A) THE ORIGINAL DRAFT LETTERS.

(B) THE SMUTS-GANDHI AGREEMENT.

(A) *The Draft Letters.*

The following were the original draft letters between General Smuts and Mr. Gandhi which led to the Agreement of June 30, 1914:—

Pretoria, January 21, 1914.

The Secretary for the Interior, Pretoria.

“ Sir,—Before leaving for Phœnix, I venture to express my thanks to General Smuts for the patient and kind interviews that he has been pleased to grant me during this time of overwhelming pressure. My countrymen will remember with gratitude his great consideration.

“ I understand that the Minister is unable to accept (with regard to the Indian Inquiry Commission) either—

- (1) My suggestion that a member representing Indian interests should be co-opted, when suggestions of policy are inquired into; or
- (2) My suggestion that a second commission, with Indian representation, should be appointed to deal with those questions only, the present Commission in that case becoming purely judicial. I submitted a proposal also, which, in view of the Government's decision, I need not state here. Had any of my suggestions been viewed favourably by the Government, it would have been possible for my countrymen to assist the labours of the Commission. But with regard to leading evidence before this Commission, which has a political as well as a judicial character, they have conscientious scruples, and these have taken with them a solemn and religious form. I may state briefly that these scruples were based on the strong feeling that the Indian community should have been either consulted or represented where questions of policy were concerned.

“ The Minister, I observe, appreciates these scruples, and regards them as honourable, but is unable to alter his decision. As, however, by granting me the recent interviews, he has been pleased to accept the principle of consultation, it enables me to advise my countrymen not to hamper the labours of the Commission by any active propaganda, and not to render the position of the Government difficult by reviving passive resistance, pending the result of the Commission and the introduction of legislation during the forthcoming session.

“ If I am right in my interpretation of the Government's attitude on the principle of consultation it would be further possible for us to assist Sir Benjamin Robertson, whom the Viceroy, with gracious forethought, has deputed to give evidence before the Commission.

“ A word is here necessary on the question of allegations as to ill-treatment during the progress of the Indian strike in Natal. For the reasons above stated, the avenue of proving them through the Commission is closed to us. I am personally unwilling to challenge libel proceedings by publishing the authentic evidence in our possession, and would far rather refrain altogether from raking up old sores. I beg to assure the Minister that, as passive resisters, we endeavour to avoid, as far as possible, any resentment of personal wrong. But, in order that our silence may not be mistaken, may I ask the Minister to recognise our motive and reciprocate by not leading evidence of a negative character before the Commission on the allegations in question?

“ Suspension of passive resistance, moreover, carries with it a prayer for the release of the passive resistance prisoners now undergoing imprisonment, either in the ordinary gaols or the mine compounds, which might have been declared as such.

“ Finally, it might not be out of place here to recapitulate the points on which relief has been sought.

They are as follows:—

- (1) " Repeal of the £3 tax in such a manner that the Indians relieved will occupy virtually the same status as the indentured Indians discharged under the Natal Law 25 of 1891.
- (2) " The Marriage Question.
(These two are the points, as I have verbally submitted, which require fresh legislation.)
- (3) " The Cape entry question. (This requires only administrative relief, subject to the clear safeguards explained to the Minister.)
- (4) " The Orange Free State question. (This requires merely a verbal alteration in the assurance already given.)
- (5) " An assurance that the existing laws, especially affecting Indians, will be administered justly, with due regard to vested rights.

" I venture to suggest that Nos. 3, 4 and 5 present no special difficulty, and that the needful relief may be now given on these points as an earnest of the good intentions of the Government regarding the resident Indian population.

" If the Minister, as I trust and hope, views my submission with favour, I shall be prepared to advise my countrymen in accordance with the tenour of this letter."

(Sgd.) M. K. GANDHI.

Department of the Interior, Pretoria.

January 21st, 1914.

" Sir,—With reference to your letter of even date, I am instructed by the Minister of the Interior to reply that you are correct in your statement that it is not proposed to make any alteration either in the personnel of, or the reference to, the Commission appointed to inquire into the recent Indian strike in Natal. The Minister regrets, but, of course, understands, that you are so far committed by your previous public declarations in regard to the Commission that you are precluded from appearing before it. He also recognises the motive which makes you unwilling to revive old sores by courting libel proceedings before another tribunal.

" The Government repudiates as strongly and emphatically as heretofore the charges of harsh or improper action against the Indian passive resisters and strikers. But, as you and your friends have decided not to appear before the Commission and lead evidence in support of those allegations, it seems likely that there will be no charges for the Commission to investigate. The Government would regret the consequent absence of an opportunity to lead rebutting evidence in vindication of the conduct of its officials, but it feels that, unless it has a definite case to answer, any attempt to deal with the allegations before the Commission could only result in an unprofitable waste of time.

" The Government is anxious that any recommendations which the Commission may make on the larger issue of Indian grievances should be received at a sufficiently early date to enable proposals to be submitted to Parliament during the forthcoming session. It is hoped that those proposals, if accepted by Parliament, would ensure a satisfactory and permanent settlement. The Government considers that such a settlement of long-standing disputes is too important to justify any risk of endangering its achievement by delaying the proceedings of the Commission, already delayed through unforeseen circumstances, by an inquiry which would now be necessarily one-sided, into points of minor and secondary moment relatively to wider issues at stake.

" If, therefore, the Indians decline to submit to the Commission any specific charges in connection with the treatment of passive resisters and strikers during the recent troubles, the Government will not think it necessary to take any further action in refutation of the allegations against it and its officers, but it reserves its right to ask the Commission to investigate the occurrences which resulted in loss of life at Esperanza and Mount Edgecombe.

" With reference to your prayer for the release of bona-fide passive resistance strikers from ordinary or compound gaols, the Department of Justice had already, previous to the arrival of your letter, taken steps for the release of the small balance of these prisoners kept in the gaols.

" In regard to the grievances which you have summarised at the end of your letter, the Government will, as already stated, await the recommendations of the Commission before taking any action."

(Sgd.) E. M. GORGES.

Secretary for the Interior.

M. K. Gandhi, Esq., Pretoria.

(B) *The Smuts-Gandhi Agreement.*

The following correspondence between Mr. Gandhi and General Smuts, in confirmation of a series of interviews, constitutes a perfect understanding between the Government and the Indian community in regard to those administrative matters which do not come under the Indians' Relief Bill:—

Department of the Interior,
Capetown, Cape of Good Hope,
30th June, 1914.

Dear Mr. Gandhi,—Adverting to the discussions you have lately had with General Smuts on the subject of the position of the Indian community in the Union, at the first of which you expressed yourself as satisfied with the provisions of the Indians' Relief Bill and accepted it as a definite settlement of the points, which required legislative action, at issue between that community and the Government; and at the second of which you submitted for the consideration of the Government a list of other matters requiring administrative action, over and above those specifically dealt with in that Bill; I am desired by General Smuts to state with reference to those matters that:—

- (1) He sees no difficulty in arranging that the Protector of Indian Immigrants in Natal will in future issue to every Indian, who is subject to the provisions of Natal Act 17 of 1895, on completion of his period of indenture, or re-indenture, a certificate of discharge, free of charge, similar in form to that issued under the provisions of Section 106 of Natal Law No. 25 of 1891.
- (2) On the question of allowing existing plural wives and the children of such wives to join their husbands (or fathers) in South Africa, no difficulty will be raised by the Government if, on enquiry, it is found, as you stated, that the number is a very limited one.
- (3) In administering the provisions of Section (4) (1) (a) of the Union Immigrants' Regulation Act, No. 22 of 1913, the practice hitherto existing at the Cape will be continued in respect of South African-born Indians who seek to enter the Cape Province, so long as the movement of such persons to that Province assumes no greater dimensions than has been the case in the past; the Government, however, reserve the right, as soon as the number of such entrants sensibly increase, to apply the provisions of the Immigration Act.
- (4) In the case of the "specially exempted educated entrants into the Union" (*i.e.*, the limited number who will be allowed by the Government to enter the Union each year for some purpose connected with the general welfare of the Indian community), the declarations to be made by such persons will not be required at Provincial borders, as the general declarations which are made in terms of Section 19 of the Immigrants' Regulation Act at the port of entry are sufficient.
- (5) Those Indians who have been admitted within the last three years, either to the Cape Province or Natal, after passing the education tests imposed by the Immigration Laws which were in force therein prior to the coming into effect of Act 22 of 1913, but who, by reason of the wording of Section 30 thereof, are not yet regarded as being "domiciled" in the sense in which that term is defined in the Section in question, shall, in the event of their absents themselves temporarily from the Province in which they are lawfully resident, be treated, on their return, as if the term "domicile" as so defined did apply to them.
- (6) He will submit to the Minister of Justice the cases of those persons who have been in the past convicted of "bona fide passive resistance offences" (a term which is mutually understood) and that he anticipates no objection on Mr. De Wet's part to the suggestion that convictions for such offence will not be used by the Government against such persons in the future.
- (7) A document will be issued to every "specially exempted educated entrant" who is passed by the Immigration Officers under the instructions of the Minister issued under Section 25 of Act No. 22 of 1913.
- (8) All the recommendations of the Indian Grievances Commission enumerated at the conclusion of their Report, which remain over and above the points dealt with in the Indians' Relief Bill will be adopted by the Government;

and subject to the stipulation contained in the last paragraph of this letter the necessary further action in regard to those matters will be issued without delay.

With regard to the administration of existing laws, the Minister desires me to say that it always has been and will continue to be the desire of the Government to see that they are administered in a just manner and with due regard to vested rights.

In conclusion, General Smuts desires me to say that it is, of course, understood, and he wishes no doubts on the subject to remain, that the placing of the Indians' Relief Bill on the Statute Book of the Union, coupled with the fulfilment of the assurances he is giving in this letter in regard to the other matters referred to herein, touched upon at the recent interviews, will constitute a complete and final settlement of the controversy which has unfortunately existed for so long, and will be unreservedly accepted as such by the Indian community.

I am, etc.,
(Sgd.) E. M. GORGES.

M. K. Gandhi, Esq.,
7, Buitensingel,
Capetown.

7, Buitensingel,
Capetown,
30th June, 1914.

Dear Mr. Gorges,—I beg to acknowledge receipt of your letter of even date herewith setting forth the substance of the interview that General Smuts was pleased, notwithstanding many other pressing calls upon his time, to grant me on Saturday last. I feel deeply grateful for the patience and courtesy which the Minister showed during the discussion of the several points submitted by me.

The passing of the Indians' Relief Bill and this correspondence finally closed the Passive Resistance struggle which commenced in the September of 1906 and which to the Indian community cost much physical suffering and pecuniary loss and to the Government much anxious thought and consideration.

As the Minister is aware, some of my countrymen have wished me to go further. They are dissatisfied that the trade licences laws of the different Provinces, the Transvaal Gold Law, the Transvaal Townships Act, the Transvaal Law 3 of 1885 have not been altered so as to give them full rights of residence, trade and ownership of land. Some of them are dissatisfied that full inter-provincial migration is not permitted, and some are dissatisfied that on the marriage question the Relief Bill goes no further than it does. They have asked me that all the above matters might be included in the Passive Resistance struggle; I have been unable to comply with their wishes. Whilst, therefore, they have not been included in the programme of Passive Resistance, it will not be denied that some day or other these matters will require further and sympathetic consideration by the Government. Complete satisfaction cannot be expected until full civic rights have been conceded to the resident Indian population.

I have told my countrymen that they will have to exercise patience and by all honourable means at their disposal educate public opinion so as to enable the Government of the day to go further than the present correspondence does. I shall hope that when the Europeans of South Africa fully appreciate the fact that now, as the importation of indentured labour from India is prohibited and as the Immigrants' Regulation Act of last year has in practice all but stopped further free Indian immigration and that my countrymen do not aspire to any political ambition, they, the Europeans, will see the justice and indeed the necessity of my countrymen being granted the rights I have just referred to.

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 the 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.

I am,
Yours faithfully,
(Sgd.) M. K. GANDHI.

E. M. Gorges, Esq.,
Department of the Interior,
Capetown.

[For the disputed letter of July 7th, 1914, which did not form part of the original Agreement, see Appendix F.—C.F.A.]

APPENDIX C.

SPEECHES AND RESOLUTIONS IN CONNEXION WITH IMPERIAL
RELATIONS.

(a) *General Smuts' Speech at the Imperial War Cabinet, 1917.*

“ I wish to speak, Mr. Chairman, on this subject specially since the matter of the treatment of Indian Immigrants in South Africa, as you know, has been a cause of constant trouble not only between us and the Empire of India, but between us and the Colonial Office and India Office. I agree with the former speakers that a departure has been made in this Conference in bringing the representative from the Empire of India to this Conference which will go far to obviate the recurrence of such troubles in the future. In South Africa, there has been this fundamental trouble, that the white community have been afraid to open the door too wide to Indian Immigration. We are not a homogeneous population. We are a white population on a black continent; and the settlers in South Africa have for many years been actuated by the fear that to open the door to another non-white race would make the position of the few whites in South Africa very dangerous indeed. It is because of that fear and not because of any other attitude towards the question of Asia that they have adopted an attitude which sometimes, I am bound to admit, has assumed the outward form, although not the reality, of intolerance. Luckily we have got over these difficulties. The visit of the late Mr. Gokhale to South Africa did an enormous amount of good. His visit was followed later by that of Sir Benjamin Robertson, a distinguished public servant of India who also assisted the Government to overcome great difficulties on this point some years ago. The result has been the Legislation to which both the whites and the Indian community in South Africa agreed. There is still a difference of opinion on administrative matters of detail, some of which are referred to in the Memorandum before us, but I feel sure and I have always felt sure that once the white community in South Africa were rid of the fear that they were going to be flooded by unlimited Immigration from India, all the other questions would be considered subsidiary and become easily and perfectly soluble. That is the position in which we are now. The fear which formerly obsessed the settlers there has been removed; the great principle of restricting immigration, for which they have contended, is on our Statute Book with the consent of the Indian population in South Africa and the Indian authorities in India; and that being so, I think the door is open now for a peaceful and statesmanlike solution of all the minor administrative troubles which have occurred and will occur from time to time. Of course the main improvement has been the calling of India to the Council Chamber of the Empire. Here, if any question proves difficult of treatment, we can discuss it in a friendly way and try to find in consultation a solution, and I am sure we shall ever find it. I, for one, do not consider that amongst the multitudinous problems which confront us in our country the question of India will trouble us much in the future.”

(b) *Mr. Burton's Speech at the Imperial Conference, 1918.*

“ The matters which were raised by Sir Satyendra Sinha and the Maharajah, in connection with this question, present, I suppose, some of the most difficult and delicate problems, which we have had to deal with and which it is our duty as statesmen to attempt to solve satisfactorily, if the British Empire is to remain a healthy organisation. I have told Sir Satyendra myself, that my own attitude has been—and I am sure it is the attitude of my colleagues—sympathetic towards the Indian position generally. There are, of course, difficulties and it would be idle to disguise the fact that many of these difficulties are of substantial importance, which have to be faced in dealing with this matter. But I do not despair of a satisfactory solution being arrived at.

“ Sir Satyendra Sinha has been good enough to refer to the attitude adopted by Canada and ourselves in discussing this matter in Committee, and I think, it is only right, from our point of view, to add that the possibility of arriving at a satisfactory solution on this occasion has been due very largely indeed to the reasonable and moderate attitude which the Indian representatives themselves have adopted. But for that, of course, the difficulties would have been ever so

much greater. As far as we are concerned, it is only fair to say—and it is the truth—that we have found that the Indians in our midst in South Africa, who form in some parts a very substantial portion of the population, are good, law-abiding, quiet citizens; and it is our duty to see, as he himself expressed it, that they are treated as human beings, with feelings like our own, and in a proper manner.

“As to the details, I need not go into all of them. Paragraph No. 3 embodies, as a matter of fact, the present law of the Union of South Africa. That is our position there; so that our agreement as to that is no cession. I pointed out to Sir Satyendra, when we were in committee, that in some of these points which he brought up as affecting South Africa I thought, in all probability, if he were in a position to investigate some of them himself, he would find that the complaints were somewhat exaggerated. I cannot help feeling that is the case, but I will not go into these matters now. As far as we are concerned in South Africa, we are in agreement with this resolution, and also with the proposal referring the Memorandum to the consideration of our Government and we will give it the most sympathetic consideration we certainly can.”

(c) Text of the Reciprocity Resolution, 1918.

(1) “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.

(2) “British citizens domiciled in any British country, including India, should be admitted into any other country for visits, or the purpose of pleasure and commerce, including temporarily residence for the purpose of education. The condition of such visit 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 vise 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.

(3) “Indians already permanently domiciled in the other British countries should be allowed to bring in their wives and minor children on condition (a) that not more than one wife and her children shall be admitted for each Indian; (b) that each individual so admitted shall be certified by the Government of India as being the lawful wife or child of such Indian.

(4) “The Conference recommends the other questions covered by the Memoranda presented this year and last year to the Conference by the representatives of India in so far as not dealt with in the foregoing paragraphs of this Resolution, to the various Governments concerned with a view to early consideration.”

(d) Speech of General Smuts, as Prime Minister, August 26th, 1919, when presented with an address at Durban by Indian community:—

“The British are profoundly grateful for the effort India made in the war, and that gratitude is not merely academic, but will be reflected in the attitude of conciliation and benevolence of the British people towards the people of India in greater political freedom than they had enjoyed before.

“I thank you for the beautiful address with which you have presented me, and for the sentiments expressed therein. I am glad to note that in the address you have made mention of the fact of your countrymen having served under my command in this Great War. As I have said on previous occasions, I have been proud of the privilege of having had under me in East Africa so large a number of your countrymen. Some of them came from the independent Native States of India, Imperial Service contingents and others, who did great and glorious work in this War. I had written from East Africa to the Princes of India of the splendid part they played by their troops, and that there were few better

than they. Your countrymen fought not only in East Africa, but took part in other theatres of war. The conquering of the Turkish Empire was, in the main, the work of the Indian army. The burden of the work in Mesopotamia, Turkestan, and the Indian Frontier fell almost entirely upon the Indian army. If the war had continued until this year, the Indian Empire would have had over a million men in the field. The stupendous part Indians played in this struggle has had considerable effect on the result of the war. Owing to her magnificent efforts, India has won for herself a place among the nations of the world.

"As a member of the War Cabinet, I have had great opportunities of knowing more about the feelings of the Indians and their desire for a larger share in the apportionment of commissions in the Army, and I am glad I was able to do something for them in the Cabinet. I have worked in public and a good deal in private for the recognition of India and her services to the Empire. I strongly supported the proposals of granting commissions to Indians, and when it was pointed out that this might create an anomalous position, and that there might be the possibility of Europeans being placed under Indians, I replied, "Why not? I would be proud to serve under an Indian Officer if he were able." In the Peace Conference, India was represented by the Maharajah of Bikanir, Lord Sinha, and Mr. Montagu. The Maharajah is a personal friend of mine, and Lord Sinha is a man of considerable ability and training. He is one of the cleverest men I have met, and I was able to learn much from him on India's problems. As a result of the war, there was an emotional feeling throughout the world which did not leave India unaffected. She desires to govern herself. Other Asiatics have been ruling and misruling; and India, after having been under the British for over 100 years, should be given a large measure of self-government. I have been a party to the Hon. Mr. Montagu going to India to study the question there, which has resulted in some far-reaching concrete proposals being submitted to the British Parliament. The British are a very highly imaginative people, though they do not appear to be so. There was a great feeling in England in favour of India's aspirations. With the improvement of the status of India, the position of the Indians in other places will be better. Before my return, I found that the Asiatic Trading Act had been passed in the Union, and there had been a great irritation among the Indians here, which had also caused a great deal of feeling in India. But the Government had decided to appoint a Commission to go into the whole matter. India would be represented by members on the Commission to watch over the interests of Indians so that no stigma might attach to them. Some of you think I look down upon Indians, but that is not so. I look up to them. They come from a very old civilization—much older than ours. They are able to hold their own. We have our difficulties in South Africa, and we, as a small white community, cannot withstand a great influx of Indians. We would be crushed and overwhelmed if we had an open door. India, if she is in need of immigration for her surplus population, has the fertile fields of Mesopotamia, Euphrates, Tigris and Turkestan, which can hold 30,000,000 of people. But, now that the Indians are here, I hold they should have fair treatment in all parts of the Union. We have to live side by side in conciliation, and we must endeavour to understand each other's standpoint, so that we may live together and grow together. We are members of the one family and belong to the same Empire."

(e) *Speech by the Rt. Hon. E. S. Montagu, Secretary of State for India, to a Deputation in London concerning the new Act adversely affecting Indians in the Transvaal, August 28th, 1919.*

"You have quoted in your excellent Memorandum some of the proceedings at the Conference of 1917 when we achieved an admission of the right of the dominions and of India to control their own immigration and you included the very part of General Smuts' speech which I had down in my own to read to you. I think, after a statement of that kind, it is not surprising that we were disappointed. But I come now to the proceedings of the Imperial Conference at which I myself helped—the one of last year Mr. Burton, who represented South Africa in that discussion, said: 'It is only fair to say, and it is the truth, that we have found that Indians in our midst in South Africa, who form, in some parts, a very substantial portion of the population, are good, law-abiding, quiet citizens, and it is our duty to see, as Lord Sinha expressed it, that they are treated as human beings with feelings like our own, and

in a proper manner.' Then he went on to say: 'As far as we are concerned in South Africa, we are in agreement with this resolution, and also with the proposal to refer the memorandum to the consideration of our Government, and we will give it the most sympathetic consideration that we can, certainly.' Well, Gentlemen, is it surprising, in view of these hopeful words and in view of the demeanour of our Dominion colleagues, both in Conference and in Committee, that we, the representatives of India at that Conference, expressed our gratitude for the way in which they were approaching the problem and felt confident that the future was going to be brighter than the past? And is it surprising that the first legislative action taken after this Conference has aroused a depth of feeling and emotion, not only throughout India, but among all those who have an opportunity of serving India and forwarding her interests? 'Gentlemen, Lord Sinha and I in Paris were continually discussing this matter with General Smuts and with General Botha, and I would beg you to remember in discussing this matter that it may well be that the forces arrayed against you are not the Colonial Office to whose assistance I desire to pay a warm tribute, or the High Commissioner, the Governor-General, Lord Buxton, to whose services, for many reasons, I desire to pay a warm tribute on behalf of India, or even the Government itself, but certain powerful people who live in that country; and I would draw your attention to the fight, the good fight, which was put up by the South African Government successfully against the clause which it was intended to add to this Bill which would have made it even still more disastrous to our cause than it is to-day We have suggested what appears to all of us in this room too obvious, that this is not a domestic enquiry. It is an Imperial Enquiry. An Enquiry upon which I would go so far as to say not only the good relations of the members of the Empire depend, but upon which the sincerity of the welcome which the Dominions gave to the representatives of India at the Imperial Conference would be decided by the world, and, therefore, I have asked that the Government of India should be directly represented upon the Commission, and in case anybody might think, which I know is not the case, that there is any difference of opinion between officials and non-officials, we have suggested that the Government of India should be represented by one official and one non-official on the Commission.'

(f) *Text of the Resolution, 1921.*

"The Imperial Conference, while re-affirming the resolution of the Imperial War Conference of 1918 that each community of the British Commonwealth should enjoy complete control of the composition of its own population by means of restriction of immigration from any other communities, recognizes that there is incongruity between the position of India as an equal member of the British Empire and the existence of disabilities upon the British Indians lawfully domiciled in some other parts of the Empire. The Imperial Conference, accordingly, is of the opinion that in the interests of the solidarity of the British Commonwealth, it is desirable that the rights of such Indians to citizenship should be recognized. 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 India and South Africa some way can be found as soon as may be to reach a more satisfactory position."

(g) *General Smuts concluded his speech at the Imperial Conference, 1923, as follows:—*

"There is one British citizenship over the whole Empire, and there should be. That is something solid and enduring, but we must not place a wrong interpretation upon it. We must not derive from the one British citizenship the rights of franchise, because that would be a profound mistake. The attitude has been that franchise does not depend upon British citizenship. It is only in India this position is not understood. Indians go to the length of deriving from their British citizenship the further notion of equal franchise rights also, and they claim they may go from India to any other part and enjoy the same franchise rights as other portions of the Empire. I think that is wrong, not only as regards India, but as regards every part of the Empire. I do not think that an Australian,

for instance, should come to South Africa and claim franchise there as a matter of course. He is a British subject and on that footing we are equal in the eye of law; but when it comes to the exercise of political franchise rights, I think there is a great difference and distinction and we should recognise that. And where a distinction is carried into actual practice, as it is in South Africa, it should not be looked upon as an indignity—as a reflection on the citizens of any Dominion including India who come to us and who do not get those rights. That is really all I wish to say about this matter.

“ I noticed in Dr. Sapru’s statement a remark, which almost looked like a threat—that if India fails in forcing on us the view which she holds so strongly, then she may be compelled to make of it a question of foreign policy. Well, I would say this, you cannot have it both ways. As long as it is a matter of what are the rights of a British subject it is not a matter of foreign policy. It is a matter entirely domestic to the British Empire. If it becomes a question of foreign policy, then Indians cannot claim on the ground of their British citizenship any more the recognition of any particular right. Once they appeal to a tribunal, whether it be the League of Nations, or whether it be outside the British Empire, they can no longer use as an argument the common British citizenship.

“ I want to keep it there. I want it to be recognized that you must not derive from that citizenship claims you cannot uphold. Let me just say this in regard to what fell from the Maharaja of Alwar. He said that if we do not invite him, he will invite himself.”

Maharaja of Alwar: “ I did not quite say that.”

General Smuts: “ Let me say this, Maharaja. Nobody would be more welcome in South Africa than you; and I would welcome nothing more than that you should come, as a great representative of India, to look into the conditions in South Africa yourself, convince yourself of the situation there, and convince yourself also that apart from the far-reaching political difficulties we have, our fundamental attitude towards our Indian fellow citizens is one of justice and fairplay. I do not think our Indian fellow subjects in South Africa can complain of injustice. It is just the opposite. They have prospered exceedingly in South Africa. People who have come there as coolies, people who have come there as members of the depressed classes in India, have prospered. Their children have been to school. They have been educated and their children and grand-children to-day are many of them men of great wealth.

“ I noticed the other day the Rev. C. F. Andrews, who is a great friend of the Indian cause in South Africa, publicly advised the Indians in South Africa not to go back to India. The Government of South Africa actually pays for their tickets, give them pocket-money and other inducements in order voluntarily to return to India, and thousands avail themselves of that policy and return to India. That gentleman, who is a great protagonist of the Indian cause, has publicly advised Indians not to fall in with that policy. He says: ‘ You will be worse off in India.’ I quote this to show that there is no unfairness, no injustice to our fellow citizens in India; but when they come forward and make claims which politically we cannot possibly recognise, our attitude of friendliness will worsen and the position as regards them will become very difficult and complicated.”

Maharaja of Alwar.—“ I should like to get my mind a little more clear on one point, and that is with regard to the settlers in Natal who have built their houses, invested their money and spent their lives there. What would you propose about them? ”

General Smuts: “ They have all the rights, barring the rights of voting for Parliament and the Provincial Councils, that any white citizen in South Africa has. Our law draws no distinction whatever. It is only political rights that are in question. There, as I explained to you, we are up against a stone wall and we cannot get over it.”

(h) *Sir Tejbahadur Sapru replied as follows:—*

“ There is an essential confusion in the position which General Smuts takes. Really the fact of the matter is this: you cannot, according to the modern law of citizenship, and according to the latest development of thought on this subject, have two kinds of citizenship in the same Empire, a higher and a lower. When I go to your country and satisfy the requirements of the law of franchise, you have no right to tell me that because I am an Indian subject of His Majesty I shall not be entitled to exercise my Parliamentary rights. Therein lies the whole position General Smuts has taken.

"And with regard to the disability of the Indians in the purchase of town lands and in respect of trade licences and other things, General Smuts, as I said before, had not a word to say in his speech this morning. Therefore the position remains this: that while I receive support, substantial and general, from His Majesty's Government and all the Dominion Prime Ministers, I have received no support from General Smuts. On the contrary, he has expressed the desire that the resolution of 1921 should be repealed. I hope for the reputation of this Conference, for the reputation of the Dominion Prime Ministers, and for the reputation of His Majesty's Government, nothing of the kind will be done; and though you may tell my countrymen that the problem is undoubtedly a difficult one I request you also to say you are trying to discover means of solving it. If you do that, you will change our attitude with regard to the great Imperial questions.

"There is only one more remark I will make with regard to General Smuts' speech. He referred to the desire for repatriation and the advice of the Rev. C. F. Andrews. Let me tell you that if any one understands Mr. Andrews, or knows him intimately, I do. There are hundreds and thousands of my countrymen in South Africa who cannot even speak their mother tongue. They have settled there. Their fathers have settled there; and it is very easy to understand how difficult they will find it to leave a land in which they and their fathers and grandfathers have lived. It is for those reasons Mr. Andrews advised, and it is for those reasons I should advise them, not to leave that country, but fight their battles until their position was recognised some day or other as that of equal citizens.*

"General Smuts said that as a British subject I could not claim that this problem would pass from the stage of a domestic problem to that of a foreign problem. He misunderstood me. It is not difficult to foresee the stage being reached when even the Government of India—whom he has attacked over its attitude in regard to Kenya, but I must admire for the very same attitude,—may find it necessary to appeal to His Majesty's Government and say that one part of the Empire is standing against the other, and it is for you and His Majesty's Government now to treat this problem, inside your own Commonwealth, as you would deal with a problem of foreign policy. That is what I meant, and I anticipate a stage like that being reached at no distant date in so far as the relations of India with South Africa are concerned."

*This was not the true reason. I publicly advised the Natal Indians, in 1920, not to go back under the voluntary repatriation scheme, because the Union Government had transgressed the voluntary character of the scheme and had sent Mr. Wynne Cole *recruiting* Indians to return, and had issued leaflets in the Indian vernaculars giving what I knew to be an untrue representation of Indian labour conditions.—C.F.A.

APPENDIX D.

STATEMENTS CONCERNING NATAL AND INDIAN IMMIGRATION.

Proclamation issued, in 1843, by Her Majesty's Government.

“There shall not be in the eye of the law any distinction or disqualification whatever founded upon mere distinction of colour, origin, language, or creed, but the protection of the law, in letter and in substance, shall be extended impartially to all alike.”

Address of the Durban Corporation to the Government, 1859.

“Independently of measures for developing the labour of our own Natives, we believe your Excellency will find occasion to sanction the introduction of a limited number of coolies, or other labourers from the East, in aid of the new enterprises on the coast lands, to the success of which sufficient and reliable labour is absolutely essential; for the fact cannot be too strongly borne in mind, that on the success or failure of these rising enterprises depend the advancement of the Colony or its certain and rapid decline. Experimental cultivation has abundantly demonstrated that the issue depends solely on a constant supply of labour.”

Section 51, Law 2, of 1870.

“When any Coolie Immigrant shall be desirous to commute his right to a free passage for the value in land to the amount of the cost of such passage, and the Lieutenant Governor shall see fit to grant such immigrant out of the Crown lands of the Colony a piece or parcel of land equal in value at the upset price of the Crown Land to the amount of the cost of such return passage, such immigrant shall have the same in lieu of his right to a full passage.”

Report of the Indian Commission in Natal, 1886.

“Free Indians thrive in Natal; their industrious habits cause them to prosper in nearly every occupation in which they engage. They show commendable industry in fishing and fish curing; the Indian Fishing settlement on Salisbury Island in Durban Bay has been of manifest advantage, not only to the Indian but to the white inhabitants of the Colony.

“They do remarkably well as cultivators, in the coast districts, of small parcels of land rented on short leases. In such agricultural pursuits, they have competed with their former masters, and the quantity of maize grown by them has been no unimportant factor in lowering for some years the market price of that cereal. In numerous localities in the uplands as well as in the coast districts they have converted waste and unproductive land into well kept gardens, planted with vegetables, tobacco, maize and fruit trees. Those settled in the vicinity of Durban and Pietermaritzburg have succeeded in winning for themselves almost entirely the supplying of the local market with vegetables . . .

“In fairness to the free Indian, we must observe that the competition is legitimate in its nature, and it certainly has been welcomed by the general community.

“There can be no doubt that Natal is admirably suited whether as a temporary or a permanent home to Indian immigrants.

“We are impressed with the necessity, at a time when the Colony is labouring under a depression of the most serious nature, of so moving that its agricultural development shall not be restrained. We are anxious not to imperil the interests of those persons who have been induced, by an abundant and continuous supply of Indian labour, to invest their capital in large industries of undoubted benefit to the whole of the Colony.”

Statement of Mr. J. R. Saunders, one of the members of the Commission.

“ If we look back to 1859, we shall find that the assured promise of Indian labour resulted in an immediate rise of revenue, which increased fourfold within a few years. Mechanics who could not get away, and were earning 5s. a day and less, found their wages more than doubled, and progress gave encouragement to every one from the Berg to the sea. But a few years later, alarm arose that it would be suspended. Simultaneously, down went revenue and wages. Immigration was checked, and retrenchment and reduction of salaries were the main thing thought of. And yet another change came some years later in 1873. A fresh promise of renewed Indian Immigration created its effect, and up again went the revenue, wages and salaries, and retrenchment was soon spoken of as a thing of the past.”

Evidence of Sir Henry Binns before the Commission.

“ In my own opinion, the free Indian population is a most useful section of the community. A large proportion of them—considerably larger than is generally supposed—are in service in the Colony, particularly employed as house-servants in the towns and villages. They are also considerable producers, and from information, which I have taken some trouble to gather, I conclude that the free Indians have grown about one hundred thousand muids of maize per annum for the last two or three years; besides considerable quantities of tobacco and other articles. Before there was a free Indian population, the towns of Pietermaritzburg and Durban had no supply of fruit, vegetables and fish; at present all these things are fully supplied. We have never had any immigrants from Europe who have shown any inclination to become market gardeners and fishermen; and I am of opinion, that but for the free Indian population, the markets of Pietermaritzburg and Durban would be as badly supplied now as they were ten years ago. Were coolie immigration to be permanently stopped . . . in a very short time, after such stoppage, there would cease to be as much employment for Europeans as there is now. Tropical cultivation never has been and never will be carried on without Indian labourers.”

Evidence of Sir J. L. Huellet before the Commission.

“ I consider that the free Indians, at present in the Colony, are an immense benefit, being largely engaged in agricultural pursuits. I do not think that the competition of the free Indian has interfered in the slightest degree with the development of the country by European settlers.”

Mr. J. Chamberlain's letter to the Prime Minister of Natal, 1894.

“ Electors of important constituencies in Great Britain have considered Indian Gentlemen worthy not merely to exercise the franchise, but to represent them in the House of Commons. I desire, however to guard myself from the supposition that I regard this question merely from the point of view afforded by the experience of this country, and that I have not paid due regard to local considerations. It is manifestly the desire and intention of your Government that the destinies of the Colony of Natal shall continue to be shaped by the Anglo-Saxon race, and that the possibility of any preponderant influx of the Asiatic voters should be averted . . . But the Bill under consideration involves in a common disability all Natives of India without exception, and provides no machinery by which an Indian can free himself from this disability, whatever his intelligence, his education, or his state in the country; and to assent to this measure would be to put an affront on the people of India such as no British Parliament could be a party to.”

Sir John Robinson's speech introducing the new Franchise Bill, 1896.

“ I said in the course of my remarks, in connection with the second reading of the original Bill, that our object was to save the Electorate from being swamped by men who had had no experience in connection with the exercise of privileges of freedom or franchise . . . This Bill will disqualify all persons who are precluded by virtue of their inexperience

from the exercise of the high privileges of citizenship. . . . This Bill is the result of negotiations carried out in perfect good faith with Her Majesty's Government, and, any departure from the terms thereof would be as far as the Government are concerned be an act of bad faith. I want honourable members to bear in mind that this Bill is in the nature of an agreement which has been entered into between the Home Government on the one part and this Government on the other part. As far as we are concerned, we have done our best in the course of this agreement which have involved considerable negotiations extending over a period of at least one and half years. We have done our best in the agreement to provide that the wishes of this Colony, and the interest and necessities of this Colony, as regards this question, shall be fully and completely met. As far as the Home Government are concerned they undoubtedly have done their best to meet our wishes in every respect in so far as the political difficulties they have to deal with will allow."

Speech of Mr. Harry Escombe, Attorney-General, 1896.

"And here we say, while it is absolutely wrong and it would be wicked were we to allow the Indian vote to become paramount in this Colony. . . . I believe it is equally wrong that where these highly educated Indians come to this Colony—men educated at the Universities; men for all we know practising at the Indian Bar, or perhaps lately having a seat in the House of Commons representing one of the largest London constituencies, I say, if gentlemen of Indian extraction, having social standing and advantages such as that, are not to have a means whereby they can obtain an entry to the franchise, the thing is wrong in principle, and we cannot justify the exclusion."

The Secretary of State for India's Despatch, 21st July, 1897.

"We regret the necessity for restrictions which exclude the British Indian subjects from South Africa, but accept the prohibition of further immigration in order to secure the fair treatment of those who are lawfully settled there. We therefore are entitled to demand fair and equitable treatment involving complete equality before the law for those Indians who have already been allowed to settle in Natal, or who might hereafter under the new Immigration law be permitted to do so."

Government of India Despatch, 14th May, 1903.

"We are constrained to recognise the fact that if emigration is to continue, and if reasonable treatment is to be secured for Indian settlers in Natal, measures must be taken to prevent the rapid increase in the number of settlers which has been so marked in recent years. We realise that if those numbers should continue to increase greatly, the Colonial Anti-Indian feeling would become intensified and would be more difficult to control, especially in the towns. The irritation excited against the Indian might take shape in measures and actions which would increase ill-feeling and resentment in India and might even become a source of embarrassment to the Imperial Government."

Lord Curzon's Despatch, 1904.

"He (Lord Milner) regards it as deeply to be deplored that the Government of India should refuse to permit its subjects of the labouring class to come to this country. The fact is that we are not in the least anxious for Indians to go to the Transvaal at all. The relief thereby given to our Indian problem is infinitesimal, and we only lay up for ourselves a crop of trouble in the future. Outside the Government of India itself, where the Imperial sentiment is strong, I know of no class, community or individual in India, who wants the Indian to have anything to do with the Transvaal. The bitter example of Natal is before them."

Letter of the Colonial Secretary, January 5, 1906.

"I am to state that it appears to Lord Elgin (then Colonial Secretary) that in order to secure the fair treatment of the Indians now in the Colony. Lord Selborne (then Governor of the Transvaal) suggests that His Majesty's Government should be prepared to approve Legislation having the practical effect of excluding Asiatics from entering the Transvaal in future. Lord Elgin regards this as the only possible course to adopt in the circumstances."

Letter of Secretary of State for India in reply.

"The Secretary of State for India-in-Council, while regretting the necessity for a step which entails the practical exclusion of Natives of India from a British Colony, agrees with Lord Elgin that the compromise proposed by Lord Selborne is likely to afford the only practicable solution of this difficult question."

From Report of Commission of 1907.

"Absolute and conclusive evidence has been put before the Commission that several industries owe their existence and present condition entirely to indentured Indian labour. The expansion of industries, made possible by the presence of Indians, has provided the Native with further openings.

"The existence of these industries has been, is still, and in the future will be increasingly beneficial to a very large number of the people in the Colony and to the Colony as a whole, and their exhaustion or restriction, by whatever cause brought about, would be serious and irreparable to the individual and general interests.

"Further, the employment of Indian labour has provided opportunities for whites which would not otherwise have existed.

"The Indians are industrious, law-abiding, and, on the whole, sober in their habits, and it has been proved that their presence has had no injurious effect on the morals of the whites or Natives."

Mr. (afterwards Sir Benjamin) Robertson's letter, December 18th, 1908, announcing the prohibition (on the part of India) of indentured labour to Natal.

"It is more particularly in view of the continued failure to secure the necessary Amendment of the Dealer's Licences Act that the question of prohibiting emigration to Natal has again been raised. After giving their best consideration to all the issues involved, the Government of India have formed the conclusion that emigration to Natal should be stopped. So long as Natal maintains her present attitude they consider that they would not be justified in permitting the continuance of a system which must have the effect of increasing the number of Indians who may be ultimately affected by the measures adopted by the Colony. With a constantly increasing free Indian population, the divergence between the Indians' and Colonists' standpoints will necessarily be multiplied and the difficulties which have to be faced in securing fair treatment will be similarly aggravated."

On the earnest representation of the Natal Government the Secretary of State for India agreed to permit the emigration of indentured Indians for a period not exceeding one year, on condition that a law was enacted allowing the right of Appeal to Supreme Court against a refusal to renew a dealer's licence.

Secretary of State's letter December 2nd, 1908.

"I am to say that the Government of Natal have passed an Act amending the Dealer's Licences Act so as to give the right of Appeal to the Supreme Court against the withdrawal of licenses. The Secretary of State gives an assurance that the immigration of indentured Indians will not be stopped until the Union Government has come into existence and decided on its future policy in the matter. It is understood that the duration of the period will not exceed one year from the present date."

The Government of India finally prohibited the emigration of indentured labour from India to Natal on 1st July, 1911.

From Report of the Economic Commission, 1914.

“ The Indian population of the Union, located for the most part in Natal, may be divided into those brought there under indenture and those who followed them on their own initiative and at their own expense. Of the latter, in the main a trading class, many opened stores at first for the supply of Indian and Native requirements; few have been drawn into industrial pursuits. It is chiefly the ex-indentured Indians who are noticeable in manufacture. The indentured Indian of the early days, when his term of service expired, often took up land and grew vegetables, mealies and tobacco. To a certain extent he re-indentured or took service with Europeans, but of late years he has increasingly entered the semi-skilled and skilled trades. To-day he is engaged in the building trades, printing, boot repairing, tailoring, painting, mattress-making and other miscellaneous callings of the semi-skilled trades. Many so engaged are Natal-born Indians, and numbers who speak English are employed as cooks, waiters, drivers, vanmen, and in lawyers' offices as junior clerks and touts. The Natal-born Indian is a problem in himself; he is often fairly educated and in many cases owes his education to self-sacrifice of the lowly indentured parents. His education does not, however, link on to manual labour as a rule and he looks to less strenuous and more highly paid callings. Here he finds the way largely blocked, and naturally becomes dissatisfied. The majority who follow field work, either as re-indentured or free Indians, or who work in the coal mines, brickfields, and so forth, do not receive much more than able-bodied natives. In other callings, their earnings are much below those of whites.

“ In the skilled trades, the efficiency of Indians is distinctly beneath that of white men, and there is no doubt as to the extent to which they undertake work for white people. So far as they labour for their own people, objection to their advancement is not even plausible. That they perform tasks of a not very expert kind in painting, carpentering, bricklaying, and so forth, to the direct order of white consumers is beyond dispute; but it would be impossible to determine the extent of the work in question, and how far the skilled white man is affected by it. Much of the work is evidently that of the handyman rather than of the expert artizan. Again, there was conflict of testimony as to the amount of skilled work performed by Indians indirectly for white consumers. Skilled Indians work for shops kept by Indians; but the degree of recourse to these shops by whites, it is hopeless to attempt to measure. It was alleged further that work, such as the making up of clothes, was put out by white shopkeepers to Indian skilled workers; but certain Indian witnesses examined by your Commissioners declared that the bulk, at any rate, of the work was done for Indian shops to the best of their knowledge.

“ Again the extent of the trade done among other than Indian manufacturers employing Indians only, is unknown; but it seems likely that in cheap tinware, especially for Natives, it is relatively considerable. It may be avowed that skilled Indians either bring their knowledge from India or pick it up through being employed for rough work where skilled whites pursue their avocations. Your Commissioners failed to discover evidence proving that skilled labour has suffered seriously from the competition of Indians.

“ Your Commissioners desire to call attention to certain Municipal actions with reference to Indians, including those born in Natal, the aim of which is to protect white employment. Some years ago Indians began to show enterprise in small shop-keeping and simple manufacturing on an insignificant scale; and recently, in consequence, new licenses to trade or manufacture for sale have been generally, if not invariably, refused to Asiatics in Natal, though old licenses have been renewed. In the Cape also, similar action, though possibly not stringent action, has been taken. Your Commissioners are convinced that the drastic course adopted in Natal was harsh and imprudent. Indians have been left under the impression that they are to be definitely debarred in the future from sharing in the licensed trades merely on the ground of their nationality. How much unrest and anxiety has been occasioned by the unnatural system of importing Asiatics on contract is too obvious to need more than a bare statement.

“ Reviewing the whole situation as regards the competition of white and non-white in the skilled and semi-skilled callings, your Commissioners conclude as follows:—

“ The competition is greatest with the Cape Coloured, and next in magnitude with the Indians. None of the evidence proved that the sphere of white labour

was being absolutely restricted in the Union, and the wages of the whites had fallen. It is a plausible view that some of the so-called encroachments of the non-whites should properly be regarded as a filling of the gaps left by the attraction of the whites to superior situations, which could not have existed in the absence of competent people to fill the lower positions. Several witnesses affirmed that there was a dearth of capable white labour, and that a good man soon found a better opening for his talents. The complaints of grinding competition can be understood, since anybody who experiences competition feels it, even if his rivals are losing ground. But here and there white labour may have been displaced, and a constant fear of displacement is prevalent, which is comprehensible, particularly as the non-white workman usually gets a lower wage. The low wage of the non-white, combined with the fact that he readily drops his supply price when demand slackens, is apt to cause a substitution of non-white for white labour when business is depressed. Finally your Commissioners conclude, that in initiative, resource, and powers of control, the white races unquestionably stand pre-eminent. It is important that the rising generation of the whites should fit themselves to fill supervisory and highly skilled positions, so that such competition as may be felt in the future may force them upwards rather than downwards. The state and local authorities can assist movement in the right direction by providing educational facilities with reference to industrial needs. Success cannot be achieved by the white man in South Africa by keeping the Coloured man down, but by raising himself up."

[Most of the above statements are taken with acknowledgment from M. P. Subramania Aiyar's book, "The Indian Problem in South Africa."]

APPENDIX E.

THE GOVERNMENT OF INDIA'S POSITION.

(i) Sir Benjamin Robertson's Statement before the Lange Commission.

The Government of India have thus agreed that further immigration of Indians into the Union should be prohibited. They themselves stopped indentured emigration to Natal, and they refused to allow indentured emigration to the Transvaal. They accepted the various Immigration Restriction Acts passed by the Colonies before Union. They accepted the Union Immigrants Regulation Act of 1913. They accepted the Resolution of the Imperial Conference of 1918 that each community of the British Commonwealth should enjoy complete control of the composition of its own population by means of restriction on immigration from any of the other communities. They have gone further than this, for they have acquiesced in the extension of the principle of the Resolution to the different Provinces of the Union; and they do not ask for any relaxation of the laws regulating inter-provincial emigration until the Provinces themselves are satisfied that such relaxation will not be harmful.

On their side, Governments in South Africa have, from time to time, given undertakings and assurances that Indians who are lawfully settled in the country, will be fairly treated, and their existing rights safeguarded. The assurances given by General Smuts in 1917 and by Mr. Burton in 1918 have already been quoted. Previous undertakings in regard to particular laws are summarised below. In addition, there was the so-called Smuts-Gandhi Agreement of 1914, to which the Government of India were not a party, but were, in a sense, a witness. Recently there appears to have been a tendency to narrow unduly the application of this agreement; and in the Transvaal it seems to have been construed as an undertaking by the Indians there that they would apply for no new trading licences. The correct interpretation of the agreement in regard to trading in the Transvaal is examined in more detail later on. It is desired to emphasise here that the agreement is of general application to the whole of the Union. As reported to the Government of India, it is embodied in two letters, both dated the 30th June, 1914, exchanged between Mr. Gorges, then Secretary to the Department of the Interior, and Mr. Gandhi. The Union Government undertook to give relief on the points in issue in the passive resistance movement, and in consideration of this undertaking passive resistance was ended. One of the points in issue, as stated by Mr. Gandhi in his letter dated the 21st January, 1914, to the Minister of the Interior, was "an assurance that existing laws especially affecting Indians will be administered justly and with due regard to vested rights." The required assurance was given by Mr. Gorges in his letter, dated the 30th June, 1914, in the following terms:—

"With regard to the administration of existing laws, the Minister desires me to say that it always has been and will continue to be the desire of the Government to see that they are administered in a just manner and with due regard to vested rights."

The Government of India interpret this undertaking as implying that no new law would be passed imposing fresh restrictions on Indians. An undertaking to administer existing laws in a just manner appears to them to be meaningless, if the rights which Indians are entitled to exercise under those laws can be restricted at will by fresh legislation. The writer of a South African article in the March number of the "Round Table" has stated that this was generally admitted in South Africa at the time. "It would probably be fair to say," he writes, "that all reasonable men in South Africa at that time recognised that new difficulties would arise and would have to be met; and that in meeting them they would be bound by no obligation except that of at least maintaining the Indian in the status which he acquired in 1914."

In addition to the general undertakings applicable to the Union as a whole, special obligations have been incurred by particular Provinces. The memorandum which has been placed before the Commission by the Natal South Coast Indians

is a clear and cogent statement of the peculiar claims of the indentured Indians and their descendants in Natal. It will be admitted that it would be inequitable to deprive them or their descendants of rights which were open to them at the time of their introduction into the Colony, and were, in effect, conditions of their recruitment.

Again, as has already been stated in paragraph 5, the Natal Act No. 22 of 1909, providing for an appeal to the Supreme Court against refusal to renew a dealer's licence, was the condition on which indentured emigration was permitted for another year. Natal has received full consideration for this Act, and is not now free to repeal it.

(ii) *Speech of Lord Reading, Viceroy of India, December 26th, 1925.*

Let me assure you that I have watched the position of Indians in South Africa with anxiety and sympathy for some years past and have taken all measures, as opportunity offered from time to time, which appeared calculated to ameliorate their condition. I am deeply grieved at the present situation. It is natural that you should seek to ascertain at first hand in India the feelings of the people and Government of India on these questions and to fortify your cause with what you will undoubtedly carry away with you the warm sympathy of the people and Government of India. Great indignation has been felt and expressed in India and public opinion has been deeply pained by the status which the projected legislation in South Africa proposes to assign to Indians. It has been observed with apprehension that in introducing the Bill, Indians have been described as an alien element in the population of the Dominion and intentions have been expressed of solving the problem by securing a very considerable reduction in the Indian population of the Union.

I fully understand the depth of the feelings by which your community and Indian opinion generally is exercised: I do not underrate the strength of the apprehensions you entertain. Nevertheless, whilst it is natural that you should present your cause with considerable vigour it must be remembered that the issue is now in South Africa. South Africa is a Dominion. Its Parliament has full power to pass legislation regarding its internal affairs. Feeling in South Africa is naturally sensitive to interference from outside in those affairs. I have never in my experience known a good case to suffer by sober presentment.

I and my Government emphatically hold that we have a right to make representations regarding measures prejudicial to Indians domiciled in South Africa. It is a duty from which we shall never shrink; and we claim that our views should be heard and considered. We have reason to know that our right to make representations and be heard is not disputed by the Union Government. Indeed I gratefully acknowledge that they have on various occasions given effect to our suggestions. At the same time we recognise that the position of that Government must be respected and that no claim can be sustained by us of a right to interfere in their domestic affairs. Should the Union Government be unable in the end to accede to our request, we reserve to ourselves freedom to take such action as may seem desirable in the circumstances of the case. We have always kept His Majesty's Government fully informed through the Secretary of State for India of the strength of feeling in India on the question of Asiatic legislation in the Union and of our own views on these questions.

I cannot consider the prospects hopeless. I believe that the Union Government will give careful consideration to our views, based as they are on facts and equitable considerations. It is evident that in the absence of Indian franchise, the Union Government recognise that they have a special responsibility for Indians in South Africa. The present Union Government have not yet carried any anti-Asiatic legislation. The Colour Bar Bill was rejected by the Senate. The fate of the present bill is still undecided. . . . Let me assure you that whatever differences may exist in India on other political questions, there is unanimity of opinion regarding the position of Indians in South Africa. I and my Government believe that any representations that may be made and any action that may be taken in the interests of India and the Empire on behalf of the Indians in South Africa will have the whole-hearted support of the people. No course which can legitimately and constitutionally be taken will be left unexplored and all reasonable measures calculated to ameliorate the situation will be taken.

APPENDIX F.

MR. GANDHI'S LETTER OF JULY 7TH, 1914.

Phoenix, Natal,
7th July, 1914.

“ Dear Mr. Gorges,

“ I have now got a moment to submit my note on the Gold Law. As you know, after mature consideration, I refrained from pressing for the insertion of a special clause defining ‘ vested rights ’ in connection with the Gold Law and Townships Amendment Act, because I felt that any definition in the correspondence might result in restricting the future action of my countrymen. However, so far as my interpretation of ‘ vested rights ’ is concerned, I think that I should reduce it to writing. General Smuts was good enough to say that he would endeavour to protect vested rights as defined by me. The following is the definition I submitted to Sir Benjamin Robertson, who, I understand, submitted it to General Smuts. My letter to Sir Benjamin containing, among other matters, the definition is dated the 4th March, 1914: ‘ By vested rights I understand the right of an Indian and his successors to live and trade in the townships in which he was living and trading no matter how often he shifts his residence or business from place to place in the same township.’ I am fortified in my interpretation by the answer given by Mr. Harcourt in connection with the matter, in the House of Commons, on the 27th June, 1911:—

‘ Complaints against that legislation (the Gold Law and Townships Amendment Act) have been made and are now being investigated by the Government of the Union of South Africa, who have lately stated that there is no intention of interfering with any business or right to carry on business acquired and exercised by Indians prior to the date of the legislation.’

“ I have also traced the note by Mr. de Villiers which I alluded to in our conversation. It is contained in a White Paper published in London in March, 1912, and has the following:—

‘ No right or privilege which a coloured person has at the present time is taken away by the new Act (Act 35 of 1908).’

“ And again—

‘ Section 131, which, before the Bill was introduced into Parliament, formed the subject of questions in the English House of Commons and of despatches from the Secretary of State to the Governor, has been amended in Committee so as to safeguard any rights which a coloured person may, at the present time, have of occupying land in mining areas.’

“ Certainly, prior to the passing of the Gold Law, no restrictions were, to my knowledge, placed upon the movement or the trade of British Indians in the gold areas. There can, therefore, be no justification for any restriction now, especially in regard to those who are already settled in their respective townships.”

“ I am, etc.,

“ (Sgd.) M. K. GANDHI.”

The meaning of this letter has been disputed. Some have made it actually a part of the Smuts-Gandhi Agreement, though it was clearly, from its contents, a note written a week after the agreement was signed. It has also been taken to define the full extent of vested rights about which an assurance was given in the Agreement instead of merely referring to the vested rights in connexion with the Gold Law and Townships Amendment Act. Below will be found some of the principal statements bearing on the subject.

Sir Benjamin Robertson, who is referred to in Mr. Gandhi's letter, has recorded before the Lange Commission what he regarded as the meaning of this disputed letter as follows:—

“ § 54. Mr. Gandhi's letter dated the 7th July, 1914, relates only to a side-issue in the settlement of 1914. As is clear from the opening sentences of Mr. Gandhi's letter, his definition of 'vested rights' referred to such rights *only in connection with the Gold Law and Townships Amendment Act*. The Smuts-Gandhi agreement, as reported to the Government of India, consists of the two letters of the 30th June, 1914; and the letter of the 7th July was not made known to them until it was published in the report of the Select Committee of 1919. Its meaning, however, seems clear enough.

“ The amendment of the Gold Law and the Townships Amendment Act was not an issue in the passive resistance movement. They fell within the category of existing laws which the Union Government undertook to administer 'in a just manner and with due regard to vested rights.' General Smuts promised that he would endeavour to protect vested rights as defined by Mr. Gandhi. Mr. Gandhi accordingly submitted the following definition *in connection with these two particular laws* in his letter of the 7th July:—

'By vested rights I understand the right of an Indian and his successor to live and trade in the township in which he was living and trading, no matter how often he shifts his residence or business from place to place in the same township.'

“ The Government of India understand this to mean that any such trader who might be occupying land in contravention of the Gold Law or the Townships Amendment Act, would not be evicted. Section 1 of Act No. 37 of 1919 gives legal validity to General Smuts' promise, and by extending the period until the 1st July, 1919, more than fulfils the undertaking which was given in 1914.”

Mr. Gandhi's statement about his own letter is as follows:—

“ But there is a third letter, totally irrelevant, considered as part of the agreement, which has been used for the curtailment of trade rights. It is my letter of 7th July addressed to Mr. Gorges. The whole tone of it shows that it is purely a personal letter setting forth only my individual views about 'vested rights' in connection with the Gold Law and Townships Amendment Act.”

Mr. Polak, who was left behind after the Agreement as Mr. Gandhi's successor, in order to clear up any minor points at issue, has cabled from London as follows:—

“ Mr. Gandhi's letter of June 30th, 1914, referred to all existing laws throughout the Union. This alone formed part of the Settlement. Mr. Gandhi's letter of July 7th was private, unofficial, written after the Settlement and not binding on anyone. He confined his views in it, meaning his expression of opinion to be applied to Gold Law and Township Amendment Act. See Sir Benjamin Robertson's statement before Lange Commission, § 54.” (Quoted above.)

The indirect evidence of Sir William Solomon's Commission may be quoted as follows (p. 32):—

“ We have now reached the fifth and last of the alleged grievances which have been formulated by Mr. Gandhi in his letter to the Minister on January 21st, 1914, in which he requires 'an assurance that the existing laws specially affecting Indians will be administered justly and with due regard to vested rights.' The representations which have been made to us on this subject deal mainly with the Immigration and Licensing Acts.”

It would appear from the above that there was no idea in the minds of Sir William Solomon's Commission that the phrase "vested rights" had to be confined to the Gold Law and Townships Amendment Act of the Transvaal.

Two public bodies dealt with the same subject in the South African Union in the years 1919 and 1921, respectively.

(i) *A Select Committee on Disabilities of British Indians in Transvaal under the Chairmanship of Mr. Edward Rooth reported on 30th April, 1919 as follows:—*

“ It appears that an agreement was arrived at in June, 1914, with regard to Indian traders in the Transvaal between General Smuts as representing the Government of the Union and Mr. Gandhi as representing the Indian Community that vested rights acquired by Indians would be respected, such vested rights being the right of an Indian and his successors to live and trade and to shift his residence or business from place to place in the same township.”

It should be noted that the Select Committee was only dealing with certain “ Disabilities of British Indians in the Transvaal.” It appears, therefore, to confine itself to that part of the Smuts-Gandhi Agreement of 1914, which had reference to the Transvaal, and rightly to give no opinion in its own Report with regard to the Agreement as a whole. The Agreement itself, which contained the assurance of “ due regard to vested rights,” was an Agreement relating to the whole South African Union.

(ii) *The Lange Commission of March, 1921, has the following reference:—*

“ § 83. It was further pointed out by Indian witnesses as well as by the Representative of the Government of India that when defining ‘ vested rights ’ in his letter of the 7th July, 1914, Mr. Gandhi was referring to rights in connection with the Gold Law and Townships Amendment Act only. The Amendment of these two Acts was not in issue in the passive resistance movement; and they were regarded as falling within the category of existing laws which General Smuts undertook to administer ‘ in a just manner and with due regard to vested rights.’ ”

Other references appear only to deal with the letter in connexion with the Gold Law and Townships Amendment Act, to which it rightly applies.

The Lange Commission rules out this letter of July 7th as in any way being an actual part of the Agreement. It states, §74:—

“ That Agreement is embodied in two letters which passed between Mr. Gorges, Secretary for the Interior and Mr. Gandhi on June 30th, 1914.”

6

DOCUMENTS

RELATING TO

THE INDIAN QUESTION.

Collected by C. F. ANDREWS.

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*The Hon. G. K. Gokhale's Speeches as reported in VI 1 to VI 22.
South African news papers from Oct. 22 to Nov 13, 1912.*

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I. THE HON. MR. G. K. GOKHALE'S SPEECHES.

(As reported in the South African newspapers, from October 22 to November 18, 1912.)

SPEECH AT JOHANNESBURG.

What was the situation in South Africa? He was trying to study it, so far as possible from every standpoint and, if he might say so, with sympathy for every standpoint. There they had, in the first place, the European community, small in numbers, which had established itself in that vast country in the midst of a very large indigenous population, which was alien to it in race, and on an entirely different plane of civilisation, and this had already given rise to problems social, political, economic, and moral, which filled the more thoughtful men of the community with serious concern for its future. This situation appeared to be already difficult enough, and then they found that members of a third race, also alien to them, whatever their relations might be in another part of the Empire, were coming in, making their home and establishing themselves there in South Africa. They found that the numbers of this third race were comparatively small, but they found that there was a steady influx going on, and they feared that, in course of time, they might be swamped by that third race, and that their special civilisation, their traditions, and the character of the institutions under which they lived, under which they had been brought up, would be seriously affected, more or less, by that influx, in addition to any effect that might be produced by the vast indigenous population that already existed in the sub-continent. Further, there was undoubtedly the colour prejudice, which was very strong—and he was surprised to find how strong it was. And, finally, there was the question of the economic interests of a certain section of the community, which found itself exposed to serious competition on account of the influx of this third community. He hoped that he had set out the European position as fairly as it was possible for him to do.

Next he would ask them to look at the Indian side. He would ask them to enter into the Indian feeling as he had endeavoured to enter into the European feeling. The Indian population of the sub-continent was numerically very small, smaller than one-ninth of the European population. He understood that the total Indian population of the sub-continent was about 150,000. Out of that number nearly 120,000 were either ex-indentured people or their descendants, or persons serving under the system of indenture at that moment in Natal. Now he wanted them to realise that the bulk of that population consisted of men who had been brought into the country by the British Government in the interests of a section of the white population of that country. He wanted them further to realise that the remaining 30,000 had merely come in the wake of those indentured men.

He had had occasion in March of that year, in connection with a debate in their Legislative Council, to read the despatches that passed between the Government of India and the Government of England when indentured labour was introduced in Natal in 1860. In those despatches the Imperial Government had made the most solemn promises to the Government of India that the people who were to be brought over to Natal would be treated with every possible consideration during the term of indenture, and that after their indenture they would be allowed to settle in the land, and would have every facility given them that they might prosper in the country. The Imperial Government had held this tempting offer forth to the Indian Government in order to induce that Government to agree to the system of indenture; and for the first few years, at any rate, the whole attitude of the European community in Natal towards the indentured men was totally different from what it had been in recent years. The fear in those days was not that the Indian would stay in the country after he became free, but that he might go back after completing his indenture, and therefore every conceivable inducement was placed in his way that he might remain in the Colony afterwards and not go back to India. That was capable of the clearest possible demonstration.

A change, however, gradually took place in the attitude of the European population towards the eighties. And now they had gone so far as to impose a preposterous tax of £3 per year on every man, woman or child—girls above 13 and boys above 16—if they continued to reside in the Colony after having completed their indentures. He was not going into the merits of the question; he only mentioned what a complete change of attitude there was in the matter; but, whatever the change of attitude, one fact remained clear—that the Indian had not come to the sub-continent of his own accord, that he had been brought there for the benefit of a section of the European population in the sub-continent, that the free man had come in the wake of the indentured man, and that the bulk of the Indian population consisted of ex-indentured men or their descendants, or men still serving under indenture. If they would look at it from that standpoint he believed they would be able to understand better than otherwise the feeling of Indians

in India in that matter. Here were their countrymen induced to emigrate for the benefit of the European population there—it was admitted that Natal was largely made by Indian labour; and now they read stories, some of which might be exaggerated, though there must be something in many of them, which appeared to them to be stories of grievous oppression and injustice. They saw that their countrymen had to live here under harsh laws and were subjected to an administration of those harsh laws which was even harsher than the laws themselves, and they could not understand why they were so treated. The people of India did not realise all the intricacies of the problem, and naturally there was a feeling of intense indignation there about what they read. That was the other side of the picture.

Behind the Indians in South Africa stood India, with an ancient people, who were not ashamed of their contribution to the world's civilisation and progress, and who felt that, now that they were in the Empire, they should have opportunities of steady advancement under the flag of England. And behind all—behind the European community, behind the Indians—was the Empire, with the British flag floating over it, promising justice and equal opportunities for prosperity to the various members living under it. That briefly was the position. Again, he hoped that he had stated it without undue emphasis and without exaggeration.

Now how was a situation of that character to be dealt with? Unfortunately, the statesman's task was not like writing on a clean slate. He never could deal with problems as though nothing had gone before. Almost invariably, in practical affairs, one found that one had to take over the writing of those that had gone before, and by erasing a little in one place, adding a little in another, and altering a little elsewhere, to make it suffice for the needs of the present. That was the only way in which practical problems could be dealt with in any country. That was the essence of practical politics. The politician had undoubtedly to base himself on justice; he had need to be inspired by high purpose, and he had to take note of what would reconcile conflicting interests. And then he had to deal with facts as he found them. That was the spirit in which the question had to be approached by all parties if a solution was to be found. The facts were there—the 150,000 Indians, on the one hand, asking for just treatment; on the other the European community with all its prejudices and with all the interests which it felt to be at stake. Taking the facts as they were, what was the way in which a way might be found out of the difficulty, that a solution might be arrived at reasonably satisfactory to all parties concerned? In proceeding to consider the question in a spirit of compromise the first point to note was that if the compromise was proposed of a character which would cause sore or bitter feelings on one side or the other, it had no chance of being accepted, or, if it was forced, that it would not last. What, then, were the elements of possible bitterness, possible soreness, to be removed before a solution could be proposed, which might reasonably be expected to be accepted by both sides? Taking a broad view of the case, it might be said that the European objection to the Indians was a double one. First of all there was the objection based on the fear of being swamped. The second was the fear that the political and other institutions under which they lived might be affected in course of time by the influx of Indians. There was also the grievance of a section of the European community in regard to trade competition, but that stood on a different footing from the other objections, for, as against it, there was the point of view of the consumer who was not interested in preventing that competition, but wished to buy wherever he could buy cheapest. The first two objections, however, were serious, fundamental, in any consideration of the present situation, and he saw the necessity of giving a reasonable assurance to the European mind that no room would be left for fear on either of those two scores, if a reasonable solution were to be arrived at. He could understand that, unless the European in South Africa were enabled to feel secure that a continual influx of Indians into the sub-continent would not be going on, unless they were enabled to feel that their predominance in that land would not be affected, it would not be possible to reach a solution of the problem which would be really acceptable to the European community. What form actually the assurance should take was naturally a question for discussion, negotiation and adjustment. But the European mind must be set at rest on those points before they could hope to arrive at a solution which would remove the more irritating grievances of the Indian community. When the European community saw that there was no room for any more fears on these two heads, he hoped that they would realise that the Indians who were there were subjects of South Africa, and that the Government of that country must be solicitous for their welfare as it was for that of its other subjects. And the European community must then accept the view that except as regards the points he had mentioned, Indians must live under equal laws with themselves, and that the administration of those laws must be just and humane. If the question were approached in that manner—the necessary assurance being forthcoming to allay the reasonable fears of the Europeans and the Indians who were there being assured that they would be treated justly and humanely in all other matters—he thought that a solution of the question should not be very difficult to reach. Of course a solution even on those lines might not be generally acceptable, but the moderate men on both sides should join hands, combine and insist that some such solution should be adopted in the interests of both sides.

The extreme men on the Indian side might not matter just now, because they had no voice in the Government of South Africa, though they might cause trouble in India. But the extreme men on the European side might not perhaps care to have a solution even on those lines—he was only hinting at the possibility, and that was more for them to consider than for himself; but it was possible that a section at any rate of the European community might further insist on the third grievance based on trade jealousy and economic competition being also settled in their favour with the other two points before agreeing to a compromise. Here, however, it was impossible for the Indian community to concede anything substantial. That was a matter of justice pure and simple to the Indian here, and it did not concern the Europeans as a whole, but only a section of them. If, however, it was sought to prevent the small Indian trader from competing permanently on reasonable terms with the European trader, by thrusting him into locations, harassing him, and ultimately sending him out of the country, he did not think a settlement was possible. He was aware that there were those who said that though that Empire included within its fold many races and peoples, yet it was in reality only a white man's Empire. Europeans undoubtedly occupied a dominant position, but could it therefore be said that Indians and other races should be only hewers of wood and drawers of water in the Empire? He was not there to argue the question, but he invited those who thought like that to visit India, to see what it was like, and then come back and repeat such an opinion, if they could. He would not discuss that view any further. But he would be frank and tell them that on those terms England would find it difficult to hold India; and those who cared for the greatness and prosperity of the Empire—and it was not only Englishmen who so cared, but they in India also cared, because they knew that they had opportunities for progress in that Empire which they would not otherwise have—would see the necessity of not encouraging the belief that the Empire belonged to the European races only. If unfortunately it was found that the lines on which he had suggested a compromise were not possible owing to strong and violent opposition on the part of a section of the European community there, the struggle, he feared, would have to go on.

It was necessarily bound to go on. But he felt sure that there was a steadily increasing section of the European community itself who would not have that kind of thing. They would not allow any injustice which amounted to an intolerable oppression, such as a harsh administration of existing laws, to go on for long. And so, leaving the Indians aside, if he understood the English character properly, he felt that the conscience of their own people would insist on a remedy being found, which would be in greater accord with their sense of justice. He knew that that was so, and it was that side of the English character that had enabled England to hold India for all those years, which had linked up the destinies of those two countries. And so it appeared to him that, after the other difficulties had been solved, if the harsh anti-Indian laws were not repealed in due time—not in a day, that was not possible—if they were not repealed in due course, and if their administration was not made more humane than it was, the better section of the European community in South Africa itself would not stand it for long. If, however, they unfortunately stood it—because it was often in the nature of such environments to undermine character—troubles and complications were sure to arise in India, which would undoubtedly cause serious embarrassment to the Empire, which had been on the whole a beneficent instrument of progress to all. That was his view of the question, and he had ventured to lay it before them frankly. And in that connection he would like to tender the thanks of the people of India to the European Committee constituted during the acute stages of the struggle to help the passive resisters. He thought that, next to the courage and heroism shown by the passive resisters themselves, the brightest spot in the struggle was the constitution of that Committee and the unselfish work that it did to help the Indian side. The people of India felt grateful to the Committee, and he would like to tender on their behalf his very best thanks to the Committee and to its worthy and able Chairman, Mr. Hosken, who had not shrunk from personal sacrifice in the interests of the cause which he had espoused.

Before concluding, he would like to say a few words to the Indian section of that gathering. His Indian brothers and sisters in this sub-continent had taken and were taking infinite trouble to make his visit a success, and he really did not know how to thank them. Even at that banquet he understood that not only the general arrangements but even the cooking and waiting—everything—had been done by volunteers. It had been purely a labour of love. He could only thank them sincerely for all their trouble. He earnestly hoped with Mr. Duncan that that chapter in the Transvaal history, which would always have to be recalled with pain and humiliation—pain certainly for both sides, humiliation—well, he would not speak about that—that that chapter had been definitely closed. He hoped that the more serious grievances under which they laboured would soon be redressed, but whether they were redressed sooner or later, they would have to depend in the future, as in the past, largely upon themselves. As he had said at the station on the occasion of the great welcome they had given him, India, who had been remiss in the past, in helping them, would on all future occasions be behind them. Her heart had

been stirred, and she will not forget again her children across the seas. But, when all was said and done, the brunt of the struggle would have to be borne by them in South Africa. And judging by the splendid spectacle they had presented in the course of the last struggle, he could not but feel confident that if ever another struggle came they would again acquit themselves worthily and in a manner of which India would have no reason to feel ashamed. India felt the greatest admiration for the passive resisters, who had borne so much for the honour of her name. He would not mention names, because where so many had done well, it was impossible to mention all, and it was invidious to mention only a few. But one name stood apart from the rest, the name of the figure which had been foremost in the struggle, the figure of his friend, of the friend of everyone in that room—Mr. Gandhi. India recognised in Mr. Gandhi a great and illustrious son of whom she was proud beyond words, and he was sure that men of all races and creeds would recognise in him one of the most remarkable personalities of their time; but it was only those who had the privilege of knowing him intimately that knew how the pure and indomitable spirit that dwelt in that frail-looking frame, that glorified whatever it touched, would break but never bend in a just or righteous cause. He was happy to find that that appreciation of Mr. Gandhi was not confined to the Indian community only, for during his tour nothing had warmed his heart more than to see the great, the universal esteem in which his friend was held by the European community on all sides. Wherever they had been, he had seen members of the European community eagerly surrounding him to shake hands with him, making it quite clear that though they had fought him hard in the past and might fight him again in the future, they honoured him as a man. That appreciation of Mr. Gandhi among Europeans was a most valuable asset to the Indians in any future struggle they might have to wage. They thus had self-reliance and they had a great leader, but above all they had a just cause, and that meant a great deal, for the words of the poet were as true to-day as they had ever been: "Thrice is he armed that hath his quarrel just." God grant that the occasion might never arise for them to engage in a fresh struggle, but if it did arise, he knew they would not shrink from the conflict. It might be that their difficulties would not be removed soon. It was sometimes found that, with all the desire in the world for a settlement of differences of both sides, those who realised what was best were not able to adopt that best in practical affairs; and he was inclined even to fear that, with every wish to promote a solution the Ministers themselves might find it difficult to carry it through against those who might be opposed to their policy. He most earnestly hoped that that would not happen, but, if it did happen, he hoped also that it would not discourage them. Mr. Duncan had asked him not to feel discouraged. He had been now for some years in public life and he knew that the man who would be discouraged at the first rebuff had no business to be in public affairs. He could assure him, therefore, that, whatever happened, he would not be discouraged, but it was a question not of his being discouraged or otherwise, but of his countrymen not being discouraged. And he would ask his countrymen to remember that, after all, the true moral interest of those struggles lay not so much in achievement as in the effort, for such effort in itself added to the permanent strength of the individual and the community, whether it succeeded or failed in its immediate purpose. A great teacher had said that it was not so much what they had in life as what they *were* that mattered. He wished that every one of the Indians there would always keep that in mind. If success awaited them it was well; but if they must fail when they had done their best, even then it was well, because it was always well to have endeavoured.

SPEECH TO THE TRANSVAAL CHINESE.

Mr. Gokhale said that he was most grateful to the Transvaal Chinese Association and to those who had responded to its invitation for the compliment which had been paid to him that morning—a compliment which gave him the greater pleasure in that it was wholly unexpected. There was a saying in English that adversity made strange bed-fellows. That, for the moment, he took to mean that common hardships and suffering often brought together to work, in a spirit of co-operation, those who otherwise might be strangers. It was such common adversity and suffering that had brought together the British Indian community and the Chinese community of the Transvaal into close co-operation two years previously, and he saw from the function that morning that the feeling of fellowship that had been generated then had continued to that day. He was there to seek redress of the grievances of his own countrymen—that was quite true—but no one would rejoice more than he if their brethren from China also found that their disabilities were removed when the disabilities of Indians were removed. He, however, felt bound to say that a function of that character should suggest serious reflections in all thoughtful Europeans living under the British flag. There were the Chinese community owning allegiance to their own Government—a foreign power. There were Indians living under the flag of England. And yet, in that part of South Africa, over which also floated the flag that floated over England and India, Indians found themselves in the same

boat with their brethren from China, who belonged to a foreign country, both being subjected to the same disabilities. Not that he objected to Indians being bracketed with the Chinese in itself. The people of India would always be proud to be placed by the side of and be bracketed with the people of China. There was a great deal in common between those two countries. The people of both those countries were ancient peoples having much of their civilisation in common. Moreover, India gave to China her great religion of Buddhism, and in times far remote there had been considerable intercommunication between those two countries. Even to-day they in India were following with close interest the developments taking place in China, and the general feeling in India was one of strong sympathy with the Chinese in their attempt to establish themselves on a strong and stable Republican basis. It had been said that the Anglo-Saxon race—he did not know much of the Dutch, and so he would speak only of the Anglo-Saxon for the present—with all its great qualities, was lacking in one quality, and that was the quality of imagination. Anglo-Saxons, and he believed the same thing was true of the Dutch, probably even to a greater extent, found it difficult to put themselves into other people's places and to realise their feelings. Else, they would be struck with the utter incongruity of the policy of the open door throughout the East for the Europeans, on which they insisted, and the policy of the closed door against all Easterns in most Western colonies. Those were matters, however, which had to be dealt with in a spirit of compromise, as he had already pointed out on the previous day, and he earnestly hoped that the Chinese community would press their claims just as British Indians were doing, in order that the many grievances of both might be redressed. In one respect the Chinese stood in a position of advantage. They had their own independent Government behind them, which could negotiate in this matter and was not embarrassed with promises and undertakings such as were understood to hamper the Imperial Government in regard to this Indian question. On the other hand, the Indian Government could not negotiate directly with the South African Government, but could act only through the Imperial Government, whose hands, as he had said, were more or less tied because they considered they had granted self-government to South Africa. He had been told by a distinguished gentleman the previous evening that his bringing in the Imperial Government so often was liable to be misunderstood, because it might appear as though he were advocating Imperial intervention in South African affairs. He had no wish that the Imperial Government should interfere in South African affairs in any matter, but if South Africans would treat the Indian community as they did, the Indian community was surely entitled to appeal to the protection of the Imperial Government, which protection was due to it and was its sole resource in an extremely difficult position. If South Africans did not want the Imperial Government to intervene, and he had no wish that the Imperial Government should intervene, the only course was that they should set the matter right themselves.

SPEECH AT MARITZBURG.

Maritzburg, he said, was the capital of Natal, and Natal was at the heart of the Asiatic problem. Looking up some statistics on the point, he found that of the 150,000 Indians in South Africa, no less than 120,000 had been brought in by the British Government, mainly for the benefit of the Natal Colonists, or were the descendants of Indians so brought in. He did not wish to press the point unduly, but he felt that so significant a fact threw a special responsibility on Natal to solve the difficulty of the Indian problem, which he would at once admit was a most delicate and complicated one. He had tried both before and since coming to this country to get a truer view of the situation, and was bound to recognise that the position of the white community in this sub-continent was a very difficult one. A great many allowances would have to be made, and he realised that he would have to enter into the feelings of the European community in order to suggest a remedy that would have a chance of proving satisfactory to all sides. He came to South Africa with that feeling, and all he had since heard and seen since his arrival in the country had gone to confirm the opinion that it would be no easy matter to find a solution that would be satisfactory to all parties. On the one side was a small European community, in a vast country, scattered among a vast number of natives. That in itself was a tremendous problem, because the two races were of different grades of civilisation and their contact had already produced difficulties, social, political, economic, and moral. The European community naturally wished to safeguard its own civilisation, its own culture, and its own interests. That was only natural. Then the Indian factor had been introduced. Their numbers at present were small, but there was a fear in the mind of many Europeans that unless drastic measures were taken their numbers would grow, and they would possibly one day swamp the European community. He had come to think that a large part of the conditions of which the Indians, perhaps rightly, complained, was due to that fear. Then came trade jealousies, the European fearing that, with his simpler standard of living, the Indian would undersell him. That was a question, however, which had two sides. The complaint came from the small trader, who was inconvenienced, not from the community as a whole, which, if it was interested in anything, was interested in buying as cheaply as possible.

The feeling in India was not quite realised in this country. Indian sentiment had been most deeply aroused by the statements that had been made there of the unjust treatment of Indians here and the narration of the grievances under which they laboured. The principal of these grievances were the general treatment of resident Indians, the £3 licence demanded of ex-indentured Indians and their children who chose to remain free in Natal, and the withholding of trading licences. In India they thought that these men had given the best that was in them to this land—European Commissioners in Natal had stated that clearly—and that but for the Indians the prosperity of Natal would have dwindled and gone. They realised that the Indians were brought here so that Natal might prosper, but now they were not allowed to settle here or engage in business, and the feeling of the European community was that they should go back to India. Under the indenture system promises were made by the British Government to the Government of India that after the period of indenture was over the Indians would be allowed to settle here and have every opportunity to rise as high as their merit and ability allowed. From 1860 to 1880 the fear was that no more Indians would come, and inducements were offered to those here to remain. In the 'eighties a change took place in the attitude of the European. The Indians increased in numbers, jealousy began to be felt, and ultimately a feeling of antagonism developed. In India they saw these things, but they could not understand how anybody could justify them. He felt very strongly that they must either keep the Indian here on terms not inconsistent with the broad requirements of policy or they must get rid of them. There was a very strong feeling in India in consequence of the stories current there. He had of course his own view before he left India, but he had come here to study the question, and he would be unworthy of his mission if he failed to do his best to approach the question from every side. (Cheers.) He had honestly done his best. (Cheers.) Whether as a result of what he had seen he would be able to submit suggestions to the Union Government or to the Government of India, was more than he could say, but he had done, he was doing, and he would do his best, and that was all the assurance he could give.

He wanted them to realise that the question was a larger one than it might appear. He had seen it argued that it did not matter if there was discontent in India. That opinion could not be expressed by any who were concerned for the future of the Empire. After all, in some respects India was the pivot of the British Empire—the Empire without India would be a much smaller thing than it was to-day, and nothing done in Natal to-day could fail to react on India. In India they willingly accepted British rule, and gave allegiance to the British flag because under that flag alone could they find the best conditions for their future progress. Indian loyalty was different to the loyalty of the Englishman in that it was a form of enlightened self-interest, because they felt that the flag of England represented those elements of order and progress which would not otherwise be available to them, and they were as anxious to continue under that flag as the people of Natal could possibly be. Feeling in India was very bitter and acute at the treatment accorded to the Indians established here, and the Government of India felt itself powerless in the face of that feeling. India in the past few years had passed through stormy times, but thanks to the statesmanship of the Ministers at Home, and the Viceroy, the country had started on a new career, and with fewer internal problems to occupy the minds of the people they had time to concentrate their attention on the situation of the Indians in this country. For himself, he saw the anxiety of the European to restrict immigration, he saw the strength of the contention that this country must be pre-eminently European. That was a position which it was possible to understand and to accept. He felt that the European was bound to be dominant in this country for as long as one could see, and on the question of unrestricted immigration, it should not be difficult to arrive at a reasonable compromise; but as regards the Indians already in the country, he thought the only possible solution was to treat them so far as possible on equal terms as subjects of the one Union. If that sense of equality were withheld from them what was their position? They were cut off from their own country, and were settled here. If they could not remain here without harassing restrictions, he did not know what would happen to them. They could not go back to India because they had lost touch. They were here, they had done good work, and he thought it was only reasonable that they should have equal facilities for earning a decent livelihood. (Hear, hear.) A previous speaker had said that if the Empire was to endure it must be based on justice. Any policy which preferred the interest of one section at the expense of another, however convenient it might be temporarily to do, if it became a permanent policy, would lead to disaster. While justice persisted, he had no doubts as to the future of the British Empire. He had known the Britisher for many years, and he knew that however strongly other interests might prevail, deep down in the heart of every Britisher was a feeling for justice and fair play, which would prevent any selfish policy being adopted for very long. All Governments made mistakes, but as long as a sense of justice existed there was a certainty of such mistakes being remedied and corrected. He trusted that whatever policy Natal and South Africa adopted would be a policy which took due note of the claims of the Indians who now lived here, and would be just and humane.

V, 1

SPEECH AT DURBAN.

South Africa was associated first and foremost in India with the name of Durban. Almost every Indian who had come to this sub-continent had landed at Durban, and it was from Durban that they had now spread over the rest of South Africa. But even to-day the largest Indian community in the country was to be found in and around Durban, and the interest of the European citizens of Durban in the problem was greater and more intimate than that of Europeans in any other part of South Africa. He had not come to this country without having ideas of his own on the question. But he had come with the determination to do his best to see both sides of a most difficult problem. Up till recently they in India had been unable to give much attention to the question. They had had to deal with serious questions of internal administration, which occupied all their attention, and had no room for the South African Indian question. In fact, four or five years ago it appeared that they were facing a very grave crisis, and nobody knew what the end was to be. But wise English statesmanship came to the rescue, and enabled India to tide over the crisis, with the result that the problems of to-day were not so acute. But this relief from anxiety at home had enabled them to centre their attention on the treatment of Indians in South Africa.

The matter came to their notice most prominently at the time of the recent trouble in the Transvaal, and then they had had their attention drawn to various aspects of the indentured labour question and to the £3 licence tax imposed on ex-indentured men, women and children who sought to remain free in Natal. The result was that there was a strong feeling in India to-day that Indians were not receiving in this country the treatment they ought to receive. He was not expressing any personal opinion; he only desired they should realise what the feeling of India, rightly or wrongly, was. The feeling that the treatment which South African Indians were receiving was not that to which they were entitled under the British flag was growing so strong in India, and a feeling of bitterness was developing so seriously that the Government of India and public men in India had grown nervous as to future developments. And when he received the invitation from the Indian community of South Africa to come and help them, he was glad to be able to say that he would do so, because that invitation coincided with the desires of the Indian population in India. He came primarily at the instance of the community here, but also in accordance with the wishes of the Indian people and with the goodwill of the Indian and Imperial Governments. To those of them who, in common with people in other parts of the Empire, were responsible for maintaining the greatness and glory of the Empire, it was right, he thought, that he should explain this feeling in India in order that they might know what line of action to adopt, so that any reasonable cause that might exist for the feeling might speedily be removed. There was no desire on the part of Indians to do any injustice to the position of the European community here. He was able to realise that the position of the European was extremely difficult, and that conviction had been strengthened as he had toured the country. The position was a most complicated one, and while it was to be expected that they would be true to the traditions associated with British rule, they had also a right to ask the Indian community to understand and realise the difficulties, and not expect what was practically impossible. The European community was a small community in this country in the midst of a large indigenous population, and the situation necessarily became more complicated by the presence of a third party, differing in tradition and mode of living. There was no doubt that the European element must continue to predominate in this land—that it must be made to feel that its position and its special civilisation were absolutely secure; the government of the country must be in accordance with Western traditions and modes of thought. But a solution of the difficulty would only be possible if the two sides entered into one another's feelings.

the European community.

There were, of course, other questions—trade jealousies and competition, and the like; but these he put on a lower footing, because, after all, people wanted to get their things as cheaply as possible, and if the Indian sold his goods at a cheaper price than the European he was surely entitled to do so. The interests involved were greater than these—the interests involved affected the welfare of the whole Empire. India felt that a great many of her countrymen had been brought into this country by the British Government, responsible for its administration before the people of the country were granted responsible government. Out of 150,000 Indians nearly 120,000 were either indentured or ex-indentured, or their descendants. That meant that nearly the whole population in South Africa had been brought to the country in the country's interests. India's tradition in regard to the stranger had always been one of the utmost hospitality, and the people of India could not understand this treatment of those to whom Natal was admittedly so beholden. But, so far as emigrating was concerned, the Indian was not keen. They were not an emigrating people, and the mere stopping of emigration to this country would not trouble them. There was scarcity of labour in India to-day, and they were not requiring any outlet for surplus population. The position which Natal occupied to-day was largely owing to Indian labour, and when this labour was introduced specific promises were made by the Imperial Government to the Government of India as to how the people coming

here would be treated. The Government told the people that they would be allowed to settle here after their indenture was complete, that land would be allotted to them, and that facilities would be given them to prosper. Nothing was to retard their advancement. And this was the attitude for twenty years. Afterwards, however, the attitude of the Europeans commenced to change, until a sentiment of absolute hostility to the Indian settlers had grown up in many quarters. Considering the origins of the Indian population here, India to-day could not understand how anybody could raise the cry that these people should either be sent back to India or subjected to disabilities extremely unjust and humiliating in their character. They felt they were members of the Empire just as much as the Europeans. They accepted British rule because they felt that under England's flag they would attain the respect of civilised peoples. Their loyalty to the Empire was based on self-respect and self-interest, and it was none the less real on that account. Nothing should be done to make them feel that they were only helots of the Empire—mere hewers of wood and drawers of water. If the English flag stood for one thing more than another it stood for freedom and justice to all under it. It was, therefore, necessary that in whatever part of the Empire Indians happened to be they should be enabled to feel that the cause of freedom was safe with them, and that they would be treated on a basis of justice. The stories reaching India just now were calculated to weaken that feeling, and if this feeling grew—namely, that in spite of promises made, Indians were to be held down as a depressed class—then he assured them that, no matter how long it might be, the cause of British rule in India would be in serious jeopardy. India was not the India of fifty years ago. The East was awakening and India was in the midst of a new national consciousness, and the question could only be solved by approaching it from this point of view. He appealed to them to look at the question from the only standpoint from which it could be approached, and he could wish for nothing better than that some of the men of this sub-continent would go to India, see what India was, and understand what she meant to the Empire. Then they would realise the necessity for finding some solution satisfactory to both sides, and close this question once and for all as speedily as possible.

SPEECH AT PRETORIA.

“There is no doubt that there is a great deal of feeling on the question on both sides, and this makes a dispassionate examination of the matter even more difficult than it would otherwise be. I have said, and I say it again, that, in the conclusions at which I have arrived, I have tried to keep in view the fact that the interests of both sides must, in some way or other, be reconciled. The fundamental question is how there shall be secured just and equitable treatment for those Indians who are here now, and their number is about 150,000. Whilst here I have heard it urged that a settlement may be found by sending these people back to India. It may be a solution of one aspect of the problem, but, assuming that it is a desirable solution, which I think it is not, it is, for financial and other reasons, absolutely impracticable. These 150,000 people are here, they cannot be repatriated, they must therefore remain here and they must become more and more an integral and a permanent part of the general population of this sub-continent.

“The most important question, then, is to what just and equitable treatment these people are entitled, and how such treatment may best be secured. Now one thing is quite clear, that if a solution of this problem is to have any permanence and finality, it has to be such as will be acceptable to the European community, who are, after all, the dominant people of this country. And so long as there exists in the European mind the fear of a continued influx of Indians, there cannot be that frame of mind on its part which would allow of any settlement being a success. The European community must therefore receive, and the Indian community must be prepared to give, the necessary assurances to remove the fear on this point. Again, there must be no room for a reasonable apprehension in the mind of the Europeans that the presence of the Indians in this land would lower the character of the political institutions under which they desire to live. I fully recognise that South Africa must be governed along the lines of Western political institutions and by men who understand the spirit of those institutions, and the European community are entitled to an assurance that this shall remain so. These assurances, however, being given outside these questions of immigration and franchise, the aim of the Government should be to make the Indians feel that they are living under equal laws, and that those laws are administered towards them with no undue harshness, but the same as towards the other people of the country. At present the Indians throughout South Africa feel, and justly feel, that even outside the two questions I have mentioned, they are subjected to harsh legislation specially directed against them, and, further, the administration of that legislation is, if anything, even harsher in spirit. To take only the more important grievances, the Immigration Law is being now worked in such a rigorous manner as to cause the Indian community most serious hardships. In Cape Colony, for instance, there is the system of permits under which an Indian who may have settled in the Colony is permitted to be absent from the country for a stated period, generally one year. Only

the other day an Indian trader who had gone to India on a year's permit, leaving his wife and children and his business behind, returned to the Colony, but he was prevented from landing because he had exceeded the period of absence by one day. This was owing to no fault of his, for if the steamer by which he came had run according to scheduled time he would have arrived three days before the expiry of the permit, but it was held up on the way by a storm for four days, and this led to his arriving a day late. And yet because of this accident he has been forced to go back to India, and his business has been ruined and his wife and children have now to follow him. The same thing is happening in Natal in connection with domicile certificates. The holders are cross-examined about their whole life and movements in this country during long periods—sometimes as long as fifteen years—and even small discrepancies between the answers given and the facts already recorded are held to justify the discrediting the certificates, and the holders are sent back to India. Now all this is grievously unjust, and I am sure only public attention has to be pointedly drawn to it to secure its stoppage, for I cannot believe that there is any desire on the part of the European community of this country to harass the Indians in this unnecessary manner. There are several other complaints to be heard everywhere about the working of the Immigration Law, but I will not go into them now. I sincerely trust that with the removal of the fear of a continued influx of Indians into this country, the Immigration Law will be administered in a far more considerate and sympathetic spirit, and all the present soreness of feeling of the Indian community in regard to it, and all sense of insecurity produced by it will be removed. Next there is the question of trading licences. This appears to be in some respects the most difficult problem of all. The Europeans feel that they are gradually being crowded out by the Indians, that the Indians undersell them, and that important branches of trade are likely to fall entirely into Indian hands. That is the European viewpoint. On the other hand, the Indians feel that their freedom is being unjustly interfered with, that all outlets are being steadily closed to them, and that gross injustice is being done to them. Now while I do not seek to minimise in any degree the argument on the European side, I must frankly say that I have always felt that the traders who are injured, if at all, by the competition of the Indians are a very small part of the community, and that, if the argument be that the Indians sell cheaper, it must surely be to the general advantage of the community, whose interest it is to buy cheaper. But that apart, what reason can be given for the refusal to transfer a trading licence from one man to another or to allow him to take his own son into partnership, as was the case only a day or two ago in Ladysmith? This is certainly neither fair nor equitable treatment, and anyone can see that its sole object is to extinguish Indian trade, as opportunities arise. This is absolutely unjustifiable. Moreover, what is to be the fate of those who are born here, under this policy? The matter of the control of trading licences, in at least two Provinces of the Union, is in the hands of the local authorities, and there is no right of appeal except as to renewal of licences in Natal, or on grounds of procedure, to a judicial tribunal, so that flagrant injustices are constantly perpetrated and go unremedied. That right of appeal against the interested decisions of their trade-competitors must be given to Indians if anything like justice is to be done to them. I quite recognise that direct interference by the Government is impracticable, with the law as it stands, but the restraining influence of the Government may be exerted in many directions, and I earnestly trust that it will be used to bring about a feeling of security in the mind of the Indian trader and remove a grievous sense of injustice and wrong.

“The question of the education of Indian children born in South Africa is also one about which the community has a great grievance at the present time. Very little provision for that education is made, and yet these children, when they grow up, must be absorbed into the general population to whose material and moral well-being they will be expected to contribute. Provision should therefore be made, not only for elementary but also for the higher and for the technical education of these children. Instruction should also be given in the Indian vernaculars in school hours. I should like the European public to lay emphasis upon this requirement, for, so long as such instruction is not given, it is a legitimate excuse for the Indian community to ask for the admission of clerks and others so instructed, for the proper keeping of their books, which are at present kept in their vernaculars, as it is impossible at present for their own children to become proficient in the Indian vernaculars in this country.

“These are the most important general grievances of which the Indian community has good reason to complain at present. Beyond these there are a number of specific disabilities imposed upon the Indian residents of the different Provinces, such as Law 3 of 1885 in the Transvaal or the Gold Law and the Townships Act of 1908, which prevents Indians from residing or trading except in locations in all so-called gold areas. But I do not propose to-night to deal with them. To one such only I wish to make particular reference, and that is the £3 tax imposed in Natal upon all ex-indentured Indians and their descendants, men and women, boys above sixteen years, and even girls above thirteen years being included, who do not return to India after the expiry of their indentures and who do not desire to re-indenture. I make bold to say that it is difficult to imagine

a more harsh and unjust impost, bringing, as it does, untold misery upon those who are required to pay it. Whatever its justification may have been at a time when there was a genuine fear of the country being overrun with indentured Indians, who were being brought here in the interests of a section of the European population itself, there is no doubt that, since the stoppage of indentured recruitment in India, there no longer remains even that shadow of justification for the imposition of this tax. I discussed this subject with a large number of persons in Natal, and I did not find a single individual to justify or support it. And it was a pleasure to me to find that even those who had, two years ago, strongly upheld the impost, are now agreed that it should be abolished altogether. I may state that strong representations in this matter were made by me to the Government to-day, and I have every reason to believe that the matter will receive the early and sympathetic attention of the Ministers.

“Ladies and gentlemen, it is impossible on an occasion like this to do more than indicate in general outline the more serious and pressing of the Indian grievances in this country. And you will not understand me, in what I have mentioned, to have exhausted the whole list. Neither have I touched on that part of our disabilities which, though acutely felt in the daily life of the community, cannot be put right by any direct action of the Government—I mean the social disabilities. I must say that I am astonished at the strength and intensity of the colour prejudice that exists in this land. I had heard a good deal about it before my arrival, and I was prepared for a certain measure of it. But not till I actually was in this country did I realise the full force with which it operates nor the extent to which it prevails. However, the only hope of a remedy in such matters is in the steady improvement of the general situation and the gradual education of the heart. Meanwhile it is wise to take note of the existence of this prejudice in any solution of present difficulties that may be thought of or attempted. And now, ladies and gentlemen, I would like to say a word publicly to the Government of this country. The difficulties of its position are great and undoubted. The delicate relations between the two European races, the social problems connected with the future of the vast native population, the powerful colour prejudice, the widespread apprehension among a section of the white population that their material interests are seriously threatened by Indian competition—all these make the position of the Government one of exceptional difficulty. And though its duty to secure the fullest justice to the resident Indian community is clear I freely recognise that the strongest Government that may be conceived of will not be strong enough to redress all Indian grievances at once, and would be hurled from power, if it attempted to do so. I feel it is incumbent on the Indian community to realise this fully and not pitch its expectation too high—to exercise patience and self-restraint as far as possible, in order to facilitate the task of the Government, for any impatient or vehement insistence on immediate relief being granted, where the Government itself is not in a position to grant it without a considerable change in public opinion, can only retard, and not hasten, remedial action. But, while admitting all this, I feel strongly that the face of the Government must be set all through in the right direction, and the progress, slow as it may be, must be steady and continuous towards full justice to the Indian population. It is one of the primary duties of every Government to ensure justice to all who are living under its protection, and the Government of South Africa owes this duty to the Indian population as much as to any other section of the community. And the fact that the Indians have no votes only emphasises this duty still further. The Indians resident in South Africa are a part and parcel of the general population, and their welfare must be an object of serious solicitude to the Government, unless the idea is to hold them down permanently as a depressed community, which I cannot believe. Those who form the Government may be dependent on the votes of the European population for their position. But once they assume the functions of Government, they make themselves responsible for even-handed justice to all, and to those who are least able to protect themselves from oppression and injustice they are bound to give their protection most.

“My final word to-night will be one of appeal to what I would call the better mind of the two communities, European and Indian. To the European community I would respectfully say—you have all the power and yours, therefore, is the responsibility for the manner in which the affairs of this land are administered. You cannot believe in your heart of hearts that whatever temporary advantages may be gained by those who have power from a policy based on obvious injustice, selfishness, or unreasoning prejudice, such advantages can long endure. You owe it to your good name, you owe it to your civilisation, you owe it to the Empire of which you are part, and whose flag stands for justice and freedom and opportunities for progress for all who live under its protection, that your administration should be such that you can justify it in the eyes of the civilised world. That you have votes, and the Indians have not, only throws a double responsibility on you—the responsibility for actively promoting their prosperity and well-being as well as yours. The affairs of this country must no doubt be administered in accordance with European standards and by men who understand the spirit and working of European institutions, but the Government must exist for promoting the prosperity not of the

European community only, but of all its subjects; else it is a travesty of Government to them. To my own countrymen resident in this land, my parting appeal is—always remember that your future is largely in your own hands. You have by no means an easy position here, and it is not impossible that it may grow even worse. But, whatever happens, do not lose faith or give way to despair. I pray to God that such a struggle as you found it necessary to wage in the Transvaal during the last three years may not have to be waged again. But if it has to be resumed, or if you have to enter on other struggles of a like nature for justice denied or injustice forced on you, remember that the issue will largely turn on the character you show, on your capacity for combined action, on your readiness to suffer and sacrifice in a just cause. India will no doubt be behind you. Such assistance as she can give shall freely come to you. Her passionate sympathy, her heart, her hopes will be with you. Nay, all that is best in this Empire, all that is best in the civilised world, will wish you success. But the main endeavour to have your wrongs righted shall have to be yours. Remember that you are entitled to have the Indian problem in this country solved on right lines. And in such right solution are involved not merely your present worldly interests, but your dignity and self-respect, the honour and good name of your Motherland, and the entire moral and material well-being of your children and your children's children."

[NOTE.—The Hon. Mr. G. K. Gokhale returned to India in December, 1912, and announced in public that he had received from the Ministers of the South African Union Government the full assurance that the £3 Poll Tax would be withdrawn on the understanding that no objection would be raised in India to the prohibition of further immigration into South Africa from India. The latter was carried out by the Union Government under the Immigrants Regulation Act 22 of 1913. When the assurance of the withdrawal of the £3 Poll Tax (which Mr. Gokhale believed he had received) was not fulfilled, Mr. Gandhi began his Passive Resistance Movement for its withdrawal. This took the form of a march into the Transvaal of over 3,000 Natal Indians, including women and children. Over 2,000 Indians who offered passive resistance were arrested at this time and imprisoned. On the release of Mr. Gandhi in December, 1913, and the invitation sent to him early in January, 1914, by General Smuts to come to Pretoria, the negotiations began, which ended in the Smuts-Gandhi Agreement of June 30, 1914. The documents relating to this Agreement will be found in the first volume of this series.—C.F.A.]

II. THE PASSIVE RESISTANCE MOVEMENT.

TOLSTOY'S LETTER TO GANDHI.

The following is the translation of a letter of Count Tolstoy's to Mr. Gandhi, which helped him during the passive resistance struggle :—

Kotchety, Russia,
Sept. 7th, 1910.

I received your journal, and was pleased to learn all contained therein concerning the passive resisters. And I felt like telling you all the thoughts which that reading called up in me.

The longer I live, and especially now, when I vividly feel the nearness of death, I want to tell others what I feel so particularly clearly and what to my mind is of great importance, namely, that which is called passive resistance, but which is in reality nothing else than the teaching of love uncorrupted by false interpretations. That love—*i.e.* the striving for the union of human souls and the activity derived from this striving—is the highest and only law of human life, and in the depth of his soul every human being (as we most clearly see in children) feels and knows this ; he knows this until he is entangled by the false teachings of the world. This law was proclaimed by all—by the Indian as by the Chinese, Hebrew, Greek and Roman sages of the world. I think this law was most clearly expressed by Christ, who plainly said, "In this only is all the law and the prophets." But besides this, foreseeing the corruption to which this law is and may be subject, he straightway pointed out the danger of its corruption, which is natural to people who live in worldly interests, the danger, namely, which justifies the defence of these interests by the use of force, or, as he said, "with blows to answer blows, by force to take back things usurped," etc. He knew, as every sensible man must know, that the use of force is incompatible with love as the fundamental law of life ; that as soon as violence is permitted, in whichever case it may be, the insufficiency of the law of love is acknowledged, and by this the very law is denied. The whole Christian civilisation, so brilliant outwardly, grew up on this self-evident and strange misunderstanding and contradiction, sometimes conscious, but mostly unconscious.

In reality, as soon as force was admitted into love, there was no more love ; there could be no love as the law of life ; and as there was no law of love, there was no law at all, except violence—*i.e.*, the power of the strongest. So lived Christian humanity for nineteen centuries. It is true that in all times people were guided by violence in arranging their lives. The difference between the Christian nations and all other nations is only that in the Christian world the law of love was expressed clearly and definitely, whereas it was not so expressed in any other religious teaching, and that the people of the Christian world have solemnly accepted this law, whilst at the same time they have permitted violence, and built their lives on violence ; and that is why the whole life of the Christian peoples is a continuous contradiction between that which they profess and the principles on which they order their lives—a contradiction between love accepted as the law of life and violence which is recognised and praised, acknowledged even as a necessity in different phases of life, such as the power of rulers, courts and armies. This contradiction always grew with the development of the people of the Christian world, and lately it reached the highest stage. The question now evidently stands thus : either to admit that we do not recognise any religio-moral teaching, and we guide ourselves in arranging our lives only by power of the stronger, or that all our compulsory taxes, court and police establishments, but mainly our armies, must be abolished.

This year, in spring, at a Scripture examination in a girls' high school at Moscow, the teacher and the bishop present asked the girls questions on the Commandments, and especially on the sixth. After a correct answer, the bishop generally put another question, whether killing was always in all cases forbidden by God's law, and the unhappy young ladies were forced by previous instruction to answer, "Not always"—that killing was permitted in war and in execution of criminals. Still, when one of these unfortunate young ladies (what I am telling is not an invention, but a fact told me by an eye-witness), after her first answer, was asked the usual question, if killing were always sinful, she, agitated and blushing, decisively answered, "Always," and to all the usual sophisms of the bishop she answered with decided conviction, that killing was always forbidden in the Old Testament and not only killing was forbidden by Christ, but even every wrong against a brother. Notwithstanding all his grandeur and art of speech, the bishop became silent and the girl remained victorious.

Yes, we can talk in our newspapers of the progress of aviation, of complicated diplomatic relations, of different clubs and conventions, of unions of different kinds, of so-called productions of art, and keep silent about what that young lady said. But it cannot be passed over in silence, because it is felt, more or less dimly, but always felt by every man in the Christian world. Socialism, Communism, Anarchism, Salvation Army, increasing crime, unemployment, the growing insane luxury of the rich and misery of the poor, the alarmingly increasing number of suicides—all these are the signs of that internal contradiction which must be solved and cannot remain unsolved. And they must be solved in the sense of acknowledging the law of love and denying violence. Therefore your activity in the Transvaal, as it seems to us, at this end of the world, is the most essential work, the most important of all the work now being done in the world, wherein not only the nations of the Christian, but of all the world, will unavoidably take part.

PASSIVE RESISTANCE.

(By M. K. GANDHI.)

I shall soon be far away from Phœnix, if not actually in the Motherland, and I would leave behind me my innermost thoughts. The term "Passive Resistance" does not fit the activity of the Indian community during the past eight years. Its equivalent in the vernacular, rendered into English, means Truth-Force. I think Tolstoy called it also Soul-Force or Love-Force, and so it is. Carried out to its utmost limit, this force is independent of pecuniary or other material assistance; certainly, even in its elementary form, of physical force or violence. Indeed, violence is the negation of this great spiritual force, which can only be cultivated or wielded by those who will entirely eschew violence. It is a force that may be used by individuals as well as by communities. It may be used as well in political as in domestic affairs. Its universal applicability is a demonstration of its permanence and invincibility. It can be used alike by men, women, and children. It is totally untrue to say that it is a force to be used only by the weak so long as they are not capable of meeting violence by violence. This superstition arises from the incompleteness of the English expression. It is impossible for those who consider themselves to be weak to apply this force. Only those, who realise that there is something in man which is superior to the brute nature in him, and that the latter always yields to it, can effectively be Passive Resisters. This force is to violence and, therefore, to all tyranny, all injustice, what light is to darkness. In politics, its use is based upon the immutable maxim that government of the people is possible only so long as they consent either consciously or unconsciously to be governed. We did not want to be governed by the Asiatic Act of 1907 of the Transvaal, and it had to yield before this mighty force. Two courses were open to us—to use violence when we were called upon to submit to the Act, or to suffer the penalties prescribed under the Act, and thus to draw out and exhibit the force of the soul within us for a period long enough to appeal to the sympathetic chord in the governors or the law-makers. We have taken long to achieve what we set about striving for. That was because our Passive Resistance was not of the most complete type. All Passive Resisters do not understand the full value of the force, nor have we men who always from conviction refrain from violence. The use of this force requires the adoption of poverty, in the sense that we must be indifferent whether we have the wherewithal to feed or clothe ourselves. During the past struggle, all Passive Resisters, if any at all, were not prepared to go that length. Some again were only Passive Resisters so-called. They came without any conviction, often with mixed motives, less often with impure motives. Some even, whilst engaged in the struggle, would gladly have resorted to violence but for most vigilant supervision. Thus it was that the struggle became prolonged; for the exercise of the purest soul-force, in its perfect form, brings about instantaneous relief. For this exercise, prolonged training of the individual soul is an absolute necessity, so that a perfect Passive Resister has to be almost, if not entirely, a perfect man. We cannot all suddenly become such men, but, if my proposition is correct—as I know it to be correct—the greater the spirit of Passive Resistance in us, the better men we will become. Its use, therefore, is, I think, indisputable, and it is a force which, if it became universal, would revolutionise social ideals and do away with despotisms and the ever-growing militarism under which the nations of the West are groaning and are being almost crushed to death, and which fairly promises to overwhelm even the nations of the East. If the past struggle has produced even a few Indians who would dedicate themselves to the task of becoming Passive Resisters as nearly perfect as possible, they would not only have served themselves in the truest sense of the term, they would also have served humanity at large. Thus viewed, Passive Resistance is the noblest and the best education. It should come, not after the ordinary education in letters of children, but it should precede it. It will not be denied that a child, before it begins to write its alphabet and to gain worldly knowledge, should know what the soul is, what truth is, what love is, what powers are latent in the soul. It should be an essential of real education that a child should learn that, in the struggle of life, it can easily conquer hate by love, untruth by truth, violence by self-suffering. It was because I felt the forces of this truth, that, during the latter

part of the struggle, I endeavoured, as much as I could, to train the children at Tolstoy Farm and then at Phoenix along these lines, and one of the reasons for my departure to India is still further to realise, as I already do in part, my own imperfection as a Passive Resister, and then to try to perfect myself, for I believe that it is in India that the nearest approach to perfection is most possible.

WOMEN AND PASSIVE RESISTANCE.

(By Mrs. POLAK.)

Ruskin has said : " A woman's duty is twofold, her duty to her home and her duty to the State." Scarcely an Indian woman in South Africa has read Ruskin's words, probably never heard of them, but the spirit of truth manifests itself in many ways and places, and the Indian women of South Africa intuitively knew this as one of the true laws of life, and their work showed that they performed their greater duty accordingly. These women, without any training for public life, accustomed to the retirement of women of India, not versed or read in the science of sociology, just patient, dutiful wives, mothers, and daughters of a struggling class of workers, in an hour of need, moved by the spirit of a larger life, took up their duty to their country, and served it with that heroism of which such women alone are capable.

It is said so often that woman does not reason, and perhaps it is a charge largely true, but where the elementary laws of being are concerned, woman follows a surer path than any dictated by reason, and sooner or later gets to her goal. Every reform movement has shown that, from the moment women stand side by side with men in the maintenance of a principle, however dimly understood by them, the spirit of the movement grows, is crystallised, and success to the movement is assured.

The Westerner is so accustomed to think of the Indian woman as one living in retirement, without any broad thought and without any interest in public affairs, that it must have come with a shock of surprise to learn that many Indian women, some with babies in their arms, some expecting babies to be born to them, and some quite young girls, were leaving their homes and taking part in all the hardships of the Passive Resistance campaign.

The last phase of the fight, and the one through which to-day we rejoice in peace, was practically led in the early stages by a small band of women from Natal, who challenged prison to vindicate their right to the legal recognition of their wifehood, and a similar small band of women from Johannesburg.

The women from Natal, all of them wives of well-known members of the Indian community, travelled up to Volksrust, were arrested and sentenced to three months' hard labour, and were the first of hundreds to go to gaol. The women from the Transvaal travelled down the line, taking in the mines on their way, holding meetings and calling upon the men to refuse to work and to die rather than live as slaves, and at the call of these women, thousands laid down their tools and went on strike. I think it may safely be said that, but for the early work of these brave women, during the middle of last year, the wonderful response to the call of honour and country might never have taken place. About six weeks after the Transvaal women left, they also were arrested, and a similar sentence to that passed upon the women of Natal was passed upon them. So these brave women were shut away from life, but the fight now so splendidly begun went on to the end.

A few days after the release of these last women, two gave birth to children, and another, a young girl of about twenty, passed away, and a third hovered between life and death for months, but the goal was won. To-day all these women are back in their homes and are busy in the usual routine of an Indian woman's life. There is absolutely none of the pride of heroism about them. They are the same patient, dutiful women that India has produced for centuries, yet they endured the publicity ; and no one who does know India can understand how terrible to the Indian woman such publicity is. They endured the physical hardship, the mental sorrow, the heartache : for nearly all who did not take young children with them left young ones at home, enduring hunger strikes, because they were deprived of fat to eat and sandals to put on—endured it all without hardness or bitterness. India has many things to be proud of, but of none more than the part the Indian women of South Africa took in the uplifting and recognition of a people here despised.

MR. GANDHI'S SPEECH AT VERULAM.

One of the most important gatherings held just before Mr. Gandhi left South Africa was the great meeting of indentured Indians and employers at Verulam. In his address Mr. Gandhi took pains to make the position under the Indians' Relief Act absolutely clear to the Indian labourers, and addressed a few earnest words at the close to the European employers of the neighbourhood.

He asked his countrymen to understand that it was wrong for them to consider that the relief that had been obtained had been obtained because he had gone to gaol, or his wife, or those who were immediately near and dear to him. It was because *they* had had the good sense and courage to give up their own lives and to sacrifice themselves, and in these circumstances he had also to tell them that many causes led to that relief, and one of these was certainly also the most valuable and unstinted assistance rendered by Mr. Marshall Campbell of Mount Edgecombe. He thought that their thanks and his thanks were due to him for the magnificent work that he did in the Senate whilst the Bill was passing through it. They would now not have to pay the £3 tax, and the arrears would also be remitted. That did not mean that they were free from their present indentures. They were bound to go through their present indentures faithfully and honestly; but, when those indentures terminated they were just as free as any other free Indian, and they were entitled, if they would go to the Protector's office, to the same discharge certificate as was granted to those who came before 1895, under Law 25 of 1891. They were not bound to re-indenture nor to return to India. The discharge certificates would be issued to them free of charge. If they wanted, after having gone to India, to return, they could only do so after they had lived for full three years in the Province as free men after serving their indentures. If any of them wished to have assistance for going to India, they could obtain it from the Government if they did not wish to return from India. If, therefore, they wanted to return from India, they would fight shy of that assistance which was given to them by the Government, but would find their own money or borrow it from friends. If they re-indentured, they could come under the same law, namely, Law 25 of 1891. His own advice to them was not to re-indenture, but by all means to serve their present masters under the common law of the country. If ever occasion arose, which he hoped would never happen, they now knew what it was possible for them to do. But he wanted to remind them of this one thing, that Victoria County, as also the other districts of Natal, had not been so free from violence on their own part as the Newcastle district had been. He did not care what provocation had been offered to them or how much they had retaliated with their sticks or with stones, or had burned the sugar cane—that was not Passive Resistance, and, if he had been in their midst, he would have repudiated them entirely and allowed his own head to be broken rather than permit them to use a single stick against their opponents. And he wanted them to believe him when he told them that Passive Resistance pure and simple was an infinitely finer weapon than all the sticks and gunpowder put together. They might strike work, but they might compel nobody else to strike work, and if, as a result of their strike, they were sentenced to be imprisoned, whipped, or to both, they must suffer even unto death—that was Passive Resistance, nothing else. Nothing else, and nothing less than that, would satisfy the requirements of Passive Resistance. If, therefore, he was indentured to Mr. Marshall Campbell, or Mr. Sanders, or any friends about there, and if he found that he was being persecuted or not receiving justice, in their case he would not even go to the Protector; he would sit tight and say: "My master, I want justice or I won't work. Give me food if you want to, water if you want to; otherwise I sit here hungry and thirsty," and he assured them that the hardest, stoniest heart would be melted. Therefore, let that sink deeply into themselves, that whenever they were afraid of any injury being done to them all, that was the sovereign remedy, and that alone was the most effective remedy. If they wanted advice and guidance, and many of them had complained that he was going away, and that his advice would not be at their disposal, all he could suggest to them was that, although he was going away, Phoenix was not leaving and, therefore, if they had any difficulty they should go to Phoenix and ask Mr. West or Mr. Chhaganlal Gandhi what was to be done in a particular case. If Mr. West or Mr. Chhaganlal could help them, they would do so free of charge, and if they could not they would send them to Mr. Langston or his other brothers in the law, and he had no doubt that, if they went to Mr. Langston with a certificate from Mr. West that they were too poor, he would render them assistance free of charge. But, if they were called upon to sign any document whatsoever, his advice to them was not to sign it unless they went to Phoenix and got advice. If Phoenix ever failed them and wanted a farthing from them, then they should shun Phoenix.

The scene before him that morning would not easily fade from his memory, even though the distance between him and them might be great. He prayed that God might help them in all the troubles that might be in store for them, and that their conduct might be such that God might find it possible to help them. And to the European friends living in this country he wished to tender his thanks, and he wished also to ask them to forgive him if they had ever considered that during that awful time he was instrumental in bringing about any retaliation at all on the part of his countrymen. He wished to give them this assurance that he had no part or parcel in it, and that, so far as he knew, not a single leading Indian had asked the men to retaliate. There were times in a man's life when he lost his senses, his self-control, and, under a sense of irritation, fancied or real, began to retaliate when the brute nature in him rose, and he only went by the law of "might is right," or the law of retaliation—a tooth for a tooth. If his countrymen

had done so, whether under a real sense of wrong or fancied, let them forgive him and let them keep a kind corner in their hearts; and if there were any employers of indentured labour there present who would take that humble request to them, he did ask them not to think always selfishly, though he knew it was most difficult to eradicate self, and let them consider these indentured Indians not merely as cattle which they had to deal with, but as human beings with the same fine feelings, the same fine sentiments as themselves. Let them credit them to the fullest extent with their weaknesses, as also at least with the possibility of all the virtues. Would they not then treat their Indian employes even as brothers? It was not enough that they were well treated as they well treated their cattle. It was not enough that they looked upon them with a kindly eye merely; but it was necessary that employers should have a much broader view of their own position, that they should think of their employes as fellow human beings and not as Asiatics who had nothing in common with them who were Europeans, and they would also respond to every attention that might be given to them. Then they would have an intelligent interest not merely in the material or physical well-being of their men, but in their moral well-being. They would look after their morality, after their children, after their education, after their sanitation, and, if they were herding together in such a manner that they could not but indulge in hideous immorality, that they would themselves recoil with horror from the very imagination that the men who were for the time being under their control should indulge in these things because they had been placed in these surroundings. Let them not consider that because these men were drawn from the lowest strata of society, that they were beyond reclamation. No, they would respond to every moral pressure that might be brought to bear upon them, and they will certainly realise the moral height that it is possible for every human being, no matter who he is, no matter what tinge of colour his skin possesses.

THE COLONIAL-BORN INDIAN: THE SETTLEMENT AND HIS FUTURE.

(By A. CHRISTOPHER.)

The writer purposes to view "the settlement" born of the Passive Resistance Movement initiated by that great Indian leader, Mr. Gandhi, and brought to a head by the unparalleled event in the life of the Indian community in South Africa, which assumed the form of a huge strike demonstration by thousands of Indian labourers and others—these have now become matters of history—and, incidentally, to consider an aspect or two of the future of the Colonial-born Indian. It is but fair to preface the introspection with the qualification that whilst Mr. Gandhi has declared "the settlement" to constitute the Magna Charta of the Indians in South Africa, he has been careful to add that it would give the Indians a breathing space of time, thereby leaving it to be inferred that, as the Magna Charta signed by King John at Runnymede was but the beginning of what to-day are the liberties, privileges, and responsibilities of the Briton, so from the endeavours of the Indian community following upon "the settlement," yecept the Magna Charta of South African Indians by Mr. Gandhi, must come the eventual complete recognition of the Indian in the life of the State here. But to speak of the redress in a fuller or lesser measure of Indian grievances as a settlement of the Indian Question is a misnomer, and can but be true in a restricted sense. The abolition of that iniquitous tax of £3 on ex-indentured Indian immigrants is a settlement, and its effect especially upon the future Indian population will be tremendous and for the good. The legislation upon the marriage question is as much as can be reasonably expected in a country like South Africa, particularly when it is remembered that some provision has been made for the safeguarding of plural wives where such already exist. The removal of the racial bar is a matter of paramount importance to the future of Indians. The just administration of the laws of the country has been promised. Regulations have been framed under the Indians' Relief Act, but so short a time has elapsed since these things have happened that it would be speculative to express dogmatic views upon the details of "the settlement." But the restoration of the right of South African-born Indians to enter the Cape Colony is in a sense a settlement though it carries with it the reservation that in the event of that Province being "flooded" with Indians born in the other Provinces, then that right may be administratively withdrawn. Whether such a reservation was expressed or not, it is in the power of the Legislature to do whatsoever it wills, and where, as in human affairs, there is ever change, there can be no finality, though the settlement of a question at the time it is effected and so long as no developments take place therein, may be viewed as final. This observation on the changes to which man is ever subject is especially applicable to the Colonial-born Indian, who, it has been admitted from the statesman, the Public Commission economist, to the veriest scribbler in the dailies of the country, is a problem in himself, and the solution of this problem will be the end of what is known locally as the Indian Question. The Hon. Mr. Gokhale, when here, advised Colonial-born Indians to seek their own salvation, as to them this land was their home, however much they might look to India as their motherland. Patriotic they might be, and there can be no doubt that they are, but

immediately they were concerned with the affairs of South Africa, and their efforts should be directed to their acceptance in its polity; but this phase of the question is so vast that it permits not a cursory discussion here. Mr. Gandhi, on the eve of his departure from South Africa, was emphatic in his advice that, as the salvation of the Indian Community was in the hands of the Colonial-born Indians, if they who had come to this country were to cut themselves away from them, they would surely be driving a nail into their coffin. These expressions are worthy of remark. They suggest that with the stoppage of Indian immigration—free, restricted or conditional—and with the elimination of the India-born Indian by the hand of death or by return to India, gradually, in the course of a number of years, the entire character of the future Indian population here would be South African. To the South-African born Indian, then, must they, who would solve the Indian Question, turn, and in him they will find material worthy of a part in the structure of South Africa. He is in a state of transition from the East to the West, and if it were possible that the virtues of the Occident and the Orient could be blended in him, then the prediction of Kipling, that the East and the West will never meet, will have been falsified. And there is hope for the Colonial-born Indian, given the opportunities of trade, calling, occupation and freedom of locomotion, with facilities for academic, technical, agricultural, and industrial education, that he will hold his own; but his condition will be cribbed, cabined and confined so long as the proverbial barriers remain in the country with a Union which cannot for ever keep the Indians born in South Africa from realising their oneness of interests and aspirations in life; and this must happen sooner than most people would expect, as the Colonial-born Indian must by the force of his circumstances and environment, become more and more anglicised. If the Jew, than whom none is more tenacious of the language, religion, customs, traditions and history of his nation, be anglicised and yet remain a Jew, it is probable that the Indian may become anglicised and yet be not denationalised. Evidences of this are not wanting, for, with the absorption of much that is English, such as, for instance, certain sports, there goes along with these their national games, and this process is noticeable in almost everything connected with them. But at the same time, the attractions of the West appear to be gaining in strength, and the risk of the Colonial-born Indian eventually in the course of generations losing his power to withstand them even partially is very great indeed. The position, however, is not hopeless, if the communication that existed between India and South Africa by the immigration and emigration of Indians is restored, in any case for the present, by the organisation of a means by which Colonial-born Indian boys and girls may spend some years of their life in India, learning as much as is possible during those years of something of India, its wealth of intellectual and spiritual knowledge, its greatness and its resources, past and present.

And this leads one to consider the means by which the Colonial-born Indian, irrespective of sex—for the education of the girls, the mothers of the nation, is as important as that for the boys—may live and study in India, and the means that suggest themselves are scholarships tenable in India, enabling the student to return from thence the better qualified to earn, and learned in the lore of India to serve his community in a distant land and be patriotic to the country of his fathers. Education doled out to the Colonial-born Indian leaves much to be desired. Mr. Gandhi has already indicated his willingness to assist in the education of Colonial-born Indians in India, and may not the Colonial-born Indian ask the nation-builders of India: Have we not a place in the structure of the national edifice you contemplate, and will you not assist us, so that we may assist you in your patriotic work?

A FREE STATE VIEW OF THE SMUTS-GANDHI SETTLEMENT.

(From "THE FRIEND," BLOEMFONTEIN.)

Notwithstanding the views that may be held on the Indian question in South Africa, there will be few who will grudge tribute to the character and work of the Indian leader, Mr. M. K. Gandhi. An able man, he has never allowed any selfish motive of place or pay to dictate his course of action. He was pre-eminently a people's leader. Actuated by patriotism, dominated by unfaltering belief in the justice of his cause, and stopping to consider no obstacle, except as something to be circumvented, he fought a long, often a lone, but always a clean, straight fight for the cause for which he endured hardship and imprisonment, but never disgrace. Such is the type of man who has just left South Africa for his homeland. It does a country good to have had as a citizen a man of Gandhi's rectitude of character and resoluteness of purpose. It is good to have such a man to disagree with, and we have differed and continue to differ fundamentally from him. He has based his case on the abstract. We have taken our stand on the practical. Hence the vital difference in point of view. In the abstract, we concede that he is mainly right. He is probably thousands of years ahead of the world. The brotherhood of man—white, black, yellow, copper-coloured—is not yet. When it does come, mankind, in all like lihood, will be not one of any of the colours mentioned, but a mixture of the whole. But this matter of the evolution of the human race need not bother us to-day. We have to consider

ourselves as we find ourselves. We have to approach this Indian question, not from the point of view of India, nor of the British Empire, nor even of the peoples of South Africa, but—frankly and bluntly—just merely from the point of view of the comparatively small number of Europeans who have settled in this country. This is precisely one of those questions in which what are called the interests of South Africa come first. We have, however, been permitted to place those interests first simply because we form part of the British Empire. If South Africa were an independent state it is as certain as anything human can be that the British Government, which is responsible for the government of over 300,000,000 Indians, would not have allowed South Africa to settle the question as it has now been settled. Even if the British Government did not intervene—and it is almost unthinkable that, in such circumstances, they would not—some other great Power would be only too eager to take advantage of such an excuse as our treatment of the Indians to force a war upon us for the purpose of annexation and colonisation. It is just as well for us to be under no misconceptions in considering a problem like this.

Fortunately, the South African Government has had the sympathy, the advice and the assistance of the British Government in dealing with the question, and, as we have said, the result is that it has been settled from the point of view primarily of South Africa's interests, i.e. the interests of the European population of South Africa, which interests are, of course, and must necessarily be, frankly selfish. With us the question is not one of abstract justice, but of actual self-preservation. Moreover, the present generation of European South Africans is suffering as a result of the selfishness and greed of a previous generation. As Mr. Gandhi very truly points out, the majority of the Indians in the Union to-day are either indentured labourers or their children, to whom South Africa has become either the land of adoption or of birth. These indentured Indians "did not enter the Union as ordinary free immigrants, but they came upon the invitation of and, indeed, after much coaxing by the agents of South African employers of this class of labour." Almost wholly, this Indian burden is one that the Union has had to take over from Natal, and we think the people of that Province should not, when considering other South African problems, forget the terrible legacy they have left us. The solution of the matter was one of the most delicate and serious problems facing the Union Government. That, on the whole, it has been solved by General Smuts on a reasonable and, we hope, a lasting basis will, we think, be generally conceded. Mr. Gandhi, who helped so considerably towards a settlement, says that in future "South Africa will hear little of the Indian problem in its acute form," and, from this point of view, he urges, fairly enough, what are two great admissions made by his people. They have "reconciled themselves to an almost total prohibition by administrative methods of a fresh influx of Indian immigrants and to the deprivation of all political power." This agreement that no more Indians are to come to South Africa and that those who are here do not seek political power will meet the two principal European objections. The problem is now narrowed down to dealing with the Indians who are in South Africa and who are not likely to leave. The most outstanding of their religious, marriage and other grievances have already been met by General Smuts, and matters that still remain will be solved, we hope—to use Mr. Gandhi's words—"in the natural course and without trouble or agitation in an acute form." These include such claims as full rights to trade, inter-Provincial migration and ownership of landed property. Not one of these is European South Africa prepared to grant in its entirety to-day, though within limits the principle of all three has been conceded more or less in one or other portion of the Union. Their ultimate solution, therefore, may be left to evolution, and each can be debated and thrashed out as it arises as a practical question. So far as the Free State is concerned, we are strongly opposed to all three.

MR. GANDHI'S FAREWELL SPEECH AT THE JOHANNESBURG BANQUET.

Mr. Gandhi said that they or circumstances had placed him that evening in a most embarrassing position. Hitherto those who had known him in Johannesburg had known him in the capacity of one of many hosts at gatherings of that kind, but that evening they had placed him in the unfortunate position of being a guest, and he did not know how he would be able to discharge that duty. For the other he thought long experience had fitted him, if he might say so with due humility, most admirably; but the present position was entirely new to him and Mrs. Gandhi, and he was exceedingly diffident as to how he was going to discharge the new duty that had been imposed upon him. So much had been said about Mrs. Gandhi and himself, their so-called devotion, their so-called self-sacrifice and many other things. There was one injunction of his religion, and he thought it was true of all religions, and that was that when one's praises were sung one should fly from those praises, and if one could not do that, one should stop one's ears, and if one could not do either of these things, one should dedicate everything that was said in connection with one to the Almighty, the Divine Essence, which pervaded everyone and everything in the Universe, and he hoped that Mrs. Gandhi and he would have the strength to dedicate all that had been said that evening to that Divine Essence.

Of all the precious gifts that had been given to them those four boys were the most precious, and probably Mr. Chamney could tell them something of the law of adoption in

India and what Mr. and Mrs. Naidoo, both of them old gaol-birds, had done. They had gone through the ceremony of adoption, and they had surrendered their right to their four children and given them (Mr. and Mrs. Gandhi) the charge. He did not know that they were worthy to take charge of those children. He could only assure them that they would try to do their best. The four boys had been his pupils when he had been conducting a school for Passive Resisters at Tolstoy Farm, and later on at Phoenix. Then when Mrs. Naidoo had sought imprisonment, the boys had been taken over to Johannesburg, and he thought that he had lost those four pearls, but the pearls had returned to him. He only hoped that Mrs. Gandhi and he would be able to take charge of the precious gift.

Johannesburg was not a new place to him. He saw many friendly faces there, many who had worked with him in many struggles in Johannesburg. He had gone through much in life. A great deal of depression and sorrow had been his lot, but he had also learnt during all those years to love Johannesburg, even though it was a Mining Camp. It was in Johannesburg that he had found his most precious friends. It was in Johannesburg that the foundation for the great struggle of Passive Resistance was laid in the September of 1906. It was in Johannesburg that he had found a friend, a guide, and a biographer in the late Mr. Doke. It was in Johannesburg that he had found in Mrs. Doke a loving sister, who had nursed him back to life when he had been assaulted by a countryman who had misunderstood his mission and who misunderstood what he had done. It was in Johannesburg that he had found a Kallenbach, a Polak, a Miss Schlesin, and many another who had always helped him, and had always cheered him and his countrymen. Johannesburg, therefore, had the holiest associations of all the holy associations that Mrs. Gandhi and he would carry back to India, and, as he had already said on many another platform, South Africa, next to India, would be the holiest land to him and to Mrs. Gandhi and to his children; for, in spite of all the bitterness, it had given them those life-long companions. It was in Johannesburg again that the European Committee had been formed, when Indians were going through the darkest stage in their history, presided over then, as it still was, by Mr. Hosken. It was last, but not least, Johannesburg that had given Valiamma, that young girl, whose picture rose before him even as he spoke, who had died in the cause of truth. Simple-minded in faith—she had not the knowledge that he had, she did not know what Passive Resistance was, she did not know what it was the community would gain, but she was simply taken up with unbounded enthusiasm for her people, went to gaol, came out of it a wreck, and within a few days died. It was Johannesburg again that produced a Nagappan and Naryanasamy, two lovely youths hardly out of their teens, who also died. But both Mrs. Gandhi and he stood living before them. He and Mrs. Gandhi had worked in the limelight; those others had worked behind the scenes, not knowing where they were going, except this, that what they were doing was right and proper, and if any praise was due anywhere at all, it was due to those three who died. They had had the name of Harbatsingh given to them. He (the speaker) had had the privilege of serving imprisonment with him. Harbatsingh was 75 years old. He was an ex-indentured Indian, and when he (the speaker) asked him why he had come there, that he had gone there to seek his grave, the brave man replied: "What does it matter? I know what you are fighting for. You have not to pay the £3 tax, but my fellow ex-indentured Indians have to pay that tax, and what more glorious death could I meet?" He had met that death in the gaol at Durban. No wonder if Passive Resistance had fired and quickened the conscience of South Africa. And, therefore, whenever he had spoken, he had said that, if the Indian community had gained anything through this settlement it was certainly due to Passive Resistance; but it was certainly not due to Passive Resistance alone.

He thought that the cablegram that had been read that evening showed that they had to thank that noble Viceroy, Lord Hardinge, for his great effort. He thought, too, that they had to thank the Imperial Government, who during the past few years, in season and out of season, had been sending despatches after despatches to General Botha, and asking him to consider their standpoint—the Imperial standpoint. They had to thank also the Union Government for the spirit of justice they had adopted that time. They had, too, to thank the noble members of both Houses of the Legislature who had made those historic speeches and brought about the settlement; and, lastly, they had to thank the Opposition also for their co-operation with the Government in bringing about the passage of the Bill, in spite of the jarring note produced by the Natal members. When one considered all those things, the service that he and Mrs. Gandhi might have rendered could be only very little. They were but two out of many instruments that had gone to make this settlement.

And what was that settlement? In his humble opinion, the value of the settlement, if they were to examine it, would consist not in the intrinsic things they had received, but in the sufferings and the sorrows long drawn out that were necessary in order to achieve those things. If an outsider were to come there and find that there was a banquet given to two humble individuals for the humble part they played in a settlement which freed indentured Indians from a tax which they should never have been called upon to pay, and if he were told also that some redress were given in connection with their marriages, and

that their wives who were lawfully married to them according to their own religions had not hitherto been recognised as their wives, but by this settlement those wives were recognised as valid wives according to the law of South Africa, that outsider would laugh and consider that those Indians, or those Europeans who had joined them in having a banquet, and giving all those praises and so on, must be a parcel of fools. What was there to gloat over in having an intolerable burden removed which might have been removed years ago? What was there in a lawful wife's being recognised in a place like South Africa? But, proceeded Mr. Gandhi, he concurred with Mr. Duncan in an article he wrote some years ago, when he truly analysed the struggle, and said that behind that struggle for concrete rights lay the great spirit which asked for an abstract principle, and the fight which was undertaken in 1906, although it was a fight against a particular law, was a fight undertaken in order to combat the spirit that was seen about to overshadow the whole of South Africa, and to undermine the glorious British Constitution, of which the Chairman had spoken so loftily that evening, and about which he (the speaker) shared his views.

It was his knowledge, right or wrong, of the British Constitution which bound him to the Empire. Tear that Constitution to shreds and his loyalty also would be torn to shreds. Keep that Constitution intact, and they held him bound a slave to that Constitution. He had felt that the choice lay for himself and his fellow-countrymen between two courses, when this spirit was brooding over South Africa, either to sunder themselves from the British Constitution, or to fight in order that the ideals of that Constitution might be preserved—but only the ideals. Lord Amptill had said, in a preface to Mr. Doke's book, that the theory of the British Constitution must be preserved at any cost if the British Empire was to be saved from the mistakes that all the previous Empires had made. Practice might bend to the temporary aberration through which local circumstances might compel them to pass; it might bend before unreasoning or unreasonable prejudice, but theory once recognised could never be departed from, and this principle must be maintained at any cost. And it was that spirit which had been acknowledged now by the Union Government, and acknowledged how nobly and loftily. The words that General Smuts so often emphasised still rang in his ears. He had said: "Gandhi, this time we want no misunderstanding, we want no mental or other reservations, let all the cards be on the table, and I want you to tell me wherever you think that a particular passage or word does not read in accordance with your own reading," and it was so.

That was the spirit in which he approached the negotiations. When he remembered General Smuts of a few years ago, when he told Lord Crewe that South Africa would not depart from its policy of racial distinction, that it was bound to retain that distinction, and that, therefore, the sting that lay in this Immigration Law would not be removed, many a friend, including Lord Amptill, asked whether they could not for the time being suspend that activity. He had said "No." If they did that it would undermine his loyalty, and even though he might be the only person he would still fight on. Lord Amptill had congratulated him, and that great nobleman had never deserted the cause even when it was at its lowest ebb, and they saw the result that day. They had not by any means to congratulate themselves on a victory gained. There was no question of a victory gained, but the question of the establishment of the principle that, so far as the Union of South Africa at least was concerned, its legislation would never contain the racial taint, would never contain the colour disability. The practice would certainly be different. There was the Immigration Law—it recognised no racial distinction, but in practice they had arranged, they had given a promise, that there should be no undue influx from India as to immigration. That was a concession to present prejudice. Whether it was right or wrong was not for him to discuss then. But it was the establishment of that principle which had made the struggle so important to the British Empire, and the establishment of that principle which had made those sufferings perfectly justifiable and perfectly honourable, and he thought that when they considered the struggle from that standpoint, it was a perfectly dignified thing for any gathering to congratulate itself upon such a vindication of the principles of the British Constitution.

One word of caution he wished to utter regarding the settlement. The settlement was honourable to both parties. He did not think there was any room left for misunderstanding, but whilst it was final in the sense that it closed the great struggle, it was not final in the sense that it gave to Indians all that they were entitled to. There was still the Gold Law which had many a sting in it. There was still the Licensing Laws throughout the Union, which also contained many a sting. There was still a matter which the Colonial-born Indians especially could not understand or appreciate, namely, the water-tight compartments in which they had to live; whilst there was absolutely free inter-communication and inter-migration between the Provinces for Europeans, Indians had to be cooped up in their respective Provinces. Then there was undue restraint on their trading activity. There was the prohibition as to holding landed property in the Transvaal, which was degrading, and all these things took Indians into all kinds of undesirable channels. These restrictions would have to be removed. But for that, he thought, sufficient patience would have to be exercised. Time was now at their disposal, and how wonderfully the

tone had been changed. And here he had been told in Cape Town, and he believed it implicitly, the spirit of Mr. Andrews had pervaded all those statesmen and leading men whom he saw. He came and went away after a brief period, but he certainly fired those whom he saw with a sense of their duty to the Empire of which they were members.

But, in any case, to whatever circumstances that healthy tone was due, it had not escaped him. He had seen it amongst European friends whom he met at Cape Town; he had seen it more fully in Durban, and this time it had been his privilege to meet many Europeans who were perfect strangers even on board the train, who had come smilingly forward to congratulate him on what they had called a great victory. Everywhere he had noticed that healthy tone. He asked European friends to continue that activity, either through the European Committee or through other channels, and to give his fellow-countrymen their help and extend that fellow-feeling to them also, so that they might be able to work out their own salvation.

To his countrymen he would say that they should wait and nurse the settlement, which he considered was all that they could possibly and reasonably have expected, and that they would now live to see, with the co-operation of their European friends, that what was promised was fulfilled, that the administration of the existing laws was just, and that vested rights were respected in the administration; that after they had nursed these things, if they cultivated European public opinion, making it possible for the Government of the day to grant a restoration of the other rights of which they had been deprived, he did not think that there need be any fear about the future. He thought that, with mutual co-operation, with mutual goodwill, with due response on the part of either party, the Indian community need never be a source of weakness to that Government or to any Government. On the contrary, he had full faith in his countrymen that, if they were well treated, they would always rise to the occasion and help the Government of the day. If they had insisted on their rights on many an occasion, he hoped that the European friends who were there would remember that they had also discharged the responsibilities which had faced them.

And now it was time for him to close his remarks and say a few words of farewell only. He did not know how he could express those words. The best years of his life had been passed in South Africa. India, as his distinguished countryman, Mr. Gokhale, had reminded him, had become a strange land to him. South Africa he knew, but not India. He did not know what impelled him to go to India, but he did know that the parting from them all, the parting from the European friends who had helped him through thick and thin, was a heavy blow, and one he was least able to bear; yet he knew he had to part from them. He could only say farewell and ask them to give him their blessing, to pray for them that their heads might not be turned by the praise they had received, that they might still know how to do their duty to the best of their ability, that they might still learn that first, second and last should be the approbation of their own conscience, and that then whatever might be due to them would follow in its own time.

TAGORE AND GANDHI.

In a letter to Mr. Gandhi, Rabindranath Tagore refers to the struggle in South Africa as the "steep ascent of manhood, not through the bloody path of violence but that of dignified patience and heroic self-renunciation." "The power our fellow-countrymen have shown in standing firm for their cause under severest trials, fighting unarmed against fearful odds, has given us," he says, "a firmer faith in that strength of the living God that can defy sufferings and defeats at the hand of physical supremacy, and make its gains out of its losses."

A FAREWELL LETTER.

Just before leaving South Africa, Mr. Gandhi handed to Reuter's Agent at Cape Town the following letter addressed to the Indian and European public of South Africa:—

I would like on the eve of my departure for India to say a few words to my countrymen in South Africa, and also to the European community. The kindness with which both European and Indian friends have overwhelmed me sends me to India a debtor to them. It is a debt I shall endeavour to repay by rendering in India what services I am capable of rendering there; and if in speaking about the South African Indian question I am obliged to refer to the injustices which my countrymen have received and may hereafter receive, I promise that I shall never wilfully exaggerate, and shall state the truth and nothing but the truth.

A word about the settlement, and what it means. In my humble opinion it is the Magna Charta of our liberty in this land. I give it the historic name, not because it gives us rights which we have never enjoyed and which are in themselves new or striking, but because it has come to us after eight years' strenuous suffering, that has involved the loss of material possessions and of precious lives. I call it our Magna Charta because it marks a change in the policy of the Government towards us and establishes our right

not only to be consulted in matters affecting us, but to have our reasonable wishes respected. It moreover confirms the theory of the British Constitution that there should be no legal racial inequality between different subjects of the Crown, no matter how much practice may vary according to local circumstance. Above all the settlement may well be called our Magna Charta, because it has vindicated Passive Resistance as a lawful clean weapon, and has given in Passive Resistance a new strength to the community; and I consider it an infinitely superior force to that of the vote, which history shows has often been turned against the voters themselves.

The settlement finally disposes of all the points that were the subject matter of Passive Resistance, and in doing so it breathes the spirit of justice and fair play. If the same spirit guides the administration of the existing laws my countrymen will have comparative peace, and South Africa will hear little of the Indian problem in an acute form.

Some of my countrymen have protested against it. The number of these protestants is numerically very small, and in influence not of great importance. They do not object to what has been granted, but they object that it is not enough. It is impossible, therefore, to withhold sympathy from them. I have had an opportunity of speaking to them, and I have endeavoured to show to them that if we had asked for anything more it would have been a breach of submission made on behalf of the British Indians in a letter addressed to the Government by Mr. Cachalia during the latter part of last year and we should have laid ourselves open to the charge of making new demands.

But I have also assured them 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 the 16th ultimo) 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 Licences Laws of Natal and the Cape. The promise made by General Smuts to administer the existing law 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 resident Indian population from South Africa. The concession to popular prejudice in that we have reconciled ourselves to almost the total prohibition by administrative methods of a fresh influx of Indian immigrants, and to the deprivation of all political power is, in my opinion, the utmost that could be reasonably expected from us. These two things being assured, I venture to submit that we are entitled to full rights of trade, inter-Provincial migration, and ownership of landed property being restored in the not distant future. I leave South Africa in the hope that the healthy tone that pervades the European community in South Africa to-day will continue, and that it will enable Europeans to recognise the inherent justice of our submission. To my countrymen I have at various meetings that I have addressed during the past fortnight, attended in several cases by thousands, said, "Nurse the settlement; see to it that the promises made are being carried out. Attend to development and progress from within. Zealously remove all causes which we may have given for the rise and growth of anti-Indian prejudice or agitation, and patiently cultivate and inform European opinion so as to enable the Government of the day and Legislature to restore to us our rights." 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.

The presence of a large indentured and ex-indentured Indian population in Natal is a grave problem. Compulsory repatriation is a physical and political impossibility, voluntary repatriation by way of granting free passages and similar inducements will not—as my experience teaches me—be availed of to any appreciable extent. The only real and effective remedy for this great State to adopt is to face responsibility fairly and squarely, to do away with the remnant of the system of indenture, and to level up this part of the population and make use of it for the general welfare of the Union. Men and women who can effectively strike in large bodies, who can for a common purpose suffer untold hardships, who can, undisciplined though they are, be martyrs for days without police supervision and yet avoid doing any damage to property or person, and who can in times of need serve their King faithfully and capably, as the ambulance corps raised at the time of the late war (having among other classes of Indians nearly 1,500 indentured Indians) bore witness, are surely people who will, it given ordinary opportunities in life, form an honourable part of any nation.

If any class of persons have special claim to be considered, it is these indentured Indians and their children, to whom South Africa has become either a land of adoption or of birth. They did not enter the Union as ordinary free immigrants, but they came upon invitation, and indeed even after much coaxing, by agents of South African employers of this class of labour. In this letter I have endeavoured as accurately and as fairly as is in my power to set forth the Indian situation, and the extraordinary courtesy kindness and sympathy that have been shown to me during the past month by so many European friends. The frankness and generosity with which General Smuts, in inter-

views that he was pleased to grant me, approached the questions at issue, and the importance that so many distinguished members of both Houses of Parliament attached to the Imperial aspect of the problem, give me ample reason for believing that my countrymen who have made South Africa their homes will receive a fairly full measure of justice and will be enabled to remain in the Union with self-respect and dignity.

Finally, in bidding good-bye to South Africa, I would like to apologise to so many friends on whom I have not been able, through extreme pressure of work, to call personally. I once more state that though I have received many a hard knock in my long stay in this country, it has been my good fortune to receive much personal kindness and consideration from hundreds of European friends, well-wishers and sympathisers. I have formed the closest friendships, which will last for ever, for this reason and for many similar reasons, which I would love to reduce to writing but for fear of trespassing unduly upon the courtesy of the press. This sub-continent 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, and its welfare will always be a matter of great concern, and the love bestowed upon 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.

III. INDIAN RELIEF BILL DEBATE.

(Reprinted, with kind permission, from the "Cape Times," June 9th, 1914.)

The MINISTER OF FINANCE moved the second reading of the Indians Relief Bill. He requested members to approach such a thorny and difficult question in a non-controversial spirit. The House were now in a position to finally settle the Indian problem on a satisfactory basis, the recommendation of the Solomon Commission, which inquired into the grievances of Indians, having been accepted as a solution by the Indian Government, and also, with one exception, by the Indian community residing here. He recalled the passing of the Immigration Act last session, and the agitation which followed it. Mr. Gandhi raised four points, on two of which it was possible for the Government to meet him. There were two other points on which it was impossible for the Government immediately after the session to meet the community's views.

RIGHT OF ENTRY.

One was the right of entry of the South African born Indian into the Cape Province. In the Immigration Act of last year provision had been made that Indians entering the Cape Province should be required to comply with a dictation test, and Mr. Gandhi desired that this restriction should be removed. The Government, however, pointed out that the point had been fully discussed during the debates on the Bill, and that the strongest exception had been taken to the removal of the restriction, which revived the restriction under the old Cape laws. The second question was the marriage question. In the Immigration Act of last year a clause had been adopted on the motion of the hon. member for Cape Town, Castle (Mr. Alexander), permitting the entry of a wife married according to polygamous rites, though the marriage was *de facto* monogamous. The Natal Division of the Supreme Court had, however, decided that it was not possible to recognise as legal a marriage celebrated according to polygamous rites. Administratively in the past there had been no difficulty in the matter.

Mr. P. DUNCAN (Fordsburg): Then why did they raise the question?

THE MINISTER OF THE INTERIOR said that if he were to answer that question it would take a very long time, and he did not think it was necessary to do so. It was a case that had presented some very extraordinary features. When it became clear that the Government could not satisfy the Indian community on these points, the question of the £3 licence was raised. He did not intend to go in detail into that question, but he would say that it was impossible for the Government, when threatened with a strike, to make any concessions at all. Then followed a great deal of bloodshed and violence in suppressing the strike, and subsequently the Solomon Commission was appointed. It was assisted in its labours by a representative of the Indian Government, Sir Benjamin Robertson, whose services had been, as he could say from personal knowledge, of the very greatest value to the Commission. He had smoothed its work considerably, and had thrown light on many difficult questions. The Commission, it would seem, had made fourteen recommendations. Most of these required merely administrative action, and here he would say that it was the intention of the Government to carry out the Commission's recommendations in their entirety, partly by legislation and partly by administration; and in this way to secure that peace which they were all longing for, that peace which was not merely of such importance to South Africa itself, but also to South Africa in her external relations. (Cheers.)

The points dealt with in the Bill included recommendations Nos. 1, 3, 4, 5 and 13 in the report.

THE MARRIAGE QUESTION.

The measure before the House dealt with recommendations 1, 3, 4, 5, and 13 of this Commission. The recommendations 3 and 4 dealt with the marriage question pure and simple. Recommendation 3, with which he would first deal, was as follows: There should be legislation on the lines of Act 16 of 1860 of the Cape Colony, making provision for the appointment of marriage officers from amongst Indian priests of different denominations, for the purpose of solemnising marriages in accordance with the rites of the respective religions of the parties. Both in Natal and the Cape, as far back as 1896, a law was passed giving the Government power to appoint priests of Mahommedan belief. Although little advantage had been taken of the Act in the Cape, yet the Indian community claimed they should have the right to be married before their own priests. Section 1 of the Bill carried out this recommendation. The next recommendation also referred to the marriage question, and was as follows: There should be legislation for the validation, by means of registration, of existing *de facto* monogamous marriages, by which are understood marriages of one man with one woman under a system which recognises the right of the husband to marry one or more other wives. Directions as to the mode of registration and of the particulars to be entered in the register might be given by regulations framed under the Statute. This was a more difficult question for the Commission to deal with—the religious unions which were already existing among Indians in this country, but not recognised by South African laws. The Indians contended that an opening should be given for these unions so long as they were monogamous to be turned into legal marriages by a simple system of registration, which had been adopted. These people could go before marriage officers or magistrates, and when they had satisfied these officers that such a marriage did exist they could have it registered. This was to meet cases where a marriage already existed between man and wife. It was pointed out by the Commission that a marriage like that would not debar these people under their religious tenets from taking more wives. But those would not be legal marriages. Short of legalising polygamy, he did not see what else they could do. That was the most important and the most difficult question before the Commission, and in this connection Sir Wm. Robinson rendered great assistance.

NOT COMPLETE SATISFACTION.

Since then representations had been made by Mohammedans, who were not quite satisfied and who said that according to their faith it was permitted to them to marry more than one wife, and by now giving an opening for one marriage to become legal it seemed a great hardship, and one which the Indians wished to see removed. He (the Minister) argued the question, and they could not possibly satisfy him of any way of dealing with the claim they advanced. They mentioned the course that had been taken in Mauritius, and he (the Minister) promised to go into the matter, but he had not received any information on that point and so could not make a statement that afternoon. So among the Mohammedans there was not complete satisfaction with the report on this point, but so far as the Commission had been able to meet these people in a legal way the Commission had done so. He would now come to the marriage question as it affected immigration, and the Commission reported

as follows: Section 5 (g) of the Immigrants Regulation Act of 1913 should be amended so as to bring the law into conformity with the practice of the Immigration Department, which is "to admit one wife and the minor children by her of an Indian now entitled to reside in any Province or who may in future be permitted to enter the Union irrespective of the fact that his marriage to such wife may have been solemnised according to tenets that recognise polygamy, or that she is one of several wives married abroad so long as she is his only wife in South Africa." If an Indian was resident in South Africa, and wanted to bring out his wife and minor children, to which he was entitled in law, no inquiry would be made as to whether it was a legal marriage, but the inquiry would be: Were they married in the tenet of some religion? The man could only bring one wife. This would be found in section 3 of the Bill, and thus disposed of the marriage question, which was a most difficult and important question. He would now come to recommendation 13, which dealt with the question of domicile certificates in Natal. Under the old Immigration Law, the Natal practice was to issue domicile certificates, and these certificates when issued were conclusive as to the right of the holder to return to Natal. The system was abolished in the Act of last year, because it was found that in many cases these certificates got into the hands of wrong people. There were thousands of people entitled to these certificates, and the question was how to deal with them in such a way that no hardship would be constituted. The Minister then quoted recommendation 13, as follows: Domicile certificates which have been issued to Indians in Natal by the Immigration Officers of that Province, and which bear the thumb impression of the holder of the permit, should be recognised as conclusive evidence of the right of the holder to enter the Union as soon as his identity has been established. This was being followed.

THE £3 TAX.

This left one other point, and that was the abolition of the £3 tax in Natal. He did not intend to cover the whole history of the tax. Hon. members knew that this system of coolie labour was introduced many years ago. As the number of the Indians increased, it became a matter of concern as to what steps should be taken to get some of these people back to India. In 1893 a mission went from Natal to India, and the result was found in the law passed in 1895—the law they were now concerned with. Indentured coolies, after they had finished their term of service and who did not wish to return to India, could stay in Natal on the payment of a £3 licence. From the very start the law did not promise to be a success, and after five years another mission was sent to India to see whether it was not possible that the indentures should expire in India. The mission did not meet with success, and no change was made. The Indians claim that this tax should be abolished, and this was one of the questions the Solomon Commission went into. The Commission came to the conclusion that the claims of the Indians were fair and just and politic, and recommended the repeal of clause 6 of the Act of 1895. This course was adopted in the Bill. The Commission pointed out that the tax was only payable by a small portion of the Indian population. The Commission pointed out that 11,000 males were at present liable to the tax and about 21,000 were still under indenture or had been re-indentured. The Commission also pointed out that the Indian population was much larger, and that the people liable to the tax were the least able to bear the burden. When everybody paid a capitation tax such was easy to collect, but where only a small portion of a population paid it became extremely difficult, because they could only collect through the machinery of the police. When a policeman wanted to make out that a man was liable to the tax he must prove that he came to Natal after 1895, which was most difficult, and also that he did not come there as a free man, which was also very difficult.

COMMISSION AND ABOLITION.

From the very beginning this tax had been avoided in a wholesale fashion, and in 1905 the Natal Government passed a law by which no employer could accept the service of any of these people without making certain that they had paid the tax. That law had been on the Statute Book for some years, but had never been carried out. Just as it was difficult to collect the tax from the Indians it was found just as difficult to collect it by means of this amending law. The Commission pointed out that the position had become very serious indeed, because these people, in order to avoid the tax, wandered from place to place. The Commission advanced other arguments that told against the tax, and finally came to the conclusion that the tax should be abolished. The Minister pointed out that the evidence as to whether the tax had the effect of inducing these people to return to India had been very conflicting, and the Commission was not satisfied that the tax had had any effect in inducing the coolies to return to India. The Commission suggested that the best course would be to repeal section 6 of the Act of 1895, and the Minister pointed out that the result under this Bill would be that no other alteration was made in the status of Indians in Natal. Clause 6 gave power to the Government to give free passages to any Indians willing to return to India and renounce their rights of residence in South Africa. The object of the Government was to assist in every way possible to induce them to leave this country and go back to India. He appealed to hon. members, especially those from Natal, to assist the Government in getting the Bill through this session. They had a unique opportunity of dealing with this troublesome question. It was a point which affected the whole of the British Empire, and he was sorry to say it was taking another form in one of the British Dominions. They had reached a stage after a long struggle when they could bring the whole matter to a conclusion, and he would ask members, especially members from Natal, to assist the Government on this occasion and so remove one of the most dangerous elements which at present beset them.

AGAINST THE BILL.

Sir A. WOOLLS-SAMPSON (Braamfontein) said he was very sorry he was not going to support the Government. (Hear, hear.) The Indian community under the advice and guidance of Mr. Gandhi engineered a strike, and to secure the support of the Indian Government and the sympathy of the British public false statements of cruelty, coercion and semi-slavery were cabled to every part of the civilised world. (Hear, hear.) The Government of this country appointed a Commission presided over by one of the judges of the Supreme Court, to inquire into these allegations and to suggest remedial measures. Really it was the first duty of that Commission to nail down the falsehoods that had been circulated abroad in reference to the treatment of Indians by the white inhabitants, by the officials and by the Government of this country. (Hear, hear.) He regretted that in some instances this matter had received the support and countenance of a number of white men on the Rand, to whose everlasting discredit it should be said that whenever any question arose between the coloured and white races in this country they could always on the slightest provocation discover more virtue in a coloured skin than they could in a white one. (Hear, hear.) In the course of their report, the Commission stated: "So far from assisting the Commission by placing before it the case for the Indian community for the redress of their grievances and by collecting evidence in support of the serious allegations of acts of violence committed upon persons sentenced to imprisonment in connection with the strike, the leaders decided on various grounds, which it is unnecessary to mention, entirely to ignore the Commission. The result was that not only was the Indian community not represented by counsel, but that, acting upon the advice given by Mr. Gandhi,

no witnesses appeared to substantiate the charges of violence." Mr. Gandhi and his friends, despite the fact that an important Indian official had been appointed by the Indian Government to watch the interests of the Indian community throughout the sittings of the Commission, prevailed upon all his people not to give evidence, alleging mainly that he objected to the personnel of the Commission. Mr. Gandhi's objection to the personnel of the Commission was a mere subterfuge. (Hear, hear.) He was unable and so were his people to substantiate the charges which had been sent broadcast over the water, and he knew full well that their presence before that Commission would once and for all prove conclusively that they had engineered this strike on false premises entirely. (Hear, hear.) The Commission was very anxious, if possible, to acquire some evidence with regard to these charges, and as a matter of fact an Indian named Sooker did appear before the Commission to tender evidence. The Commission pointed out, however, that the evidence that he gave was hearsay, but he stated that there was in the precincts of the court a man named Balbadhur, who was himself one of the men who had been ill-treated after the strike. This man was brought before the Commission, and his complaint was that, after the strike, and on his return to the mine, he was assaulted by the compound manager. This was investigated and it was found that the three witnesses whom Balbadhur had called before the Magistrate to investigate the charge against the compound manager all denied any knowledge of the alleged assault, and thereupon the charge was withdrawn.

UNRELIABLE STATEMENTS.

The only single charge, therefore, that was brought to the knowledge of the authorities was proved conclusively to be founded entirely on bad evidence. He (Sir A. Woolls-Sampson) now wanted to take two points. First, the question of the reliability of the Indians in their statements; and, secondly, whether they were justified owing to ill-treatment. As to the first point, the Commission said that it was well to draw attention to a fact which constantly confronted us in this country, and that was that the Indian community itself was in a great measure responsible for the stringency of the investigations which were made into applications of all kinds by the officials of the Immigration Department. That had been rendered absolutely necessary by the numerous attempts at fraud and impersonation which were constantly made by Asiatics. This (said the hon. member) went to prove that, as far as reliability was concerned, the Indian statements had to be accepted with very considerable reservation. He wanted to point out that in this instance there was nothing to justify the attitude adopted by the Indians, because this report went to prove that they were at that time well treated by those who employed them. The Commission quoted returns in regard to the number of coolies reindentured, and added: "These figures are eloquent testimony to the good relations which exist between the coolies and their employers, to which reference has already been made." The hon. member went on to say that this all went to prove conclusively that there was no ill-treatment in the case of the Indians in Natal, that this strike was engineered purely for political purposes, and possibly far more to serve a political purpose in India than it was in this country. (Hear, hear.) It was made perfectly clear in reference to this £3 tax that when it was imposed it was imposed with the full consent of the Indian authorities, that it was imposed in the terms of indenture, and Sir Benjamin Robertson, who was the official appointed by the Indian Government, stated that, as far as it was possible to make this clear to the Indians, it was done, and that there could be no reasonable complaint on their part that we were imposing an unjust tax upon a number of people who were unable to pay it. "One thing, however, was clear" (the Commission reported), "and that is that all that could be done by the Government of Natal was done to explain the real position to them, and that it was upon

the express understanding already set forth that they were introduced into the Colony. It is equally clear that, whatever may be said about the coolies themselves, the Government of India, which may be regarded as standing in the position of guardians to their ignorant subjects, accepted and acquiesced in the provisions of Act 17 of 1895, which are embodied in the indentures, and that they at any rate were under no misconception as to the conditions under which the coolies were admitted into Natal." At this stage he would like to refer to the disabilities under which we laboured by the presence of an overwhelming coolie population as we had it in Natal. When Europeans went to India, China or Japan they took with them large sums of money. They established factories, industries and works of all descriptions, and found employment for the poorer classes.

THE INDIAN COMMISSION

Proceeding, Colonel Sampson said that the Indian in Natal, in the course of his industry, employed his own people. He sent very little money abroad. He quoted from the report of the Indians' Grievances Commission, and said that the insurrection in Natal in 1906 had been brought about, not by the poll tax but by the hut tax. The insurrection of 1906, he had discovered, was caused by the hut tax, and the tax that had been remitted had nothing to do with it. He went on to deal with native taxation.

Mr. T. SCHREINER (Tembuland) asked whether the question of native taxation was being discussed.

Mr. SPEAKER: The hon. member is not in order.

Colonel LEUCHARS (Greytown) said he thought the Minister was taking too optimistic a view of the result of the proposals. He ventured to differ from the Minister, and thought that the natives would regard the Bill as a sign of weakness. It was only nine months ago that the Indians in Natal adopted the passive resistance movement, and it was a fortunate thing that it had not ended in bloodshed.

PRAISE FOR GENERAL SMUTS.

Mr. F. D. CHAPLIN (Germiston) said he felt somewhat at a disadvantage in having to speak after the previous speaker, who had a knowledge of the conditions of Natal which, of course, was denied to him. Living elsewhere, he (Mr. Chaplin) must say that the hon. member (Col. Leuchars) had taken what seemed to him an unduly pessimistic view of what might be the consequences of this Bill. (Hear, hear.) It was not popular in this country to do anything or say anything which might be interpreted as being in favour of the Indian or native population.

Sir A. WOOLLS-SAMPSON (Braamfontein): You are quite wrong; we do not want to handicap the whites.

Mr. CHAPLIN (proceeding) said he hoped he would not come under the ban of the hon. member for Braamfontein if he took up a line different from that taken up by that hon. member. The members who had spoken after the Minister had devoted themselves only to one subject, and that was the remission of the £3 tax. Of course the Bill was not by any manner of means confined to that. He thought the Minister certainly deserved credit for the very thorough manner in which he had followed the recommendations of the Commission in regard to this extremely complicated subject of the marriage question. Last year, when this matter was before the House, the hon. member for Cape Town, Castle (Mr. Alexander), moved an amendment which some of the members on that side of the House at that time hoped would settle the question so far as the marriage point was concerned. They were surprised to find that what they believed to be the ordinary meaning of the words inserted in the Act had been challenged by the Minister's own officials. It seemed to him that that was an entirely unnecessary course. The practice was in accordance with what they desired, and therefore it seemed to him that no good purpose could be served by raising

the question, as it was raised by the immigration officer at Durban. What they had now before them, however, definitely settled that matter. Members distinctly understood that the words inserted last year referred to the *de facto* monogamous wife. If that position had not been remedied, he thought the Government, Parliament and the people of this country would, to some extent, have been open to the charge of having been guilty of a breach of faith. They on the Opposition side of the House understood that this particular difficulty was going to be met, and it would be most unfortunate if a totally different interpretation were placed on it. It seemed to him that the Bill made a very fair attempt at meeting these marriage difficulties. Of course, without recognising polygamy, which they could not do, they could not go any further. He believed that the Indians would see that if this Bill went through, the people of this country were going as far as they possibly could to meet the demands of the former. He now came to the question of the £3 tax, which was going to be the determining factor in the reception the House was going to give to the Bill. Two points had been made. His somewhat violent friend behind him (Sir A. Woolls-Sampson) had made two points. So far as the first point of the hon. member was concerned, it was perfectly true that the Indian community made a very grave mistake in not appearing before the Commission. He thought the Viceroy and the Government of India had quite endorsed that view.

MALTREATMENT CHARGES EXAGGERATED.

It was true, in effect, that the Commission had found that the charges of maltreatment were very greatly exaggerated. But that was not a feature which was peculiar to matters in which Indians were alone concerned. (Hear, hear.) They had had a good many accusations made by other people in regard to circumstances on the Rand, accusations which had also been exaggerated. If they allowed themselves to be unduly influenced by the fact that some of the Indians had been misled and that others of them had made a number of erroneous statements—if they allowed that to weigh with them—then he was afraid that they would get no further and that they would be unable to deal fairly with the matter now before the House. It was fairly established that the tax had not, on the whole, served the purpose for which it had been introduced, and had not had the effect of inducing the people to go back to India. He supposed the reason was that circumstances had changed. Owing to the stoppage of the importation of indentured Indians into Natal there had been a scarcity of labour and the wages of those in Natal had gone up to a large extent, and that accounted for the very large number of Indians wishing to remain in the country. The main question put forward by the hon. member for Braamfontein and the hon. gentleman opposite was that the remission of the £3 tax might have a bad effect on the natives. The Government had much better information at its disposal as to the state of affairs among the natives than hon. members could possibly have. It had access to information furnished by magistrates throughout the length and breadth of the country. He (Mr. Chaplin) was not going to pretend that he had more knowledge than was obtainable by the Government through the countless sources of information at its command. He thought they were justified in assuming that the Government after having its attention directed to the raising of this question, as was shown in the report, was satisfied in its own mind that any risk of the kind might safely be taken. The Indians were a class by themselves, and this tax was not a tax for revenue purposes. It was not a licence nor was it a tax. What it was the report of the Commission pointed out—it was a penalty on continued residence in this country. That penalty was put on for a specific purpose, and had not been effective, and therefore the question arose: Why should this impost be maintained? Whether it was rightly or wrongly raised was not the point. The question had arisen and had provoked an immense amount of feeling,

not only among the Indians in this country but the Indians in India.

A MATTER OF DUTY.

If they in that House could assist the Imperial Government to keep matters smooth in this respect by removing this cause of discontent, he thought they were only doing their duty in supporting the proposal to remedy it. (Ministerial cheers.) Other strikes had taken place. Some of the things which employers were asked to do after the events in Johannesburg in July last were such as he thought they should not have been asked. But they were done in order to remove misconceptions and grievances. One had to try and get at the root of the trouble, and did not always get at it; sometimes went too far one way or the other. But if they simply took up the attitude that they were the stronger and, therefore, should not be forced to do anything, then he thought they were not doing their duty. (Opposition cheers.) This was a matter which went beyond our Colonial borders. We were part here of the British Empire, and we had to recognise our liabilities as well as we had to recognise the advantages we got. What they were doing now they were doing on the faith of the statements which had been made by the leaders of the Indian community and the Government of India, and by the British Government on their own behalf. Whatever was done now was based on the assumption that the free immigration of these people to this country was to be stopped once and for all. They were all agreed on that, but if they could remedy these grievances, which went further than some of them liked, let them give the matter a fair chance and see if they were not able to remove this ground of trouble, which, if something happened, they would be paying very much more for—not so far as money was concerned—than they were paying if they took the risk of supporting that measure. He hoped the Bill would be carried. (Cheers.)

THE THIN END OF THE WEDGE.

Mr. W. M. MYBURGH (Vryheid) said that contrary to the appeal made to members by the Minister he hoped that hon. members would save South Africa by not allowing this measure to go through. He said that they were not taking best advice from these people, but they should refuse to grant them rights they never had. These people entered into contracts on the distinct understanding that they should pay the £3 tax or return to India. They accepted the £3 tax, and the Minister now asked the House to forego an honest contract. The hon. member for Germiston said that they should redress these things, and consider not only South Africa but other parts of the Empire. Let them look at what had been happening in another part of the Empire, where the people were standing shoulder to shoulder and refusing to admit the Indians. Those people were saving that Government and that country from what he would call an undesirable class, and were they in South Africa going to open the gates for the refuse of the back parts of India to overrun their country? He said it was the duty of the House to save the country. This was only the thin end of the wedge, and was not going to be the final settlement of the question. As soon as the Bill was passed these people would find something else. He hoped the House would not be kicked about by Messrs. Gandhi & Co., to accept what they put forward. He protested against the measure, and hoped the House would refuse to pass it.

Col. Sir A. WOOLLS-SAMPSON (Braamfontein) said that the hon. member for Germiston understood him (the speaker) to say that he reflected on his courage. He (the speaker) did not do so. What he meant to say was that the hon. member, not being South African, had not the same interest as he had in South Africa.

MR. MERRIMAN'S VIEWS.

Mr. J. X. MERRIMAN (Victoria West) thought he would be wanting in courage if he did not voice

his support for the Bill. He had no love of Indian immigration for South Africa, and had, as a matter of fact, incurred a certain amount of odium in the old days in the Cape by opposing the demand of the Western Province wine farmers for the importation of coolie labour—they loved it so well. Over and over again he had pointed out the mischief and danger Natal was to the rest of South Africa by bringing these coolies in. He recognised then that these coolies formed an element of their population which would grow, and sooner or later prove a trouble. But Natal suited their own convenience. They were selfish, and these were the people who were now standing up and objecting to the proposed *modus vivendi* from a situation for which they were themselves to blame. So anxious were the Natal people to continue in their policy that they actually brought in 20,000 coolies within the last few years. The late Mr. Sauer disliked Indian immigration; but he adopted the only sound method of dealing with the native races. His policy was, "Don't let them bring more into the country, but treat those who are here well; treat them as men, and give them justice and fair play." That was the true principle. Of course, any proposal to ship the Indians back would be fought tooth and nail by the Natal coal owners and those who employed Indians as shepherds and domestic servants—and better servants there were not in the country. They did not want the Indians repatriated, but desired them to continue living here under disabilities. But, of course, the Indians would not be content to do that. As a large body of people advanced in ideas of Western civilization they were not likely to rest quietly under disabilities placed on them because of their colour and the place they came from.

THEIR FAIR DUTY.

It was an impossible state of things, and he warned the House—it might not be in his lifetime—that as they sowed so would they reap, and if they sowed an injustice they would reap a retribution that would be very severe on this country. (Hear, hear.) In the Cape they had tried to be fair—without being altruistic—to the coloured races, and that was the only sound and safe principle they could go upon. He viewed the growing colour prejudice with alarm, because he was sure it would bring other things in its train. They must do their best, and in his opinion that Bill was doing nothing more than their fair duty. They said they would not have any more Indians in this country. Whether Natal wanted them or not she would have to do without them, because Natal was a part of the Union. But while the Indians were here let them treat them as they did the rest of their coloured population, and do not put them under special disabilities because of their colour or the place they came from. He appealed to his friends. He was sure they wished to do what was right and proper. Did they think the Government of India wanted to shunt these people here? No, they went and fetched them. (Hear, hear.) That being so, this was being used as a handle in India to stir up dissatisfaction. This question, small as it seemed to them, of kicking the coolies from one end of the country to the other, was used as a handle to stir up disaffection in India. At the King's Coronation the King made a solemn promise to India that the grievance would be redressed, and now they had hon. members urging that they should break that promise. That sort of thing made the ground for stirring up dangerous disaffection in India. Surely they ought to do their best to assist the British Government, instead of adding fresh fuel to the fire in the most difficult position any country had ever been placed of governing India truly and well. He was surprised at the attitude of the hon. member for Braamfontein. He (Mr. Merriman) thought he was a Briton to the core, and he remembered occasions when the hon. member might almost have been called ultra-British. He (Mr. Merriman) wanted to ask him to search his own heart and see if in opposing this Bill he was doing a service to the country he belonged to. If he persisted, he (Mr. Merri-

man) thought he would be doing his country a great disservice. Let them treat these Indians with justice, but let them say they would have no more of them.

A NATAL VIEW.

Mr. C. HENWOOD (Victoria County) said he regretted that the Government had seen fit to introduce this so-called Indians Relief Bill, for, if passed, it would be highly detrimental to the best interests and welfare of the people of the Union, and especially Natal, and it would give little or no relief and would not be acceptable to the Indians as a settlement of their grievances. It was apparent that they did not intend to stop at anything short of equal rights, and he would give them credit for being bold enough to come out in the open and say so. He was surprised that the Government were so blind that they did not see that this was the thin end of the wedge. The Indians were knocking at the door for point after point until they could get full and equal rights with the civilised people of this country, which meant that they would have a full right to move in any part of the Union, and would also have trading rights. They in Natal had been accused of having imported these Indians into the colony in the earlier days for their own gain, for their own advantage, to build up their industries. So far as he knew, the people of Natal were quite prepared to take the full responsibility of allowing them to remain there under present conditions, provided that the Government also carried out their part of the bargain by imposing the laws and regulations that were instituted by the Natal Government as safeguards against the Indians going too far. This was a burning question, and he was afraid that the present Bill would add more fuel to the flames. Proceeding, the hon. member sketched the history of the legislation passed by the Natal Parliament from time to time in reference to the Indian population. He pointed out how under their low standard of living the Indian traders and artisans were enabled to freeze out European traders and artisans, and how the condition of affairs eventually became so acute that the Colony had to say, "No more of this, we shall have to stop this importation." He quoted from the returns in order to show that, so far as the number of those who returned to India on the expiration of their indentures were concerned, the law in Natal was for some years effective. He admitted that of late years it had not been so effective, but he thought that every hon. member must admit that it was the intention of the Legislature and the people of Natal that these people should either reindenture or return to India, or pay this tax. To repeal the law was not a sign of strength, but of weakness. The right hon. the member for Victoria West had stated that Natal had dragged these people here. He (Mr. Henwood) maintained that the contracts were fair and above board. The right hon. gentleman had made a great point about Imperial spirit, but they found that when the House was asked to give further assistance with regard to the Navy he had not the pluck and the courage to vote, but he walked out of the House. Proceeding, the hon. member urged that it was the duty of the Government to see that the existing law was carried out so far as the Indians of Natal were concerned.

THE IMPERIAL ASPECT.

In 1860 there were 58,000 indentured Indians in Mauritius, and there was no law which provided for their return to India. To-day Mauritius was practically an Indian colony. That was a bright outlook for Natal—it was something to think of. They should think seriously of that matter while discussing a Bill of that description. If they took the standpoint of the Imperial Government they would approach the matter from another point of view altogether. They knew that trouble was brewing in India, and they also knew that the Empire must suffer. In considering that question they must realise that they were laying a foundation stone for the prosperity of their children. He did not think that the House would be justified in

dealing with legislation of that description until a referendum had been taken of the voters in Natal. He moved to omit all the words after "that" and to substitute "that this House is not prepared to deal with legislation for the relief of Indians until the subject matter of this Bill has been submitted by referendum to the Parliamentary voters of Natal."

A CAMPAIGN OF CALUMNY.

Mr. A. FAWCUS (Umlazi) supported the amendment. He said that they had immigration laws in this country which applied to the white man and also applied to the Indians. The white man must have a certain amount of capital and educational qualifications. Why should not the same law be applied to the Indians? The most dangerous clause of all was the one dealing with the female class, because with every woman they allowed into the country there was the danger of them allowing an eventual large family to come in. Any hon. member who knew anything about Natal knew that the Indian child of sixteen years of age was a mature woman. Indians married at the age of twelve or thirteen, and the idea of allowing every female child of that age into the country was a ridiculous and suicidal one. Proceeding, the hon. member said that he happened to be in England during last December when this matter was being discussed in the English newspapers, and he well remembered the campaign of calumny and misrepresentation which went on. There was no word bad enough which could be said about South Africa on this matter. From the highest Indian official to the merest scribbler, who knew nothing at all about the subject, people denounced South Africa. No stick was good enough to beat South Africa with at that time. Reference had been made in the course of this debate to the Commission. He wished to say that he had given evidence before this Commission. The Commission's report was to the effect that this £3 tax had been inoperative. But he (the speaker) wished to say that he had the assurance of the Secretary of the Immigration Board in Durban that during last year considerably over 2,000 Indians went back to India, were driven back by this tax, and one Indian told him (the speaker) of a shipload of 300 Indians who were going back because of that tax; they did not want to go, but they simply had to on account of that tax. (Hear, hear.) If they could get Indians to do that, well all he could say was let them go. In Natal they had more real knowledge of this question than people in other parts of South Africa had. A case happened in his own constituency in which contracts for Government supplies were given to Indians who were displaced under white traders. The position of affairs in Canada had been mentioned. Were they going to support Canada in the stand she was taking up in that matter, or were they going to support India? South Africa was held up as a warning to Canada at the present time. Of course, the official view in India was that we should make things better for them, but the matter was more deeply rooted than that. It was not a question of whether Indians should be allowed to remain in Natal or pay a £3 tax. It was far deeper than that, but his view was that so long as the £3 tax was having the effect of sending any Indians back it should remain.

A UNION MATTER.

Mr. M. ALEXANDER (Cape Town, Castle) said he would not have a great deal to say on the matter, because he realised that the less one said who was a friend to the Bill the better. (Hear, hear.) This matter had been referred to as a Natal matter. That was not fair. One might have expected a little word of gratitude from the Natal members regarding the development of the Natal industries which had taken place owing to the labour of the Indians in that Province. Where would the Natal industries be if it were not for those Indians? It was absurd to call that a Natal matter; it was a Union matter, and if an injustice was done, all the Union would have to suffer and not merely one part. Proceeding, Mr. Alexander said that no

good purpose would be served by going into the Indian strike. When that strike took place in January everyone would admit that the leaders of the Indian movement stayed their hand, and did not embarrass the Government at a time of great trouble in the country. It was no use the hon. member for Victoria County urging truth and justice unless it were to apply equally to members of the coloured community as well as to whites. Truth and justice were not colour blind. He (the speaker) did not look upon these people as aliens. They were British subjects. They were introduced into Natal, and Natal had had full benefit of their work. A large number of Indians had been born in Natal, consequent upon legal marriages in the country, and if a mistake had been made it could not be rectified if that meant doing a gross injustice to the people. The Bill before the House did not by any means meet the wants of the Indian community, but it was an attempt by the Government to give justice as far as they thought possible to the Indian community without detriment to South Africa. Hon. members who had spoken against the Bill did not seem to realise that it did not go one single step further than the Bill of last session intended to go. It was only at the expressed wish of the late Minister of the Interior, who was in charge of that Bill, that the word "monogamous" was put in lest the law should be understood to recognise polygamy.

NOT A NEW PRINCIPLE.

With regard to the £3 tax, that principle had already practically been decided in the case of women. It was not a new principle. They could not induce men to re-indenture or go back to India now that they could get higher wages. That tax did not assist in any way to influence their return to India. Was it not a better way to provide them with a free passage? With reference to the point made by the hon. member for Umlazi (Mr. Fawcus) regarding children under 16 years of age, that clause had been passed under the Act of 1913, and it was in the Immigration Laws of the Union when the Provinces were separate. The only relief the Government granted under that Bill was that the Indian child could not be penalised as against any other child. Monogamous marriages were to be allowed, and the children of such marriages were to be recognised also. That was simply carrying out the intentions of Parliament last year, though that was not expressed in the Courts of Natal as it should have been expressed. That was an Imperial question, urged Mr. Alexander. ("No, no.") He was stating a fact; in other words the relations between that community and the Union of South Africa may or may not have serious consequences in regard to other parts of the Empire. He did not say that South Africa ought to be asked to give up any of their rights or act unfairly as against their own brethren, because that was an Imperial question. But the Government was not asking anybody to do that. Under that measure no injustice was done of any kind to any part of the people of South Africa. If they could remove that difficulty and friction from South Africa it would do a great deal of good. Did not hon. members realise what a great cost that difficulty had been to the people of South Africa? By passing the Bill the Imperial Government would not only be relieved of a serious embarrassment, but South Africa would be released from serious difficulties. Other demands might arise in the future, but so far as the difficulties concerning us at the present moment and for a long time to come, the Bill would remove a considerable number of difficulties which were a hindrance to the progress of the Union. In solving the Indian difficulty South Africa would be benefited by a very statesmanlike solution of a pressing problem. Let hon. members rise superior to their prejudices and do justice to every section of the community and assist the Imperial Government in a very difficult question, and by so doing hon. members would be doing something they would be thankful for. (Cheers).

TREATING INDIANS LIKE HUMAN BEINGS.

Mr. H. M. MEYLER (Weenen) said they had heard several impassioned speeches from hon. members for Natal, and so he would like to say a few words to show that all the Natal members were not of the same opinion. It was hardly to the credit of some of the hon. members who had spoken that they should be individuals who had waxed fat on Indian labour. The Minister of the Interior had always been recognised as a strong man, and he had never shown himself a weakling in dealing with the Asiatic question. The marriage difficulty arose through an error in the Act passed by mutual consent last year, and it was only because legal quibbles had arisen that it was imperative to alter the law. The main difficulty was the abolition of the £3 tax. Here we had a strong Minister who had never shown himself a pro-Asiatic, and there was nothing in the Bill but the carrying out of the findings of a Commission which no one had accused of being pro-Asiatic. The Commission, which was possibly biased to some extent against Asiatics, had brought out findings which were embodied in the Bill, and the Commission came to its conclusions after taking evidence throughout the Union. He felt rather flattered that the opinion he expressed had been carried out in the findings. Perhaps the hon. members for Umvoti and Umlazi were a little bit hurt that their evidence was not accepted as gospel by the Commission. He was not aware whether the hon. member for Vryheid gave evidence, but he had the opportunity of doing so. The hon. member came from a portion of Natal from which Asiatics had always been most rigorously excluded. In fact it had been said that it was easier for a rich man to enter the Kingdom of Heaven than for an Asiatic to enter the Vryheid district. Did the hon. member for Vryheid mean to say that it was practicable that there could be a wholesale scheme for the repatriation of 140,000 persons? That would be utterly impossible. The Government had done the best thing it could towards encouraging repatriation, and he hoped a large number of Indians would take advantage of the opportunity of returning to their own country. By offering these opportunities South Africa would be treating the Indians like human beings. A good deal had been said about the bona fides of the Indian leaders and that they would not accept this as a final settlement, but he thought they could trust the Minister to understand how far the Indian leaders were acting in a bona fide manner. A little bird had whispered that if this settlement was arrived at the person who was regarded in some quarters as a sinister figure, but who by other people was regarded as a cultured man with high ideals, would voluntarily leave South Africa. Mr. Gandhi had proved himself to be a man who could thoroughly be trusted. Surely the hon. member for Umvoti was speaking under a misunderstanding when he referred to Mr. Gandhi as an uncivilised person. He (Mr. Meyler) wondered if the hon. member for Umvoti ever met Mr. Gokhale, a gentleman who could make speeches which would be an ornament to this House. All the Indians were not the uncivilised people he found working on his wattle estates. There was, continued Mr. Meyler, a lot of misunderstanding as to the operation of the £3 tax. This tax was not being collected, and whether the Bill went through or not, no Government would be strong enough to collect it in the future. What was the use of talking of the effect on the native mind of the abolition of the tax when the tax was no longer collected, and that tax would never be collected again? When the hon. member for Durban, Central (Sir D. Hunter), who was a man of the highest integrity, gave evidence before the Commission, he said "it is never inopportune to do the right thing." He intended to support the Bill, and he hoped that hon. members would recognise that there were other things of vital importance that still had to be attended to. The tax, he thought, was a matter that should be dealt with in committee. The hon. member for Victoria County proposed that a referendum

should be taken in Natal. He (Mr. Meyler) was not the least bit afraid of a referendum, because he knew the good sense of the Natal people would carry the Indian question to victory. The hon. member for Victoria County and his friends were those who were opposed to a referendum when it was suggested in Natal prior to Union. He (Mr. Meyler) thought it was an anomaly to suggest that they should have another referendum to deal with this one special point. He felt he could not support the amendment. In conclusion, he said they should forget the darkness of last November, and the terrible position in which they and the Empire found themselves. He thought the settlement should be made, and he considered they need have no fear that the Indians would not carry out the honourable understanding.

†Mr. G. L. STEYTLER (Rouxville) said he found himself in a difficulty. He realised that the people concerned in this Bill were most undesirable to this country, and he was afraid that the effect of the measure would be that the Indians might enter the country in large numbers. They could not allow the wives of those already here to come in. But what was more, this was not going to be the end of the question, but simply the beginning of a movement which at present was spreading all over the Empire. By allowing these people to come in they would do a dis-service to the whole of the Empire. It might be said that it was unjust to the Indians to allow their wives and children to come in, but a more important question was whether it was just to the rest of the people of the Union to allow them in. Indians squeezed out European tradesmen, and were a general curse to the country. He feared that if the Bill was passed a large number of Asiatics would enter the Free State—and what then? he asked. In the circumstances, he could not possibly support the measure before the House.

SPEECH BY THE PRIME MINISTER.

The PRIME MINISTER said that he just wished to clear up one or two points which had been raised in the course of this debate. It was unnecessary for him to enter into the details and the merits of this measure, which had been made quite clear by the Minister of the Interior. It seemed to him, however, that a large number of the hon. members did not quite understand the objects of this measure. The hon. member for Rouxville, for instance, had referred to one section of the Indian community, whereas the Bill dealt with an altogether different section. He (the hon. member for Rouxville) had referred to that section which was quite free and lived in various parts of the country. The Bill now before the House had absolutely nothing to do with these people. They were in the country, and remained here whether the Bill was passed or not. (Hear, hear.) The class which had vested rights here could not be interfered with anyway. The Bill only dealt with those people who to-day were not here as free men—they were indentured labourers, the poorest class of all.

An HON. MEMBER: Yes, and the very worst, too.

The PRIME MINISTER said he trusted the House would deal with the Bill and the principles involved therein earnestly and seriously. The principles concerned were by no means superficial. He well remembered how from the very first they had experienced difficulties in the Transvaal concerning the Indian question. It had been quite impossible for any Parliament to say in an offhand manner, "Put all these people out of the country, we do not want them here." Only by paying millions of pounds in compensation could they have done anything like that, and even then the matter would not have been settled. In these circumstances he wished to appeal to members to deal with this Bill from the point of higher statesmanship rather than what they desired and than what their own personal wishes were. He knew that in South Africa there was a great and strong feeling of prejudice against the Indians. But he also knew that the people of South Africa would believe him

When he said that he had always done his utmost to keep these Indians out of the country. (Hear, hear.) Nor did he rise in the House to embrace these people.

BY WHOM CREATED?

But whatever they did, whatever their feelings were, they must be just and fair towards the Indians. When the Government came to this House with a Bill such as the present one, it should be understood that the Government had gone into the matters involved most carefully, and had given all these matters its serious and careful consideration. The Government was responsible to the House and to the people for the measures it introduced, and he trusted that the House would regard this Bill from that point of view. (Hear, hear.) What had been most disappointing to him was to have listened to the speeches of hon. members representing Natal on both sides of the House. It was regrettable that these hon. members did not feel the matter so seriously when they introduced the Indians into South Africa. (Hear, hear.) If they had felt their responsibilities so keenly at the time they would have consulted the rest of South Africa, and to-day the country would not have been faced with all these difficulties. (Cheers.) But if to-day hon. members realised these difficulties so acutely, then they should not forget that these difficulties were entirely the creation of the people of Natal. (Hear, hear.) Unfortunately these Indians had not remained in Natal only, and to-day these people were found in other parts of the country as well. It was unpleasant having to say this, but it had to be done. (Hear, hear.) But they had to do what was right and fair towards South Africa. Whatever their prejudices against the Indians, he (General Botha) quite agreed with Mr. Merriman that it was their duty in this House, as a Parliament and as a Government, to work for peace, justice and fairness. (Cheers.) They had to deal with people who were not represented in this House, and whose presence in this country was due to the action of the people of Natal. Therefore, he hoped that hon. members from Natal would help South Africa out of the difficulty in which it had been placed. And this they could do by supporting the Bill now before the House. (Cheers.) He knew the hon. member for Braamfontein (Sir Aubrey Woolls-Sampson) was a rough-rider, and he trusted that his rough-riding would now be in the interests of justice and fairness—(cheers)—and he was sure that if the hon. member carefully thought over the matter he would give the Bill his support. After all they had seen and gone through in this country, the Prime Minister went on, it must be quite clear that this House had to take the responsibility to deal with matters as they were to-day—(hear, hear)—and they should not introduce legislation with a view to what was good for themselves only. They no longer stood by themselves in four separate Provinces, and it was because they had to consider a greater cause that they should see to it that, especially in this matter, they did not go in the wrong direction. They must be careful lest they made their difficulties more acute than they were to-day, and more serious than they could become if this Bill were passed. (Cheers.)

DRAGGING IN THE NATIVE QUESTION

He regretted the attitude taken up by some hon members, who had coupled the native question with this Indian problem. They had no right to do so. (Hear, hear.) When they dealt with native questions, they dealt with native questions pure and simple, and they had to deal with the Indian problem in the same spirit and on its own merits. (Cheers.) It was useless dragging in this native argument, because he wished to say emphatically that if there were one subject of which they had every right to be proud it was this, that they, as a small minority, had always easily governed the large native majority in South Africa. (Loud cheers.) He would like to ask hon. members whether they hardly ever heard of a native refusing

to pay his taxes? The collector went round, and the natives came along of their own free-will and paid their taxes. He wondered whether any tax collector would have such an easy task if sent to a farming community to collect taxes? (Laughter.) He held that instead of this question having been dragged in in the way it had been done, this country had cause for gratification at the obedience to the law always displayed by the native population. (Loud cheers.) One hon. member had stated, the Prime Minister went on, that the effect of this Bill would be that a large number of Indians would settle in the Free State. The hon. member, however, was mistaken, because the Bill did not deal with the general aspect at all. Under this measure no such rights were given. Hon. members should be extremely careful in their statements lest they should spread wrong impressions among the people. The Indians who were in Natal to-day could not go to the Transvaal or to the Free State. This question had been fully dealt with in the Immigration Regulation Bill of last year. Hon. members should be careful not to spread the impression that this House was now engaged in passing legislation giving the Indians the right to go anywhere they pleased. This measure to a certain extent only gave a definition. (Hear, hear.) It was under the Act of last year that the women and children had come in. The matter now before the House was a most important one, and was one bristling with difficulties, but they in this House should see to it, and should see to it carefully, that the question was put right.

MUST STAND BY THE BILL.

It was for that reason that he appealed to the House to deal with the subject on its merits, and he trusted that this House would see the Government through. (Hear, hear.) He wished to make it clear that the Government was bound to pass this measure. "We have introduced this Bill (said the Prime Minister), and we must stand by it, and I cannot see how we can possibly drop it. Therefore, I want to appeal to the House to assist us in getting this Bill on the Statute Book. I know the subject is an extremely thorny one, but to anyone giving the matter his serious attention it must become clear that the way proposed in the Bill is the only way to solve the difficulties." (Hear, hear.) Proceeding, General Botha referred to the amendment of the hon. member for Victoria County (Mr. Henwood). The hon. member was in favour of getting this question referred to a referendum in Natal. But he (the Prime Minister) asked, did not Natal have this referendum? Then by a majority it was decided to introduce the coolies. (Hear, hear.) It was essential that a solution be arrived at. They could not have any more strikes or upheavals in Natal such as they had had. It was impossible and impracticable to keep a standing commando there. Perhaps this Bill did not solve the matter in the way many hon. members desired to see it settled, but he (the speaker) held that it was the only proper solution. The question of the country losing revenue under this Bill had also been raised. To his (the speaker's) mind, it had always been difficult to reconcile a policy under which one section of the community was taxed differently to another section in the way this had been done in Natal. In conclusion, the Prime Minister said he hoped the hon. member for Victoria County would realise that his amendment was impossible, as this was a question for which the Union Government had to assume responsibility. What was to be the result of the increase in the Indian population? The hon. member said they must keep Natal Indians in Natal, but that was impossible, they would force their way into the other provinces in due course. The time would come when there would be no room for more Indians in Natal unless the whites moved out to make room for them. They would not confine themselves to working on the plantations and sugar factories, they were becoming better educated, and had higher ambitions. They would only stay at the labour for which they were originally introduced

long enough to enable them to start in some other business. They were not fond of the work for which the Indians were originally introduced. The sons of the indentured Indians were looking for something on a higher plane. How were they going to get their desire? The only way he could see was for the white people to make room for them by going out.

ONLY PART OF THE DEMANDS.

It was not merely a question of whether an injustice was being done in connection with that £3 tax; it was a question of the future of Natal. It had been said that there would be peace if that Bill were passed, but if the Minister of Finance thought there would be peace by giving in to demands of the Indians in that respect he would subsequently find that he was quite wrong. That was only a part of the programme of the demands of the Indians. The hon. member went on to refer to the petition of the Indians to Lord Crewe, in connection with which he said there were gross slanders regarding alleged ill-treatment and degradation of the Indians by the people of Natal. Those slanders were telegraphed all over the British Empire and appeared in the newspapers in all parts of the world. But they had not the courage to come forward and substantiate a single item of those charges. That agitation for the repeal of the £3 tax did not originate in Natal, but in India, and the people in this country were being made tools of to carry on the agitation. In the petition they asked that Indians throughout the Empire should have rights of citizenship. That meant that here in this country every Indian should have the same rights and privileges as the white people, and if that House granted them the little point in that Bill it would encourage them to make further demands. They could easily afford to pay the £3 tax. The question before the House was an important one to Natal, and the opinion of Natal should be taken on the matter before the House passed such a measure.

†Mr. C. A. VAN NIEKERK (Boshof) said that the £3 licence was not a tax at all, it was simply the terms of a contract, and he agreed that if they gave way on the matter it would not be accepted as magnanimity, but weakness. In regard to the Indian question Canada had put her foot down, and South Africa would do well to follow the same course.

Business was suspended at 6 p.m.

EVENING SITTING.

Business was resumed at 8 p.m.

Mr. VAN NIEKERK (resuming his speech) said the Indians would regard the action of the Government, if this Bill passed, not as an act of generosity, but as an act of weakness. It would simply mean the thin end of the wedge, and he felt sure that next year the population of India would claim free entry to Natal. It was true that many Indians worked in the coal mines. He would sooner see the poor whites employed there. The statement that it was difficult to collect the £3 tax proved that there was something wrong in the Department of the Interior. The same was proved by the argument that Indians came in under forged permits. If this was proved against any individual they should at once deport such a man. This country had to be careful and see to it that the people were duly protected—it was merely a case of self-preservation. If this Bill did not aim at introducing any radical changes, why then introduce it at all? The Prime Minister had asked the House not to mix the native question up with the Indian question. But, said the hon. member, the Commission itself had brought the matter to the notice of the Government. There was no doubt about it that the native would at once ask why the Indian received better treatment than the native?

NO BREACH OF FAITH.

He held there was no question of any breach of faith. The Indians had been brought here

understanding that they would have to pay this £3 tax. Well, let them pay it now. The great danger was that the Indian women were to be admitted. Eventually this country would suffer from an over-population of coolies. He knew the Government had to cope with great difficulties, especially when such agitators as Mr. Gandhi, Mr. Polak and Mr. Kallenbach were about. These people should have been deported, he held. In conclusion, Mr. Van Niekerk moved as an amendment that the Bill be read that day six months.

†Mr. H. P. SERFONTEIN (Kroonstad) seconded the amendment, and feared that the effect of the Bill would be that the Indians would be allowed to enter the Free State. These Asiatics, he said, were an undesirable element, and should be kept out. He could not possibly vote for the Bill, and once they conceded anything at all, the Indian community would demand more.

Mr. T. L. SCHREINER (Tembuland) said he spoke as one who would rather that there had never been a single Indian come to this country to complicate the already difficult position in regard to the different races here. He always held, however, that we were bound to treat the Indians who were here, especially as they were British subjects, with fairness and with justice, and he was still of that opinion. He would have imagined that any thoughtful person who had any knowledge of the contests that had been carried on in this country, both before and after Union, anybody who had anything like a statesmanlike mind, would have rejoiced that at last there was to be an end to these troubles, as a matter of compromise. In the Bill before the House he thought there was evidence of a compromise. Certain claims made by the Indians and those who supported them had not been satisfied in the Bill, but he was not going to speak about those, because he was agreeable to take the finding of the Commission. In regard to two or three points on which the Indians made certain claims, the Commission had made no recommendations. It had been said this afternoon that Indians were not at all satisfied with this, and they only meant to make it a starting point for further demands. They had had a statement read out from the paper "Indian Opinion" a short time ago, not he believed coming from any Indian in this country, but what some Indians in India had been saying about "equality" and that kind of thing. But surely members of this House ought not to be misled by that, when the people chiefly concerned, as far as he understood, Mr. Gandhi and Mr. Polak, expressed themselves as satisfied with this Bill. He took it that the Indians were satisfied with the Bill as it stood, and so was he also satisfied on their behalf. He had more than once brought up this matter of the £3 tax since Union was consummated. With regard to the Union tax—because, after all, that was the crux of the opposition made this afternoon to the Bill—he could have understood the argument raised if that tax had been very much higher than it was, and if it had been an absolutely prohibitive tax, because then the Indian rather than pay would, he supposed, have gone. It was made £3 and as a result it had not succeeded in bringing about the results which they hoped for. Yet this was the illogical position of the hon. gentlemen who had been declaiming against this Bill and the repeal of the tax. They had put it this afternoon as if, should the tax be removed, this country would be flooded with Indians, no more of them would go back at all, and the white man would be ousted in Natal, and the Indian would take his place. That seemed to him a ridiculous position to take up. This might be the position if that tax had been absolutely successful, but it had been an inoperative tax. Then there was another point. Did the Natal people want all the Indians to go back? Was it not the object of that tax rather to say "we will force the Indians to be re-indentured"? If they had put on a tax of £20 the Indians would have gone back. Only a few years ago they heard a big outcry in Natal because the indenture system was to be stopped. Apart altogether from what

had been proceeding between the Indian Government and the Imperial Government, he thought it would be a good thing to repeal this tax at the present time.

A RED HERRING.

The native question had been introduced into the discussion. That particular tax, he pointed out, was levied for a particular reason on a particular class of people. What particular tax was there with regard to the natives that was levied for a particular reason, and only applied to a particular section? There was not the slightest reason to believe that if they repealed that tax there would be a clamour for the repeal of any ordinary tax. That was a red herring which had been drawn across the trail; the hon. member for Braamfontein had got a fear of the black man on the brain. They should deal with the native when matters concerning the native cropped up, but they should not drag him in, like King Charles' head, on every possible occasion. It was said by the hon. member for Umlazi (Mr. Fawcus) that a good many Indians had gone back to India on account of that £3 tax. Under the Bill at present before the House there would be more of them go back because of the very wise provision the Government had put in section 6 whereby passages would be allowed. He would suggest they move on those lines, and would even urge giving them something. (Hear, hear.) Why not repeal the tax and give them £3 instead? He would suggest £5 to induce them to go back to India. There would be no question of compulsion; it would be perfectly voluntary on their part. Proceeding, the hon. member said that he thought the majority of the people in Natal did not want all the Indians to leave. They only wanted a part of them to go. If they all went he believed there would be an outcry for tropical natives, or somebody worse than the Indians, to fill their places.

A WRONG PRINCIPLE.

In respect of the referendum, Mr. Schreiner said he was in Natal when the strike took place and was astonished at the immense number of the Indian people there; that made him more wishful than ever he had been before that this experiment had never been tried, and that those people had never been brought into the country. But they had their duty to perform, and if they could put inducements before those people to go back to India, he thought they should do so. When they said leave that matter to Natal, he objected to that because if they followed those lines they would never be a Union. If they were to allow that referendum to take place in Natal he believed it would be a wrong principle, because there would be any amount of other questions referring to other Provinces which they would be called upon to deal with in a similar way, and then the sooner they tore up the Act of Union and went in for federation, the better it would be. He was always in favour of federation, but he had accepted unification, and they ought to act up to it. Therefore they could not leave that important matter to Natal. His influence would go in support of the Government, for he thought the country owed a debt of gratitude to the Government for having conducted the negotiations in connection with that difficult matter to that point that they had brought before the House a Bill which would not increase the danger in any way from Asiatics or Indians in the country. He looked upon it as a compromise amidst conflicting ideas, and though he sympathised with the people of Natal, who were suffering from the fruits of their own doings, those difficulties ought not to make them unjust. They must try what they could do to induce the Indians to go back to India.

IN A DILEMMA.

Mr. W. F. CLAYTON (Zululand) said he was on the horns of a dilemma. If the Minister had divided the Bill into two parts he could have satisfied his conscience. He was quite willing to agree to the first part of the Bill which endeavoured to remove

disabilities from those Indians who were free to live within the borders of the Union, but not to the proposition that they should do an injustice to a large and important part of the community—the white population of Natal. When they considered such an important subject as that before the House they should consider it on broad lines and try to place themselves in the position of those who were under a disability in the matter. The hon. member for Victoria County had briefly sketched the incidents leading to the position of affairs at the present time. He (Mr. Clayton) wanted to say that the Indians in Natal might be roughly divided into three classes. The first, the Asiatic, or, as he was sometimes called, the Arab, was a man who came there of his own accord to trade with the native population, and who had since taken away the whole of the small whites' store-keeping trade in the country and much of the native trade. That class was strongly represented in the Peninsula here. The second class, the majority of the Indian population in Natal, were free to leave or go where they liked in the Province or engage themselves in any pursuit they pleased. As a matter of fact they were entering into a wider sphere of occupation than would have been believed to be possible when they came into the country. In the third class which came under the operation of Act 17 of 1895, and upon whom was laid the burden of either going back to India or re-indenturing and thus remaining outside of colonisation, and were called upon to pay the £3 per annum tax.

NOT AN UNJUST TAX.

He hoped hon. members would not confuse these classes when dealing with the question. He maintained that on the main body of Indians in Natal this £3 tax which it was now proposed should be removed constituted no burden, but on that portion only which had come out knowing full well that unless they re-indentured themselves or returned to India they would have to pay that tax. He would like the House to consider the grounds upon which the Commission based their reasons for removing the tax. They recommended it for two reasons: the first was that the Act was inoperative; another was that the tax was imposed upon a minority which would be placed in a worse position than those who had come into Natal within recent times. With regard to the first objection, he had figures to show that the tax accomplished what it was intended to do. The Act was passed in 1895 owing to the fact that certain Indians were then not indentured, and as the tax was not made retrospective it became operative in 1901. It would then be seen that the Act, as soon as it came into force, had an immediate effect. The figures of those returning to India in 1895 were 415; in 1896, 296; in 1897, 418; in 1898, 188; in 1899, 503; in 1900, 448; in 1901, 639. Then the Act came into force in 1902, when 1,482 returned to India, thus showing the effect which that tax had upon the Indians who had served their term of indenture. In 1903 the number was 2,029; in 1904, 1,672; in 1905, 2,078; in 1906, 3,939; in 1907, 3,484; and in the following year, according to the evidence before the Commission, out of 7,735 who had completed their indentures, 3,989 returned to India, those who were left, of course, taking up their licences. In 1909 the number rose to 4,895. Who, he asked, would say that the tax was inoperative? Rather, had it not served the purpose for which it was imposed? The true reason was that the tax had not been collected of late. If that had been properly done there was no doubt but what the same proportion of Indians would have left Natal as in the previous years. He thought that disposed of the first reason given by the Commission for the abolition of the tax. In regard to the other point, that the tax was placed upon a small portion of the Indian population, the question might be asked; Why was it placed upon that small proportion and was it not an injustice done to that minority? They found that these Indians had been taking up occupations in the country instead of returning to India.

Mr. P. DUNCAN (Fordsburg): Why didn't you stop bringing them in?

Mr. CLAYTON (continuing) said that a deputation went to India prior to 1895 to make representations to the Indian Government with regard to the return of its subjects. The idea was that the men should either work or go back and not settle down in Natal. Nothing, however, came of the deputation, and in 1895 the Act was passed. The Natal Parliament, however, did not wish to do an injustice to those who had been in Natal prior to the passing of the Act, and these were allowed to remain without any disabilities, because they had been called to Natal, but from that time forward the Government was resolved that those who came should be placed under the disability of paying the tax, and there was no doubt that these people knew perfectly well under what conditions they came to this country. Personally, he might say that of all those who had passed through his employ he had never heard a man dispute the terms of his contract. (Hear, hear.) He did not think that any Indian desired to remain in the country but that he looked forward to the time when he would go back to India, and in asking that this tax should be removed an act of injustice was being done to Natal. There was a very strong feeling in the northern parts of Natal that the country should not be overrun by Indians. At a recent agricultural conference two resolutions were passed. The first related to the undesirability of having a permanent Indian population and the second to the desirability of retaining the present tax of £3 per head.

FOLLOWING THE INDIANS' EXAMPLE.

During the existence of the Indian strike he (Mr. Clayton) had heard natives working in his own fields saying that if they could not get what they wanted they would have to strike as the Indians had done. The lesson of the Rand strike, followed by the Indian strike, would make it strange if on some other questions there might not be passive resistance on the part of the native population. That was a fear which had been expressed and made by public men in Natal, and that was what had passed in his own mind when he thought of their passing such a Bill as that. The Bill was not going to be final, and would be a sort of stepping stone to civil equality and the franchise. It might be contended that Natal was to blame for having brought these Indians to South Africa. In 1874, when the second importations had been instituted, it was on account of the drifting away of their native labour to the diamond fields of the Cape. Since then they had had that drifting of their native population to the goldfields of the Union. If they (the Natal people) had been selfish, it had been for their own preservation and to do something for their living and for their work. The question had been raised about these Indians being British subjects. How would that view be dealt with, he asked, if they were to send 100,000 of their native subjects to live in India free to do what and to go where they pleased? The desire not to embarrass the British Government at the present time was a point which appealed to him, but in reply to the right hon. member for Victoria West (Mr. Merriman) he would say, suppose that a thousand Indians were shipped and arrived at the Cape. Would the hon. member say that they would receive them with open arms and make them their fellow subjects? In Natal they had gone into the mire and they did not want to go deeper into it. They did not want a proposition which would make them sink deeper into the mire. Referring to what the Minister had said, the hon. member said that, as an employer of Indians and as one who came into contact with very many employers of Indians, effect had been given to the law and the Protector of Indians had insisted over and over again that they should provide for the payment of arrears of the £3 licence by instalments. Every endeavour had been made to see that the law was brought into operation. No man was going to run his head into a noose for the sake of a few men

who had not paid the licence. The case had been prejudiced, as he had said, by the non-collection of the licences in the past, in the days since Union. As to what the hon. member for Weenen (Mr. Meyler) had said about waxing fat on Indian labour the hon. member for Victoria County (Mr. Henwood) had never, so far as he knew, had an Indian in his employ, so that it could not be said that the hon. member waxed fat on Indian labour, nor could it be said of the other hon. members to whom he (Mr. Meyler) had alluded. Continuing, Mr. Clayton said that they believed that they represented public opinion in Natal on that matter, and that the colonists of Natal were opposed to the continuance of the Indians within the borders of Natal as colonists. The hon. member for Germiston (Mr. Chaplin) had inquired what was the use of keeping that on. It was costing the employers of Natal just as much having that indentured labour as if these men were free men, but the difference was that if they became free men they might not return, but settle on the land. That was the purpose of the tax, and a man must return after he had served his period. He knew that the Immigration Board had sent a telegram that they agreed to the abolition of the £3 licence for the purpose of not embarrassing the British Government. Their first duty in South Africa, said the hon. member, was to themselves—(Ministerial cheers)—and they had a right to protect themselves, so that those who came into the country knowing that they would have to pay, and were now serving out their periods of indenture, might finish their time and might be compelled to carry out the terms of their contract under which they had come to South Africa. Knowing how the unenlightened native and Indian would regard that measure as yielding to force, he must oppose its second reading.

A BLESSING OF UNION.

Mr. T. BOYDELL (Durban, Greyville) said that he took exception to the remark of the hon. member for Zululand, that he was speaking for the people of Natal. That was not so, because he was only speaking for the people who had brought the Indians into the country, and who were exploiting them for their own ends. It was interesting to listen to the various Natal members who opposed the measure on the ground that the abolition of the £3 tax was going to flood the Province with free labourers, and that that would be bad for the white community. From what they had said one would have thought that they had stood up on platforms and advocated that these men should not be allowed to land. He (Mr. Boydell) had been connected for some years with an agitation which had for its object the prevention of these Indians being allowed to land in the country, and being exploited for industries which Natal could very well have done without. These were the men who had spoken in that House whom he (Mr. Boydell) and his friends had had to fight. One of the blessings in Union so far as Natal was concerned was the fact that the Union Government put a stop to the further importation of indentured Indian labour, and those men who had spoken in the House had waxed rich on the labour of these Indians. What had Natal got after all? They had got 135,000 Indians against 99,000 Europeans. They had a sugar industry which had they never seen it they would have been better off to the tune of half a million a year. He admitted that this was a problem that bristled with difficulties, but let not the Minister imagine that this was a final settlement. They were only starting with it. If they had to deal with it properly they would have to deal with it on more radical lines. But happenings during the last twelve months, the sacrifices by the Indian community, and bloodshed had forced the Minister to come to grips with the Indian problem. Incidentally he pointed out that the trouble in Natal in the past had been that the balance of political power had been held by the country party. He pointed out that all the members of the last Government in Natal were elected by 2,000 votes altogether, whereas the hon. member

for Roodepoort, who was then the junior member for Durban, got 2,000 votes himself. Most of the clauses of the Bill they could not disagree with on principle. They had got the question of the £3 tax, and they had also got the very important clause which had not been sufficiently touched upon except by the hon. member for Tembuland, viz., clause 6, which provided for free passages not only to indentured Indians, but, he took it, to all Indians in Natal. That was a big step in the right direction, but it was not by a long way a big enough step. The indentured Indians in Natal had had their passes on the determination of their indentures, or, if they liked to reindenture, any Indian, no matter how long he might have been in the country, could have a free pass. With that part of the clause they were in agreement, but he hoped to move an amendment so as to extend the provisions of this clause in order that the Government might deal with this problem in the way in which it should be dealt with. That was why he would not be altogether against a referendum of the people in Natal if it were put on a wide basis so as to enable them to deal with the problem as a whole. They must remember that in removing the disabilities of one section of the community they should not create additional disabilities upon another section. They had got to take care that in doing justice to one section they did not inflict an injustice on another section.

AN INEFFECTIVE TAX.

With regard to the £3 tax, he was not one of those who in the past had attached very great importance to this tax, whether it was on or off. As had been shown in this House, it had been largely ineffective. The authorities had not been able to collect it in the past, and he did not suppose that, if it were retained, they would be able to collect it in the future. The hon. member for Zululand had quoted some figures showing the effect which this tax had had in making Indians return to India. As far as they went, those figures were quite correct, but they did not go far enough. It would be found that the number of Indians who returned to India or went back into indenture very largely depended upon the degree of prosperity or depression in the country. (Hear, hear.) They would find that when Natal was going through a period of depression the number of Indians who returned to India went up considerably. If the hon. member for Zululand had not stopped at the year 1908, he would have seen how, when there was a revival of trade, the number of Indians who returned to India fell in a very marked fashion. In 1908 the number who returned was 4,685, but in 1909, when things started to get a little bit better, the number who returned fell to 3,614, and the figures for the next few years were as follows: 1910, 3,199; 1911, 2,630; 1912, 1,409; 1913, 1,700. He would like to give the House the number of Indians who were liable to this tax in 1912, the number who paid the tax, and the number of prosecutions under the tax. This tax, to his mind, was nothing more or less than a blind, throwing dust into the eyes of the population of Natal, who were agitating for the stoppage of further importation into Natal. This was a case of the chickens coming home to roost. In 1912, out of a total number of free Indians of 46,000, the number liable to this tax was 10,206, and the number who paid the tax was 1,594. The Government collected £4,782 from the men, whereas they should have collected £30,600 if they had all paid the tax. The number of women liable was 5,089, and the number who actually paid the tax was 41.

THE GREAT WEAKNESS.

The Government collected about £123 out of £15,267. An hon. member asked why didn't the Government collect this tax. He (Mr. Boydell) would like to refer him to the speech of Mr. Harry Escombe in moving the second reading of the Act of 1895. They could take civil proceedings for non-payment of the tax, but they could not put the Indian into gaol for non-payment. In 1912 341

Indians were prosecuted for non-payment of the tax, but they did not pay after all, and 90 of them were prosecuted to show cause why they did not pay. Seven of that number were put in prison, not for non-payment of the tax in the first place, but for refusing to comply with the order of the Court to pay so much a month. There was the weakness of the whole thing, and the people of Natal accepted that as a solution when it was only dust thrown into their eyes, and the sooner the people realised that whether the tax was on or off it made no difference in the general movements of the Indian population, the sooner would they find the solution of the problem. With regard to repatriation, said Mr. Boydell, when the hon. members for Victoria County, for Berea, and for Zululand all professed a great interest with the white community of Natal, and he thought they should support an amendment to ask the Government to inaugurate a scheme which would include the assistance of all parties concerned, the Indian Government, the Indian community of Natal, the Home Government and the South African Government, to see if they could not put their heads together to enable them to repatriate large numbers of the Indians and give them sufficient inducement to go back to India. They would be quite willing to take advantage of it

Mr. J. HENDERSON (Durban, Berea): We must hear the scheme.

Mr. BOYDELL said it was not the place to lay down any cut and dried scheme, but he thought one on the lines he had suggested would serve the purpose. He had had many talks with Indians in Natal. One had told him that he had been there twenty-one years. He was a man holding a high position, and was very well educated. His social standing was equal to any white, and he said that if the Government would offer him £50 to take his wife and family back to India he would be prepared to go to-morrow. He (Mr. Boydell) did not think he was any exception to the rule. A large number of them agreed it would be more satisfactory if they could go back to India and some monetary compensation. That would be more acceptable than patchwork schemes.

POLITICAL AND CIVIL RIGHTS.

It had been said that Indians would not be satisfied until they got full political and civil rights. Well, it would be difficult to stop any community advancing in knowledge when there was latent capacity on their part to learn and to adapt themselves quickly to the highest educational standards. If they were taxpayers and equal to other citizens of the country educationally it was difficult in theory to deny them full civil and political rights, however disastrous that might be. There were 50,000 male Indians in Natal, free and indentured, 27,000 women and 58,000 children, making a total of 135,000 in all. Against those 50,000 men there were only 30,000 male adult Europeans. There was a majority already of 20,000 male adult Indians in Natal as compared with the white male population, and whilst the Indian population was increasing year by year by leaps and bounds, the white male adult population of Natal had gone down by no less than 4,000 since the previous census. Ten years ago there were something like 200 white tailors employed, and very few Indians, in Durban. To-day they could not find more than 60 white tailors there, but they would find between 200 and 300 Indian tailors. Many of those 60 white tailors could not possibly compete with the Indian tailors owing to the low standard of living amongst the Indians. In the french-polishing trade the white men got 14s. a day and the Indian £3 to £5 a month. Ten years ago the majority of the french polishing in Natal was done by whites, but to-day it was done by Indians. The same applied in the upholstering trade, and in the painting and tinsmithing businesses again the Indian was ousting the white man out of the country altogether. The trade had increased tremendously in Natal, and that increase had been made possible by absorbing more Indians and Kaffirs and doing with fewer poor whites. The position as regards Natal was indeed a serious one

We had either got to save our sugar industries or to save Natal. (Hear, hear.) The position was quite simple; they had got to save a few industries which had been worked by Indian labour or to save the white population of that Province, and it rested with that House to say what they were going to do. He did not doubt but what the Bill was an honest attempt on the part of the Minister to settle the question, but to his (the speaker's) mind it was only a step towards a settlement. He had an amendment to move, although it was difficult to oppose a Bill while agreeing with its main principle. Much had been said about the Indian being fully aware of the contract he was entering into when coming to this country, but from reliable evidence they were told that this was not the case, but that they were more or less hustled into accepting the terms. His amendment was: "That legislation modifying the present laws relating to Indians in Natal should contain provisions definitely prohibiting any further importation of indentured Indians or other labour to Natal; and the Government should take into consideration the advisability of providing inducements, including monetary compensation, to members of the present Indian population of Natal to return to India." They wanted the Minister, when replying, to give a categorical assurance that something on these lines would be done, but something that would be fair to the Indians themselves. He thought an attempt should be made to settle them down in their own country, even if they had to pension them off for life. That was a view held by the majority of people in Natal—that some inducement should be held out to them to go back again to their own country. He would not be at all surprised if the Indian Government would, if asked, place land at the disposal of these men. He thought a gift of money here and land in India would induce them to return.

A NARROW ESCAPE.

Mr. SPEAKER: Will the hon. member read his amendment?

Mr. BOYDELL again read it.

Mr. SPEAKER: No, no, that is expenditure—monetary contribution.

Mr. BOYDELL: It is only asking the Government—

Mr. SPEAKER: If that is carried, it means that the Government must introduce legislation incurring expenditure.

Mr. BOYDELL: No, it is only asking the Government to consider the advisability.

Mr. SPEAKER: Let me look at the amendment.

Mr. SPEAKER having read out the amendment, asked who seconded it.

Mr. C. H. HAGGAR (Roodepoort) seconded the amendment.

Mr. W. F. CLAYTON (Zululand) said that he desired to make a personal explanation.

Mr. SPEAKER: Yes; with the leave of the House.

Mr. CLAYTON thereupon said that at the end of his speech he had misquoted a telegram, and he had not read the word "not" which appeared therein. The resolution which had been unanimously passed was that the Board approved of the action of the Government in not giving way to pressure, etc.

Mr. C. H. HAGGAR (Roodepoort) said that the hon. member for Durban, Greyville (Mr. Boydell), had suggested two alternatives, but he thought that both could be carried out. The leaders of the sugar industry of Natal had told the Commission in 1908 that they could grow sugar in Natal at a profit by using white labour, if they could only secure conditions similar to those in Australia. The sooner the Government looked in that direction the better it would be for all. He thought that the hon. member for Zululand (Mr. Clayton) would agree that Natal had always been more than just to the planters, and now under Union the Natal

planters were treated with more generosity. Had the planters taken advantage of their opportunity or had they turned their face in another direction, and had they not, in spite of a large quantity of Indian labour available in Natal, gone to India for another supply? Did the hon. member remember what had been done at the end of 1910 or the beginning of 1911, when allotments had been cut up and Indians settled there as a bait to the people of India, but they had not taken the bait and the people had not come. He did not understand the hon. member's jeremiad about land being cut up and using the white man. He (Mr. Hagggar) had found that it was not the white man who was required there, for when white men had been unemployed he had tried to get them to cut cane in the sugar fields, but not a single one was allowed to do so. The hon. member proceeded to quote from what Col. Wylie had said in the Natal Parliament that they had laid down a law that no Indian should work unless he had paid his licence, and that no man could employ him until the licence had been paid; that the licence was payable through his wife and children, and that it had never been intended that the wife should pay.

REAL BLACK PERIL OF SOUTH AFRICA.

He regarded this as the real black peril of South Africa. It was an economic menace whether it was a social menace or not, and anything that the Government did in the way of limiting or destroying the evil he would be prepared to support. He was sorry that the Government had not gone further than it had done, and said that 75 per cent. of the people of Natal would be prepared to support any movement on the part of the Government to send the Indians out of Natal. He then referred to a tour which he made in Natal with another gentleman, and said at every centre where they held a meeting on this question they carried a resolution unanimously in favour of stopping Indian immigration.

At this point

Mr. SPEAKER intervened and said that the hon. member for Durban, Greyville, had moved an amendment which should be in the nature of a superseding amendment to the second reading of the Bill, and it stated that legislation should be introduced prohibiting the importation of indentured Indian labour. He thought that that was the law now.

Mr. F. H. P. CRESWELL (Jeppe): No, sir.

Mr. SPEAKER: That is the law under the Act of last year, as far as I remember.

Mr. CRESWELL said that the law did not definitely prohibit the importation of indentured Indian labour. He read the clause and pointed out that it rested with the Minister. There was nothing definite which would prevent a Government from acceding to a request that indentured Indian labour should be imported.

Mr. SPEAKER: That was to attain the object, was it not?

Mr. CRESWELL said that the law did not specifically prohibit the importation at present.

The MINISTER OF FINANCE: The hon. member is quite right—the prohibition of importation is in general terms. That has been exercised, and the Minister has deemed that all Asiatics are unsuitable to the country.

Mr. CRESWELL said that other Ministers might think differently. There was no security that another Minister might not deem Asiatics suitable for the Province of Natal.

Mr. SPEAKER: The hon. member can proceed.

Mr. HAGGAR (continuing) said he believed that in two years all existing indentures in Natal would cease, and there would be a good chance for the Minister to take a bigger step if he desired to do so. He referred to the prohibition of Kanaka labour in Australia, and said that, of course, at first there was a howl, but since then the industries of the country had been doing very well. In two years in

Natal the Government could see that better labour was employed, or it could take over the sugar estates at a valuation and work them themselves. Dealing with the tax, he said that whether it was continued or taken off he did not think it would make a great deal of difference. The fact of the matter was that the principle was bad, and the speaker went on to deal with the tax in relation to Indian women. The hon. member went on to say that, if it were intended that the tax should not be paid by women, that injustice ought to be removed. He knew hundreds of instances where the men had been absolutely unable to pay the tax. It had been a very cruel imposition, apart from the amount and from any principle involved in it.

OBJECT OF THE TAX.

With regard to the object of the tax, he pointed out that he had heard planters, members of Parliament, and employers of Indian labour in Natal, say again and again that it was not the tax they wanted, but they wanted to compel the Indians to re-indenture. Hon. members in the Natal Parliament said that they would rather have the Indians after the first term because they were worth more money. They used and worked them until they could work no longer. They had been told that these Indians re-indentured because they were satisfied with the conditions of service. The Protector, however, said that the immediate object of re-indenturing was not to secure a passage to return to India, but because they were penniless and in debt and had not saved enough to return to India. He (Mr. Haggart) was not going to say that cruelties had been very extensive, but there had been cases of very harsh treatment. He hoped the Government would make up their minds soon. He had a scheme whereby this matter could be settled. Let them take away the privileges from the sugar industry which it had enjoyed so long, and send the coolies back with a nice little sum in their pockets. In five years' time they could empty the country at least of all the undesirables. They must put the Natal sugar industry on a fair basis, fair from the standpoint of the country, and not rob the country year after year, as it had been robbed and was being robbed to-day. On economic grounds this system ought to cease, on grounds of humanity it ought to cease, and if we had any Christianity at all it would cease and cease straight away. He hoped the Government would resolve that there should be a real settlement, a settlement that would endure.

Mr. T. ORR (Pietermaritzburg, North) said that on this Bill he took a view which was opposite to that of many of his colleagues from Natal. It seemed to him that the hon. member who had moved this amendment did not desire to see a settlement of this question, because his amendment would have the effect of indefinitely postponing legislation on the subject. That was part and parcel of the methods of the members on the cross-benches session after session. They wanted to create difficulties. The other amendment, that the second reading should be taken that day six months, meant postponing it for ever. He could not agree with that, and with regard to the referendum amendment, that was equally impossible now that Natal had entered the Union. There appeared to have been an air of unreality about the discussion since two o'clock. The hon. member referred to the evidence of one of the witnesses before the Commission, who expressed the opinion that the tax was not an inducement to cause indentured Indians to return to their country. That was an opinion which the Commission itself also agreed with. That talk about goading the Indians into rebellion gave one to think that a tremendous number would be affected. But the tax had almost fallen into disuse, and of the 10,000 who were liable to be called upon to pay the tax it was only collected from some 3,600—those who were in constant employment and easily got at. The tax was not worth while collecting from a revenue point of view, and matters had now gone so far that it would not be possible to properly collect the tax. If it would

put them in a position to remove embarrassment from the British Government it was not worth while to enforce the tax. But it was not the desire on the part of some of the Natal members who had spoken so much to force the Indians to go back, but to cause them to re-indenture. Why should they not be honest and say so? Even on that ground, however, it would not last very long, because further indentured labour had been stopped from coming into the country, and soon they would be all free labourers. They would not go back because there was more inducement at the present time for those men to remain in this country than previously. He wished to support the second reading of the Bill, believing it to be an honest attempt to settle the difficulty of the £3 licence, a matter of which far too much had been made.

A FREE STATE OPINION.

†Mr. C. T. M. WILCOCKS (Fauersmith) said it was not his intention lightly to deal with an important matter like this. When they went to Natal and saw the position of affairs prevailing there they at once realised the seriousness of this question. Every speaker to-day had emphasised that the coolie was an undesirable element. We did not wish to treat the Asiatic harshly or unjustly, but he held that an attempt should be made to get rid of the Indian. Instead of the Bill, however, doing that, it proposed to make matters easier for him. He felt that the £3 licence constituted an incentive for the Asiatic to return to India. And now it was proposed to remove this incentive. He could not see that there was anything harsh in the £3 licence, especially in view of the fact that the indentured labourers had come to South Africa knowing exactly under what terms they came here. The new danger which was being created was that the coolie could settle on the land as a free labourer. He remained here, because in this country he could make a better existence than in his own country. In twenty years' time the country would swarm with coolies, and the effects on the white population could only be disastrous. Everyone who had come in contact with Asiatics knew how difficult it was to compete against them in every sphere of trade and commerce. Under the Act of last year the Asiatic was given certain protection, but this new Bill extended this protection even further. It was curious how certain suggestions made by "The Times" last year had been acted on. Mr. Wilcocks went on to say. He wished the House to realise the dangers to which it was exposing the country. They often heard of a white man's country, but how could they ever make it a white man's country in these circumstances? His fears for the adoption of this Bill had been greatly reduced after the speeches of the Natal members. The hon. member for Umvoti (Col. Leuchars) was to him like the Oracle of Delphi. On a previous occasion he had made his voice heard on an important question, and had caused a great tumult in the country. However, his voice had then been listened to. If it was again listened to now, he would go a long way towards mending the wrong he had done then. In conclusion, Mr. Wilcocks said that he hoped the Government would not go on with this measure.

WHAT ARE THE REASONS?

Mr. C. G. FICHARDT (Ladybrand) said that he could not understand why that coolie tax had not been collected, and if there was a law which required that the tax should be paid it seemed that there was something wrong because the tax had not been collected, and the Minister of Finance in his speech had not made it clear why that tax had not been collected. If the law was not to be carried out in regard to the Asiatics in Natal, it was no use passing another law if it would simply lead to another evasion. He asked if the Minister of Finance would allow them to escape the income tax if they wandered about the country—because the Asiatics did not pay their tax because it was said that they wandered about. The native poll tax, the hon. member went on to say, was collected through the country, and

it seemed to him that there were other reasons for the non-collection of that tax on coolies than the reason that it was difficult to collect. Instead of imposing further disabilities on the Asiatics, they were now removing disabilities and making it easier for Indians in that country. The hon. member proceeded to quote from the evidence given by Mr. Dick before the Indian Commission as to how Indians evaded and circumvented the immigration regulations. It did seem to him, said the hon. member, that instead of relaxing the laws they should be strengthened. The Asiatic question was such a serious one in South Africa that they could not and dare not trifle with it. The other dominions had taken steps to keep Asiatics out of their countries, and those dominions had nothing like the difficult problem which they had in South Africa in connection with the coloured question. It had been shown over and over again how when Europeans and Asiatics came together the Europeans went invariably to the wall. As to what the hon. member for Durban, Berea (Mr. Henderson), had said about the Orange Free State sitting still, he would find the Orange Free State with him to a man in preventing the entry of any more Indians to South Africa. The Orange Free State at present was being invaded by Asiatics from Natal, as the hon. member for Ficksburg (Mr. Keyter) could bear out. The hon. member (Mr. Henderson) might rely upon the support of the people of the Orange Free State in regard to restrictions against Asiatics entering that country. Dealing with the position of Natal, the hon. member said that if Natal had made a mistake in the past and Natal had seen that it was a mistake, South Africa should see what could be done to deal with that very great evil which existed in Natal. Continuing, he said that the removal of the disabilities would be an encouragement to Indians of all classes to stay in South Africa, and he thought that they should not complicate their problems by the importation of more colour into South Africa. A gentleman, whose opinion was valuable, told him that in time the Free State would be overrun by coolies, and he asked his friends not only to fight for the purpose of keeping the coolies out of the Free State but to fight so that more might not enter South Africa. Messrs. Gandhi and Company had told them that this £3 tax business was merely the beginning, and that what they were aiming at was equality with the white man and for the franchise. He read an interview which had taken place with Mr. Polak, who said that they wanted the assurance of the Minister that the Immigration Act would be sympathetically administered. He also said that the acceptance of the Bill did not mean the abrogation of the claim to civil equality in South Africa. He thought that members from the Free State were opposed to any lightening of the burdens on Asiatics.

LOOSENING THE BONDS.

As a convinced opponent of the admission of Asiatics into South Africa, he would oppose any loosening of the bonds. Instead of sitting there and considering the question of removing disabilities on Asiatics in South Africa they ought to be considering legislation which would repatriate all these Asiatics that we had in this country. He would vote against the Bill, because he believed that in removing these disabilities they were opening the door further to the admission of Asiatics into South Africa.

Mr. F. H. P. CRESWELL (Jeppe) said that the hon. member for Pietermaritzburg, North, knew as well as he (Mr. Creswell) did that this was the only stage at which it was competent for them to move an amendment indicating their objection to the Government measure, on the ground that there was no provision for expenditure in a certain direction which they believed absolutely necessary to make the policy of this Bill efficient. It was perfectly open to the Minister in Committee to propose an amendment to strengthen clause 6 by offering distinct monetary inducement to any Indians who were prepared to emigrate back to their own country. With regard to the second point, about which Mr. Speaker had some doubt, the

question of the importation of further indentured labour, they anticipated, approving as they did in the main of this Bill, that the main effect of the abolition of the £3 tax was going to be a distinct blow at the indentured Indian labour system. The effect would be that the planters, if they wished to retain their Indians, would probably have to pay them higher wages. They knew that influences would be brought to bear on the Government, to which the Government would always find itself amenable, to depart from their present stated policy of refusing to allow any further indentured supply to supplement the supply of labour, which would be found to be running short. In two years' time they might have pressure brought to bear on the Government to cause some other experiment to be tried. They on the cross-benches did not want one form of indentured labour to be superseded by another; what they did want was that the Government should recognise that the difficulty was of our own causing, and that we must spend money to induce as many Indians as possible to return. Then, no longer under the fear of a continually advancing tide of Indian population, but with the stream flowing the other way, we should be able to deal with the whole matter in a calmer and wiser spirit.

†Mr. J. G. KEYTER (Ficksburg) said to him it appeared there was no hardship in the contracts signed by the Indians. But now it seemed that the Indians wished this House to alter the contracts which they themselves had entered into. After having concluded the indentures they had to submit to a certain pass, for which they had to pay £3. There were no real grievances. What were called grievances were what the Indians were told by agitators like Gandhi and Co. If the collection of the tax was difficult where the Magistrate had to hand out the pass to the Indians, for which he was paid £3, then he wondered how other taxes were to be collected. Surely the Magistrate had a list of those people, and if they did not pay there were the police. If the tax was not collected, why then was it not? How could, in these circumstances, the Government complain of lack of revenue? How did Gandhi, Polak and Co. know of this Bill, he asked, before even this House knew anything about it? He disagreed with the statement of the hon. member for Ladybrand that Indians still entered the Free State. Since the passage of last year's Act, he wished to say, to the credit of the Minister of Finance, that no Indians had entered the Free State. (Hear, hear.) He quoted the case of an Indian who had been sent back from Ficksburg to Cradock. It was simply a matter of administration, and he wished to tell Mr. Gandhi that if he, with his followers, entered the Free State he would quickly be thrown over the borders. In conclusion, Mr. Keyter said that he could not vote for this Bill, and that he did not see any necessity to impose fresh taxation, seeing that such a large source of revenue was neglected and ignored.

GENERAL SMUTS' REPLY.

The MINISTER OF THE INTERIOR, in replying on the debate, said he had heard many arguments in the course of the debate, but very few indeed against that Bill. The whole force of the arguments had been directed against the policy—the fatal, suicidal policy—adopted by the Natal people many, many years ago. That policy had been condemned there more strongly by the Natal members than by members from any other part of the Union. If Natal had made a mistake many years ago, and had been trying to undo that mistake by trying to pass impossible legislation, that did not absolve them from doing their duty. They found that it was possible to-day to arrive at a solution—the subject was a difficult one, and the matter had cost a great deal of trouble already, but to-day they thought they could get to some finality. Hon. members asked what reason had he or the Government for supposing that some finality might be reached in the matter. Well, they had heard from the Government of India that they were satisfied with the report of that Commission,

and that if that report was passed they would look upon it from their point of view as satisfactory. If the people of that country could come to some solution which could be approved of by the Government of England as it had been approved of by the Government of India, they had gone a long way towards a solution of the difficulty. It was said, would the Indians accept it? The hon. Minister went on to quote from an article in "Indian Opinion" of June 3rd, where the Bill was referred to, and other administrative actions which had been taken in terms of the report of the Commission. The article wound up by saying that the struggle, which had gone on for years, and had meant enormous losses and suffering to the community, might be said to be honourably closed.

THE LABOUR AMENDMENT.

He thought therefore that they might assume, whatever might lie in the distant future, that if that Bill passed, and the Government carried into effect the other recommendations of the Commission, then they might assume that they would have peace. The hon. member for Greyville had moved an amendment, the object of which was to go a good deal further. He (the Minister) thought that the hon. member wanted more effective steps taken to see the Indians in this country repatriated, and no further Indian labour brought here. To the last point no assurance was necessary. Unless something quite unforeseen happened no indentured Indian labour would come into South Africa again. With regard to the other point, to secure repatriation he might say that the Government would go a long way to secure that point of view. From what he had heard it was the universal opinion, not only of the people of South Africa but also of the people of Natal, who three years ago sent a deputation to beg on its knees that the embargo should be removed and more Indians brought into Natal. He could assure hon. members from Natal that the Government would do all in its power to get Natal out of

the mire. They were at a very late stage of the session, and they were determined to get this Bill through. If they overloaded this Bill with repatriation provisions they would cause trouble. Let them deal with that matter separately, and on its merits. The Government would favour a policy of that kind, and go a long way to see it carried out. He hoped the hon. members on the cross-benches would not therefore shelter themselves behind this amendment, because the Bill went a long way in the direction they desired. He thought the Government was proposing to take the right course, and he hoped the House would stand loyally by the Government.

Mr. SPEAKER put the question that all the words after "that," proposed to be omitted from the original motion for the second reading of the Bill, stand part of the motion, and declared that the "Ayes" had it.

Mr. C. A. VAN NIEKERK (Boshof) called for a division, which was taken with the following result:—

Ayes	..	..	..	60
Noes	..	..	..	24
				—
Majority for the motion ..				36

It was therefore decided that the words should stand.

The following voted in the minority: Messrs. Clayton, Myburgh, Keyter, Henwood, Henderson, D. H. W. Wessels, Maginess, Haggard, Andrews, H. W. Sampson, Creswell, Madeley, E. N. Grobler, Fawcus, Woolls-Sampson, Leuchars, Fichardt, H. P. Serfontein, H. W. Serfontein, J. H. B. Wessels, Van Niekerk, P. G. W. Grobler, Wilcocks and Boydell.

The motion that the Bill be read a second time was then agreed to. The Bill was read a second time, and set down for the Committee stage on Thursday next.

The House adjourned at 11.35 p.m.

~~111~~

Population.

1921	161,339
1926	173,959.

Natal

Province	Male	Female	Total
Natal	83,045	68,345	151,430.
Transval	10,409	5,338	15,747
Cape	4,578	2,077	6,655
Total	98,112	75,847	173,959.

Trade Licences.

Natal. Increase in European licences 15 per cent as against 5 in Indian licences. European licences increased from 2839 in 1921 to 3344 in 1924, while the Indian ~~licences~~ licences increased from 2909 to 3055.

Bonus.

Till 1924 £ 5 per head and £.25 per family.
Since 1924 £.10 do 50

Annexure containing summary of the conclusions reached by the Round Table Conference on the Indian question in South Africa. .

I. *Scheme of assisted emigration.*—(1) Any Indian of 16 years or over may avail himself of the scheme. In case of a family, the decision of the father will bind the wife and minor children under 16 years.

(2) Each person of 16 years of age or over will receive a bonus of £20 and each child under that age a sum of £10. No maximum shall be fixed for a family. A decrepit adult who is unable to earn his living by reason of a physical disability may, at the discretion of the Union authorities, receive a pension in lieu of or in addition to the bonus. The pension will be paid through some convenient official agency in India out of a fund provided by the Union Government to such amount as they may determine. It is expected that the amount required will not exceed £500 per annum in all.

In every case the bonus will be payable in India on arrival at destination or afterwards, through some banking institution of repute.

(3) Free passage, including railway fares to port of embarkation in South Africa and from port of landing in India to destination inland, will also be provided.

(4) Emigrants will travel to India *via* Bombay as well as *via* Madras. Emigrants landing at Bombay will be sent direct from the ship to their destination at the expense of the Union Government.

Survey and certification of ships shall be strictly supervised and conditions on the voyage, especially in respect of sanitary arrangements, feeding and medical attendance, improved.

(5) Before a batch of emigrants leaves the Union, information will be sent to some designated authority in India at least one month in advance giving (a) a list of intending emigrants and their families, (b) their occupation in South Africa and the occupation or employment which they would require in India, and (c) the amount of cash and other resources which each possesses. On arrival in India emigrants will be (i) advised, and so far as possible, protected against squandering their cash or losing it to adventurers, and (ii) helped, as far as possible, to settle in occupations for which they are best suited by their aptitude or their resources. Any emigrant wishing to participate in emigration schemes authorised by the Government of India will be given the same facilities in India as Indian nationals.

(6) An assisted emigrant wishing to return to the Union will be allowed to do so within three years from the date of departure from South Africa. As condition precedent to re-entry, an emigrant shall refund in full to some recognized authority in India the bonus and cost of passage including railway fares received on his own behalf and if he has a family, on behalf of his family. A *pro rata* reduction will, however, be made (i) in respect of a member of the family who dies in the *interim* or a daughter who marries in India and does not return, and (ii) in other cases of unforeseen hardship, at the discretion of the Minister.

(7) After expiry of three years Union domicile will be lost in agreement with the proposed revision or the law relating to domicile which will be of general application. The period of three years will run from the date of departure from a port in the Union and expire on the last day of the third year. But to prevent the abuse of the bonus and free passage by persons who wish to pay temporary visits to India or elsewhere no person availing himself of the benefits of the scheme will be allowed to come back to the Union within less than *one* year from the date of his departure. For purposes of re-entry within the time limit of three years, the unity of the family group shall be recognised though in cases of unforeseen hardship the Minister of the Interior may allow one or more members of the family to stay behind. A son who goes with the family as a minor, attains majority outside the Union, marries there and has issue will be allowed to return to South Africa, but only if he comes with the rest of his father's family. In such cases he will be allowed to bring

his wife and child or children with him. But a daughter who marries outside the Union will acquire the domicile of her husband and will not be admitted into the Union unless her husband is himself domiciled in the Union.

II. *Entry of wives and minor children.*—To give effect to paragraph 3 of the Reciprocity Resolution of the Imperial Conference of 1918, which intended that an Indian should be enabled to live a happy family life in the country in which he is domiciled, the entry of wives and children shall be governed by the following principles :—

- (a) The Government of India should certify that each individual for whom a right of entry is claimed, is the lawful wife or child, as the case may be, of the person who makes the claim.
- (b) Minor children should not be permitted to enter the Union unless accompanied by the mother, if alive, provided that
 - (i) the mother is not already resident in the Union, and
 - (ii) the Minister may, in special cases, permit the entry of such children unaccompanied by their mother.
- (c) In the event of divorce no other wife should be permitted to enter the Union unless proof of such divorce to the satisfaction of the Minister has been submitted.
- (d) The definition of wife and child as given in the Indians Relief Act (No. 22 of 1914) shall remain in force.

III. *Upliftment of Indian community.*—(1) The Union Government firmly believe in and adhere to the principle that it is the duty of every civilised Government to devise ways and means and to take all possible steps for the uplifting of every section of their permanent population to the full extent of their capacity and opportunities, and accept the view that in the provision of educational and other facilities the considerable number of Indians who remain part of the permanent population should not be allowed to lag behind other sections of the people.

(2) It is difficult for the Union Government to take action, which is considerably in advance of public opinion, or to ignore difficulties arising out of the constitutional system of the Union under which the functions of Government are distributed between the Central Executive and the Provincial and minor local authorities. But the Union Government are willing :—

- (a) in view of the admittedly grave situation in respect of Indian education in Natal, to advise the provincial administration to appoint a provincial commission of inquiry and to obtain the assistance of an educational expert from the Government of India for the purpose of such inquiry ;
- (b) to consider sympathetically the question of improving facilities for higher education by providing suitable hostel accommodation at the South African Native College at Fort Hare and otherwise improving the attractiveness of the institution for Indians ;
- (c) to take special steps under the Public Health Act for an investigation into sanitary and housing conditions in and around Durban which will include the question of
 - (i) the appointment of advisory committees of representative Indians ; and
 - (ii) the limitation of the sale of municipal land subject to restrictive conditions.

(3) The principle underlying the Industrial Conciliation Act (No. 11 of 1924) and the Wages Act (No. 27 of 1925) which enables all employees including Indians to take their places on the basis of equal pay for equal work will be adhered to.

(4) When the time for the revision of the existing trade licensing laws arrives, the Union Government will give all due consideration to the suggestions made by the Government of India Delegation that the discretionary

powers of local authorities might reasonably be limited in the following ways:—

- (1) The grounds on which a licence may be refused should be laid down by statute.
- (2) The reasons for which a licence is refused should be recorded.
- (3) There should be a right of appeal in cases of first applications and transfers, as well as in cases of renewals, to the courts or to some other impartial tribunal.

IV. *Appointment of Agent.*—If the Government of the Union of South Africa make representations to the Government of India to appoint an agent in the Union* in order to secure continuous and effective co-operation between the two Governments the Government of India will be willing to consider such a request.

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Statement made by Mr. J. W. Ehere, C.I.E., C.B.E., I.C.S., in the Legislative Assembly, on Monday, the 21st February 1927.

1. It was announced in April 1926 that the Government of India and the Government of the Union of South Africa had agreed to hold a Round Table Conference to explore all possible methods of settling the Indian question in the Union in a manner which would safeguard the maintenance of western standards of life in South Africa by just and legitimate means. The Conference assembled at Cape Town on December 17th and its session finished on January 12th. There was, in these meetings, a full and frank exchange of views which has resulted in a truer appreciation of mutual difficulties and a united understanding to co-operate in the solution of a common problem in a spirit of friendliness and good-will.

Both Governments re-affirm their recognition of the right of South Africa to use all just and legitimate means for the maintenance of western standards of life.

2. The Union Government recognises that Indians domiciled in the Union who are prepared to conform to western standards of life, should be enabled to do so.

3. For those Indians in the Union who may desire to avail themselves of it, the Union Government will organise a scheme of assisted emigration to India or other countries where western standards are not required. Union domicile will be lost after 3 years' continuous absence from the Union, in agreement with the proposed revision of the law relating to domicile which will be of general application. Emigrants under the assisted emigration scheme who desire to return to the Union within the 3 years will only be allowed to do so on refund to the Union Government of the cost of the assistance received by them.

4. The Government of India recognise their obligation to look after such emigrants on their arrival in India.

5. The admission into the Union of the wives and minor children of Indians permanently domiciled in the Union will be regulated by paragraph 3 of Resolution XXI of the Imperial Conference of 1918.

6. In the expectation that the difficulties with which the Union has been confronted will be materially lessened by the agreement now happily reached between the two Governments, and in order that the agreement may come into operation under the most favourable auspices and have a fair trial, the Government of the Union of South Africa have decided not to proceed further with the Areas Reservation and Immigration and Registration (Further Provision) Bill.

7. The two Governments have agreed to watch the working of the agreement now reached and to exchange views from time to time as to any changes that experience may suggest.

8. The Government of the Union of South Africa have requested the Government of India to appoint an agent in order to secure continuous and effective co-operation between the two Governments.

I am laying on the table of the House an annexure to the announcement I have just made. This annexure gives in greater detail the terms of the agreement which has now been reached between the Government of India and the Government of the Union of South Africa. The following comments might however help Honourable Members to follow the annexure more easily.

2. The first point is the declaration by the Union Government that they firmly believe in and adhere to the principle that it is the duty of every civilised Government to devise ways and means and to take all possible steps for the

uplifting of every section of their permanent population to the full extent of their capacity, and accept the view that, in the provision of educational and other facilities, the considerable number of Indians who remain part of the permanent population should not be allowed to lag behind other sections of the population. This should dispel any apprehension that the 'maintenance of western standards of life' does not include the upliftment of the Indian community to those standards. As earnest of their good-will, the Union Government propose (1) to advise the Government of Natal to appoint a Commission on Indian education; (2) to give attention to the provision of suitable hostel accommodation for Indians at the College at Fort Hare and to consider sympathetically other proposals to increase the attractiveness of that institution for them; and (3) to investigate the position in respect of sanitation and housing in the 'peri-Durban' area where the problem is understood to be acute and, possibly, elsewhere, and to consider in consultation with local authorities the most appropriate means of dealing with the situation, including (i) the formation of advisory committees of representative Indians; and (ii) the limitation of available municipal land sold with restrictions under the Durban Land Alienation Ordinance, No. 14 of 1922, and the Natal Boroughs and Township Land Ordinance, No. 5 of 1923. These Ordinances now enable municipalities in Natal to transfer, with the consent of the Administrator, land belonging to them under restrictive conditions of a racial character as to occupation or ownership. It is hoped that, as a result of this investigation, the principle of consultation between the Indian community and local bodies in matters of municipal administration affecting the former may be established, and that more municipal land of a suitable nature be made available for Indians for housing purposes. Industrial laws, like the Industrial Conciliation Act, 1924, and the Wages Act of 1925 will be administered so as to enable Indian employees in industry to take their place on the principle of equal pay for equal work.

3. The second point is the new scheme of assisted emigration which the Union Government propose to organise for those Indians who may desire to avail themselves of it. Honourable Members are doubtless aware that section 6 of the Union Act, No. 22 of 1914, known as the Indians Relief Act, provides for the grant of free passage from any port in the Union to any port in India to any Indian who makes a written request for such passage and signs as a condition of the grant of such request a statement that he abandons on behalf of himself and his wife and all minor children (if any) all rights possessed by him or them to enter or reside in any part of the Union together with all rights incidental to his or their domicile therein. This is an essential feature of the existing scheme of voluntary repatriation. Under the new scheme, Union domicile will not be lost except by three years' continuous absence from the Union in conformity with a proposed revision of the law which will be of general application, and an assisted emigrant wishing to return to the Union within the period of three years will be allowed to do so on repayment of the bonus and cost of passage including railway fares which he may have received on his own behalf and, if he has a family, on behalf of his family. Any objection that there might be to the existing scheme of voluntary repatriation on the ground that it requires of Indians wishing to avail themselves of it an irrevocable surrender of their Union domicile is thus removed. Another feature of the new arrangement is that each person of 16 years or over will be free to choose for himself whether he will or will not avail himself of the scheme of assisted emigration. At present for purposes of voluntary repatriation from South Africa, 21 years is treated as the age of majority and the Union domicile of a person under that age has to be signed away by the father if the latter wishes to avail himself of a free passage to India. It will be observed that the agreement provides for schemes of assisted emigration to be organised "to India and other countries". The phrase is intended to cover the emigration of Indians who may return to India from South Africa, to the Federated Malay States and to Ceylon under schemes of emigration from India to those countries which are now operative.

4. The third point is that, in regard to the entry into the Union of the wives and minor children of Indians resident in the Union, the principle

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underlying the reciprocity Resolution of 1918 will be maintained, and that the prohibition of the entry of this class of persons after the 1st August 1930, which was contemplated in the Areas Reservation and Immigration and Registration (Further Provision) Bill, is no longer envisaged.

5. The fourth point is that, in order to ensure effective and continuous co-operation between the two Governments, the Government of the Union of South Africa have requested the Government of India to appoint their agent in the Union. Direct relations between the two Governments will be permanently established if the Government of India accept the proposal which is now receiving their earnest consideration.

6. Lastly, to inaugurate under the most favourable auspices the agreement which has now happily been reached between the Government of India and the Government of the Union, the latter have decided not to proceed further with the Areas Reservation and Immigration and Registration (Further Provision) Bill. Honourable Members who have studied the provisions of that measure will appreciate with what relief this decision will be received by the Indian community in South Africa.

7. It is unnecessary to attempt an elaborate appreciation of the results of the Conference, of which a brief summary has been given. Honourable Members must judge for themselves. In doing so it is hoped they would bear fully in mind the position as it was a year ago. The Government of India are of opinion that the agreement reached is eminently satisfactory, and they have ratified it. They are confident that the considered judgment of the Indian legislature will be in favour of the action they have taken.

8. The agreement reflects the utmost credit on our delegation which negotiated it. The Government and the people of India owe a great debt of gratitude to the whole delegation for the sagacity, skill and expedition with which they accomplished a difficult and delicate mission. Nor must we forget the services of the Paddison deputation whose admirable preliminary work made a Round Table Conference possible. But it will be readily admitted that these satisfactory results could not have been secured unless the Government of South Africa had entered the Conference in a spirit of friendliness and good-will. In the reception which they gave to our delegates to the Conference, and in the courageous and sympathetic statesmanship which their representatives brought to bear on the solution of the Indian problem in South Africa, we have received unmistakable proof of the earnest desire of the Government and people of the Union to cultivate friendly relations with the Government and people of India. The agreement which has to-day been announced to the House is a convincing proof of their good-will. Let us treat it as such and endeavour to make it the basis of lasting friendship between India and South Africa. It is not suggested that all outstanding questions between the two countries have been solved. But the Government of India are confident that, if the spirit that prevailed at the recent Conference at Cape Town endures, ultimate solution of the Indian problem in South Africa in a manner that will be satisfactory and honourable to both countries is assured.

Sastri's Article
in the Hindustan Review,
for April 1927

VIII

The Capetown Agreement.

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The dispute between South Africa and India is as old as Kruger, who has already receded into the dimness of the past. It has several sides and has passed through several phases, but never knew any assuagement till the other day. No settlement which was not the result of a severe armed conflict could in the circumstances be final or decide all the points at issue. The recent negotiations at Capetown have achieved no miracle. But they have borne unexpectedly good fruit and, what is more, have brought within the region of probability a satisfactory ending of a controversy that has vexed nearly two generations.

The enlarged outlook of South African statesmen, to which this auspicious turn is due, is indeed a phenomenon deserving of the psychologist's attention. Those who witnessed it do not hesitate to describe it as a real change of heart. It has caused pleasurable surprise to most students of public affairs. Even the disterpered politician, who almost resents the removal of a grievance, recognises it in his own way - by refusing to believe it. How is it to be accounted for? Its beginning is clearly traceable to the final stage of the work done by the Paddison deputation of last year, when they persuaded the Government of the Union, at a late stage of the Areas Reservation Bill, to suspend its course, pending the result of a Round Table conference between its representatives and those of the Government of India. Sir George Paddison and Mr. G. S. Bajpai must have been gratified at the many tokens of appreciation which they received from leaders of opinion in South Africa on whom they had first impressed the gravity of India's feelings and the necessity of a thorough investigation. Then came the visit of the important Parliamentary deputation headed by Mr. Deyers. In a brief and hurried tour through India these representative South Africans took a measure

Insert the following after "culmination" in line 7, page 2.

No better witness on this point can be cited than Dr. Malan. In presenting the settlement to the Union Parliament he said, "The invitation from the Government of India, of which we availed ~~of~~ ourselves during the recess, to send a representative deputation on a friendly visit to India, was prompted by feelings of genuine friendship, has offered to the Government and members of Parliament a much-valued opportunity of studying at first hand conditions in India and has been a potent factor in the creation of that atmosphere to which the success of the Conference must be mainly ~~be~~ attributed. The hospitality which the members of the deputation received from the ~~Government~~ Government and the people of India could not be surpassed."

but their countrymen throughout South Africa, who followed their movements were profoundly affected by the hospitality and courtesy manifested by Indian society and by the marvellous self-restraintⁿ by which politicians of every shade forbore to make any unpleasant references to the obnoxious Bill or indeed to any of ~~the~~ the numerous quarrels of which it was the culmination. The most potent cause, however, was the political evolution of General Hertzog, the present Prime Minister of the Union. The earnestness and ~~g~~genuine candour of his nature brought him completely under the spell, which England knows how to cast over her political unfriends. The new "status" of his country, hailed as the crowning triumph of his diplomacy, induced a high degree of exultation under the influence of which he was determined to vindicate the enlarged freedom he had acquired in the only way in which it could be vindicated - by magnanimous extension of it to the weak and powerless peoples under his sway, of whom hitherto the empire had assumed the guardianship.

A feeling of mutual respect and equal association between special^{ly} chosen representatives is one thing; goodwill and fellowship between communities is another. The first may conclude an agreement; the second alone can carry it into full effect. It is open to doubt whether the public opinion necessary for translating into daily action the ameliorative provisions of the settlement is at present in actual being. A surprising amount of toleration was perceptible at the demonstrations held in honour of the Indian Delegation. For the moment hotels and civic halls opened their doors to the Indian community; ~~they were~~ they were allowed to sit at meals with whites and speak from the same platforms. Whether this happy understanding is kept up beyond the occasion depends on the care and wisdom with which it is nursed by those blessed souls on both sides who value peace and goodwill among men.

Of such Mr. C. F. Andrews is the finest exemplar. No praise in the cheapened currency of the day is adequate for the patience, devotion and humbleness of spirit with which this saintly man has gone about on his work of healing and reconciling in all grades of society, among those who wield power and those who are their victims, among politicians, ~~traders~~ ^{tradesmen}, journalists and priests. The settlement was made possible by his exertions; it will be made fruitful by his exertions.

II.

South Africa, like India, is divided into provinces of unequal size, population and resources, the Cape Province alone being larger than the other three put together. Constitutionally the central government is described as unitary. Still in respect of those functions, which are actually transferred to the provinces or to local authorities, overlapping and interference from the centre are jealously guarded against. Unfortunately, sanitation, housing, trade licenses, education, subjects which most concern the welfare of Indians, all come within this category. The Union Government could only advise and recommend ameliorative measures under these headings to other authorities, and the intelligent reader will guess how difficult it will be, even when such measures have been passed by local authorities, to get them administered in the proper spirit. The necessity thus arises for some competent and duly authorised Agent of the Government of India to remain on the spot and establish direct contact with these local authorities.

The provinces differ one from another in their treatment of Indians. The Orange Free State excludes Indians altogether. There are only about a hundred serving as waiters or ⁱⁿ similar capacities. In the Transvaal the Indian has neither municipal nor parliamentary franchise, cannot acquire fixed property, must reside in locations, and

Trade licenses, which are really valued most by our people, are usually renewed though here and there difficulty has recently been felt even in this matter, but as a rule no new licenses are given. In Natal the parliamentary franchise was taken away from our people long ago ^{in 1896} the municipal franchise was taken away quite recently. But the individual voters are allowed to continue on the register and it is possible in certain localities for Indians, if they combined, (which however they seldom do) to send in a representative or two of their own, though these must necessarily ^{be} white persons. Our people can acquire fixed property anywhere, but municipal authorities have ~~recently~~ within the last few years begun to sell the lands at their disposal with restrictions on transfer of a racial character. Such restrictions are common in private sale deeds, but to these our countrymen raise no special objections. As regards trade licenses new ones are no longer possible. The Cape has always been known for the absence of an acute Indian problem. Rhodes's formula of equal laws for all civilised peoples is still the prevailing doctrine, though its spirit is no longer maintained as in the old days. The Indian retains the franchise and can acquire property. Trade jealousy has just made its appearance here and there, and new licenses are occasionally refused. ~~Through the~~
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agencies. These are too few in number, especially in Natal and have no classes above the fourth. The whole situation is admitted to be "grave" by the authorities. Everywhere Indians repose the utmost confidence in the courts of the land, and they would be prepared in the last resort to acquiesce in the grant of full powers as to trade licences to local bodies provided they enjoyed the right of unrestricted appeal to the supreme judicial tribunals. The above enumeration of disabilities might create the impression in the mind of the hasty reader that Indians in the Union of South Africa were the victims of a cruel system of persecution, or from a material point of view were sufferers from poverty, ^{beggary, or chronic} or unemployment of the acute kind that we are familiar with in this country. There can be no doubt that speaking generally, even the lowest classes in South Africa are better off than they would be here, while a great number of Indians are in easy circumstances and some have amassed fortunes, which in this over-crowded land would have been almost impossible to men of their education and status. In fact, intelligent Indians who are in a position to compare the conditions in the two countries, have no hesitation in giving the preference to South Africa. Another fact exactly the reverse of what one would ordinarily expect is that of the various provinces of South Africa the Cape is the one which records a decrease in the Indian population, while the two other provinces show a perceptible increase. This is noteworthy because the position of the Indians is by all accounts the best in the Cape whether from a political, social or educational standpoint. Moreover the laws of the provinces allow the Indian to migrate to the Cape from the other provinces on satisfying an easy educational test, while movement in the contrary direction is prohibited. The explanation of the surprising phenomenon is perhaps to be found in the ~~comparative ease with which money may be made in the trans-~~

Insert the following after "greatly" in line 27, page 6.

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- ⊕ This slackening is admittedly attributable in great part to the racial bitterness and ill-will created by the Class Areas Bill introduced by the Government of the South African Party.

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in the greater competition in the economic life ^{of} in the Cape which makes it ~~more~~ difficult for the simple Indian trader to make his way there. Notwithstanding the unpropitious conditions of life which the Indians ~~have~~ to face in the Transvaal, he would appear to make money more easily there, and the trader class on the whole would perhaps place a higher money value on a Transvaal domicile than on one in either of the other provinces. But South Africa is not the only land in which economic prosperity and political freedom do not march together, or an unsophisticated person who is driven to make a choice would attach more importance to the former than to the latter.

The Indian population in the Union, as estimated for the year 1926, is 174,000. Of these the Cape, though much the largest province, has 6,500, the Transvaal has 15,500 and ^a Natal has 152,000. In the last named province the European population is roughly 150,000, so that our people are in a slight majority. About 15 years ago the majority was much more decidedly in our favour. To ~~counter-~~ ^{reduce it} ~~act,~~ this majority European immigration was stimulated, while Indian immigration was practically stopped, and even repatriation was after 1914 resorted to in the case of Indians. Owing to these special measures the disparity between the two populations was in the course of being effaced. For some reasons however during the last three or four years European immigration has practically ^{at the same time that} ceased, ~~while~~ repatriation ^{of Indians} ~~also on the other hand~~ seems to have slackened greatly. The result is that the numerical balance threatens to continue in our favour and a few alarmist agitators have succeeded only too well in filling the minds of the Natal whites with the fear of being swamped. Some extremists would like the Indians to be driven out of Natal altogether; the majority would be content with a material reduction of the Indian population. An easy calculation shows that, even if the number of Indians ^{was} ~~xxxx~~ to be kept stationary,

by neutralising the natural increase, as many as three thousand should be induced to leave ^{South Africa} ~~South Africa~~ every year. It may also be mentioned at this point that the maximum of repatriates in any year so far has just fallen short of this figure.

The white population in Natal is mostly British, and supports in politics the South African party headed by Gen. Smuts. In the earlier years our main difficulty was with the Boers in the Transvaal. Since the British established themselves in that subcontinent, they have taken the lead in the anti-Asiatic campaign, and the fact is universally admitted that the position of Indians has become steadily worse since the Treaty of Vereeniging and is now most acute in the most British of the provinces. Gen. Smuts was right when he objected to my fixing the responsibility on the Boers. "Were I to yield to Mr. Sastri's demands", he protested in effect, "I should be betraying the Natal Britisher, who has placed his trust in me." Recent cables make it clear that the Natal white will oppose the settlement bitterly. In the circumstances it is a consoling reflection that the present Government does not derive much support from Natal, and can afford to pursue its own course without being unduly frightened by the threats of their opponents. In this course Gen. Hertzog and Dr. Malan would find their task rendered easy if our fellow-countrymen conducted themselves, as there is every reason to believe they would, with dignity and moderation..

~~Mr. Gandhi~~

Mr. Gandhi has repeatedly disavowed designs of political ascendancy and responsible leaders have loyally followed this policy of renunciation. The fear of numerical swamping was neutralised ^{for the time} by our acquiescence in the almost total exclusion of Indians decreed by the Immigration Act of 1913. And this principle has since received the clear concurrence of the Government of India at successive Imperial Conferences. For the benefit of the young students of the subject of Indians Overseas I shall insert here two extracts setting forth the views of Mr. Gandhi. One is from a famous letter of his of June 1914 to Mr. Gorges, the other is of somewhat later date and is taken from his farewell letter to the European and Indian Public of South Africa.

"I have told my countrymen that they will have to exercise ~~their~~ patience and by all honourable means at their disposal educate public opinion so as to enable the Government of the day to go further than the present correspondence does. I shall hope that when the Europeans of South Africa fully appreciate the fact that now, as the importation of indentured labour from India is prohibited and as the Immigrants' Regulation Act of last year has in practice all but stopped further free Indian immigration and that my countrymen do not aspire to any political ambition they, the Europeans, will see the justice and indeed the necessity of my countrymen being granted the rights I have just referred to."

"The concession to popular prejudice in that we have reconciled ourselves to almost the total prohibition by administrative methods of a fresh influx of Indian immigrants, and to the deprivation of all political power is, in my opinion, the utmost that could be reasonably expected from us. These two things being assured, I venture to submit that we are entitled to full rights of trade, inter-Provincial migration, and ownership of landed property being restored in the not distant future."

Mr. Gandhi is justly regarded as an idealist who adheres to a principle in the face of adverse circumstances. If he has been a consenting party to this compromise, it must be because the conditions of the time made it inevitable. Yet both he and Gokhale were criticised with asperity for surrendering a vital principle by champions of the party of moderation. And although the nation has now definitely submitted to the logic of facts, echoes of the old opposi-

The following passages are called from Mr. Gandhi's farewell speeches and letters of the second half of 1914.

"The settlement was honourable to both parties."

"To his countrymen he would say that they should wait and nurse the settlement, which he considered was all that they could possibly and reasonably ~~xxx~~ ~~xxxxxxxxxxxx~~ have expected."

"A word about the settlement and what it means. In my humble opinion it is the Magna Charta of our liberty in this land."

"I call it our Magna Charta because it marks a change in the policy of the Government towards us and establishes our right not only to be consulted in matters affecting us but to have our reasonable wishes respected."

"The settlement finally disposes of all the points that were the subject matter of passive resistance, and in doing so, it breathes the spirit of justice and fairplay."

ofulation } "The presence of a large indentured and ex-indentured Indian population in Natal is a grave problem. Compulsory repatriation is a physical and political impossibility. Voluntary repatriation, by way of granting free passages and similar inducements will not, as my experience teaches me, be availed of to any appreciable extent."

"He knew the Mayor had received some telegrams stating that the Indians Relief Bill was not satisfactory. It would be a singular thing if in this world they would be able to get anything that satisfied everybody, but in the condition of things in South Africa at the present time he was certain they could not have had a better measure. 'I do not claim credit for it; it is rather due to the women and children and those who quickened the conscience of South Africa. Our thanks are due also to the Union Government. I shall not forget that General Botha showed the greatest statesmanship when he said that his Government would stand or fall by this measure. I followed the whole of that historic debate, historic to me, historic to my countrymen and possibly historic ~~xxx~~ to South Africa and the world.' It was well known to them how Government had done them justice, and how the Opposition had come to their assistance."

The next extract is from the evidence of Mr. Andrews before the Select Committee on the Areas Reservation Bill, dated the 5th March, 1926.

"I was present with Mr. Gandhi when we talked over ~~xx~~ carefully an extremely important clause which is now called the voluntary repatriation clause, and he discussed the clause with me, discussing it with the object of reducing the fear in this country of the Indian population. At that time there was an atmosphere of wonderful friendliness between Mr. Gandhi and those he represented and General Smuts and those that he represented. The consequence was that Mr. Gandhi ~~xx~~ cordially, with the consent of everyone in India, agreed to that voluntary repatriation clause, namely, that every one who liked to take the bonus passage back on the forfeiture of domicile would be allowed to do so and no objection would be raised by India. That clause was inserted simply because there was an atmosphere of give and take. Now today there is

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no such atmosphere at all; there is just the opposite. Even to mention the word "repatriation" today, with this present Bill threatening India, is to wound and sting and burn. Therefore, today it is not possible in this atmosphere for the Indian Government really to co-operate in this way. But after the atmosphere itself has changed - completely changed as it was in 1914 - I think there are many ways in which, as the Indian Government itself has expressed, the voluntary repatriation clause might be re-examined."

The condition on which a free passage was given to an Indian wishing to go back to India permanently was that he should sign a statement "that he abandons on behalf of himself and his wife and all minor children (if any) all rights possessed by him or them to enter or reside in any part of the Union together with all rights incidental to his or their domicile therein." Without doubt this statement involves a humiliation, and one cannot wonder that the pride of any patriot would be hurt at the sale of his birth right for a mess of pottage. But the stream of emigration back to India, which started at that time, has gone on since then, with fluctuations, it is true, but never wholly dried up. The Government of South Africa found it necessary about the year 1921 to add to the free passage an additional inducement in the shape of £.5 bonus per head, subject to a family maximum^u of £.25. In 1923 the bonus was^u raised to £.10 per adult and £.5 for each child, subject to a maximum of £.50. Although several thousands of Indians returned to India under this scheme, the Anti-Asiatic feeling became worse and worse. It led to the harassment of our population in trade and kindred matters, and culminated in their being deprived in Natal of the municipal franchise. The Government of Gen. Smuts felt it necessary to introduce the Class Areas Bill, which would have enacted a species of segregation of our people. But ^{the Government} it fell before the Bill could be passed into law. The present Ministry took up the matter in their turn, and brought forward a more thoroughgoing and drastic measure, which was referred to as the sword of Damocles. ^{and} In the consternation, which it

Lord Reading's diplomacy found its opportunity. To the Paddison Deputation, which he despatched to South Africa for the purpose of conducting an enquiry on the spot, must be assigned the honour of having effected the first favourable turn in the situation. Before the Round Table Conference could be decided upon, two points of consequence had to be definitely yielded. As they formed the preliminary basis of the Conference they must be carefully remembered.

1. The existing scheme of repatriation and its working were to be carefully examined with a view to discover any difficulties that might have arisen and to smooth these away,
- and 2. no settlement of the dispute would be acceptable to the Union Government which did not guarantee the maintenance of western standards of life by just and legitimate means.

At this point it ^{may be useful} ~~would be proper~~ to turn aside for a moment and point out an anomaly which proves how strange is the way of politics and how curious the solution which the politician has often to accept. The class of Indian against whom the brunt of the agitation is directed and whom the agitator is most anxious to get rid of is the trader, who undersells his Jewish rival and rouses his worst jealousy. No bonus that the Government can conceivably promise will ever be a sufficient inducement to this class. On the other hand, it is the poor unorganised agricultural labourer and the thriftless ^{section amongst the} Indian farmers of Natal who will avail themselves of the free passage and bonus. But this class, far from exciting anybody's jealousy, are in much request in the farms and plantations in Natal owned by whites. In fact it is well known that the white farmers and planters actually paid men a few years ago to dissuade intending Indian repatriates. Quite recently, however, they have been silenced by the raging and tearing propaganda of the trading community. So that in proportion as the new assisted emigration scheme is suc-

get little relief, while ~~at~~ ^{hitherto} uncomplaining class will suffer from a genuine grievance. The new settlement, however, justifies the same results on a more intelligible theory. The maintenance of western standards being a sine qua non, some Indians could be enabled by suitable ameliorative methods to conform to them, while other Indians might not by any process of upliftment ever be enabled to do so. There are no visible marks by which the one class might be distinguished from the other. A rough test is afforded by the offer of a free passage and bonus. Those who accept belong to the second class; those who do not must be presumed to belong to the other. Lest anyone should over-interpret this paragraph, it must be added that the white farmer in opposing repatriation is only friendly to the Indian upto a point and in his own way. He wants him only as a cheap and unresisting labourer. As soon as he sets up on his own or his children go to school and seek other employment, ^{even the farmer} he joins the general crusade.

But what are these western standards, which an Indian has to reach or quit? No logical or legal definition need be attempted. It is a matter of general knowledge that different grades of people live up to different standards. Speaking of communities rather than individuals, no one can fail to notice the difference in the general lay-out, cleanliness, the absence of evil smells and the elegance or refinement of a cantonment as contrasted with its adjoining city. This will help to a realisation of the difference generally between western and eastern standards. In individual lives the difference is to be found in personal cleanliness, modes of dress, furniture, mural decorations, ~~the~~ sanitary arrangements and habits, etc. If we add the categories of style of conversation, amusements and cultivation of fine arts - we get a whole range of headings under each of which great disparities exist

as between individuals in the same class. The mere possession of wealth does not betoken a high standard of life. It is notorious in India how the great trading castes and money-lending castes lead bare and crude lives in comparison with the professional classes, who are on the whole not nearly so well off. To come to the ~~immediate~~ ^{immediate} point, those ~~that~~ ^{who} visit Durban and notice the difference between the quarters which are predominantly white and the quarters which are predominantly Indian, do not ask for precise definition of standards, though each observer may be ready with his own explanation of how the difference arises. Offence is caused and a rankling sense of injustice is produced by omitting to acknowledge that there are many in the one community who live up to the standards of the other and many in the latter who sink to the level of the former. Sweeping generalisations and are to be avoided, and laws and regulations based on them and discriminating between communities are a prolific source of social jealousy and conflict. Philosophers and moralists may contend with ~~a good deal of~~ ^{some} justification that civilisation has taken the wrong road and that the ultimate interests of humanity require a return to simpler and more ascetic modes of life. But in South Africa the white community, whose right to regulate the polity and civilisation of that sub-continent we have admitted, will not wait till these fundamental questions are settled ~~and will~~ ^{but} press for rough and ready methods of settling everyday problems. The multiplication of wants, the cultivation of tastes, the increase of elegancies and refinements and the incessant striving for the means of acquiring and satisfying these are the outward marks of modern civilisation, and it is no ~~use~~ ^{use} our trying to run away in the opposite direction. European and Indian, however, may unite heartily to honour those rare individuals who teach by example how riches are not necessary to happiness.

We are now ready for a discussion of the main features of the settlement. At the head of India's gains must be placed the abandonment of the oppressive Bill known as the Areas Reservation and Immigration and Registration (Further Provision) Bill. To all appearance people in this country have already forgotten the horrors with which our countrymen in South Africa were threatened under this Bill. By a very slight exaggeration it was described as compulsory repatriation without compensation, bonus or free passage. It would have reduced Indians to ~~seek~~ to live "by taking in each other's washings." It would ~~have~~ ^{the} violated ~~the~~ ^{the} Smuts-Gandhi agreement in all essentials. The brevity and directness of the Minister of the Interior in introducing the measure were indicative of the iron resolve that lay behind it. These were his words:- "I must say that the Bill frankly starts from the general supposition that the Indian, as a race in this country, is an alien element in the population, and that no solution of this question will be acceptable to the country unless it results in a very considerable reduction of the Indian population in this country. But on the other hand, the method of dealing with this question will not be the employment of any forcible means. The method which this Bill will propose will be the application of pressure to supplicants, on the other hand, the inducement which is held out to Indians to leave the country. This Bill to a certain extent follows well-known lines. To a certain extent we go on the path which has been trodden before by my hon. friends opposite, but the Bill does not rest there, it goes a good deal further." The best summary of the ~~my~~ provisions of the Bill was made by Lord Olivier in the House of Lords about this time last year.

* That is to say, that as the present inducements of offered ~~inducements~~ passages and bonuses are not sufficient to uproot the population of Indians settled in Natal, they could not possibly be expected to uproot them, if more had been exercised. Their existing rights and liberties, which they have acquired under the ordinary laws of the land and under the guarantee of His Majesty's Government, are to be very much diminished in South Africa, and life there will become intolerable to a very large number of Indians.

* That is more than pressure, it is oppression. It is not to be wondered at, when Indians in India see their relations exposed to this oppression, that they become restive and ask: What is the use of our belonging to an Empire which guarantees to protect us if, again and again, the promises that have been made in the name of that Empire to our kinsmen are not to be maintained, and those kinsmen subjected to oppression to induce them to relinquish the privileges that they have acquired?

* The pressure on Indians is to be exercised in several ways. First of all, by restricting, in townships, the right to acquire or lease real property, or to be licenced to trade, to defined areas. Urban authorities are to advise as to the setting up of those areas. The power to grant a renewal of a trading licence anywhere is also discretionary, and this discretion is meant to be used. The question of granting trade licences already created in times past produced a considerable storm between India and Africa, and on the last occasion, in 1903, when power was definitely taken to withdraw licences to Indians then trading, the legislation was not allowed at that time by His Majesty, and it did not come into operation on the ground - the ground on which we are arguing this case - that vested and guaranteed interests were being interfered with.

* Secondly pressure is exercised by taking away the right of buying or leasing land anywhere in South Africa except in such areas in Natal only as may be allowed within thirty miles of the coast. Thirdly, it increases from £.30 to the crushing sum of £.100 the bail which may be demanded from a returning domiciled Indian pending the hearing of evidence as to his right to return. An Indian may go to India from Natal and is allowed to come back on producing evidence that he has been domiciled, but the mere certificate is not considered sufficient evidence of that domiciled. The presumption is, I suppose, that it may be forged. Therefore he is treated at once as a prohibited emigrant and subjected to a bail which has hitherto been £.30, but which is now, without any reason so far as I have been able to find out, raised to the enormous and crushing ~~enormous~~ sum of £.100. This is to be imposed on him before he can be allowed to produce the definite evidence required that he is the emigrant he purports to be. That is a piece of oppression.

* In the fourth place it includes in the Transvaal, for the purpose of this Act only, the districts of Utrecht and Vryheid, in order to enable Indians to be expelled from those mining district by the operation of the Transvaal law. In order to restrict the freedom of Indians in Natal, and simply for the purpose of this Bill, these districts are nominally put back into the Transvaal area in order that Indians working there may be deprived of their employment and driven out. This is what Dr. Malan mildly describes as "pressure". In the fifth place it encroaches upon, or opens the door to infringements of existing rights of domicile. The purpose is to reduce the numbers and this Bill restricts the importation of wives and children of domiciled Indians and curtails existing rights of registration of employment in the Transvaal. I have stated that Lord Reading's opinion, and certainly the opinion of anyone

enactments are a distinct infraction of the rights of Indians which His Majesty's Government are bound in honour to maintain and safeguard."

Our countrymen in that sub-continent have a vivid conception of the oppression and hardship that such a Bill would have inflicted on them, and it is no wonder that they hail with joy a settlement which rids them of such a nightmare.

But not only have they escaped from this nightmare; they have been accepted as a part of the permanent population ~~and~~ entitled, like other elements of it, to the fostering care and protection of the Union Government. The noble words, which embody this generous policy, are well-worth quoting. Under the heading "Upliftment of Indian community," the first paragraph runs:-

"The Union Government firmly believes in and adheres to the principle that it is the duty of every civilised government to devise ways and means, and to take all possible steps for the uplifting of every section of their permanent population to the full extent of their capacity and opportunities, and accept the view that in the provision of educational and other facilities the considerable number of Indians who remain part of the permanent population should not be allowed to lag behind other sections of the people."

Dr. Malan and his compatriots have shown rare wisdom in changing from the one position to the other and rarer courage in admitting and announcing the change, and it is impossible to withhold from them a tribute of admiration for qualities all too uncommon in the sphere of political public opinion and the attitude of local bodies may delay the translation of this policy into positive acts of amelioration, but their clear enunciation on paper gives our ~~people~~ people a sure foothold in the path of progress which they have hitherto lacked. When things refuse to move forward or threaten to move backward it is a blessing as we have often realised in our own history, to be able to point as to a guiding star to a clearly-expressed ideal of administration.

Nor is this policy of equal treatment and fair-play left altogether in the air. Several directions are

indicated in the Annexure, which need not be particularised here, in which the policy is to be carried out for the betterment of the Indian population. Housing and sanitation, ^{the} ~~the~~ organisation and wages of workmen, trade licences are some of the headings under which improvement will be aimed at, and in favourable conditions, may be attained. But the most important of these, the one which lies at the foundation of all progress, is the topic of education.

~~Arrangements at present are being made for a few schools maintained by Government or Mission agencies, and specially set apart for our community. These schools generally do not teach beyond the fourth standard. For all education beyond that standard children must be sent to India or England. The only institution for higher education~~

It must be admitted that the leaders of our community have been unable hitherto to show much self-help, and the wealthy members cannot escape blame for the neglect of the coming generations. Let us hope that they will respond to the loud call that will be made on their public spirit and beneficence as a result of the educational commission of enquiry which the Federal Administration will be induced to appoint in the near future. If the Indian educational expert associated with this commission has an engaging and persuasive personality we may expect some benefactions on a liberal scale which will supply the awful deficiencies in Indian education.

Some explanation will be required of a provision which has been newly made which is in the nature of a restriction. Minor children will not hereafter be admitted into the Union unless accompanied by their mothers. The ~~figures~~ figures under this head supplied by the Immigration Department showed that more than ninety children out of a hundred admitted every year left their mothers in India. There was some reason to suspect fraud in several cases. Anyhow it was clear that the children were taken into the

lead healthy family lives, but for enabling the former to acquire a South African domicile in their turn, for ~~tax~~ trade and other material purposes. It is impossible not to sympathise with the complaint that a large proportion of domiciled Indians keep their families in India and ^{do} cannot regard South Africa as their home. It will help to regularise the whole ^{matter} ~~question~~ of the admission of wives and minor children when the Government of India undertake, in pursuance of the Settlement, to certify* that each individual for whom a right of entry is claimed is the lawful wife or child, as the case may be, of the person who makes the claim.* In the case of the other Dominions the Government of India issues these certificates of identity in accordance with the Reciprocity Resolution of the Imperial Conference of 1918. The Union Government have now expressed their willingness that the Government of India should undertake a similar responsibility with reference to South Africa.

V.

The Settlement casts other responsibilities also on the Government of India. Hitherto they have remained passive spectators in the scheme of repatriation. Though it was their duty, in the words of Mr. Gandhi, to look after returned emigrants, nothing stands to their credit so except an occasional subsidy to relieve acute distress. The Union Government naturally think that their repatriation scheme will become more attractive if it becomes known in South Africa that at this and something will be done to receive those who return and help them to settle down. The Government of India will not be called upon to contribute ^{anything} ~~in any way~~ from their treasury. There is a lot however that could be done without incurring financial liability. The emigrants will be received in Bombay, ~~and~~ Madras and Calcutta by our officers and helped to proceed

their monies will be taken care of if they desired^{it} and their bonuses will be paid through official agency at their destinations. To enable them to settle down in the occupations for which they are suited, official bureaus will supply the necessary information and advice. It is expected that, without detriment to the interests of the labour force here, it will be possible for the railways, harbour and other schemes now afoot to absorb the main part of the returning Indians. They will also be eligible to benefit by the emigration schemes, which may from time to time be sanctioned by the Government of India, such as are now open to the Federated Malay States and Ceylon. In fact, it is these two countries and Mauritius which are contemplated in the 23 provision which says that the Union Government may organise schemes of assisted emigration to India and "other countries". Seeing that Mr. Gandhi, and following him, many others have criticised this provision, it may of use to set out below a statement which Muhammad Habibullah made the other day in the Council of State. ✓

"The Government were aware that there was some apprehension in India regarding the exact intention of the provision in the recent agreement of the Indian question in South Africa, that the Union Government would organise a scheme of assisted emigration to countries other than India. The phrase "other countries" was intended to cover migration to Ceylon and Malaya to which countries emigration from India was already allowed and to enable the Union Government to meet applications from Indians born in Mauritius and elsewhere who wished to return to their place of birth. If at some future date the Union Government decided to afford facilities for emigration to other countries they would doubtless consult the Government of India."

The name "repatriation scheme" is to be replaced by the more ~~appropriate~~ "the scheme of assisted emigration". The change, not only takes away part of the odium which has attended the scheme, but is more in accord with facts; for, more and more of those that avail themselves of the scheme, will be those born in South Africa; and in their case, the word "repatriation" is obviously

the intending emigrant will not be required to sign a declaration surrendering his domicile and that of his family for a pecuniary consideration. He will have the right, after the first year of his return and before the expiry of the third year, to return to South Africa, provided he refunds the bonus and the cost of passage received by him. This right of re-entry is a concession to Indian sentiment, *while* it might attract many who would have recoiled from the irrevocable step of surrendering their domicile once for all. Even after the expiry of three years the emigrant need not sign a document yielding up his rights of domicile; for under a new law, which will soon be enacted and which will apply to all emigrants alike, whether white or coloured, domicile will expire *after three years' continuous absence* automatically, except in cases where the Minister of the Interior permits a longer stay outside the Union. A novel feature is the provision for the payment of *many* pensions to decrepits in lieu of, or in addition to, the bonus. The Government of India will undertake to distribute this pension out of funds allotted for the purpose by the Union Government. One more change deserves mention. Hitherto for the purpose of admitting minor children of parents domiciled in the Union the age of majority has been fixed at 16 years, but for the purpose ^{of} repatriation *has been* a man ~~is~~ required to take away ^{all} his minor children under 21 years. This *anomaly* ~~anomaly~~ is now removed, the age of majority being 16 both ways. It will be admitted that, taken along with the considerable increase in the scale of bonuses, ~~then~~ these improvements are calculated to enhance the effectiveness of the old repatriation scheme. It is obviously impossible to estimate precisely how many will return every year to India, but we must impress it on South African whites that it is possible to be too sanguine in their anticipations, and by premature expressions of disappointment to retard the movement they desire.

A little reflexion on various parts of the agreement is enough to show how useful, nay how indispensable, an Agent of the Government of India ~~will~~ would be in South Africa. The Union Government have requested the Government of India, and these have agreed, to appoint such an officer. Mr. Gandhi, whose knowledge of South African affairs ^{has been} kept up to date, has told us indeed that the ultimate value of most provisions contained in the agreement depends on the character, ability and standing of our Agent. The Government of India are no less aware of the importance of this office and will doubtless make the best selection that is possible. The designation, the precise duties and the status of the officer have not yet transpired. Perhaps they can be finally determined only after consultation with the Union Government, but one may be permitted to express the hope that the office will really rank high, betokening the status which South Africa has recently attained and India will soon attain. This is the first time that India makes an ambassadorial appointment to a Dominion, and all ^{future} possibilities must be present to the consciousness of those who choose the person and determine his style, precedence and privileges.

The Viceroy is indeed to be congratulated on his courage in choosing an Indian for leadership of this Delegation. The result has amply vindicated his choice. Let us trust that it will embolden him to select Indians for responsible offices of this kind in future, and thus dispel once for all the impression which long practice has created abroad that the paucity of qualified Indians makes it necessary to hold the country in the leading strings of Britishers. No one will venture, in matters of this high order of importance, to deprecate caution, but even a conservative student of Indian affairs will soon allow that Britain has never taken a forward step a day too soon

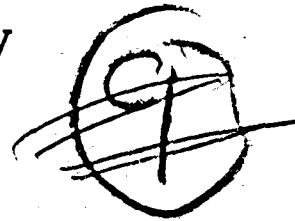
innovation, she has again and again lost credit for courage and generosity. May we indulge the hope that the lesson will not be lost on the Secretary of State for India? and his Council have allowed India and South Africa to settle their dispute without the intervention of the Indian Office. If the experiment has succeeded it may well be repeated with equal chances of success in its favour. It may be hard to stand aside and let others do the job which has long considered one's own. But constitutional progress is a series of such self-denying acts, and Lord Birkenhead, we trust, is as capable of them as any Secretary of State before him.

V. S. Srinivasan



Reports of the Protectors of Emigrants at
Madras & Calcutta on the condition
of Indians repatriated under the
South African Voluntary
Repatriation Scheme

(May 1925 to November 1926)



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COPY OF LETTER FROM THE PROTECTOR OF EMIGRANTS, MADRAS, TO THE SECRETARY TO GOVERNMENT, LAW (GENERAL) DEPARTMENT, THROUGH THE COMMISSIONER OF LABOUR, No. 131-25, DATED THE 27TH MAY 1925.

Emigrants—South African Voluntary Repatriation—“Umzumbi”, dated the 18th May 1925.

I forward herewith a copy of the Medical Inspector's report on the condition of the emigrants repatriated by S. S. “Umzumbi” which arrived here on 18th May 1925. I also send a copy of the answers (not printed) obtained from them with reference to the questionnaire which has been revised as required in G. O. No. 1238-Mis. Law (General), dated the 7th April 1925.

2. The total number of persons repatriated were 176 of whom one was a deportee—Kuppan *alias* Kuppuswamy of Bangalore—and he was despatched to Bangalore through the Police escort as usual. The details for the total number are given below :—

(1) Male adults	95
(2) Female adults	38
(3) Boys	20
(4) Girls	15
(5) Male infants	6
(6) Female infants	2
	176

Of these 18 people are classified as “decrepits” by the Medical Inspector in his report referred to above. He also gives his reasons for classifying them as such.

3. There were no destitutes as every one of them except the deportee received a bonus of £10 per head subject to the maximum of £50 for a family. As regards their savings I give you a classified list below :—

List of persons who brought savings.

	No.
(1) Savings from £1 to £5	1
(2) „ „ 6 to 10	7
(3) „ „ 11 to 20	3
(4) „ „ 21 to 50	6
(5) „ „ Above 50	1

4. As usual I boarded the steamer with the Medical Inspector and I agree with his observations in his report. There was a general complaint that arrangements for the supply of food were not satisfactory—especially sauce and vegetables and that the food was ill-cooked. Several told me that their first hearty meal was after disembarkation at this port. Drinking water was served only at the time of meals and was not adequate. Proper arrangements were not made for supply of water for bathing purposes. The steamer carried coal which is not permitted in an emigrant steamer.

5. As regards treatment in the colony, all the emigrants averred that it was bad now. Indians are thrown out of employment on the most trifling pretexts. Once out of employment they never secure another berth. In the case of traders licenses are not allowed to be inherited by sons. If an European went to purchase, other Europeans dissuaded the intending purchasers.

The taxes on houses even on lands owned by Indians were heavy. Not one appeared to be lured by the bonus. The chief reason for repatriation was the difficulty to find employment. After Mrs. Sarojini Naidu's trip, the ill-treatment appears to have been worse. When Indians asked for berths they were scoffingly referred to go to that lady for work,

These are the general complaints made by the 'disembarkees'. No special complaint was directed against the S. A. official except that he did nothing to stop the non-official public from harassing the Indian.

Inspection Notes by the Medical Inspector of Emigrants on S.S. "Umzumbi" on 18th May 1925.

Inspected S.S. "Umzumbi" with repatriates from South Africa on 18th May 1925.

There was no illness on board the ship worth mentioning. There seemed to have been a clean bill of health; except for a case of asthma no serious illness was reported. The accommodation provided was sufficiently clean and adequate. The necessary provision for comforts and conveniences prescribed for in the Government order seems to have been attended to in general but there was a general complaint that the vegetables provided were insufficient and that the food was not well prepared. The quantity of meat and rice was alleged to be quite good; but it was the preparation and the want of fresh vegetables that was complained of.

Personal cleanliness of the emigrants was not as good as it should have been. Sufficient fresh water was, I am given to understand, not supplied daily for baths and other purposes required to keep oneself clean. The sanitation in the ship was extremely satisfactory except for the deck intended for the emigrants. It was that morning filthy and dirty at the time of inspection. One had almost to pick his way on the deck to inspect it; it was so dirty and slippery; possibly there was no time that morning to wash the deck clean after the morning meal.

This steamer also carried coal contrary to regulations prescribed by the Government of India for steamers intended to convey emigrants. I enclose herein a list of decrepits (not printed) with report as regards their condition. The purpose of this report is not known nor the exact definition of the "decrepits" given; but I have in selecting these cases taken only those repatriates whom I considered old and infirm and suffering from chronic and incurable illness unfit anymore to earn their livelihood by labour.

COPY OF LETTER FROM THE PROTECTOR OF EMIGRANTS, CALCUTTA, TO THE SECRETARY TO THE GOVERNMENT OF BENGAL, REVENUE DEPARTMENT, No. 452, DATED THE 19TH JUNE 1925.

I have the honour to acknowledge the receipt of Government endorsement No. 4315-Emi., dated the 7th April 1925, enclosing for information and guidance a copy of letter No. 223, dated the 27th March 1925, from the Government of India, Department of Education, Health and Lands (Overseas), regarding certain information required by the Government of India relative to repatriates arriving at Calcutta from Natal who have been repatriated under the South Africa Voluntary Repatriation Scheme.

As stated in my report No. 451 of the 18th June 1925, 130 such repatriates arrived at Madras from Natal by the S.S. "Umzumbi" on the 18th May 1925, and were sent from there by rail to Calcutta. On arriving here on the 22nd May last the repatriates were visited and on the lines indicated by Government, questioned as to the cause of their return.

Of the 55 repatriates examined, the undernoted numbers ascribed the following different causes as the reason for their return.

Six stated they were not able to get work owing to race prejudice.

Thirty mentioned that being Indians, employers were not willing to engage them, due to which they were unemployed.

One said that being out of work and having no prospects of obtaining such the offer of a bonus to return to India acted as an inducement to return.

Eight did not expect to obtain work owing to being in a bad state of health, disabled, or too old to work.

Ten were offered reduced rates of wages or were receiving irregular payment.

Seventy were women and children and as the heads of families and the adult males had been questioned, no enquiries were considered necessary in their case.

During conversation with the repatriates it was found that practically the lot of them had worked in coal mines. The unanimous complaint was that at the present time the employers preferred employing Kaffirs and Dutch labourers for work in the mines in place of Indians, although the wages paid to them in some instances were higher than those given to Indians.

From the tone of the conversation it is gathered that a great economic change is taking place in the colony. Due to there being a preponderance of native and Dutch labour available employers are finding no difficulty in securing all the labour they want locally. Consequently the once needed Indian labour appears to be no longer required.

In this replacement the question of wages is not being considered by employers. Although full information on this point is not obtainable, it seems evident that local labour is being better paid than Indian. This may be attributed to perhaps the larger outturn of work by the Dutch or Kaffir labourer.

This change is evidently affecting Indian labour in the colony bringing unemployment with it and consequently Indians are returning to India.

COPY OF LETTER FROM THE PROTECTOR OF EMIGRANTS, MADRAS, TO THE SECRETARY TO GOVERNMENT, LAW (GENERAL) DEPARTMENT, THROUGH THE COMMISSIONER OF LABOUR, No. 273-25, DATED THE 5TH SEPTEMBER 1925.

Emigrants—South African Voluntary Repatriation Scheme—“Umzumbi” arrived 26th August 1925.

I forward herewith a copy of the Medical Inspector's report on the condition of the emigrants repatriated by S. S. “Umzumbi” which arrived here on the 26th August 1925. I also send a copy of the answers (not printed) obtained from them with reference to the questionnaire revised by G. O. No. 1238-Mis. Law (General), dated the 7th April 1925.

2. The total number of persons repatriated were 184. Two of them were described as entitled under Act 42 of 1905 and one was a deportee, who as usual met on board by the police. The details for the total number are as follows :—

(1) Male adults	113
(2) Female adults	30
(3) Boys under 10 years	20
(4) Girls under 10 years	15
(5) Infants (boys)	2
(6) Infants (girls)	4
	184

It will be seen from the Medical Inspector's report that at the least 41 emigrants are decrepits of whom seven were sent to their respective native village under escorts furnished by the Emigration Agents, one was sent to the Mental

Hospital and another to the Royapuram Hospital. Of the 41 decrepits 31 people have said that they have relatives to fall back for their support while among the rest four have declared that they are helpless; one has said that he may have relations alone but does not know how many of them are alive and how many can be expected to support him in his old age. One was handed over to the Reverend Ferguson of the American Baptist Telugu Mission : and the rest were unable to answer owing to their state of ill-health.

3. There were no destitutes as every one of them except the deportee received a bonus of £10 per head subject to the maximum of £40 for a family. As regards their savings I understand that the emigrant did not deposit their savings with the Natal Government and get them back on landing as they used to do. They seemed to have preferred to carry their savings with them. I give below a classified list :—

	No. of persons.
(1) Savings from £1 to £5	6
(2) " " 6 " 10	7
(3) " " 11 " 20	9
(4) " " 21 " 50	6
(5) " above 50	2
	30

4. As usual I boarded the steamer with the Medical Inspector and I agree with his observations in his report. The steamer is not really fit to carry third class passengers. The medical arrangements were faulty. Persons totally unfit to travel were embarked. There was no one on board who could speak the Indians' languages. It should be incumbent that some one knowing Tamil should be on board either the medical officer or the compounder. Ward attendants and nurses were not employed. Treatment was promiscuous in the steamer hospital.

5. As regards the treatment in the colony my remarks in paragraph 5 of my letter No. 131-25, dated the 27th May 1925, about the repatriates by "Umzumbi," dated 18th May 1925, may be repeated here also.

6. The existing practice with the Emigration Agents is to pay the emigrants the railway fare to their destination which I consider to be undesirable. Most of them are so illiterate that they cannot ascertain for themselves whether the tickets issued to them are to the correct destinations. They cannot buy tickets themselves. In the case of other Colonial Emigrants, the Emigration Agent at Calcutta provides each emigrant with tickets and I also do the same in respect of emigrants disembarking here. It would be well that the Emigration Agents are asked to adopt the same procedure so as to save the emigrants the trouble which they would otherwise be put to in transit. There will be a lot of unscrupulous people who will molest them in transit taking advantage of their incapacity.

7. I have never seen such a number of decrepit and incapacitated people. There is no doubt that these people are tempted by the bonus. It is a question for the Government how far South Africa is justified after exacting all the work of these men in dumping these men on India without providing any old age pension in compensation for their past work.

*Copy of Inspection Notes by the Medical Inspector of Emigrants on S. S.
"Umzumbi."*

Inspected S. S. "Umzumbi" in company with the Protector of Emigrants on the 25th August 1925. The ship seems not to have been originally intended for emigrants; though now the authorities try their best to meet the demands of a large number of emigrants travelling as passengers. The twin-decks have small port-holes hardly sufficient for any ventilation. The repatriates have practically to go to the deck for fresh air. A small portion

of the deck is only allotted to them and that portion is further occupied by kitchen, latrines and hot water boilers. This not only limits the space but also, it cannot be denied, it is very unpleasant to sit on a deck which is also occupied by latrines which are smelling.

The hospital is located near the Captain's cabin. The frequent attendance required for serious cases cannot but be an inconvenience to the Captain, patients and the Medical Officers. The repatriates were a smelly lot. Clothes were filthy and dirty; personal cleanliness badly wanting. The emigrants complained that they had fresh water on two days of their 19 days' voyage; hardly sufficient to keep their body and clothes clean. The Medical Officer on board the ship informed me that his hospital of eight beds was full on the day he left South Africa and many of the patients were bed-ridden. All the eight patients were males; there was no room whatever for the admission of any further patients on the voyage, much less for female patients. It was a bit of surprise for me to see the hospital and the patients filthy and dirty. I could not very well make up my mind to enter the hospital on account of the bad smelling emanating therefrom. The hospital linen and the clothes worn by the patients were offensive in smell. I doubt they had any change during the whole voyage. The patients were all bed-ridden, requiring much more care than the ordinary patients as they could not help themselves. There was no nurse and evidently they received no careful nursing.

One of the patients was a leper. He was being treated with the other patients in the same room.

Among the repatriates to Madras there was a marked case of leprosy. The Medical Officer know nothing about it. Neither he nor the patients in the hospital were isolated. The Medical Officer said there was no particular provision for isolating these lepers; and it is only natural that it should be so on a steamer not intended for emigration purposes.

There were two women of unsound mind; they were brought as ordinary passengers mixed up with others. They had no separate cells provided for them. Both being females, it was all the more necessary to have separate accommodation for such cases both in the interests of their own safety and also of the convenience of other passengers. One of them was pretty troublesome and I believe even attempted to jump over board.

I send in herewith a list of decrepits (not printed), majority of them being old unfit for any further work on account of senile decay. Two of them are blind; eight are invalids and helpless for some reason or other noted against their names. They require to be escorted. It is difficult to state whether these decrepits have any body to go to and be taken care of. Some of them were out of India for years together. On enquiry some of them say they hope to find a brother, father or sister or some other relation. It is essential that detailed enquiries must be made before dealing with them.

It is not known how the repatriates bed-ridden and actually sick were declared fit for the long voyage from Natal to India. Some of them were seriously ill. It was a great risk; neither fair to the patients nor to the Medical Officer.

**COPY OF LETTER FROM THE PROTECTOR OF EMIGRANTS, CALCUTTA, TO THE
SECRETARY TO THE GOVERNMENT OF BENGAL, REVENUE DEPARTMENT,
No. 679, DATED THE 11TH SEPTEMBER 1925.**

In continuation of this office letter No. 452 of the 19th June last, relative to certain information required by the Government of India about repatriates arriving in Calcutta from Natal who have been sent back under the South African Voluntary Repatriation Scheme, I have the honour to state for the information of Government that 56 such repatriates arrived at Madras by the S. S. "Umzumbi" and were sent on by rail arriving at Calcutta on the 28th August last.

2. These people were inspected on arrival and during the inspection were questioned as to the cause of their return on the lines indicated by Government.

3. The 30 repatriates questioned ascribed the following different causes as the reason for their return.

4. Two stated they had returned for want of work as employers would not employ them due to the fact that they were Indians.

5. Two to offer of reduced wages and owing to dissatisfaction felt at present conditions. One of these had been in the colony for 20 years. He went as an ordinary labourer and by acquiring a knowledge of English verbal and written he had secured clerical service. Conditions were very satisfactory when he first went there, but these had changed since then, and were very bad now. He was offered reduced wages. He considered that the object of his employer in doing so was that he would give up service and he would replace him by a Dutchman.

Two had come back to see their relatives. One of them a school master said he had come of his own free will.

6. Three could get no work as Indians were being replaced by Kaffirs and the wages offered them were not sufficient to live on.

7. Two attributed their return to the fact that they were tired of work.

8. Six had returned for family reasons.

9. Thirteen had come back on account of permanent bodily infirmities due to which they were unable to work. One was blind, seven were broken down and too old for work, three were permanent invalids, one was of unsound mind and was put on the ship as suffering from no complaint but showed signs of mental disorder on the voyage, and one was a leper.

Twenty-six were women and children and as the heads of the families had furnished the information required it was not considered necessary to question them.

The 30 repatriates questioned as to whether the cause of their return was due to the lure of the bonus offered or the result of indirect official pressure elicited replies which indicated that these were not the causes of their coming back to India.

COPY OF LETTER FROM THE PROTECTOR OF EMIGRANTS, MADRAS, TO THE SECRETARY TO THE GOVERNMENT OF MADRAS, LAW (GENERAL) DEPARTMENT, No. 376-25, DATED THE 4TH DECEMBER 1925.

Emigrants—South African Voluntary Repatriation Scheme—S. S. " Umsinga " arrived on 22nd November 1925.

I forward herewith a copy of the Medical Inspector's report on the condition of the emigrants repatriated by S. S. " Umsinga " which arrived here on the 22nd November 1925. I also send a copy of the answers (not printed) obtained from them with reference to the questionnaire revised by G. O. No. 1238-Mis. Law (General), dated 7th April 1925.

2. The total number of persons repatriated were 129. Two of them were described as entitled under Act 42 of 1905. The details are as follows :—

(1) Male adults	58
(2) Female adults	30
(3) Boys under 10 years	21
(4) Girls under 10 years	14
(5) Infant boys	4
(6) Do. girls	2
	<hr/>
	129

It will be seen from the report of the Medical Inspector that 13 are decrepits of whom with the exception of only one person, all the rest have either lands or relatives or fair amount of savings to fall back.

IX 7

3. There were no destitutes as every one received a bonus of £10 per head subject to the maximum of £50 for a family. Their savings as given out by them are as follows:—

		No. of emigrants.
(1)	Savings from £1 to £5	4
(2)	" " 6 " 10	8
(3)	" " 11 " 20	7
(4)	" " 21 " 50	10
(5)	" above 50	6
		30

4. As usual I boarded the steamer with the Medical Inspector and I endorse his observations. The Commissioner of Labour was also present. If the repatriates are likely to come in more numbers or batches, the question of improving the steamers carrying them will have to be seriously considered.

5. Messrs. Parry & Co. not only arranged according to the recent instructions of the Commissioner of Labour to provide the emigrants with tickets to their destinations but also to put them into their proper trains.

6. On this occasion there was not, as usual, complaints of ill-treatment. Though the repatriates say there was preference for European labour they themselves said that they were treated well so long as their employers were kind.

*Inspection Notes by the Medical Inspector of Emigrants on S. S. "Umsinga"
22nd November 1925.*

Inspected S. S. "Umsinga" in company with the Protector of Emigrants and Commissioner of Labour. There were altogether 129 repatriates, with a list of five sick taken on board from South Africa. Of this, ship No. 72, Abbu is classified as a mental case. He seems not quite sound in his mind; he may be sent to the Mental Hospital. Among the other repatriates the following may be taken as decrepits in addition to the sick list, partly due to old age, partly due to disease or deformity.

No.	Name.	Remarks.
103	Nookiah	Old, unfit to work.
15	Munuswamy	Lung complaint, T. P.
8	Ellappa	Old and aged.
122	Kumaraswamy Mudali	Ditto.
21	Munuswamy	Ditto.
49	Marudan	Ditto.
140	Abdul Khaddar	Prematurely old.
114	Thiruvengadam Mudaliar	Old and aged.
118	Nagiah	Ditto.
117	Venkannah	Ditto.
115	Bakiam	Ditto.
7	Tai Goundan	Ditto.
8	Iyya Goundan	Right hand deformed.

This ship is evidently not intended to carry emigrants. There are no facilities for them in it. One of the cargo hatches in the tween-deck was set apart for accommodating the married people and the unmarried and the single about 40 in number were accommodated on the upper deck under awning. Light and ventilation in the cargo hatch is distinctly defective, there is not even a single port-hole. The repatriates accommodated on the deck complained much that they were exposed to rain and wet weather day and night. On the voyage there seems to have been a heavy rain for three or four days.

Emergency latrines have been put up on the upper deck; there are no partitions between the seats nor any privacy about them. The repatriates complained that their food was served on the same deck.

Another general complaint was that they had no fresh water for bath for 18 days on the voyage except that on the last day they had half a bucket of water for each with a piece of soap. This is possibly true as they were all a smelling lot.

There is no hospital on board the ship nor any provision for treating the sick as in-patients. No register of sick for in or out-patients maintained. It is not possible to know definitely the nature of the disease the emigrants suffered from. The doctor in-charge states that he had to treat 8 to 10 per day and that he felt the necessity of a hospital badly, the nature of the illness being fever, dysentery, asthma, Haemetesis, abortion with dysentery, etc. There was one case of abortion on board and she had to be treated in the midst of other repatriates in the same cargo hatch. There was no nurse or midwife.

List of sick taken on board from South Africa.

- 24 Goddam Appanna—Age 54—Sex M.—Disease—Asthma.
- 31 Venkatsean—No. 20539/20520—Age 41—Sex M.—Disease Paralysed.
- 55 Subbadu—No. 135760—Age 47—Sex M.—Disease Asthma.
- 72 Abbu—No. 71564—Age 50—Sex M.—Disease—Slightly Mental.
- 73 Krishnan—No. 30166—Age 57—Sex M.—Disease—Old age.

COPY OF LETTER FROM THE PROTECTOR OF EMIGRANTS, CALCUTTA, TO THE SECRETARY TO THE GOVERNMENT OF BENGAL, REVENUE DEPARTMENT, No. 961, DATED THE 4TH DECEMBER 1925.

In continuation of this office letter No. 679 of the 16th September 1925, regarding certain information required by the Government of India about repatriates arriving in Calcutta from Natal under the South African Voluntary Repatriation Scheme, I have the honour to state for the information of Government that forty-five such repatriates arrived at Madras by the S. S. "Umsinga" and were sent on by rail arriving at Calcutta on the 25th November 1925.

These people were inspected on arrival and questioned as to the cause of their return on the lines indicated by Government.

Twenty-seven repatriates were questioned and ascribed the following different causes as the reason for returning :--

Two mentioned that they could not get work as Indians were being replaced by Kaffirs.

Ten had returned of their own free will for the purpose of seeing their relatives and friends.

Domestic reasons had been the cause of four coming back to this country.

Eleven had returned as they were unable to work on account of advanced age or bodily infirmities.

Eighteen being women and children were not questioned, as the male adults of each family had furnished the information wanted.

None of the persons interrogated attributed their return to race prejudice, the lure of a bonus, or indirect official pressure.

It was noticed that several emigrants of this batch appeared to be passed the stage for work due to advanced years or infirmities.

COPY OF LETTER FROM THE PROTECTOR OF EMIGRANTS, MADRAS, TO THE
SECRETARY TO THE GOVERNMENT OF MADRAS, LAW (GENERAL)
DEPARTMENT, No. 417-25, DATED THE 22ND DECEMBER 1925.

*Emigrants—South African Voluntary Repatriation Scheme—S. S. "Umvolosi"
arrived 15th December 1925 (night).*

I forward herewith a copy of the Medical Inspector's report on the condition of emigrants repatriated by S. S. "Umvolosi" which arrived here on the night of the 15th December 1925. I send also a copy of the answers (not printed) obtained from the repatriates with reference to the questionnaire revised by G. O. No. 1238-Mis. Law (General), dated 7th April 1925.

2. The total number of persons repatriated were 190. One girl aged 3 years died of pneumonia the day after the ship sailed. Two persons paid their own passage. The details for the total number are as under :—

(1) Male adults	91
(2) Female adults	44
(3) Boys under 10 years	22
(4) Girls under 10 years	25
(5) Infant boys	3
(6) Infant girls	5
	190

It will be seen from Medical Inspector's report that there were eight decrepits. Of these two have no other means of support than the bonus of £10 received by each. The mental case has been admitted into the Government Mental Hospital, Madras, and I am not able to ascertain from this man whether he has any means of support in his native village.

No. 177 Bangaru Naidu.
No. 164 Kuppam.

3. There were no destitutes as every one of them received a bonus of £10 per head subject to the maximum of £50 for a family. The savings according to their own statements are classified as follows :—

	No. of emigrants.
(1) From £1 to £5	12
(2) " 6 " 10	9
(3) " 11 " 20	11
(4) " 21 " 50	5
(5) Above 50	1
	38

4. I boarded the steamer early in the morning of the 16th instant with the Medical Inspector as usual and I agree with his observations in his report. This steamer like the previous one was not intended to carry passengers. It is the usual cargo steamer where two holds are converted into passenger spaces. The latrines were on deck and smelt bad and the deck itself was filthy at the time of inspection. I must therefore repeat my remark that the question of improving the steamers carrying emigrants will have to be seriously considered.

Medical arrangements were not satisfactory. There is no hospital on board. A child died of pneumonia on the very next day of its embarkation. When I asked the ship's officers they stated that the child would not have lived even "if it had been placed in gold cages". The remark is grossly callous. It was complained that even the medical staff and appliances provided were not made available for prompt relief.

5. As the passengers complained bitterly of the rations, I made detailed enquiries of the Chief Steward and others. It is admitted that the jowari was full of maggots and had to be jettisoned. I took samples of the rice and dholl home and had them examined. The rice was full of grit and weevils. The dholl was also infested with vermin and the grains had been hollowed out. For the first time since the ship left tea was served on the morning of the arrival in Madras. But the tea was so bad and full of taxmin that it was ordered to be thrown overboard. I noticed also that raw onions were on view to be distributed; this is the first time in my experience that this is done in the case of human beings except on medical advice.

6. Of the several batches of repatriates from South Africa I have inspected this batch was the only one where the decrepits were so few. Most of them were able-bodied. They told me that they returned owing to the persecution and want of employment in South Africa. Indians are discharged and replaced by Boers on higher salaries.

7. As was done on the last occasion the emigrants were provided with tickets to the nearest Railway Station from which they could reach the desired destinations and were also put into the proper trains.

Inspection Notes by the Medical Inspector of Emigrants on S. S. "Umvolosi".

Inspected S. S. "Umvolosi" in company with the Protector of Emigrants on 16th instant.

The total number of repatriates was 190 for Madras of whom one child died of pneumonia the day after the ship sailed. This ship is evidently not intended for conveying emigrants. The tween-decks intended for cargo have been for the time being converted for accommodating emigrants. Light and ventilation is defective. Latrines on the upper deck put up temporarily were wanting in sanitary arrangements. There is no hospital at all.

The upper deck this morning was damp, dirty and filthy so much so one had to walk with care.

The dry meals served this morning was unique. It consisted of dry biscuits and raw onions, with tea prepared in an open bucket brewed over for at least an hour. It looked like a decoction of Tannic Acid. Naturally the emigrants complained. They also stated that the food on the voyage was not as good as it should have been.

COPY OF LETTER FROM THE PROTECTOR OF EMIGRANTS, CALCUTTA, TO THE SECRETARY TO THE GOVERNMENT OF BENGAL, REVENUE DEPARTMENT, No. 37, DATED THE 15TH JANUARY 1926.

In continuation of this office letter No. 679 of the 16th September 1925, regarding certain information required by the Government of India about repatriates arriving in Calcutta from Natal who have been sent back to this country under the South African Voluntary Repatriation Scheme, I have the honour to state for the information of Government that 66 such repatriates returned to Madras by the S. S. "Umvolosi" and were sent on by rail arriving at Calcutta on the 18th December 1925.

On arrival these people were inspected and during the inspection were questioned on the lines indicated by Government as to the cause of their return.

The following different causes were ascribed as the reason for returning to India by the 28 repatriates questioned.

Fifteen mentioned that being Indians they were unable to get employment as employers were not willing to engage Indians.

Seven had returned as they were unable to work, four on account of advanced age and three being incapacitated owing to bodily infirmities.

Four attributed their return to not being able to get regular employment. Three of these worked in the coal mines and the fourth was an agriculturist.

Domestic reasons has been the cause why two had come back.

Thirty-eight of the repatriates being women, children and infants were not questioned.

None of the persons interrogated attributed their return to the lure of a bonus or indirect official pressure.

COPY OF LETTER FROM THE PROTECTOR OF EMIGRANTS, MADRAS, TO THE SECRETARY TO THE GOVERNMENT OF MADRAS, LAW (GENERAL) DEPARTMENT, No. 54—26, DATED THE 11TH MARCH 1926.

Emigrants—returned—South African Voluntary Repatriation Scheme—S. S. " Umsinga "—arrived on 2nd March 1926 Report about—

I forward herewith a copy of the Medical Inspector's report on the condition of the emigrants repatriated by S. S. " Umsinga " which arrived in the harbour on 2nd March 1926. I also send a copy of the answers (not printed) obtained from them with reference to the questionnaire revised by G. O. No. 1238-Misc. Law (General), dated 7th April 1925.

2. The total number of souls repatriated were 134. Two of them were described as " Entitled to passage under Act 42 of 1905 ". The details are as follows :—

(1) Male adults	69
(2) Female adults	25
(3) Boys under 10 years of age	16
(4) Girls under 10 years of age	16
(5) Infant boys	4
(6) Infant girls	4

134

It will be seen from the report of the Medical Inspector that there were 20 decrepits of whom, with the exception of three, all the rest have either lands or relatives or a fair amount of savings to help them. The three excepted people said that they had to depend on their own manual labour for their maintenance. They had no savings of their own except the bonus of £10 given to them on their arrival here. The cause of death reported by the Medical Inspector relates to Calcutta. The two mental cases, viz., Kondamma (ship No. 60) and Chidambaram (ship No. 61) are, respectively, the wife and son of G. Sannasy (ship No. 126) and as he was a responsible member to take care of them they were neither willing to be admitted in the Government Mental Hospital nor were they in need of a separate escort to take them to their village.

3. There were no destitutes. Every one received a bonus of £10 per head subject to the maximum of £50 for a family. Their savings as given out by them are as follows :—

	No. of emigrants.
(1) Savings from £1 to £ 5	5
(2) Do. £6 to £10	12
(3) Do. £11 to £20	5
(4) Do. £21 to £50	7
(5) Above £50	5

34

4. As usual, I boarded the steamer with the Medical Inspector and I endorse his observations. There was no complaint about food. But the steamer is very ill suited for passenger traffic. The chief place is a converted cargo-hold without port-hole and the heat is intense. The upper deck is exposed to wind and rain. Now that repatriation is likely to be on the increase, the men should be carried better than cattle. The doctor on board, I am glad to say, was very considerate. The steamer has no hospital; and I do not see how it can be suggested that the smoking saloon could be utilised as such.

5. The complaint of ill-treatment in the Colony was this time in the lips of everybody. They say that they were driven out of work on flimsy pretexts, and a labourer who lost his employment could not succeed in getting another elsewhere and that Kaffars were preferred to Indians even on higher wages. People who bought land had to part with them for low prices on account of the Exclusion bills. They came because they were not allowed to earn a livelihood in South Africa. I wish to note my impression that amongst the passengers there was a pronounced feeling of resentment and that it cannot be politically safe if this feeling is prevalent in the Colony.

Inspection notes by the Medical Inspector of Emigrants on S. S. " Umsinga ".

Inspected S. S. " Umsinga " in company with the Protector of Emigrants on 2nd March 1926.

2. I append a list of decrepits (not printed) almost all due to old age. Of these Ponnammah, adult woman, and a boy about 10 years of age, son of S. Sannasy (Munusami), are both mental cases. They require attendance in the Mental Hospital.

3. There were in all 134 repatriates, of whom one died on voyage just a day before reaching Madras. The man is supposed to have died of old age and stated to be about 55 years old.

4. This steamer has no facilities for deck passengers, nor do I believe it is intended to be used as such. A purely cargo-deck was used for accommodating the repatriates. It was dark and dingy with no ventilation whatever except through the hatch on the upper deck. There were no port-holes of any kind. The place was hot and stuffy, unfit for persons to travel in. On the decks there were improvised latrines which made the place very foul smelling. There is no hospital for in-patient accommodation. I was shown a smoking room which, I was informed, could be used for lodging in-patients. The old man who is supposed to have died was not lodged there; was treated in the ill ventilated deck or on the upper deck. This state of affairs cannot be said to fulfil the requirements of the G. O. on the subject.

COPY OF A LETTER TO THE SECY. TO THE GOVT. TO MADRAS, LAW (GENL.)
DEPT., No. 417-O. S., DATED THE 11TH JUNE 1926.

Report on the condition of Indian repatriates from South Africa, who arrived at Madras per S. S. " Umsinga ".

I am directed to refer to your letter No. 1176-Misc., dated the 9th April 1926, forwarding a copy of the Report of the Protector of Emigrants, Madras, on the condition of Indian repatriates from South Africa, who arrived at Madras per S. S. " Umsinga " on the 2nd March 1926. Particular attention is invited to para. 4 of the Protector's report and para. 4 of the Inspection notes of the Medical Inspector of Emigrants regarding the unsuitability of the S. S. " Umsinga " for passenger traffic. It will be observed from the papers forwarded with your letter No. 247, dated the 27th January 1926, that similar complaints have been made regarding the S. S. " Umvolosi " which brought Indian repatriates from South Africa on the 15th December 1925.

2. Under section 125 of the Indian Merchant Shipping Act, 1923 (XXI of 1923), any steamship carrying more than 12 passengers to any place in British India must have a certificate, which usually specifies the exact number

of passengers which can be carried, not only in the ship or a whole, but on each part of it: that is definite spaces are definitely measured to carry a given number of passengers. I am to enquire (a) whether the masters of the ships mentioned above hold passenger certificates under the provisions of the Indian Merchant Shipping Act, 1923, and (b) whether passengers were carried by them during the voyages in question in contravention of the conditions mentioned in such passenger certificate.

COPY OF A LETTER FROM THE SECY. TO THE GOVT. OF MADRAS, PUBLIC WORKS AND LABOUR DEPARTMENT, No. 10046-A.-1, DATED THE 15TH SEPTEMBER 1926.

Report on the condition of Indian repatriates from South Africa who arrived at Madras by S. S. "Umsinga" and "Umvolosi"—Reference: Correspondence ending with Mr. Bajpai's letter No. 596-Os., dated the 24th August 1926 (routine not printed).

I am directed to say that the information required by the Government of India was not collected when the two ships S. S. "Umvolosi" and S. S. "Umsinga" last arrived on the 15th December 1925 and 2nd March 1926 respectively, that it will take about three months for the ships to return again to Madras and that a reply will be sent after inspecting them when they next arrive at Madras.

COPY OF LETTER FROM THE PROTECTOR OF EMIGRANTS, CALCUTTA, TO THE SECRETARY TO THE GOVERNMENT OF BENGAL, REVENUE DEPARTMENT, No. 201, DATED THE 24TH MARCH 1926.

In continuation of this office letter No. 37 of the 15th January 1926, regarding certain information required by the Government of India about repatriates arriving in Calcutta from Natal who have been sent back to this country under the South African Voluntary Repatriation Scheme, I have the honour to state for the information of Government that 53 such repatriates returned to Madras by the S. S. "Umsinga" and were sent on by rail arriving at Calcutta on the 5th March 1926.

During the inspection of these people on arrival they were questioned as to the cause of their return on the lines indicated by Government.

Twenty-two repatriates were questioned and gave the following replies:—

Five mentioned that they were not able to get regular work.

Seven that they were able to get employment but that the wages earned were not sufficient to maintain themselves and their families.

Five stated that they had their relatives in India and that they had come back with the idea of settling down with them.

Five returned as they were no longer fit for work, four on account of old age and one due to ill-health.

Questions put to the twenty-two repatriates as to whether the cause of their return was due to race prejudice, lure of a bonus, or indirect official pressure, drew negative replies.

Thirty-one being women, children and infants were not questioned.

COPY OF LETTER FROM THE PROTECTOR OF EMIGRANTS, MADRAS, TO THE SECRETARY TO THE GOVERNMENT OF MADRAS, LAW (GENERAL) DEPARTMENT, No. 119—26, DATED THE 12TH MAY 1926.

Emigrants—returned—South African Voluntary Repatriation Scheme—S. S. "Umzumbi"—arrived 2nd May 1926—Report about—

I forward herewith a copy of the Medical Inspector's report on the condition of emigrants repatriated by S. S. "Umzumbi" which arrived on the 2nd May 1926. I also send a copy of the answers (not printed) obtained from them

with reference to the questionnaire revised by G. O. No. 1238-Mis : Law (General), dated 7th April 1925.

2. The total number of souls repatriated were 257 as detailed below :—

(i) Male adults	119
(ii) Female adults	55
(iii) Boys under 10 years	38
(iv) Girls under 10 years	31
(v) Infant boys	9
(vi) Infant girls	5

It will be seen from the Medical Inspector's report that there are 26 decrepits. Of these a dozen people have no other means of support than their bonus. Some of them are not certain whether any relatives of theirs are alive and, even if they were, they were not in a position to say whether they will support them in their old age. Of these decrepits three were admitted into the hospital for treatment. One of them (ship No. 246 Munusami) was born in the Colony and he does not know where his father's native place was or where his relatives can be traced. He is suffering from paralysis. Another (ship No. 21 Kuppan) is dumb and I am unable to trace his relatives at Chetpat wherefrom he was recruited.

3. There were no destitutes. Every one received a bonus of £10 per head subject to the maximum of £50 for a family of five or more members. There savings as given out by them ranged as follows :—

	No. of emigrants.
(i) Savings from £1—£5	10
(ii) „ „ £6—£10	10
(iii) „ „ £11—£20	8
(iv) „ „ £21—£50	10
(v) „ „ above £50	6

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4. As usual, I boarded the steamer with the Medical Inspector and I endorse his observation. There were loud complaints about illtreatment in the Colony and illtreatment on board the steamer.

5. First as regards the Colony. Indians are being replaced on flimsy pretexts by Dutch or Kaffir labour even on higher rates. Indian labourers are housed in lines or huts meant for employees; when they lose service, they are homeless, and if they sleep in the open they are shut in prison as vagrants. They are oppressed with a multiplicity of taxes for land, for house, for roof, etc. In fact it is said that it is openly averred that the land is not for Indians and they should clear out. Indians are not allowed in towns and do not get redress by petitioning the Government authorities. They are scoffingly referred to Mrs. Naidu or Gandhi for redress if they complain. There was a general feeling of resentment in the whole crowd. In order to obtain a pretext for removal, Indians were asked to serve even when ill and turned out when they could not discharge work in their bad state of health. They are all conscious of a deep race prejudice against them which, I am afraid, has created a like prejudice in themselves. None of them had heard of the Paddison deputation and every one emphatically denied that there was any improvement in treatment even in the recent past.

6. Next as regards the steamer. The steamer is not a passenger steamer. It has merely converted two storeholds with insufficient port-holes. The only place where the passengers can get free air is deck and this space is taken with the kitchen and latrine quite close by. The latrine is not decently screened from public view. In this trip the steamer was overcrowded. I examined the stock of stores; rice, dholl, onions and potatoes were good. But in the rations issued to the passengers, I noticed rotten potatoes and bad mutton. Bathing was neglected, it is alleged, owing to want of water. Now that repatriation has come to stay, I think that a better kind of steamer should be utilised. The heat and discomfort on board this steamer are appalling.

7. In this trip, a Madras sirdar was removed owing to idleness it is alleged. No other Madrasī was employed. A Bengali sirdar appointed and ill-treated the Madrasīs to the extent of drawing blood. The assaulted man complained to me, but I made the Calcutta sirdar apologise and the injured man accepted the apology. Now that there are some hopes of rapprochement between India and South Africa and inasmuch as each one of the repatriates will become a source of hatred, I think it essential that the personnel in the steamer should be carefully chosen and should be sympathetic men acceptable to the Madrasī repatriates.

Inspection notes by the Medical Inspector of Emigrants on S. S. "Umzumbi"
~~28th April 1926.~~

Inspected S. S. "Umzumbi". There were 367 returned emigrants both for Calcutta and Madras. This ship originally not intended for emigration traffic has apparently set apart two small twin-decks and upper deck above them for repatriates. The twin-decks are dark and dingy with small port-holes with insufficient light and ventilation. The overcrowding should have caused lot of discomfort and insanitation. The upper deck is occupied by latrine, kitchen and boilers. The only fresh air that they could get is on these upper decks; but being occupied with these accessories it cannot be denied that it was very insanitary to sit on the deck for fresh air, with latrines smelling and offensive to sight. Repatriates complained that meals were also served on the deck and they had to eat them in the vicinity of latrines.

There were only two latrines, one for males and another for females, exposed on the upper deck. There was hardly any privacy about them. A canvas cloth hardly sufficient to ensure anything like decency, particularly for women, was hung in front of the seats. The repatriates complained about the insufficiency of seats as well as of the absence of privacy.

Two men died on board alleged to have been old. One of them, the doctor in charge of the ship informed me, was six months ill ashore and hardly fit to travel; the other was an old man who died within a few hours' illness. It is hardly fair to repatriate this class of invalids.

The repatriates complained bitterly about drinking water, insufficiency of bathing water, and soap for cleanliness. The drinking water supplied was shown to me by the repatriates themselves and it was almost boiling hot. They had no cold water on the voyage to drink. The repatriates were filthy and dirty and a smelly lot indeed. Their complaint that there was insufficiency of water and soap seems to be justified by the conditions in which they were found.

There seems to have been a lot of trouble on board the ship between the sirdars and the emigrants; quarrels leading to beating and kicking, with blood shed in one case, actually brought to the notice of the Protector seems to have taken place on board the ship. The sirdars appointed on board the ship are men picked out from the emigrants, purely temporary with no responsibility to anybody and disbanded on their arrival in India. There seems to have been a fight between the Madras and Calcutta sirdars, as a result thereof the Calcutta sirdar admitted to the Protector that he gave a Madras repatriate a severe beating with bleeding. None of the officers on board the ship know the language, manners, customs and habits of the Indian people sufficiently well to understand, control, and manage efficiently the crowd. They have to trust to the sirdars for any investigation or instructions. It has often occurred to me that this state of affairs might perhaps be put a stop to or at least may be improved by appointing permanent Indian sirdars on these voyages, who know the languages and have Indian experience and independent of repatriates who have no personal interests or prejudices. I may go a step further and suggest the Medical Officer on board or at least his chief assistant and the compounder may be Indians with Indian experience. This will lead to, not only better understanding, but also better control and management and efficiency in the medical treatment. The European Medical Officer on board the ship must be at a great disadvantage to deal with and treat Indian

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patients without the personal knowledge of Indians and their languages and customs. He cannot be expected to understand their complaints, first hand, realize their wants and supply them.

I enclose a list of decrepits, the cause in a great number of cases being senile decay. There was one with paralysis, one deaf and dumb and one or two blind.

COPY OF LETTER FROM THE PROTECTOR OF EMIGRANTS, CALCUTTA, TO THE SECRETARY TO THE GOVERNMENT OF BENGAL, REVENUE DEPARTMENT, No. 343, DATED THE 25TH MAY 1926.

In continuation of this office letter No. 201 of the 24th March last, regarding certain information required by the Government of India, about repatriates arriving in Calcutta from Natal who have been sent back to this country under the South African Voluntary Repatriation Scheme, I have the honour to state for the information of Government that 107 such repatriates returned to Madras by the S. S. "Umzumbi" and were sent on by rail arriving at Calcutta on the 4th May 1926.

At the time of inspecting these people on arrival they were questioned as to the cause of their return on the lines indicated by Government.

Forty-seven repatriates were questioned and they gave the following replies:—

Thirty mentioned that being Indians their employers did not wish to continue to employ them and that their appointments were filled by Kaffirs and Dutch.

Three were incapable of doing work, one owing to old age and two being incapacitated owing to permanent injuries received accidentally during work.

Twelve had returned to relatives and friends.

One stated he considered that he lost his employment owing to the visit of Mrs. Sarojini Naidu to the country.

One accompanied his parents to India.

Questions put to the forty-seven return emigrants as to whether the cause of their return was due to race prejudice, lure of a bonus, or indirect official pressure, drew negative replies.

Sixty being women and children were not questioned.

COPY OF LETTER FROM THE PROTECTOR OF EMIGRANTS, MADRAS, TO THE SECRETARY TO THE GOVERNMENT OF MADRAS, LAW (GENERAL) DEPARTMENT, No. 190—26, DATED THE 24TH JUNE 1926.

Emigrants—returned—South African Voluntary Repatriation Scheme—S. S. "Umsinga"—arrived on 21st June 1926.

I forward herewith a copy of the Medical Inspector's report on the condition of the emigrants repatriated by S. S. "Umsinga" which arrived on the 21st June 1926. A copy of the answers obtained from them with reference to the usual questionnaire will follow (received and not printed).

2. The total number of souls repatriated were 174 as detailed below:—

(i) Male adults	86
(ii) Female adults	40
(iii) Boys under 10 years	23
(iv) Girls under 10 years	18
(v) Infant boys	5
(vi) Infant girls	2
	<hr/>
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It will be seen from the Medical Inspector's report that there are eleven decrepits, of whom four are utterly helpless and have no other means of support except the bonus of £10 paid to them. Two women were recommended to be sent to the hospital, but their husbands insisted on their being taken away with them to their native villages. They said that they would give their wives the necessary medical aid. One of the decrepits, though she had no home of her own, wished to go to Tiruvannamalai, and I have arranged for her being sent under an escort and for the safe custody of her bonus of £10 and for periodical disbursement to her.

3. There were no destitutes. Every one received a bonus of £10 subject to the maximum of £50 for a family of five or more members. Their savings as given out by them ranged as follows:—

	No. of emigrants,
(i) Savings from £1—£5	7
(ii) " " £6—£10	3
(iii) " " £11—£20	11
(iv) " " £21—£50	6
(v) " above £50	6
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4. As usual, I boarded the steamer with the Medical Inspector; on this occasion the Commissioner of Labour also inspected the steamer. I am glad to report that there was no complaint about food and drinking water. The crowd was less smelly than the usual lot. But the passengers complained about the insufficiency of accommodation and exposure to waves. When the sea was rough all had to go into the hold and this is inadequate. I agree with the Medical Inspector in his observations. I wonder if the ventilation to the hold is adequate even according to the shipping rules. I did not notice any port-holes. Regarding the unsuitability of the steamer I beg attention to my report of the 11th March last.

5. As regards treatment in the Colony I have simply to reiterate what I have said in my previous reports. The answers to the questions bear out that there is a marked preference for substituting Boer or Kaffir labour for Indian labour and that even the Government officials of the Colony are accused of fostering this treatment. Several Indians are turned out of work on flimsy pretexts, are not given hawker's licenses, have to pay heavily for necessaries of an Indian and are not allowed to breed fowl and sheep for domestic use. Some of the passengers came from the Transvaal mines and complained of the treatment accorded them there. They are aware that their lot would be bad in India, but told me that it was impossible for them to live in the Colony. Several persons who had plenty of work in them returned this time.

Inspection notes by the Medical Inspector of Emigrants on S. S. " Umsinga ".

Inspected S. S. " Umsinga " in company with the Protector of Emigrants and Commissioner of Labour. There were altogether 204 repatriates, of whom 30 were for Calcutta. The following are the decrepits, partly due to old age and partly due to disease or deformity. * not dried

This ship, as has already been reported on 22nd November 1925, is not intended to carry emigrants. There are no facilities to take deck passengers in it. One of the cargo decks in the tween-decks is set apart for accommodating married, unmarried and single men, women and children. The cargo-deck is distinctly hot and stuffy, light and ventilation badly wanting. There is not a single port-hole; the only ventilation possible is by the hatch. In the early part of the voyage for about ten or twelve days the sea was running high and rough; waves washed the deck and it was not occupied nor could the repatriates be accommodated in the cargo-deck as the waves washed through the hatch into it. There is no outlet for the water in the cargo-deck, it had to be mopped up; consequently it was damp and insanitary for accommodation.

There were no suitable latrines. On the upper deck, wooden partitions were erected ensuring no privacy. The only place available for any fresh air was naturally unsightly on account of these latrines and offensive in odour. Their meals were served on the same deck in sight of those latrines. The latrines were defective in build as the walls were not built down to the bottom and the droppings were visible from the deck.

There is no hospital on board, nor any particular provision made for treating the sick as in-patients. There is no register of sick, in or out-patients maintained. It is not possible to know definitely the nature of the disease the emigrants suffered from and the treatment accorded to them. The doctor in-charge stated that he had a number of dysentery cases which he thought were in the nature of Gastric Influenza with bowel symptoms. They were not isolated; they were treated with the rest in the cargo-deck or on the upper deck in the midst of other emigrants. There was a case of labour; she was confined, according to the doctor's statement, on the floor of the smoking room and kept there for 9 or 10 days. There was no midwife. Another woman was attacked with a stroke of paralysis, three or four days ago, on board the ship and she was helpless in the midst of other emigrants. She was not given a bed, nor any treatment accorded to her. This case was not even brought to the notice of the doctor in charge. It was brought to his notice for the first time by me.

COPY OF LETTER FROM THE PROTECTOR OF EMIGRANTS, CALCUTTA, TO THE SECRETARY TO THE GOVERNMENT OF BENGAL, REVENUE DEPARTMENT, No. 439, DATED THE 7TH JULY 1926.

In continuation of this office letter No. 343 of the 25th May 1926, regarding certain information required by the Government of India about repatriates arriving in Calcutta from Natal who have been sent back to India under the South African Voluntary Repatriation Scheme, I have the honour to state for the information of Government that 30 such repatriates returned to Madras by the S. S. "Umsinga" and was sent on by rail arriving at Calcutta on the 23rd June 1926.

When these people were inspected on arrival, they were questioned as to the cause of their return on the lines indicated by Government.

Thirteen emigrants were questioned when they gave the following replies:—

Ten stated that they were not able to get employment being Indians, and that their places were filled in by Kaffirs and Dutch.

Two mentioned that they returned as they were incapable of work owing to old age.

One returned for family reasons.

The thirteen who were asked whether the cause of their return had been due to race prejudice, lure of a bonus, or indirect official pressure, replied in the negative.

No questions were put to seventeen repatriates as they were women and children.

COPY OF LETTER FROM THE PROTECTOR OF EMIGRANTS, MADRAS, TO THE SECRETARY TO THE GOVERNMENT OF MADRAS, PUBLIC WORKS AND LABOUR DEPARTMENT, No. 304—56, DATED SEPTEMBER 1926.

Emigrants—returned—South African Voluntary Repatriation Scheme—S. S. "Umzumbi"—arrived on 27th August 1926.

I am herewith sending my own and the Medical Officer's inspection notes on the S. S. "Umzumbi" which arrived at Madras on 27th August 1926.

Inspection notes by the Protector of Emigrants on S. S. "Umzumbi."

In view of the strictures previously passed upon this and similar vessels, I went over the whole boat very carefully. The sanitary conditions throughout at the time of inspection were good and the tween-decks was clean and well kept. In the Medical Officer's report in May last he took exception to the insufficient screening of the latrines and their exposed situation on the decks. The location of the latrines on the deck makes it perhaps more easy to keep them in a sanitary condition, though I think it is preferable to have them below. As regards the insufficient screening provided by the canvas curtains hanging in front, I spoke to the master of the vessel and he said they had been forced to shorten the curtains in order to prevent deck passengers going behind them and excreting on the deck instead of using the latrine seats. As a matter of fact, the repatriates, both male and female, appeared to be using the latrines quite freely even while the deck was crowded and nobody appeared to be worrying much about indecency. A screen across the front of the seats might meet the case.

2. There were no complaints made to me about food or drinking water. One man said that he had not room to sleep in comfort, but this was not supported by any of his fellows. A *précis* of the answers received to the usual questionnaire is attached.

3. As regards the overcrowding I examined the certificate held by the master. The ship was certified by the Port Captain of Durban for the present voyage to carry from Durban to India 297 tween-deck passengers and 96 crew. She actually carried passengers as stated below :—

	Men.	Women.	Boys under 10 years.	Girls under 10 years.	Infants.	Total.
To Madras	137	67	42	42	13	301
To Calcutta	34	8	7	7	1	57
						358

This makes a total of 358 souls. It must be remembered, however, that in calculating the number of passengers, boys and girls under 10 count only as a half and infants do not count at all. The total number of tween-deck passengers is thus reduced to 295, falling within the certified amount. I think there may have been some confusion at the previous inspection due to a misunderstanding of the difference between the number of passengers and the number of souls. In my opinion, the accommodation for this number of passengers, if not liberal, was at least adequate. I am informed that the ship has a similar passenger certificate from the Board of Trade in London, and where this somewhat exacting authority is satisfied it would seem pointless for us to take a stand on the question of overcrowding.

4. One woman died on the voyage and one gave birth to a girl. I inspected the hospital in which these cases were treated. It was on the upper deck and was comfortable, airy and wellfitted.

Précis of answers to the questionnaire.

Treatment under the indentured system was said to be better than after its removal. Things were worse after Mrs. Sarojini Naidu's tour and lectures which had exacerbated local feelings a good deal. Indians were being thrown out gradually on flimsy pretexts to give place to Kaffirs and Dutch labourers. The common reason given for return to India was either want of employment in the Colony or inability to continue under altered conditions of labour now existing. Very few appear to have been attracted by the bonus. One man complained bitterly that he had to part with £14 to a certain hospital; the money was taken from him on admittance and not returned. Another said that he had been suddenly served with notice to quit the lands which he had been cultivating under lease for nearly 40 years and that he had to part with them

suddenly even before he could harvest the crop he had raised. Had they remained in his possession for a month or two more, he could have enjoyed the produce. All spoke to the existence of race prejudice, but none could say definitely whether there was any indirect official pressure. Generally treatment in the Colony was said to be good, and the ship's menage was commended except for the lack of chillies.

Inspection notes by the Medical Inspector of Emigrants on S. S. "Umzumbi".

Inspected S. S. "Umzumbi" in company with the Protector of Emigrants. I forward herewith a list of decrepits (not printed) due to disease or debility on account of old age.

No complaints on board. Conditions generally satisfactory on board.

COPY OF LETTER FROM THE PROTECTOR OF EMIGRANTS, CALCUTTA, TO THE SECRETARY TO THE GOVERNMENT OF BENGAL, REVENUE DEPARTMENT, No. 722, DATED THE 27TH SEPTEMBER 1926.

In continuation of this office letter No. 439 of the 7th July 1926, regarding certain information required by the Government of India about repatriates returning from Natal under the South African Voluntary Repatriation Scheme, I have the honour to state for the information of Government that 56 such repatriates returned to Madras by the S. S. "Umzumbi" and were sent on by rail arriving at Calcutta on the 29th August 1926.

Thirty-four of these people were questioned on the lines indicated by the Government of India as to the cause of their return at the time of inspection when they gave the following replies :—

Twenty-five stated they had returned as they could not find work, Indians being replaced by Kaffirs and Dutch in employments where Indians were engaged before.

Four had returned for family reasons and five as they had turned too old to work.

Out of the thirty-four repatriates questioned no one stated that the cause of return had been due to race prejudice, lure of a bonus or indirect official pressure.

Twenty-two being women and children were not questioned.

Report of the Protector of Emigrants, Dhanushkodi, dated 10th September 1926, on the inspection of the South African repatriates that arrived at Colombo on 30th August 1926 by S. S. "Umvuma".

S. S. "Umvuma" left Durban on 13th August 1926 at noon with 132 repatriates bound for Madras Presidency and 30 for Bengal. During the voyage one of the 132 died on 29th August 1926 of pulmonary tuberculosis and the rest (131 plus 30) arrived at Colombo on the morning of 30th August 1926. That night they left Colombo by train arriving at Dhanushkodi the next morning. At Dhanushkodi they took the Rameswaram Express in the evening arriving Madras Egmore the next evening (1st September 1926).

2. According to the certificate of survey S. S. "Umvuma" is to carry only 85 first class passengers and no others. One of the cargo-holds was therefore converted by makeshift arrangements to carry the 162 repatriates.

3. To satisfy the requirements of an "emigrant vessel" two temporary latrines with canvas sides and a small hospital room (temporary) were put up on the deck, and the Port Captain and Surveyor, Durban, certified the ship on 13th August 1926 to carry the repatriates from Durban to Colombo.

4. The cargo-hold that accommodated these people is "No. 3—Between-deck" measuring 46 feet by 45 feet by 8½ feet. This gives 12 superficial feet and 107 cubic feet for each passenger. Although this might satisfy the requirements of the letter of the law, I should consider the ventilation to be insufficient as this portion of the ship has no port-holes. As a matter of fact soon after the vessel left Durban the repatriate passengers began to complain that the portion was too sultry and hot, and the complaint became so persistent and bitter that the master of the ship had to allow some of them to come up and occupy the deck.

5. There was sufficient supply of fresh water for drinking purpose. The repatriates were given fresh water for bathing only twice during the voyage (of 18 days), the supply not admitting a more free use for this purpose.

6. A qualified Medical Officer, Dr. A. G. Badenock, and an interpreter, Mr. V. M. Pillai, were in attendance during the voyage. These two and the Master of the ship, Mr. A. F. Clarkes, are said to have been very kind to the repatriates during the voyage, and the repatriates had no complaint to make regarding treatment during the voyage except in the matter of ill-ventilation referred to in paragraph 4 *supra*, for which, of course, none of the said officers was responsible.

7. A tabular statement giving the names of the repatriates, causes of their repatriation, the savings they brought, their destination in India and other particulars is appended. * Not found

8. Among the 131 repatriates bound for Madras there were 26 family groups consisting of 103 members and the remaining 28 were single men. Of the 30 repatriates bound for Bengal there were 4 families of two members each, the remaining 22 being all single men.

9. Of the Madrased repatriates 74 were born in India and the rest (57) in South Africa. Of the Bengalee repatriates only 1 was born in South Africa, the remaining (29) having all been emigrants from India.

10. *Causes of repatriation.*—Men that were employed on the railways say that there has of late been a tendency to transfer them to the sea coast in Natal, replacing them by the Whites in the interior. Those that were employed in the coal mines say that some of the mines were recently closed and in others there is a tendency on the part of the employers to replace Indian labour by the Native and that the services of the Indians are dispensed with on the slightest pretext.

11. *Savings of the repatriates.*—It is noticed, as usual, that while the average unmarried man spent all he earned in the Colony the average married man always tried to save something, the family tie serving as an incentive.

In the classification of the repatriates into "destitutes" and "semi-destitutes" ordered by the Government of India in their letter No. 131-Emi., dated 14th February 1923 (Labour Commissioner's D. Dis. No. 668-24, dated 4th December 1924), the bonus of £10 which each gets on arrival in India under the Repatriation Scheme has been taken into consideration and no one has been classed as "destitute". There were 3 decrepits (Madras) and 11 semi-destitutes (Madras 2 and Bengal 9).

12. *Future of the repatriates.*—Many of the repatriates have no clear idea as to what they would do in India hereafter.

A number of them said that they left their homes in India 20 to 30 years ago without the knowledge of their parents or other relatives, lured by the advertisement of the recruiters for Natal.