

**AREAS RESERVATION AND IMMIGRATION
AND REGISTRATION (FURTHER
PROVISION) BILL**

better known as the

ASIATIC BILL

and a fair

**Comment on the Bill by the Natal Indian
Congress showing how adversely it affects
the British Indian Community in the
Union of South Africa.**

Published by the Natal Indian Congress.

STATEMENT

by the

NATAL INDIAN CONGRESS

on the

Areas Reservation and Immigration and Registration
(Further Provision) Bill, 1925.

(Popularly known as the Asiatic Bill of 1925.)

The South African Indian Community are faced with impending repressive legislation which vitally affects their residence both legal and otherwise in this country.

The vested interests of the Indian Community who have been here since the year 1860 are large enough to necessitate immediate action and protest, but Indians being voteless, their protest so far can only be raised ineffectively. Salvation lies wholly and entirely on the sober influences that might be exerted by the Indian and British Governments, and for this reason apart from other efforts here, immediate steps should be adopted to prevent the proposed legislation ever becoming law. A copy of this Bill and the various sections of the laws which this Bill seeks to alter or add to are also printed herewith, so that the reader may better appreciate the effects of the changes it seeks to create.

The present Bill is divided into four Chapters, the first Chapter deals with the reservation of areas, the second with amendments to the Immigrants Regulation Act, the third with the registration of Asiatics in the Transvaal, and the fourth being supplementary.

CHAPTER I.

Before discussing this Chapter, the reader must be told that at present in Natal and the Cape Provinces, an Indian is free to buy, sell or lease land. In Orange Free State and Transvaal certain limitations in this respect exist, but the avowed object of the Bill being to affect Indians, as openly admitted by the Minister upon the first reading, as will be seen from his speech printed herewith, and Natal having a population of one hundred and forty thousand Indians, it is clear that Indians in Natal will particularly and immediately suffer, because the present Bill provides for:—

- (a) Areas to be set apart in towns and cities, and only in such areas shall Indians be permitted to buy and sell land. They will also have to trade in these areas only and no other. All businesses now existing elsewhere under leases shall cease by effluxion of time of current leases or by death of present lessees. This means that within a very short period of time most Indian businesses will cease to exist outside the area. Indian property owners who today are receiving fair rents will be deprived of their reasonable income because their business and residential places will not be taken up by the European Community at a fair rental and competition will be lessened. It may be pointed out that this portion of the Bill deliberately takes away what is now possessed, and practically compulsorily forces Indians into segregated areas in towns and cities.
- (b) This Chapter further provides that the Governor-General may proclaim that no Indian shall buy or lease land more than 30 miles away from the coast line except from an Indian within that 30 miles, and on the application of a Health Board or Local Board areas may be set apart within those 30 miles, then Indians will gradually in the same way as townships and cities by force of circumstances be compelled to go into these areas. This means that Indians will be debarred from purchasing or leasing properties anywhere in the Province as they now are entitled to do, and will, upon the completion of their present leases, be compelled to give up their residence and to close down their businesses unless they are able to purchase or lease

land from other Indians within the 30 miles, or go into the area if there is one within the said 30 miles, and if there is no such area proclaimed, or no land to be leased or purchased, then those businesses must necessarily cease. On a hurried computation it is estimated that 500 to 700 Indian business premises in the country are likely to be affected; apart from this an Indian business or landed property outside of the 30 miles cannot be sold or leased to another Indian.

Moreover the Bill empowers the Governor-General not only to proclaim areas but also to deproclaim such areas in part or in whole, which means that even after an area has been proclaimed and occupied, no sense of security is enjoyed, because the Governor-General can deproclaim such area. It is clear the intention of the Bill is to oust the Indian from his present vested proprietary rights and give him practically nothing substantial in place thereof, but virtually makes him a squatter and that at the wish and will of the Minister.

The effect of the operation of these two clauses alone will cripple the whole life and trade of the Indian Community and absolutely without the shadow of a doubt crush out all Indian agricultural work, progress and prospects. In plain language without considering any other phase of the Bill, the fate of the Indian is sealed and he is doomed.

This Chapter is based upon the recent Class Areas Bill which the late Smuts' Government had on the tapis, but which fell through when the Government changed.

CHAPTER II.

This Chapter deals with Immigrants Regulation. The drastic changes suggested, absolutely places into the hands of the Minister and Immigration Officer almost unlimited power to deal with the entry and possible deportation of Indians who have lived in this country for many years.

At present an Indian who outstays for a period of three years upon entering the port is required to prove his domicile notwithstanding he may already then actually

Section 14.

have his Certificate of Domicile. He is declared a prohibited immigrant and upon payment of a sum of money, which by practice £31 (Thirty-one Pounds Stg.), is found sufficient to cover, and as up till now accepted, is allowed to procure the necessary evidence and prove his domicile. Experience has shown that even this amount was not always easily obtained, and the Indian community is unaware of any Indians forfeiting this deposit and absconding and remaining in the country; the community therefore sees no reason for the Immigration Officer being empowered to make the deposit anything up to £100 (One Hundred Pounds Stg.), as this Section provides for. It is quite conceivable and with the present tension of feeling against Indians as a Community that the Officer might impose such an amount of bail as to effectively preclude an Indian immigrant being free from custody to procure the necessary evidence to prove his domicile.

It is felt that a capricious officer can easily do tremendous injury to a large number of bona fide domiciled Indians who may seek entry.

Section 10.

By this Section it is sought to revert certain two Districts of Natal, namely, Utrecht and Vryheid, to the Transvaal Province, but only for the purposes of enabling the Indian to come under the meaning of section 4 of Act 22 of 1913.

The hundreds of Indians there to-day are persons working on the coal mines and other industries. They are Indians recruited mostly from Natal proper. They have acquired a domicile there, and so long as these two Districts remain part of Natal they cannot be removed except to be put into the proposed areas. By reverting these Districts to Transvaal these Indians can be told under Section 17 of the Bill that they must return to the domicile of birth, which in most cases will be Natal.

It may be possible that if such an order be made that hundreds of these Indians will not be able to claim Natal as their place of domicile although born there, because by Section 17 they are persons who at the time of their birth were born of persons who were in Natal under conditional residence and never therefore acquired a domicile. If this view be taken then hundreds of these Indians cannot claim any domicile here and must go away presumably to India. This is evidently what the Government seeks to do by this Section 16.

With regard to Section 16 Sub-section (c) in this Bill, it is sought to delete paragraph (d) of sub-section 2 of Section 4 of Act 22 of 1913, which means that a large number of Indians who have entered Natal and Cape Colony under the Education Test may be declared prohibited immigrants under the "Deeming Order" (this Order was made by the previous Minister under Section 4 Sub-section 1 paragraph (a) of the Immigrants Regulation Act of 1913 by virtue of which he declared all Asiatics to be economically unsuited to the requirements of the Union and therefore prohibited immigrants. The validity of this Order was tested in the South African Appellate Court, but it held the Minister's Order was correct in terms of the said Section) if they applied at the ports of the Union for entry. The deletion clearly takes away a right which is to-day enjoyed.

Section 16,
sub-section (c)

Section 17 requires very close study and investigation to understand the full meaning and effect of it. It is far-reaching, and fraught with the gravest of consequences. The previous Minister as aforesaid has declared all Indians to be economically unsuitable. The present Minister in introducing the Bill has referred to Indians as aliens; He has repeated this in an interview as published in the "Natal Mercury" of the 27th August, 1925, and alleges that it was not a new idea to regard the Indian as such because the British Government in 1896 tacitly agreed that the Indian was an alien element by consenting to the withdrawal of the franchise. He further alleges that all subsequent legislation was based upon this principle. He says that by use of the word alien he means "that the Asiatic population was an alien element and could never be absorbed by the South African population."

Section 17.

Without digressing or appearing to be prolix it is submitted that the Minister's presumptions are incorrect.

The British Government did not withdraw the franchise from Indians as such. The withdrawal was general, and applied to all such as whose countries of origin of domicile had no elective representative institutions founded on the Parliamentary franchise. India at that time had no such institutions, and Indians were therefore debarred the franchise.

The Indian community learns for the first time that Asiatic legislation was based upon the principle that they were aliens.

The British Indians maintain that they can be for all useful and progressive purposes absorbed into the general community of South Africa.

The Government's present Bill is proof positive and adequate enough to show that the Indians have created such strongly absorbing ties with the other sections here, which the Government now seek to minimize.

The Indian community, without giving up its own identity, claim to be equally good South Africans as the Minister himself.

The Minister, however, in his interview says, "The Bill is generally intended to stop effectually the further encroachment of Indians and he hoped it would go further than that; that is, as a result of the exercise of pressure on the Indian he will take advantage of the inducements which are held out to him to leave the country, so that the Bill is meant not only to stop further encroachment but actually to reduce the Indian population of the country."

With these declared ideas of the Union Government one is able to understand the "raison d'être" of the Bill.

The proposed new section (e) speaks of prohibiting any person whose parents were at the time of his birth restricted to temporary or conditional residence by any law then in force.

Under Act 17 of 1895 large numbers of Indians came here under terms of conditional residence, and their offspring, now the cream of the Natal-born Indians numbering thousands born within the past 30 years, may possibly be also prohibited immigrants, because at the time of their birth their parents were restricted to conditional residence.

It is, however, proper to point out that the Indian Community may successfully meet this position by claiming that the Government through its Minister has issued certificates of discharge to those who came under conditional residence under Act 17 of 1895, thus waiving all claims against conditional residence. It was one of the points raised immediately after the 1914 settlement with Mr. Gandhi, and correspondence shows (vide Gandhi-Smuts Agreement printed herewith) that it was the Government's view to grant these Indians complete domicile, and the community certainly resents to have to face the ordeal of any test cases, not because of the result, but because of the inconvenience and expense. The question is why should a settled right be interfered with.

The proposed amendment continues to make a person a prohibited immigrant if he is a person who comes under the Deeming Order and/or who has acquired a domicile in a Province of the Union where he was not born. All Asiatics as such may be at the port of entry declared as prohibited immigrants and hundreds of Indians have acquired domicile with vested interests in other Provinces of the Union, and any such persons either returning to this Union or entering one Province of the Union from another will be declared prohibited immigrants; this means his domicile in the one Province counts for nothing, and he cannot take advantage of his birthplace because:—

- (a) He has already given up his domicile of birth;
- (b) He is a prohibited immigrant;

he cannot therefore enter at all, notwithstanding any right of vested interests.

This Section proceeds to say that the wife or child of an exempted person coming to the Union within 5 years from 1st August, 1925, or within 10 years of the first entry of such exempted person shall not be prohibited. This means that every Indian now in this Union must either before 1st August 1930 bring back his wife and children into the Union, or within 10 years of his first own entry into the Union. This is clearly an infringement and restriction of personal right and liberty.

Notwithstanding this new Bill gives an exempted Indian the right to bring back his wife within 5 or 10 years as the case may be, yet by a further provision in this new Bill he would be prevented from bringing in such wife if it could be shown that:—

- (a) he already has a woman still living in the Union with whom there exists a union recognised by this Government, or
- (b) any child or children in the Union by any woman who is still living.

This means that an Indian marrying under the tenets of an Indian religion and not registering such marriage may have children and thereafter divorce this wife according to the Indian religion, and she may thereafter become the wife of some other man or remain unmarried, then the first husband cannot go to India and bring a legitimate

wife because he has a child resident in the Union by a woman who is still living, though not his wife. This heavy punishment is unjustifiable and unproportionate, and is a ban not imposed upon any community in the world.

Section 18. With regard to Section 18 of the new Bill which seeks to make an addition to Section 10 of Act 22 of 1913, it is pointed out that the addition is quite unnecessary, as the present practice is that an Indian even already in the Union may be arrested and declared a prohibited immigrant and dealt with under Section 19 of Act 22 of 1913. Many cases have already been so dealt with.

Section 19. Section 19 of this Bill makes the addition to Section 22 that for an offence under that Section for which imprisonment without a fine is imposed, such offender may be declared a prohibited immigrant, it may be said that with this addition and the whole Section being read together, that any person in the Union who has ever been sentenced to imprisonment without the option of a fine, whether before or after the passing of Act 22 of 1913 can be declared by the Minister to be an undesirable inhabitant and be deported.

If for any reason the Government do not exercise its authority, harsh though it may be, the addition still is an incentive to the judicial functionaries influenced by the administrative section to impose punishments without the option of a fine so as to provide ground for the Minister to secure his necessary number of victims for deportation. This power should never be given to anybody because many of the offences are sometimes best suitably dealt with by imprisonment only, but the circumstances of such offence may never be so grave as to justify deportation. The discretion given to the Minister may never be nor can be from past experience expected to be exercised in favour of Indians.

Section 20. Section 20 of the present Bill will affect a large number of Indians, in that they will be compelled to give up a dual domicile in the Union, because many persons hold a domicile, for instance, in the Transvaal by birth or residence and have also similarly by birth or residence a domicile in Natal. This right of dual domicile will by operation of law cease to exist in three years, which means that large vested interests in one or other of the Provinces cannot be effectively dealt with or protected by the owner, and such businesses must necessarily be closed down.

Again, Indians, including those born in the Union, by their mere absence from the Union for more than 3 years at a time lose their domicile. This appears to be in conflict with all known law as regards to domicile, because this Bill takes away and does not give effect to a man's legal intention as to his own domicile. It also entirely takes away the present established right preserved to an Indian by virtue of his Certificate of Domicile. In order to preserve a domicile a person must return within the three years and then may immediately leave again for another three years. What is to be done with a South African born Indian who absents himself for more than three years and thus loses his domicile? Where is he to go? This surely renders the Act farcical and places the Indian under great inconvenience and unnecessary expenses with no corresponding benefit to anyone. The same argument applies to those who under the amendment are required to return before the 1st August, 1928.

The provision empowering the Minister to issue permits for a longer period than three years is not obligatory, and should he, as we expect, refuse all applications as a matter of course, then there is no relief from such decision. It is clear that the whole of this Section deprives Indians of their common law rights of freedom and restricts personal movement.

CHAPTER III.

Chapter III applies to registration of Asiatics, but deals only with those whose registration should be effected in the Transvaal. The present provisions of Act 36 of 1908 (Transvaal) gives a Magistrate a right to grant a period of 8 days to an Indian to have himself registered, but the present amendment takes away this right and places an Indian's application wholly at the discretion of the Minister. It is felt that this is likely to operate adversely to the Indian, and the present law should not be disturbed.

CONCLUSION.

The last comment on the Bill is that it is to be made retrospective as from the 1st day of August, 1925. The Minister in his first reading explains that he was doing this so as to prevent a scramble by the Asiatics to become possessed of vested interests before the Bill could become law. This retrospective operation is bound to affect all

transactions in regard to land amongst the Indian community. As a matter of fact it has already crippled and effectively restricted transactions in the buying and selling of freehold properties. It is superfluous to remark that this position is unprecedented in the annals of any country.

Every endeavour will be made to calmly and constitutionally protest against this Bill, but from past experience and from present knowledge of the existing race prejudice, Indians are constrained to believe that their representations will be futile. Concerted action, however, of Indian influence from India and its Government, acting with the British Government may secure the protection which was preserved to Indians in the South Africa Act, Section 147, which provides that:—

“The control and administration of Native Affairs and of matters specially or differentially affecting Asiatics throughout the Union shall vest in the Governor-General-in-Council”

IS THIS PROTECTION TO MEAN NOTHING TO INDIANS?

IS THE BRITISH EMPIRE WEAKENED AND UNABLE TO-DAY TO PROTECT ITS BRITISH INDIAN SUBJECTS?

IS THE INDIAN GOVERNMENT UNMINDFUL OR INDIFFERENT TO INDIANS OUTSIDE OF INDIA?

IS INDIAN REPRESENTATION ON THE LEAGUE OF NATIONS TO COUNT FOR NOUGHT?

If the answers to the foregoing questions are important, then Indians expect the leaders of public opinion to insist upon the Imperial Government doing its clear duty.

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 (Transvaal) 1908 (No. 36 of 1908); and to amend or repeal certain laws.

(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 shall intimate to the Minister—

(a) that any area within its limits is wholly or for the greater part occupied for residential or trading purposes or both such purposes by a particular class of persons;

(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 urban area within which it is situated the provisions of this Chapter.

Request by urban local authority for application of Chapter I.

(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 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 there would be afforded by such area 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 limits 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 be 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 limits 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.

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 urban area.

Proclamation
of class areas.

(2) More than one area within the urban area 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 an urban area which, in terms of the said Act No. 35 of 1908 or any amendment thereof, is proclaimed land or land held under mining title.

4. From and after the date mentioned in any proclamation issued under this Chapter establishing a class residential area or a class trading area, or a class residential and trading area, it shall not be lawful, save as provided in section ten—

Acquisition of
immovable
property in
class areas.

- (a) for any person other than a person of the class concerned to acquire immovable property or a lease or renewal of lease of immovable property within any such area; or
- (b) for any person of the class concerned to acquire immovable property or a lease or renewal of lease of immovable property anywhere within the urban area save within the limits of the class residential area or of the class trading area or of the class residential and trading area, as the case may be:

Provided that nothing in this Chapter contained shall apply to the renewal of a lease of immovable property where the right to renewal was held under a written lease existing at the commencement of this Act.

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 any urban area, 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 that urban area—

- (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 the urban area elsewhere than in the class trading area or class residential and trading area as the case may be:

Provided however, that if the Governor-General is satisfied that it is in the general interests of the public that it should be permitted to persons of the class concerned or any restricted number of such persons to carry on any particular trade or business within the urban area elsewhere than 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 persons of the class concerned or a restricted number of such persons from the operation of paragraph (b) of this sub-section in respect of that particular trade or business.

(2) Nothing in this section contained shall be deemed to prohibit the grant to any 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 any urban area any licence, permit, or other authority to carry on any trade or business, which is actually being carried on, or a renewal of such licence, permit or other authority.

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 in the urban area, and the urban local authority deems it de-

sirable 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, the urban 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.

(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 a 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 at the commencement of this Act or any right to the grant to 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, of 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 in the urban area 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.

provisions of
Suspension of
Act.

(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 urban area 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 which under Law 8, 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 an advisory board consisting of not less than three persons of the class concerned resident within the urban area, in addition to a chairman who in the case of a non-European class area may be a European. 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 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 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 or withdrawn by an urban local authority unless the advice of such advisory board shall first have been obtained in respect of the making or withdrawal, as the case may be, of such by-law or regulation.

Acquisition of immovable property by certain persons in Natal except in class areas, prohibited.

10. (1) The Governor-General may by proclamation in the Gazette declare that from and after a date to be specified therein no member of any race indicated therein shall acquire immovable property or the lease or renewal of lease of immovable property in the Province of Natal save in the coast belt as provided in sub-section (2) of this section: Provided that nothing in this section contained shall be deemed to prohibit a renewal of a lease of immovable property held under written lease at the commencement of this Act.

(2) A person who is a member of the race indicated in any proclamation issued under sub-section (1) of this section may acquire immovable property or the lease or renewal of lease of immovable property in the coast belt, from a person who is a member of the same race, but from no other person, except where the immovable property or the lease or renewal of lease of the immovable property acquired is within the limits of a class area established under this Chapter within the coast belt.

(3) From and after the date specified in any proclamation issued under sub-section (1) of this section, no member of any race indicated in such proclamation shall by testamentary disposition acquire any land or interest in land or the lease or occupation of any immovable property in the coast belt, except from a member of the same race.

(4) For the purpose of this section the coast belt means so much of the Province of Natal as lies between the coast line and a line to be defined by the Governor-General by proclamation in the Gazette corresponding as far as practicable with the coast line and drawn at an approximate distance of thirty miles therefrom.

(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— Savings.

- (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 in 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 race; or
- (d) to prohibit any executor of a deceased estate or any trustee in 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 date mentioned in any proclamation under this Chapter establishing a class residential area or a class trading area or a class residential and trading area or extending or reducing any existing area of like character, or altering the boundaries thereof.

Exemptions.

12. (1) The Governor-General may grant to any person a certificate exempting him 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.

(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” and

(iii) the people known as Mauritius Creoles or St. Helena persons or their descendants born in the Union.

13. In this Chapter unless inconsistent with the context

Explanation of terms.

“class or class of persons” includes any person having, in the opinion of the Minister, common racial characteristics, and all white persons shall be regarded as having common racial characteristics;

“person of a class” or “member of a race” includes any company or association of persons whether registered under any law or not in which one or more persons of the class or members of the race 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 Act;

“urban area” means any area under the jurisdiction of an urban local authority;

“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.

CHAPTER II.

IMMIGRANTS REGULATION.

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 two of Act No. 22 of 1913.

15. Section three of the principal Act is hereby amended

Amendment of section three of Act No. 22 of 1913.

(a) by the addition to 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 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 (a) of sub-section (1) 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, 1902” (Act No. 1, 1903, Natal) shall be deemed to be included in the Province of the Transvaal”; and

(b) 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 involving fraudulent conduct in connection with any insolvency”; and

(c) by the deletion of paragraph (a) of sub-section (2).

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 paragraphs (e) and (g) and the substitution therefor of the following new paragraphs—

(e) Any person, other than an alien, 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 paragraphs (d), (e), (f), (g) or (h) of sub-section (1) of section four; and
- (ii) that where exempted person belongs to one of the classes described in paragraph (a) of sub-section (1) of section four 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 person so exempted.

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.

Amendment of
section ten of
Act No. 22 of
1913.

18. Section ten of the principal Act is hereby amended by the addition of the following words:—

Any such person may be declared to be a prohibited immigrant and dealt with in terms of section nineteen of this Act and if such person 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 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 the holder thereof be dealt with as a prohibited immigrant: Provided that if such person 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.

Amendment of
section twenty-
two of Act
No. 22 of 1913.

19. Section twenty-two of the principal Act is hereby amended by the addition of the following paragraph:—

(d) for any offence under section twenty of this Act for which imprisonment is imposed without the option of a fine.

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.

21. Section six of the Indians Relief Act, 1914, is hereby amended by the addition after the words "any port in India" of the words "or elsewhere".

Amendment of section six of Act No. 22 of 1914.

CHAPTER III.

REGISTRATION OF ASIATICS.

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 Indian has abandoned any right of or incidental to entry, residence or domicile in the Transvaal Province.

Surrender of Asiatic registration certificate

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, shall satisfy 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 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.

Circumstances in which application for Asiatic registration certificate may be made.

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 words:

" Any Asiatic who fails upon lawful demand to produce such certificate shall, unless he is the lawful holder of a certificate of registration, be liable to be dealt with in manner mentioned in section eight ".

CHAPTER IV.

SUPPLEMENTARY.

Repeal of Laws.

26. The laws mentioned in the Schedule to this Act shall be and are hereby repealed to the extent set out in the fourth column of that Schedule.

Short title and commencement of Act.

27. This Act may be cited as the Areas Reservation and Immigration and Registration (Further Provision) Act, 1925, and shall come into force on the first day of August, 1925.

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 three, four, five (paragraph one), six, eight, sixteen, seventeen, (paragraphs five and six).

THE ASIATIC BILL

PROPOSED AMENDMENTS TO THE IMMIGRANTS REGULATION ACT.

For the convenience of the reader is 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

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."

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;

(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 thenceforth 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 of 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

(f) The same, with the addition after the words “have been stolen” of the following: “incest, sodomy, bestiality, any offence involving fraudulent conduct in connection with any insolvency.”

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 authorized 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 authorized officer, shall be unable through deficient education to himself to 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

(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 person, other than an alien, 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

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.

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 one of the classes described in paragraph (a) of sub-section (1) of section four 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 person so exempted.

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 be 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.

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 person may be declared a prohibited immigrant and dealt with in terms of section nineteen of this Act and if such person 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 the holder thereof be dealt with as a prohibited immigrant: Provided that if such person 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—

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.

- (a) for a contravention of 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.

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).

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 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:—

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.

Section six of the Indians Relief Act, 1914, remains, with the addition after the words "any port in India" of the words "or elsewhere."

Dr. Malan, Minister of Interior's Speech in introducing the Areas Reservation and Immigration and Registration (Further Provision) Bill.

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 realise, 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 of 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 have 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 every one 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.

GANDHI-SMUTS AGREEMENT OF 1914.

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 absenting 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 offences 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.,

(Sd.) 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.

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1924-1925

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The Officials of the Natal Indian Congress appreciate the invaluable services of Mr. Advocate J. W. Godfrey in the compilation of this book.