

UNION OF SOUTH AFRICA.

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REPORT

OF THE

SELECT COMMITTEE.

ON

**DISABILITIES OF BRITISH INDIANS  
IN TRANSVAAL.**

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*Printed by Order of the House of Assembly.*

APRIL, 1919.

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[S.C. 11-'19.]—DISABILITIES OF BRITISH INDIANS IN TRANSVAAL.

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## ORDERS OF THE HOUSE.

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*20th March, 1919.*

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ORDERED: That the Petition from Hadji Habib and Mooljee G. Patel, members of the Committee of the Transvaal British Indian Association, and Ismail Amod Patel, Chairman of the Krugersdorp Branch of the Transvaal British Indian Association, alleging certain disabilities imposed on the British Indian community in the Transvaal, and praying for leave to be heard by Counsel at the Bar of the House, or for other relief, presented to this House on the 25th February, 1919, and the alleged evasion of paragraph (b) of section two of Law No. 3 of 1885 and other laws of the Transvaal by British Indians and other persons belonging to the native races of Asia in acquiring or occupying fixed property in the Province of the Transvaal by forming themselves into limited liability companies, or otherwise, be referred to a Select Committee; the Committee to have power to take evidence and call for papers, and to be constituted in terms of Standing Order No. 216a.

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*25th March, 1919.*

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ORDERED: That the Minister of Justice, Messrs. Alexander, Duncan, Joubert, Rooth, de Beer, Blackwell, J. Stewart, Meyer and O'Brien be members of the Committee.

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*28th March, 1919.*

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ORDERED: That the Report of the Indian Enquiry Commission [U.G. 16—'14], presented to the House on the 17th March, 1914, be referred to the Committee.

# REPORT

OF THE

SELECT COMMITTEE, appointed by Orders of the House of Assembly dated 20th and 25th March, 1919, on Disabilities of British Indians in Transvaal; the Committee to have the power to take evidence and call for papers, and to consist of the MINISTER OF JUSTICE, MESSRS. ALEXANDER, DUNCAN, JOUBERT, ROTH, DÉ BEER, BLACKWELL, J. STEWART, MEYER and O'BRIEN.

Your Committee having considered the terms of its reference and having taken evidence thereon, (which is submitted herewith), begs to report as follows:—

## CHAPTER. I.

1. Your Committee was appointed on the petition of Hadji Habib and Moolje G. Patel, being members of the Committee of the Transvaal British Indian Association and Ismail Amod Patel, being Chairman of the Krugersdorp Branch of the Transvaal British Indian Association, which petition alleges that certain disabilities have been imposed on the British Indian community in the Transvaal in respect of the application of the provisions of Sections *one hundred and thirty* and *one hundred and thirty-one* of the Gold Law of the Transvaal (Act No. 35 of 1908), which provides *inter alia* that no coloured person except a *bona fide* servant shall be permitted to reside on or occupy proclaimed land, and the alleged systematic refusal by Municipalities to issue or renew grocers' licences to Indians under the provisions of Ordinance No. 9 of 1912 (Transvaal) on the ground that the applicants for such licences are not "desirable persons." It should be pointed out that Section *one hundred and thirty* of the Gold Law applies to the Mining Districts of Johannesburg, Boksburg, Krugersdorp, Pretoria, Heidelberg, Klerksdorp, Pietersburg, Barberton, Pilgrimsrest and Ottoshoop; Section *one hundred and thirty-one* applies only to the Mining Districts of Johannesburg, Boksburg and Krugersdorp.

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2. Your Committee was also instructed to take evidence and report on the alleged evasion of Law No. 3 of 1885 (Transvaal) (which law provides *inter alia* that Indians, etc., may not be owners of fixed property in the Transvaal), in acquiring or occupying fixed property in the Transvaal Province by British Indians and other persons belonging to the native races of Asia, by means of forming themselves into limited liability companies or otherwise.

3. Your Committee has therefore taken evidence with regard to (a) the position of Indian Traders generally on proclaimed Mining Areas in the Transvaal and (b) the alleged evasion by Indians and other Asiatics of Law No. 3 of 1885 in acquiring land by means of limited liability companies.

The position of Indian Traders carrying on business outside proclaimed Mining Areas, not being within the scope of the Committee's reference, has not been enquired into by your Committee.

With regard to the question of limited liability companies, the evidence hereon refers to the whole of the Transvaal.

## CHAPTER II.

(4. Prior to the year 1885 there was no legislation prohibiting Asiatics from acquiring and owning land in the South African Republic. In that year Law 3 of 1885 which had no retrospective effect, was passed providing that Indians and Asiatics generally "may not be the owners of fixed property in the Republic", and that the Government will have the right to indicate to them, "for purposes of residence", certain defined streets, wards and locations. The above provisions of this law are still in force.

5. The Gold Law of 1908 (Transvaal) provides in Section *one hundred and thirty* that no right under that law may be acquired by a coloured person, and that no holder of a right may permit any coloured person other than his *bona fide* servant "to reside on or occupy ground held under such right". Under the provisions of Section *one hundred and thirty-one* no coloured person is permitted to reside on proclaimed land in the Mining Districts of Johannesburg, Boks-

burg and Krugersdorp, "except in bazaars, locations, mining compounds and such other places as the Mining Commissioner may appoint".)

6. In the year 1914, following on a protracted passive resistance movement on the part of the Indian community, certain negotiations with regard to the position and rights of Indians took place between General Smuts, then Minister of the Interior, and Mr. Gandhi, representing the Indian community. The conclusions then arrived at in connection with the question with which this section deals are set forth in certain correspondence between the Secretary for the Interior and Mr. Gandhi, annexed hereto as Schedule A, and are summarised in the following extracts:—

- (a) From letter of the Secretary for the Interior to Mr. Gandhi, dated 30th June, 1914: "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 just manner and with due regard to vested rights."
- (b) From letter of Mr. Gandhi to Secretary for the Interior, dated 7th July, 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."

7. From the above it appears that an agreement was arrived at in June, 1914, with regard to Indian Traders in Transvaal between General Smuts as representing the Government of the Union and Mr. Gandhi as representing the Indian community to the effect 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.

8. From the evidence it appears that subsequent to the date of the abovementioned agreement, several

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Indians opened shops and are carrying on business in townships in which they were not licensed to trade in 1914, and that recently an influx of Indians has taken place into several townships on the Witwatersrand, viz., Boksburg, Springs and other places.)

Particulars as to the number of such new businesses, as far as these could be ascertained by your Committee, are attached to this Report as Schedule B.

9. It appears that where such new businesses have been opened by Indians, they applied to and obtained from the proper authorities, the necessary licences to trade, and that under these licences they now carry on business.

(10. The question of the right to refuse general dealers' licences was decided in the case of Motan in the Supreme Court of the Transvaal in 1904, when the Court (Innes, C.J. and Solomon and Curlewis, J.J.) held that "the instructions given to Revenue Officers to refuse licences to coloured persons must be declared to be illegal, and the Plaintiff must be declared entitled, upon due payment of the licence money, to receive licences to trade in the towns of Pretoria and Pietersburg." Under this judgment the Commissioner of Inland Revenue cannot refuse to issue general dealers' licences to any coloured person.

11. Section *ninety* of the Local Government Ordinance (Transvaal) of 1912 deals with the power of Municipal Councils to refuse certain licences and sub-section (*e*) thereof gives as a ground for refusal of applications for licences, to carry on any trade or business wherein articles of food or drink are produced, prepared, used or sold for human consumption, "that in the opinion of the Council the applicant is not a desirable person to hold such licence." From the Council an appeal lies to the Magistrate, whose decision has been held to be final. The evidence shows that in a considerable number of cases appeals from decisions of Councils refusing licences to Indians were successfully made to Magistrates.

12. It is alleged on behalf of Indian traders that certain Municipal Councils have consistently refused applications for such licences by Indians solely on the ground that they are Indians. This statement

has been denied on behalf of the Municipal Councils concerned.

13. In January, 1919, the Municipal Council of Krugersdorp applied to the Supreme Court at Pretoria for an interdict restraining Messrs. T. W. Beckett & Co., Ltd., from permitting the residence of any Indians or coloured persons on certain stands in the township of Krugersdorp or in the shops thereon or their occupation thereof. The stands in question were in occupation of certain Indians who resided and carried on business there, and the Council contended that this was in conflict with the above-quoted sections *one hundred and thirty* and *one hundred and thirty-one* of the Gold Law of 1908. Mr. Justice Mason granted an Order interdicting the Respondents from permitting the residence of any Indians or coloured persons on the said stands or in the shops thereon or their occupation thereof, other than the *bona fide* servants of the Respondents.

14. The effect of this decision was to close the Indian businesses carried on on the stands in question. Your Committee has it in evidence that several similar applications are pending or contemplated.

15. The Municipal Council of Krugersdorp submitted a Memorandum to your Committee in which its view of the present position with regard to Indian trading is fully and clearly set forth. As the circumstances with regard to Krugersdorp are also applicable to other towns, and the views of the Krugersdorp Council were supported by other Municipal Councils, a copy of this Memorandum is attached to this Report as Schedule C.

16. A Memorial signed by certain European merchants on the Witwatersrand in favour of Indian traders was submitted to your Committee and is attached to this Report as Schedule D.

### CHAPTER III.

(17. Until comparatively recently, Asiatics who desired to acquire rights to landed property (being unable in terms of Law No. 3 of 1885 to obtain transfer in their own names of such property), caused the  
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same to be transferred to a European, who thereupon passed in favour of the Asiatic, a mortgage bond for the value of the property. These bonds usually contained safeguards for the mortgagor and carried no interest.

18. In recent years this practice has been abandoned, and the *modus operandi* at present in use for acquiring landed property, notwithstanding the provisions of Law No. 3 of 1885, is for the Asiatic concerned and some of his friends or employees to form and register a limited liability company in Transvaal for the purpose of purchasing and acquiring land. Most of the companies so registered are "private" companies for which, under the Company Law, in force in the Transvaal, two shareholders are sufficient. Thus, although A and B, being Asiatics, may not obtain transfer of land in Transvaal in their own names, they may, and do, by forming themselves into a private company with limited liability as A. B. and Company, Limited, obtain transfer of such land in the name of the company. Law No. 3 of 1885 is thus rendered practically inoperative.

An action is at present pending in the Supreme Court of the Transvaal in which the validity of a company registered in circumstances as above set forth will be tested.)

19. Particulars of companies registered in Transvaal and in which Asiatics have an exclusive or controlling interest are set forth in Schedule E attached to this Report.

#### CHAPTER IV.

20. From the evidence it appears that the following points require consideration and have to be dealt with, viz. :—

- A. The position of Indian traders on proclaimed Mining Areas at the time of the Smuts-Gandhi agreement in June, 1914.
- B. The position of Indian traders on proclaimed Mining Areas who obtained licences and opened businesses subsequent to June, 1914.
- C. The position of limited liability companies consisting of, or controlled by Asiatics, and

formed for the purpose of acquiring, or which have acquired, landed property, although the shareholders of such companies are debarred by the provisions of Law No. 3 of 1885 from owning land as individuals.

## CHAPTER V.

(21. Your Committee is of opinion, and recommends : (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 legalised, 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.

22. Your Committee suggests fixing the 1st of May, 1919 as the date after which no new trading licences (save and except as renewals, as above-mentioned) shall be granted to Indians or Asiatics. It is recommended that a register should at once be framed by Government of all licences and businesses held and owned by Indians and Asiatics on 1 May, 1919, for purposes of future reference.

23. Your Committee is further of opinion that legislation should immediately be introduced for the purpose of amending Law No. 3 of 1885, and, if necessary, the Company Law, in such manner that the prohibitions against the owning of fixed property contained in Law No. 3 of 1885 be extended to any company or other body, corporate or incorporate, if the persons who have the controlling interest therein belong to any of the native races of Asia, and that

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it be rendered impossible for prohibited individuals to acquire landed property by means of forming and registering a limited company.)

A draft Bill embodying the above recommendations is attached to this Report, as Schedule F.

24. In view of the extreme importance of putting an end—without delay—to the present unsatisfactory state of affairs, your Committee is of opinion and urgently recommends that the abovementioned Bill be submitted to Parliament during the course of the present Session for the purpose of passing the necessary legislation.

(EDW. ROOTH,  
Chairman.)

Committee Rooms,  
House of Assembly,  
30th April, 1919.

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## SCHEDULES TO REPORT.

[A.]

Department of the Interior,  
Cape Town, 30th June, 1914.

M. K. Gandhi, Esq.,  
7, Buitencingel, Cape Town.

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 No. 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 *one hundred and six* 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 *four* (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 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 *nineteen* 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 *thirty* 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 in the past been 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 *twenty-five* 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 these 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 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 fulfil-

ment 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,

Yours faithfully,

(Sgd.) E. H. L. GORGES,  
Secretary for the Interior.

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7, Buitensingel, 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 discussion 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 interprovincial 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.

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. 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.

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Phoenix, Natal,  
7th July, 1914.

E. L. Gorges, Esq.,  
Pretoria.

Dear Mr. Gorges,—I have now got a moment to submit my note upon 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,

Yours truly,

(Sgd.) M. K. GANDHI.

[B.]

- (1. List of new General Dealers' Licences issued to Indians on Proclaimed Goldfields. These represent new licences issued for the first time since 1st July, 1914:

Krugersdorp .. .. .	2
Boksburg .. .. .	28
Germiston .. .. .	33
Johannesburg .. .. .	1
Heidelberg .. .. .	7
Total .. .. .	71



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II. List of new Trading Licences issued by the Municipal Council of Krugersdorp to Asiatics from 1st July, 1914, to 31st March, 1919:

Butcher	..	..	..	..	..	1
Grocer	..	..	..	..	..	10
Pedlar	..	..	..	..	..	1
Hawker	..	..	..	..	..	4
Laundry	..	..	..	..	..	2
Total	..	..	..	..	..	<u>18</u>

III. List of new Trading Licences issued by the Municipal Council of Johannesburg to Asiatics since July, 1914:

Pedlars	..	..	..	..	..	485
Hawkers	..	..	..	..	..	145
Carters	..	..	..	..	..	34
Laundry	..	..	..	..	..	7
Billiard Room	..	..	..	..	..	2
Soap Boiler	..	..	..	..	..	2
Dairy	..	..	..	..	..	1
Cab Proprietor	..	..	..	..	..	4
Kaffir Eating House	..	..	..	..	..	1
Asiatic Eating House	..	..	..	..	..	2
Tea Room	..	..	..	..	..	1
Total	..	..	..	..	..	<u>684</u>

IV. List of new Trading Licences issued by the Municipal Council of Barberton to Asiatics since 1 July, 1914:

Laundry	..	..	..	..	..	4
Pedlar	..	..	..	..	..	11
Total	..	..	..	..	..	<u>15</u>

[C.]

Memorandum re Asiatics in the Krugersdorp Municipal Area.

The number of Asiatics in the South African Republic appears not to have called for special legislation until the year 1885. In that year it became necessary to pass legislation with regard to them which is contained in Law 3 of 1885, which law proclaimed them (a) incapable of obtaining Burgher rights in the Republic and (b) Incapable of owning fixed property in the Republic.

This Law also provided for the registration of those Asiatics who settled in the Republic for the purpose of carrying on trade or otherwise and also gave the Government

the right to assign streets, wards and locations for them to live in.

The above Law was extended by Volksraad Resolution, Article 14 of the 12th August, 1886, and Article 138 of the 16th day of November, 1890, and put into practical effect by Government Notice No. 208 of 25th April, 1899, under which all Asiatics who had not at that time complied with the terms of previous Laws should before 1st July, 1899, proceed to dwell and carry on business in the streets, wards and locations thereto appointed according to Law. They were further prohibited from obtaining licences for business in streets other than those appointed under above-mentioned Laws. Asiatics outside Townships were ordered to remove their businesses and residences to within such appointed streets, wards or locations within a Township before the 1st July, 1899. The last three paragraphs of such Government Notice dealt with claims to exemptions. Sub-section (c) of Article 2 of Law 3 of 1885 was repealed by the Asiatic Law Amendment Act No. 2 of 1907, which provided for the registration of every Asiatic in the Transvaal, that fixed property in the Transvaal acquired by an Asiatic before the taking effect of Law No. 3 of 1885, and registered in the name of such Asiatic whether before or after the taking effect of such Law might be transferred by such Asiatic to another Asiatic by testament or other inheritance.

This was followed by the Asiatic Registration Amendment Act No. 36 of 1908, which made special provision for the registration of certain property in Pretoria, registered before the year 1885 in the name of a deceased Asiatic being registered in the name of his heirs. The provision of Law No. 3 of 1885 rendering Asiatics incapable of being owners of fixed property is still law in the Transvaal, as also its provision for assigning streets, wards and locations for their residence.

Under the Gold Law of 1898 coloured persons are defined to include Asiatics and this Act authorises only white persons to hold licenses under its provisions and expressly prohibited any coloured person being a license holder and being connected with the conduct of the Gold Fields except as a workman in the service of whites.

The Gold Law of 1908 under Section 7 created the Mining Districts of Johannesburg, Boksburg and Krugersdorp as a separate class and grouped them under the denomination of Class (a). The area comprising the Mining Districts of Pretoria, Heidelberg, Klerksdorp, etc., was denominated as Class (b). This Act again confined the right of holding any licences under its provisions to white persons of the age of 16 years and upwards (Section 32), and under the terms of Section 130 expressly prohibited any right being acquired under this Act by a coloured person, also prohibiting the holder of

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a right under Law 15 of 1898 or under the Gold Law of 1908 from transferring or sub-letting or permitting to be transferred any portion of such right to a coloured person and from permitting any coloured person other than the bona fide servant of a white person to occupy or hold ground under such right. Under Section 131 of the Gold Law of 1908 no coloured person shall be permitted to reside on proclaimed land in the Districts denominated Class (a), i.e., Boksburg, Germiston, Johannesburg and Krugersdorp, except in Bazaars, Locations, Mining Compounds or such other place as the Mining Commissioner may permit. Under sub-section 3 of 131 it is provided that nothing contained in that section should 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, nor to coloured persons who at the commencement of this Act were lawfully in occupation of the premises. Under Section 3 of the 1908 Gold Law coloured persons were defined to include Asiatics or any other person who is manifestly a coloured person.

The policy of the Transvaal Laws has consistently been to prevent residence by Asiatics amongst the white population. The Laws above referred to have expressly forbidden Asiatics from acquiring landed property in the Transvaal, and the provisions of the Gold Law so far as the Witwatersrand Gold Fields are concerned, expressly prohibit their residence in the Townships except in the capacity of servants of some white person.

The policy of the Government of the late South African Republic is clearly reflected in Law No. 3 of 1885 with its amendments, and special reference should be made to the First Volksraad Resolution of the 3rd and 4th November, 1896, where it was recommended that the Government should be instructed to "apply Section 3 of 1885 since the influx of Asiatics in South Africa was increasing daily and in a very alarming degree and not only in this South African Republic but also causes serious anxiety in other States and Colonies in South Africa."

Under Crown Colony Government which existed between the years 1902/1907, the same policy undoubtedly existed. Instructions appear to have been issued by the Government to Receivers of Revenue against the issue of General Dealer's Licenses to Asiatics for exercise in Townships. The Receiver of Revenue for the District of Pietersburg in the year 1903 refused the issue to Asiatics of General Dealer's Licences for exercise in that town. The case of *Habib Motan v. The Government* (reported 1904, T.S.C. 404) resulted in the decision by the Supreme Court of the Transvaal that an Asiatic was entitled to such licence to trade and the Government was ordered to issue such licence. There was a noticeable

increase in the number of Asiatic applications for licences following upon this case, and the number of Asiatic traders from that time onwards increased at a considerable rate. So far as the effect of that decision in Krugersdorp is concerned the following figures illustrate the position.

As on the 31st May, 1902, there were 14 Asiatic licences between Langlaagte and Randfontein on the West Rand. At the end of 1904 (the decision of the *Motan* case referred to above being delivered on the 31st May, 1904) the number of Asiatics holding licences had increased to 45 within the same area in that year. Their progress since that time is illustrated by the following table and Annexure A: —

	Males.	Females.	Children.	Total.
Krugersdorp and Luipaardsvlei ...	82	13	26	121
Randfontein ... ..	7	—	2	9
West Krugersdorp, Burgershoop and District Township, Krugers- dorp ... ..	67	18	36	121
	156	31	64	251

The licences set out in the foregoing tables do not include those issued for the area of Roodepoort, Maraisburg and Florida, but it can be stated that within the Krugersdorp Magisterial Area there are being exercised at the present time ninety-three (93) general dealers' licences. As will appear later in this Memorandum, were it not for the power vested in the Council under the Local Government Ordinance of 1912, and exercised by it, it is a fair comment to make that the number of these licences would be at least double.

In so far as Krugersdorp is concerned, in the year 1902 an Asiatic named Chotabhai carried on business in quite a small way. In the year 1904 he took into partnership M. M. Dadoo. At that time they carried on business on Stand 422, Commissioner Street, Krugersdorp, but some time later removed to the premises at the corner of Rissik and Commissioner Streets, Krugersdorp. At this time a certain firm of white traders carried on a large grocers' and general business on much more commodious premises situate upon the opposite corner of Commissioner and Rissik Streets. This business had been established for years previously to the year 1899. This firm continued to carry on until the year 1912, when they were compelled to surrender their estate in favour of their creditors and the business was liquidated. The failure of this firm was stated to be directly due to the unfair competition by Asiatic traders around them.

In the year 1907 another firm of white traders carried on business on the premises situate on Stand No. 170, in the same vicinity, now registered in the name of M. M. Dadoo, Ltd., and upon which premises M. M. Dadoo carries on his [S.C. 11—19.]

present business. The business now being referred to was amongst the first to be established in this town. In the year 1907 the business was assigned for the benefit of the creditors and subsequently, in the year 1910, was sequestrated. This failure was attributed to Asiatic competition. In the liquidation of that estate the premises were purchased by Mr. H. S. Polak, of Johannesburg, on behalf of Asiatics. The premises were let to furniture dealers, Messrs. Gordon & Co., occupied by them for about 18 months, and afterwards and since occupied by M. M. Dadoo, who still carries business thereon.

At that time business was being carried on by another white trader on Stand No. 172, Commissioner Street, but in the year 1914 this trader gave up business and sold his premises to M. M. Dadoo, Ltd.

All the above businesses were carried on upon premises situate on the same block of Stands as the store referred to above, where the original business of Chotabhai & Dadoo was carried on, and at the present time Dadoo, Ltd., is either the owner or occupier of the whole of this block of stands with the exception of the stand on which the Standard Bank premises are erected.

#### GROCCERS' LICENCES.

Now, under the provisions of the Local Government Ordinance of 1912, the granting of licences, whereunder food and drinks were sold for human consumption, was vested in the Municipalities of the Transvaal. Section 90 of that Act set out certain grounds upon which Councils might refuse to grant licences. Under Administrator's Notice No. 412 of the 17th October, 1913, the granting of groccers' licences was placed within the jurisdiction of this Municipality, and the granting or refusing of them came within the provisions of Section 90 above referred to. Since the beginning of the year 1914 and up to the beginning of the year 1919 some 102 applications for licences of the nature just referred to were dealt with by the Council. Of these, 75 applications were refused, 8 were granted, 5 withdrawn, 1 applicant left the District, 3 were referred back to the Licence Committee, 2 held over, and 7 applicants did not appear. Of the above applications, 78 were marked as new, and of these 36 of the applicants resided in the municipal area and 39 came from outside the municipal area. These figures refer to new applications and do not include Asiatic businesses established at the beginning of the year 1914, which licences were renewed automatically by the Council and since that time departmentally by the Council's officials.

In view of the provisions of the arrangement alleged to have been made in the month of April, 1914, between Mr.

Gandhi, acting on behalf of the Asiatics resident in South Africa, and General Smuts, in his capacity as Minister of the Interior, the 39 new applications above referred to were in direct contravention of the terms of such arrangement, so far as the same are known to the Krugersdorp Council. A noticeable contravention arose in the case of the firm of Mahomed Ismail & Co. This firm has carried on business in Klerksdorp for many years past. In the year 1914 and in subsequent years they applied to this Council for a grocer's licence unsuccessfully, but the Magistrate of Krugersdorp, in September, 1918, ordered this Council to issue such licence in their favour.

#### ASIATIC BAZAAR.

In the year 1903 a site for an Asiatic Bazaar was selected by Government at Krugersdorp, situate and abutting upon Commissioner Street, near the present situation of the Police Barracks. This site was declared a Bazaar area by the Crown Colony Government then in existence. No Asiatic, however, has resided thereon at any time. Another Asiatic Bazaar was afterwards laid out abutting upon Commissioner Street, Burgershoop, and remained in existence until the year 1912, when the same was closed. This bazaar was closed in terms of Ordinance 17 of 1905, and upon the closing thereof compensation was paid by the Council to any Asiatic disturbed in his occupation. Previously to this time a new bazaar was laid out defined on the portion of the farm Paardeplaats, upon which Krugersdorp is built, and abutting upon the Main Trunk Road, known as the Sterkfontein Road, in a position which was especially desirable from a health point of view and favourable for trading purposes. The bazaar consisted of 100 stands, each 50 by 100 feet. No application for a site has, however, been received by this Municipality, and the Asiatics appear to have used their compensation money to start businesses in various parts of the town. At the present time Asiatics and white people occupy premises adjacent to each other, noticeably in that part of the town known as Burgershoop, and upon that part of Krugersdorp abutting upon the Market Square and Pretoria Street. The Council is of opinion that this indiscriminate occupation by Asiatics and white people is undesirable from a social point of view as well as from a public health point of view. It is pointed out that the conditions of living of Asiatic traders are extremely undesirable from a white man's point of view. Their usual method is either to live upon the premises on which they carry on their business or herded together in "tin shanties" on stands.

A noticeable instance of this sort is that of the employees of M. M. Dadoo, Ltd., who are resident on Stand 370. The [S.C. 11—19.]

Chief Sanitary Inspector of the Krugersdorp Municipality has reported on this subject in the following terms:—"With reference to the residence of Asiatics in the various townships in this Municipality, there can be no doubt that their inclination towards congregating in buildings and rooms, which are invariably of poor construction, their proneness to conditions which are generally insanitary in the extreme renders their presence in townships a menace to the health of the white population.

Although Public Health Regulations may enable a Municipality to cope with these circumstances to a degree, the By-Laws do not go far enough, and the Sanitary Staff is continuously required to repeat frequent inspections in order to control the conditions of their dwellings, storage of food-stuffs, and insanitary conveniences, etc.

Comparing the residence of Indians with that of Europeans from an aspect entirely outside that of Public Health, it cannot be refuted that a considerable loss of revenue is incurred to the Municipality; for instance, in one case in Krugersdorp some fifteen males are accommodated on one stand and which is debited for only two sanitary services. In the case of a European establishment of equal dimensions, the majority of these assistants would undoubtedly be married and would thus occupy dwellings and probably contribute some four to five hundred per cent. more in the way of Municipal charges, light, water and sanitation."

The Council is much concerned for the future of the town, owing to the rapid progress of the Asiatics in this Municipality. The progress of Asiatic traders between the years 1904 and the present time has had a marked effect upon the white traders of the town, and it requires but small imagination to foresee the time when the various white traders will be pushed out owing to the unfairness of the conditions under which trade competition is carried on. To illustrate this point it is only necessary to refer back to the business above referred to carried on by M. M. Dadoo, Ltd. In this business there are employed 14 or 15 shop assistants, most of whom are unmarried men, or men whose wives are not in South Africa. They are paid wages very much less than the average white shop assistant is paid, their method of living together as above referred to causes not only frequent inspection and concern upon the part of the Public Health Department, but also a considerable decrease in the revenue from Municipal services which would be rendered to a corresponding number of white employees. Such people if they were white persons would either occupy premises with their families, if married, or be resident at a boarding house conducted by white persons. They would contribute to the activities of the town by the purchase of food usually consumed by Europeans, they would dress differently, and as 14 or 15 European indi-

viduals residing in Krugersdorp would contribute to the revenue necessary for the upkeep and maintenance of the town. This view of the matter might not have the force it possesses were it not for the fear of the Council that the future progress of Asiatic traders will emphasise and increase those conditions to an extent which will eventually have an extremely detrimental effect upon the conditions under which this town is conducted. It has been very noticeable in the past that immediately an Asiatic occupies premises the value of surrounding properties steadily decreases. The Asiatic trader is gradually approaching the centre of the town, and when the time arrives, as in present conditions, it inevitably will, when the Asiatic trader ousts the white trader, the value of property in the centre of the town will become entirely depreciated, with a serious and irreparable loss in revenue to this Council. It will eventually mean that many of the central premises will become unoccupied. The rateable value of the town will then be depreciated to an extent which this Council fears will render efficient Municipal Government impossible. With the Council's experience and under the Rating Ordinances of the Transvaal it would be impossible to conduct and to maintain the Municipal services and conveniences which have been established in this town upon the revenue received from Assessment Rates. The progress of Asiatics among small communities such as Krugersdorp is more noticeable than in large communities such as Cape Town, Durban and Johannesburg, and is more severely felt by the inhabitants. Public attention in the smaller communities is more concentrated upon this subject, and the undesirable conditions arising from a mixed population of white and coloured people are more emphasised. The Krugersdorp Council and the inhabitants of the town have for many years past expressed their complaint against this subject. So far back as the year 1904 and since. Public meetings have been held, and the protest of the town embodied in resolutions against the system which permitted the increase of Asiatics in their midst. The Council has already moved the Supreme Court (Transvaal) to interdict the occupation by Asiatics of premises in the township. An order against such occupation was recently obtained, and it is the policy of the Council forced upon it by the intolerable conditions now obtaining in this town to take such proceedings as will result in Asiatics taking up their residence in the bazaar laid out for them, in accordance with the laws of the Province.

The Council further views with alarm the effect upon the rising generation of the increasing importance of Asiatics in its area. If and when the commercial activities of this town become monopolised by Asiatics, employment for young white persons will either be unavailable or available under objec-



tionable conditions. The Council emphasises this view, as it has been noticeable that sons and daughters of the older population are availing themselves of opportunities for commercial careers which have arisen in recent years on the Witwatersrand.

In conclusion, this Council expresses its protest against the continued breaking of the law by Asiatics in this town, being convinced that their increasing presence in this town menaces not only the Public Health but the future progress of the town and its inhabitants.

The Council, on behalf of the community under its care, therefore records its grave protest against any amelioration of the existing laws with regard to Asiatics.

Occupations of Asiatic Population at 31st March, 1919.

	Krugers- dorp and Lui- paards Vlei.	Burgers- hoop. and District Town- ship.	Rand fontein.	Totals.
Hawkers and Pedlars ..	18	21	7	46
Grocers and General Dealers ..	13	14	—	27
General Dealers, Soft Goods ..	1	4	—	5
Barbers .. .. .	1	1	—	2
Tailors and Assistants ..	5	1	—	6
Bag and Bottle Dealers ..	2	—	—	2
Shoemakers .. .. .	1	—	—	1
Shop Assistants .. .. .	23	11	—	34
Fruit Dealers .. .. .	4	—	—	4
Cooks and Chefs .. .. .	7	—	—	7
Waiters .. .. .	1	—	—	1
Cycle Dealers .. .. .	1	—	—	1
Clerks .. .. .	3	—	—	3
Butchers .. .. .	—	1	—	1
Property Owners .. .. .	2	—	—	2
Gardeners .. .. .	1	6	—	7
Laundrymen .. .. .	—	10	—	10
Brickmakers .. .. .	—	1	—	1
Housewives .. .. .	12	15	—	27
Children .. .. .	26	36	28	64
Totals .. .. .	121	121	9	251

[D.]

We, the undersigned European Merchants of Johannesburg, have pleasure in testifying to our appreciation of our business dealings with Indian Wholesalers and Retailers who have transacted business with us. We have found them in the great majority of cases honest and reliable, and we should be sorry to lose their custom.

We understand that a move is on foot to deprive Indian traders in certain areas of the rights to carry on their businesses hitherto enjoyed by them, and that they have combined with a view among other things to oppose the measures contemplated and with which they are threatened. We should be sorry to support or to endorse any such attack upon the Indian rights referred to, and on the other hand we should like to add our protest against any such deprivation.

9th April, 1919.

J. W. JAGGER, 77, President Street.  
 RANGLES, LOUBSER & Co., LTD., 74, President St.  
 HIRSCH, LOUBSER & CO., LTD., 74, President St.  
 M. BLOCH & CO., 156, Market Street.  
 A. SCHLOSBERG, 119, Market Street.  
 STUART CAMPBELL LIMITED, 158, Market Street.  
 KATZENELLENBOGEN, LIMITED, President Street.  
 ORR ROSENTHAL & CO., Market Street.  
 LITTMANN & BROWN, 101, Market Street.  
 J. ROSENBERG, 144, Market Street.  
 L. FRANKS, 56 Kruis Street.  
 J. & W. CAMPBELL & CO.  
 ARNOT & GIBSON.  
 WM. ARCHIBALD, Pinn's Building.  
 S. BUTCHER & SONS, LTD., Pinn's Buildings.  
 STAPLETON & CO., LTD., Pinn's Buildings.  
 WEINBERG & SCHARIN, 89, Market Street.  
 THE SOUTH AFRICAN NECTAR TEA CO., LTD., 89,  
 Market Street.  
 B. GUNDELFINGER, P.O. Box 207, Johannesburg.  
 L. J. MARKOWITZ & CO., Box 5372, 57, Sauer St.  
 ED. MEYERS, 44, President Street.

[E.]

## (TRANSVAAL COMPANIES ACT (No. 31 OF 1909).

A RETURN OF COMPANIES THE SHAREHOLDERS OF WHICH ARE ALL 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

NOTE.—All the above Companies are Private Companies.)

(F.)

## BILL TO MAKE FURTHER PROVISION WITH REFERENCE TO THE PROHIBITION OF OWNERSHIP OF LAND AND WITH REFERENCE TO THE RESTRICTIONS AS TO THE OCCUPATION OF LAND AND TRADING BY ASIATICS.

*Introduced on the recommendation of the Select Committee on Disabilities of British Indians in the Transvaal.*

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:—

Certain prohibitions as to occupation of ground on Witwatersrand gold fields not to apply to certain British Indians, etc.

1. Those provisions of sections *one hundred and thirty* and *one hundred and thirty-one* 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 No. 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 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 *one hundred and thirty* and *one hundred and thirty-one* or in the conditions aforesaid.

2. Those provisions of Law No. 3 of 1885 (Transvaal) and any amendments thereof heretofore enacted which prohibit a person belonging to any of the Native races of Asia from being an owner of fixed property in the Transvaal subject to certain exceptions specified in such amendments shall, subject to the same exceptions, be construed also as prohibiting the ownership of fixed property in the Transvaal by any company or other corporate body in which one or more persons belonging to any of those races have a controlling interest—provided that the provisions of this section shall not apply in respect of the ownership of any fixed property acquired by any such company or corporate body before the first of May, 1919.

Certain prohibitions and restrictions of Law No. 3 of 1885 (Transvaal) to apply to companies controlled by Asiatics.

3. This Act may be cited for all purposes as the Asiatics Short title. (Land and Trading) Amendment Act, 1919.

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## PROCEEDINGS OF COMMITTEE.

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PROCEEDINGS OF THE SELECT COMMITTEE, appointed by Orders of the House of Assembly, dated the 20th and 25th March, 1919, on DISABILITIES OF BRITISH INDIANS IN TRANSVAAL; the Committee to have power to take evidence and call for papers, and to consist of the MINISTER OF JUSTICE, MESSRS. ALEXANDER, DUNCAN, JOUBERT, ROTH, DE BEER, BLACKWELL, J. STEWART, MEYER and O'BRIEN.

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*Thursday, 27th March, 1919.*

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PRESENT :

The Minister of Justice.	Mr. de Beer.
Mr. Alexander.	Mr. Blackwell.
Mr. Duncan.	Mr. J. Stewart.
Mr. Rooth.	Mr. O'Brien.

Clerk read Orders of the House, dated the 20th and 25th March, 1919, appointing the Committee.

On the motion of the Minister of Justice,

Resolved: That Mr. Rooth be Chairman.

Clerk read and laid upon the Table the petition from Hajee Habib and Mooljee G. Patel, members of the Committee of the Transvaal British Indian Association, and Ismail Amod Patel, Chairman of the Krugersdorp Branch of the Transvaal British Indian Association, alleging certain disabilities imposed on the British Indian community in the Transvaal, and praying for leave to be heard by Counsel at the Bar of the House, or for other relief, presented to the House on the 25th February, 1919. [No. 229-'19.]

On the motion of Mr. Blackwell,

Resolved: That there be laid before the Committee 12 copies of a return showing:

- (1) The number of (a) private and (b) public companies in which Indians have a majority of the shareholding registered in the Transvaal since 1st January, 1916;
- (2) the number and value of fixed properties transferred into the names of such companies since 1st January, 1916.

The Committee deliberated and adjourned until Tuesday, at 10.30 a.m.

[S.C. 11-'19.]

*Tuesday, 1st April, 1919.*

## PRESENT :

MR. ROOTH (Chairman).

Mr. Alexander.	Mr. Blackwell.
Mr. Duncan.	Mr. J. Stewart.
Mr. Joubert.	Mr. Meyer.
Mr. de Beer.	Mr. O'Brien.

Clerk read Order of the House, dated the 28th ultimo, referring to the Committee the Report of the Indian Enquiry Commission, 1914.

Clerk laid copies of the Report upon the Table [U.G. 16—'14]. The Chairman laid upon the Table a memorandum by Mr. M. Alexander, M.L.A., regarding the trading rights of Indians in the Transvaal.

On the motion of Mr. de Beer,

Resolved: That, in terms of Standing Order No. 233 [1919 Edition], the evidence given before the Committee be recorded and transcribed in narrative form.

Mr. Henry Benjamin Shawe, I.S.O., Acting Secretary for the Interior, was examined, and put in copy of a judgment by Justice Mason in the matter of The Municipal Council of Krugersdorp vs. T. W. Beckett & Co., Ltd.

The Committee deliberated and adjourned until Thursday, at 10.30 a.m.

*Thursday, 3rd April, 1919.*

## PRESENT :

MR. ROOTH (Chairman).

Mr. Alexander.	Mr. Blackwell.
Mr. Duncan.	Mr. J. Stewart.
Mr. Joubert.	Mr. Meyer.
Mr. de Beer.	Mr. O'Brien.

The Chairman laid upon the Table copies of certain correspondence between Mr. Gandhi and Government Departments on the subject of the position of the Indian community in the Union.

Messrs. Herbert Hamel, Mining Commissioner, Boksburg, Alfred Lewis Cohn and Julius Wertheim, representing the Federation of Ratepayers' Associations of Johannesburg, were examined.

The Committee deliberated and adjourned until to-morrow, at 10.30 a.m.

*Friday, 4th April, 1919.*

## PRESENT :

MR. ROOTH (Chairman).

Mr. Alexander.	Mr. J. Stewart.
Mr. Joubert.	Mr. Meyer.
Mr. de Beer.	Mr. O'Brien.

Mr. Johannes Adriaan Nesor, M.L.A., was examined.

The Committee deliberated and adjourned until Thursday, at 10.30 a.m.

DISABILITIES OF BRITISH INDIANS IN TRANSVAAL. xxxiij

*Thursday, 10th April, 1919.*

PRESENT :

MR. ROTH (Chairman).

The Minister of Justice.	Mr. Blackwell.
Mr. Alexander.	Mr. J. Stewart.
Mr. Duncan.	Mr. Meyer.
Mr. J. A. Joubert.	Mr. O'Brien.
Mr. de Beer.	

Advocate Frederik Edward Traugott Krause, K.C., LL.D., representing the Transvaal British Indians Association, was examined, and put in statements showing the nature of the businesses, period of trading, approximate value of stock, etc., of 83 Indian firms in the Transvaal.

The Committee deliberated and adjourned until to-morrow, at 10 a.m.

*Friday, 11th April, 1919.*

PRESENT :

MR. ROTH (Chairman).

The Minister of Justice.	Mr. de Beer.
Mr. Alexander.	Mr. Blackwell.
Mr. Duncan.	Mr. Meyer.
Mr. Joubert.	Mr. O'Brien.

Advocate Frederik Edward Traugott Krause, K.C., LL.D., representing the Transvaal British Indians Association, was further examined.

Messrs. Lewis Walter Ritch and Bernard Alexander, representing the British Indian community of the Transvaal, Paragon Krishman Naidoo and Hajee Hahib Hajee Dadoo, members of the Indian community of the Transvaal, Llewellyn James Phillips, Harry Friedman and Frederick Albert Cooper, representing the Town Council of Krugersdorp, were examined, and Mr. Phillips put in a memorandum *re* Asiatics in the Krugersdorp Municipal Area.

The Committee deliberated and adjourned until Monday, at 10.30 a.m.

*Monday, 14th April, 1919.*

PRESENT :

MR. ROTH (Chairman).

The Minister of Justice.	Mr. de Beer.
Mr. Alexander.	Mr. Blackwell.
Mr. Duncan.	Mr. Meyer.
Mr. Joubert.	Mr. O'Brien.

Mr. Alexander laid upon the Table a memorandum signed by certain European merchants of Johannesburg protesting against any action which may be proposed to be taken to curtail the rights of Indian traders.

The Committee deliberated.

[S.C. 11—'19.]

Mr. Alexander moved: That all restrictions against the right of British Indians, legally resident in the Transvaal, to trade, be removed by legislation.

Upon which the Committee divided:

Ayes—1.	Noes—8.
Mr. Alexander.	The Chairman.
	The Minister of Justice.
	Mr. Duncan.
	Mr. Joubert.
	Mr. de Beer.
	Mr. Blackwell.
	Mr. Meyer.
	Mr. O'Brien.

The motion accordingly negatived.

Mr. Alexander moved: That British Indians be given the same facilities for inter-Provincial migration as are accorded to other citizens.

The Chairman ruled that as this motion was outside the scope of the Committee's reference, it could not be put.

Mr. Alexander moved: That all restrictions upon the ability of British Indians to own fixed property in the Transvaal be removed by legislation.

Upon which the Committee divided:

Ayes—1.	Noes—8.
Mr. Alexander.	The Chairman.
	The Minister of Justice.
	Mr. Duncan.
	Mr. Joubert.
	Mr. de Beer.
	Mr. Blackwell.
	Mr. Meyer.
	Mr. O'Brien.

The motion accordingly negatived.

Mr. Blackwell moved: That, in view of the agreement of the 30th June, 1914, arrived at by General Smuts, on behalf of the Government, with Mr. Gandhi, representing the Indian community, it is undesirable to maintain Sections *one hundred and thirty and one hundred and thirty-one* of the Transvaal Gold Law, No. 35 of 1908, unaltered, and the Committee recommends the amendment of these sections so as to give the Government permission to relax their provisions in regard to Indians actually established in business on mining ground at the date of the abovementioned agreement and their successors to the said businesses.

Mr. O'Brien moved, as an amendment: That legislation should be introduced providing that the provisions of sections *one hundred and thirty and one hundred and thirty-one* of the Precious and Base Metals Act of 1908 of the Transvaal (Act No. 35 of 1908) and any similar provisions contained in any freehold title or deed of grant issued or to be issued in any Government Township under the Townships Amendment Act of 1908 of the Transvaal (Act No. 34 of 1908) shall not apply to any British Indian (or his successor



in title) who was on the 1st of May, 1919, carrying on business under a licence issued by a duly appointed authority, or to the *bona fide* employees of such British Indian (or his successor in title), for so long as such business is carried on in the Township in which it was being carried on on 1st May, 1919.

Upon which amendment the Committee divided :

Ayes—6. The Chairman. The Minister of Justice. Mr. Alexander. Mr. Duncan. Mr. Joubert. Mr. O'Brien.	Noes—3. Mr. de Beer. Mr. Blackwell. Mr. Meyer.
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The amendment accordingly agreed to, and the original motion consequently dropped.

Mr. Blackwell moved : That Law No. 3 of 1885, Transvaal, be so amended that the provision against the owning of fixed property therein contained be extended also to any company or other body corporate or incorporate, if the persons who have the controlling interest therein belong to any of the native races of Asia.

Upon which the Committee divided :

Ayes—8. The Chairman. The Minister of Justice. Mr. Duncan. Mr. Joubert. Mr. de Beer. Mr. Blackwell. Mr. Meyer. Mr. O'Brien.	Noes.—1 Mr. Alexander.
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The motion accordingly agreed to.

Mr. Blackwell moved : That, in view of the fact that the acquisition, since 1915, of fixed property by Indian companies was an evasion of the spirit and intention of both Law No. 3 of 1885, Transvaal, and the Smuts-Gandhi agreement, legislation be passed requiring all Indian companies holding fixed properties to dispose of such properties before a date to be fixed, failing which such companies to be wound up by Order of Court.

Upon which the Committee divided :

Ayes—3. Mr. de Beer. Mr. Blackwell. Mr. Meyer.	Noes—6. The Chairman. The Minister of Justice. Mr. Alexander. Mr. Duncan. Mr. Joubert. Mr. O'Brien.
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The motion accordingly negatived.

The Committee deliberated and adjourned until Wednesday, the 23rd instant, at 10.30 a.m.

[S.C. 11—'19.]

*Wednesday, 23rd April, 1919.*

PRESENT :

MR. ROOTH (Chairman).

The Minister of Justice.	Mr. O'Brien.
Mr. Alexander,	

On the motion of the Chairman,

Resolved: That there be laid before the Committee a return by the Commissioner for Inland Revenue, and the Town Clerks of Johannesburg, Krugersdorp, Boksburg, Benoni, Springs, Roodepoort—Maraisburg, Heidelberg, Klerksdorp, Pietersburg and Barberton, giving particulars of new trading licences granted to, and the number of new businesses opened by, Indian traders in those towns for the period July 1st, 1914, to date.

The Committee adjourned until Wednesday, at 10 a.m.

*Wednesday, 30th April, 1919.*

PRESENT :

MR. ROOTH (Chairman).

The Minister of Justice.	Mr. Blackwell.
Mr. Alexander.	Mr. J. Stewart.
Mr. Joubert.	Mr. O'Brien.
Mr. de Beer.	

The Chairman laid upon the Table :

- (1) The following letters and telegram, forwarding, in compliance with the resolution of the Committee, dated the 23rd instant, returns giving particulars of new trading licences granted to, and the number of new businesses opened by, Indian traders in those towns for the period July 1st, 1914, to date ;  
Telegram, dated 29th instant, from Town Clerk, Johannesburg ;  
Letter, dated 25th instant, from Town Clerk, Barberton ;  
Letter, dated 25th instant, from Town Clerk, Krugersdorp ;  
Letter, dated 25th instant, from the Commissioner of Inland Revenue, Pretoria.
- (2) Letter, dated the 10th instant, from the Secretary of the Carolina Chamber of Commerce, covering resolutions adopted in regard to forbidding Asiatics from acquiring fixed property in townships and the segregation of white and coloured people.
- (3) Letter, dated the 16th instant, from the Secretary to the Prime Minister, forwarding, in compliance with the resolution of the Committee, dated 27th ultimo, a return showing the number of companies, the shareholders of which are Indians.

The Chairman submitted a Draft Report, which was considered, and adopted.

On the motion of Mr. J. Stewart.

Resolved: That the Chairman report accordingly.

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## (MINUTES OF EVIDENCE.

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### SELECT COMMITTEE ON DISABILITIES OF BRITISH INDIANS IN TRANSVAAL.

*Tuesday, 1st April, 1919.*

PRESENT:

MR. ROUTH (Chairman).

Mr. Alexander.  
Mr. Duncan.  
Mr. Joubert.  
Mr. de Beer.

Mr. Blackwell.  
Mr. J. Stewart.  
Mr. Meyer.  
Mr. O'Brien.

*Mr. Henry Benjamin Shave, I.S.O., examined.*

1. *By the Chairman.*] I am acting Secretary for the Interior and as such I am acquainted with the conditions of the Indians in South Africa, but only as regards matters of general control affecting Indians. I am not acquainted with the details as regards questions affecting their holding property in mining areas—that is a matter which rests with the Mines Department and not with the Department of the Interior. Similarly, the question of licences rests with the Municipalities or the Department of Inland Revenue. The functions of the Department of the Interior are simply to hold a brief for the Indian community on general questions, and we try to protect their interests on questions of policy generally. I have read the petition which Mr. Alexander has presented. I notice that the petitioners refer to the settlement arrived at between Mr. Gandhi and General Smuts in connection with the definition of “vested rights.” The definition of vested rights was made by Mr. Gandhi after considerable correspondence between the Secretary for the Interior and Mr. Gandhi subsequent to the passive resistance movement which took place in Natal and the Transvaal some years ago. The correspondence was conducted in 1914. In that year Mr. Gandhi wrote to the Secretary for the Interior referring to the numerous interviews which had passed between General Smuts, who was then Minister for the Interior, and himself dealing with the passive resistance move-  
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[Mr. H. B. Shawe, I.S.O.]

ment, and putting forward for consideration certain phases of the Indian question which Mr. Gandhi thought could be settled by administrative action apart from the provisions of the Indian Relief Act of 1914, the provisions of which he expressed himself as being satisfied with. As a result of that communication Mr. Gandhi was communicated with the same day by the Secretary for the Interior in a letter in which an interpretation was given of the different points outstanding between the Department and the Indian community, and among the points referred to was the question of vested rights of the Indians in the Transvaal. That question was subsequently raised in an interview which Mr. Gorges, the Secretary for the Interior, had with Mr. Gandhi, and ultimately Mr. Gandhi again wrote to Mr. Gorges and set out a definition of what he regarded as vested rights. This letter was dated the 7th of July, and reads as follows:—

I have now got a moment to submit my note upon 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 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.

There is a reference in the letter to Sir Benjamin Robertson. Sir Benjamin Robertson came out from India at the time

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when an enquiry was held, and gave evidence before the Commission, whose report you have before you. There is also a reference to a note by a Mr. de Villiers. I have been unable to ascertain which Mr. de Villiers is meant there. The last communication made by the Government to Mr. Gandhi is dated June 30th, and is addressed "Dear Mr. Gandhi," and then there is a reply from Mr. Gandhi on the same date in which he thanks the Minister for the consideration given to his representations. (The definition of vested rights also deals with the question of successors, but there is no definition as to the meaning of successors.) That has not at any time been defined. This letter of Mr. Gandhi's closed the correspondence subsequent to the passive resistance movement. In so far as the definition of vested rights was concerned, the Government did not at the time notify anyone officially of the definition arrived at between Mr. Gandhi and the Minister of the Interior. It was simply placed on record in the office. Some years after, the year before last as a matter of fact, as a result of representations made by the Municipality of Krugersdorp, who were experiencing difficulties in connection with the licensing question, we quoted for the information of the Municipality the definition of vested rights as outlined by Mr. Gandhi, and a little while after that the Vereeniging Municipality made a similar request to us, and we sent them a copy of this definition. No administrative action was taken after the receipt of Mr. Gandhi's interpretation of vested rights, and beyond sending the municipalities which had difficulties in regard to the Indian licensing question the definition given by Mr. Gandhi we took no further administrative action. The questions which have arisen now are due entirely to the actions of the local authorities. I have a copy here of the judgment of the Court in the case of the Krugersdorp Municipality *versus* T. W. Beckett & Co. I also have a copy of the record. I may say that the record is rather useful because it gives the facts in regard to the particular Indian affected by the case, how he came to Krugersdorp, etc. I could also give the Committee an idea of what the position was when the petition was presented to the House:—

(The position has apparently become acute in view of the decision of Mr. Justice Mason in the Transvaal Provincial Division of the Supreme Court in connection with the action taken by the Municipality of Krugersdorp against T. W. Beckett & Co., Ltd., who leased certain stands in the township of Krugersdorp to Indians for premises in which they carried on business under licence. Under this judgment it would appear that no person can sell or let to any coloured person any property within mining areas as defined in sub-section (2) of section seven of Transvaal Act No. 35 of 1908.) From the records in the case it would appear that the Indian, A. L. [S.C. 11—19.]

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Billimoria, who carried on the business, had only actually been resident in Krugersdorp during a period of five months, and, if that is so, he was not protected either by sub-section (3) of section *one hundred and thirty-one* of Transvaal Act No. 35 of 1908 or by the agreement between General Smuts and Mr. Gandhi on the question of "vested rights," which was defined by Mr. Gandhi as follows:—

"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 gather that there is another case before the Courts, also instituted by the Municipality of Krugersdorp, but this has not yet been decided.

The Indian position is also further aggravated by the question of licences. General dealers' licences are issued by the Commissioner of Inland Revenue, and in a case decided in the Supreme Court of the Transvaal in 1904 by C.J. Innes, Solomon and Curlewis, J.J., it was held by the Court that "the instructions given to the Revenue officers to refuse licences to coloured persons must be declared to be illegal, and the plaintiff must be declared entitled upon due payment of the licence money to receive licences to trade as a general dealer in the towns of Pretoria and Pietersburg, the defendant to pay the costs." Under this judgment the Commissioner of Inland Revenue cannot refuse to issue general dealers' licences to any coloured persons.

(In so far, however, as licences for grocery shops, eating-houses, etc., are concerned, these are controlled by the Municipalities, and the position is that under the Transvaal Local Government Ordinance, No. 9 of 1912, section *ninety (e)*, Municipalities have the power to withhold licences if, in the opinion of the Councils, the applicant is not a desirable person to hold such a licence. For some considerable time Municipalities, especially the Municipality of Krugersdorp, have, it is stated, consistently refused such applications made by Indians, and they say that lately the Magistrate of Krugersdorp, in cases on appeal, overruled the action of the Municipality of Krugersdorp and asked them to advance the reasons which prompted them to hold that the applicant was not a desirable person to hold such a licence, and, when the Municipality furnished such reasons, the Magistrate overruled their decision and granted the licence. Under the section of the Ordinance referred to, there is no appeal from the decision of the Magistrate. The Magistrate was not aware of the arrangement arrived at between General Smuts and Mr. Gandhi, but now states that in his opinion a breach has been committed by

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the Indians themselves, inasmuch as they applied for new licences contrary to the arrangement)

Finally, there is the question of Indians forming themselves into a limited liability company in order to secure fixed property for themselves in the Transvaal. By Law No. 3 of 1885, section *two (b)*, it is laid down that no person belonging to any of the native races of Asia, including the so-called coolies, Arabs, Malays and Mahomedan subjects of Turkish dominion, shall be capable of being the owner of fixed property in the Republic. This law is still in force. (Until comparatively recently, Asiatics who purchased property caused the properties to be transferred to white persons, and the latter thereupon passed in favour of the Asiatic a mortgage bond for a sum of money amounting to probably the utmost value, and even more, of that property. The bond usually contains safeguards for the mortgagor, and more often than not the principal sum did not carry interest. This practice underwent a change about three or four years ago, when it was abandoned in favour of another which the provisions of Act No. 31 of 1909 enabled them to adopt. Under section *five* of Transvaal Act No. 31 of 1909, it is laid down that "any seven or more persons (or where the company to be formed will be a private company, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company with or without limited liability." The result of this is that any two Indians may form themselves into a limited liability company and so acquire landed property in the Transvaal, and they have therefore been able to overcome the provisions of the Republican Law No. 3 of 1885 referred to above. I am advised by the Rand Townships Registrar of Johannesburg that the amount of capital invested in such properties, exclusive of mortgage bonds, is estimated at £190,931.)

I wish to add in regard to my reference to the Magistrate of Krugersdorp that I recently wrote to the Secretary for Justice and advised him of the definition of vested rights by Mr. Gandhi. I told him that the Department understood that certain Indians had acquired trading rights at Krugersdorp contrary to the understanding arrived at, and that we were advised that, although up to a certain point the Magistrate had always backed up the Municipality in his judgments, he had recently varied his procedure, and given judgment in favour of the Indians. In a letter dated the 3rd of February the Magistrate gives the reasons for his judgment, and adds that he was not aware of the understanding arrived at. The letter reads as follows:—

I beg to acknowledge the receipt of your Minute No. 3/12/19/130 of the 6th instant, enclosing a Minute from the Secretary for the Interior.

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The statements of the deputation from the Municipality of Krugersdorp appear to have been accepted without any attempt at verification; the reference to "marked change of view" is very unfortunate as it could not have been made if full particulars had been requested.

All cases are naturally decided on their merits; during the past six months there were three appeals against the Krugersdorp Municipality by Indian applicants for licences—one before Mr. Voigt and two before me; all three appeals were upheld.

Section 90 of the Local Government Ordinance (Transvaal) of 1912 deals with the power of the Municipal Council to refuse licences. Section 90 (e) gives as a ground for refusal "that in the opinion of the Council the applicant is not a desirable person to hold such licence."

The Section further provides for an appeal from the Council's decision to the Magistrate and "in the event of the Council failing to satisfy such Magistrate on the appeal that the licence was refused on good and sufficient grounds, such Magistrate may order the Council to grant such licence," etc. There is no appeal from the Magistrate who sits as an administrative officer.

(It is quite clear from the Minute from Interior, that the Council has been refusing applications for licences from Indians, solely on the ground that they were Indians.

The Council has not put forward this view in Court, and on occasions individual members of the Council in the witness box have denied that the refusal was due to this reason.

It is claimed that these licences to Indians were refused by virtue of an arrangement; I did not know of the terms of this arrangement until the receipt of the Minute from Interior under consideration. It would seem from the particulars set forth, that a breach has been committed by the Indians themselves inasmuch as they have taken steps to apply for new licences contrary to the understanding into which Mr. Gandhi entered on their behalf to the effect that no more licences would be issued to Indian newcomers.)

I submit to the Minister that it would be satisfactory to allow appeals in certain circumstances from the Magistrate to the Supreme Court.

I delayed my answer in consequence of a case that was to come before the Supreme Court. This case has now been decided. I enclose a cutting from the "Star."

The case has reference to Crown Grants only; Section 131 of the Gold Law Act 35 of 1908 will probably be similarly interpreted, and I am informed that the Indians have been advised that an appeal would probably not succeed. This will affect all Indians in Reef towns, and I hear that steps will shortly be taken here to oust Indians who have been carrying on business in a large way for some time.

I understand that the Krugersdorp Indians supported by others along the Reef will send a deputation to Cape Town to interview the Government, and will take steps to provide that the Legislative Assembly be addressed from the Bar of the House on their behalf.

I return, as requested, the annexure to your Minute under reply.

I may say again, as I did in my opening remarks, that the Department of the Interior has little or no say in the question of the holding of property by Indians or in the question of licences held by them, but from time to time we have had representations made by Municipalities, and we have told them what the position was which we occupy, and informed them that they must correspond with the provincial authorities in regard to retail licences, or interview the Mines Department on the question of the holding of property, so from my standpoint I am not concerned with the bigger question before the Committee to-day, and I should suggest that if further facts are required, (the officers best able to speak on the subject



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would be Mr. Fleischer, Registrar of Rand Townships, or Mr. Hamel, the Mining Commissioner at Boksburg. I have reports from them on the question generally of licences, etc., and I think the Committee might like to hear the contents of a letter which Mr. Hamel wrote to the Secretary for Mines and Industries recently, on the question of Indians acquiring property at Boksburg. The letter reads as follows:—

1. Within recent months an influx of Indians has taken place into the townships of Springs and Boksburg in the Mining District of Boksburg. This migration of Indians appears to be in direct breach of the terms of the compromise arrived at in July, 1914, between Mr. H. S. L. Polak, representing the Indian community and myself at that time acting on behalf of the Minister of the Interior. Reference to minutes Nos. 48, 49 *et seq.* in file M.M. 2792/14 (which was sent to you on the 21st instant) will show that this compromise followed generally on the lines of the settlement made between General Smuts and Mr. M. K. Ghandi, the principal undertaking on behalf of the Indian community being that, whilst the existing position was to be left undisturbed, there was to be no more migration of Indians from one town to another.)

2. In the Township of Springs two erven were acquired a little time ago by the Transvaal Investment Coy., Ltd., that Company being believed to be SULIMAN MIA PASHA & CO. On this block of stands which fronts three streets has been erected an extensive building containing a number of shops of which some have been let to Indians whose names, together with those of their employees and their last places of residence are as follows:—

LESSEE.	EMPLOYEE.	LAST RESIDENCE.
Suliman Mia Pasha & Co.	M. E. Kagee.	Rustenburg.
"	Suliman M. Daija.	Johannesburg.
"	Ebrahim Hasean.	"
"	Adam Ebrahim.	"
E. E. Sidat & Co.	Ebrahim Moossa.	Resident Springs for some considerable time.
"	Fakir Moosa.	"
"	Mahomed Ebrahim.	Boksburg.
"	Adam Jee Hassan.	Benoni.
Patel & Co.	I. Patel.	Benoni.
"	Ishmail A kob.	Johannesburg.
"	Mahomed Moosa.	Benoni.
"	Essop Adam.	Johannesburg.
Gopal & Son, Tailors,	Ootam Gopal.	Vrededorp.
"	Gopal Jaga.	"
Gopal Moothoo, Boot-maker.	Gopal Nothoo.	Nigel
Baba Jamal, Barber.	Baba Jamal.	Conducts shop in Benoni and opens at Springs Fridays and Saturdays.
Fruiters.	Faba Suka.	India.
"	Ahagae Walabh.	"
"	Lela Bhega.	Johannesburg.

3. In Boksburg North a Leasehold Lot was acquired in July by a limited liability company named ACKOTEE, LTD., the transfer of which was registered in this office. In August last the Lot was again transferred from ACKOTEE, LTD. to NAIKE, LTD., another limited [S.C. 11—'19.]

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liability company, which, judging from the supporting documents lodged with the transfer, appears to be a company consisting of one man. I have ascertained that the application for a Municipal Trading Licence was made by Naika, Limited, through M. B. Desai, described as Managing Director, whose address is given as 18, Barclay Arcade, Market Street, Johannesburg, postal address, box 73, East Rand.

4. When the sale of the Boksburg North Lot to an Indian Company became known there was considerable excitement in the town, and a public meeting was held in the Masonic Hall on the 8th August, with the objects indicated on the attached advertisement. The meeting resulted in the appointment of a special committee to deal with the matter. Hearing of this, and being acquainted with the somewhat inflammable spirit of Boksburg residents where Indians are concerned, I got in touch with this Committee, and deeming the present time singularly ill-chosen for starting any public or loud-voiced agitation against Indians, I suggested to this committee through its vice-chairman that if a well founded grievance could be established means might possibly be found to right such grievance by means other than conspicuous public agitation. I think the Committee realises the position, and the member just referred to has undertaken to keep me advised of any steps it is intended to take.

5. Whilst I believe that for the time being a popular agitation has been averted, feeling in Boksburg, which has always been extremely anti-Asiatic, is very strong. The committee is aware that I am bringing the whole matter to your notice.

6. It is commonly believed in this district that the recent influx of Indians is part of an organised attempt by that community to gain a larger footing and extended influence, and I deem it my duty to bring the matter to your notice in view of the terms of the settlement of 1914.

The total Indian population in the Union at the present moment is estimated at about 150,000. I have no particulars as to the numbers of women and children among that total. It is really an estimate only as we have not had a census of Indians for some time. The Transvaal has about 10,000, the Cape has about 6,500, the Free State has only 106, as they have to be there on permit, and Natal has 133,000. There can be no new Indian immigration into the Transvaal, because our Immigration Act provides machinery against it. They cannot come into the Transvaal from one of the other provinces except on temporary permit. We come across individual cases sometimes of men who have come in illegally. A couple of years ago we found that there was illegal immigration of Indians into the Transvaal from Lourenco Marques. They had adopted a system of trekking through Swaziland and getting across the Natal border into the Transvaal, but we at once took action, and I think that that has been stopped now. We made representations to the Swaziland Administration that this was happening, and they took steps to stop it. As to men who had already come in, those that we knew had come in in that way were deported. They had come in in batches of three or four, but I do not think that altogether more than possibly a hundred men came in in that manner. Of course, the great difficulty is that people try to get across to the Union overland. It is quite possible for a man not to come in

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[Mr. H. B. Shawe, I.S.O.]

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by train and unless you have an enormous police force you cannot stop immigration across the inland borders.

2. *By Mr. Alexander.*] All retail licences fall under the control of the Municipalities. (We have not got facts before us to show that those licences are new licences altogether, as distinct from licences taken over by one Indian from another. Of course, under the agreement arrived at, everything depends on the definition of the word "successors." A successor might be a man succeeding another in his business, or one might reasonably argue that successors would refer only to a man's heirs—that a man's son is his legal successor. It is quite true that the Indian has no right to bring his heirs into the country unless they are minor children, his own children, under the age of 16 years.) We have no information to show whether these Indians who have taken over licenses are entirely new comers or not. The Department of the Interior is the Department to which the Indians have always come with their grievances. We receive deputations from their Conferences, and only recently we had a deputation from their Conference here. The representations which have recently been made to us have only been made on the judgment of the Magistrate of Krugersdorp and not on judgments of other magistrates in the Transvaal. We are not aware of the judgments given at Roodepoort and Germiston. Our attention has only been called to the Krugersdorp case. (The Indians who were in the Transvaal and who were lawfully in occupation of premises at the time the Act No. 35 of 1908 was promulgated are protected by sub-section (3) of section *one hundred and thirty-one* of that Act. It would appear that they are not protected by law in regard to the question of trading, and that the Municipality can, if it so desires, take advantage of the section in the Gold Law.) I only know officially of that one case at Krugersdorp, but my attention has been directed to another case which recently occurred at Springs or Boksburg.

3. *By Mr. Blackwell.*] We accepted the definition of vested rights as laid down by Mr. Gandhi in his letter of the 7th of July, 1914. That is quite definite. There was, however, no instruction given that that was the definition to be accepted. The Government did accept the definition as laid down in the letter. (The evasion of the Law 3 of 1885 by the establishment of limited liability companies among Indians for the purpose of holding property commenced some time after the agreement in regard to vested rights had been come to.) I think it was three or four years after. That is according to the report of the Rand Townships Registrar. Mr. Fleischer says that the previous practice of holding land through white people was abandoned about three or four years ago, and after that this new practice came into force. The opinion now is that the new practice is an evasion of the Law of 1885. I take it that

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the definition of vested rights, if you apply it to the property question, has been contravened, and that there has therefore been a breach of the agreement. I have a list here showing the properties all over the Reef and elsewhere which the Indians have acquired in that way. They are spread all over the Reef in almost every area. It is a long list, and the value of the property thus acquired is estimated at about £190,931. I could not say whether Indians have now acquired land in suburban localities where they have not hitherto been in evidence at all. We have no definite information on that point. (The Government regard the practice as an evasion of the compromise which had been arrived at in 1914, but I cannot say what influenced the Government in not taking steps to bring this to the notice of the Indian community. No direction was given to the Indian community on that question. No warning was given to the Indians, although their leaders, like Mr. Polak, knew what the agreement arrived at was.) Mr. Polak has been away about two years now. He was perfectly well aware of this agreement with Mr. Gandhi, because from time to time he referred to it in his correspondence with the Department. There is no doubt that the Indians as a whole were aware of the agreement. Our Department did not bring the matter to the notice of the Indians, and I am not aware of any steps taken by the Government. Nothing was done in the way of warning or in the way of administrative action.

4. *By Mr. Duncan.]* The amount of £190,931 was the total value of the property acquired by the Indians by the 11th of September, 1918—that was the estimated figure at that time. That was the value of properties held in the names of companies as apart from properties held in the names of white persons. (There is no great danger of Indians coming into the Transvaal from Natal. Our restrictions are fairly firm there, and whenever an Indian from Natal wishes to go to the Transvaal he has to do so on permit issued by the Immigration officer, and we invariably see to his return to Natal on the expiry of his permit. Those permits are given as visiting permits under regulation. There is a deposit of £10, and the permit is covered by a revenue stamp of 2s. 6d. and when the man returns the deposit is returned to him.) As to emigration from South Africa of Indians, from what I can gather, the only Indians who are leaving for good are those who are provided for in the Indian Relief Act of 1914, or who are repatriated by the Indian Immigration Trust Board. Under the law the Immigration Trust Board has on application to return the Indians within 12 months after the lapse of their indentures at the expense of the Board. If an Indian desires to go then, the Board pays, but if he remains after that time the Board is excused from liability, and after that, under the Act of 1914, the Minister of the Interior is empowered to

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[Mr. H. B. Shawe, I.S.O.]

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repatriate Indians at the expense of the Government. We have had a considerable number of Indians applying for passages, and they have been repatriated. The number repatriated during 1918 was about 1,500. It may be the policy of the Board, as you suggest, not to repatriate the Indians but rather induce them to remain. (I had information only this morning that the total number of indentured Indians in Natal now is only 4,200. Very few of them re-indenture, and they become free Indians under the law after the expiry of their indentures. They stay on in Natal. I may also say in regard to this question of repatriation under the Indian Relief Act that we get documents signed by the Indians who wish to be repatriated that they will not return, and if they do, we deport them. The Indian Trust Board in Natal only sends back those who wish to go within twelve months after the expiry of their indentures. You ask whether it would not be possible to have the functions of the Trust Board carried out by some official who would not be subject to pressure by employers to keep the people in the country. As a matter of fact we discussed this in another Committee only recently, and I asked the Public Service Commission to go to Durban with a view to ascertaining whether the functions of the Protector of Indian Immigrants and of the Principal Immigration Officer could not be combined. From the point of view of economy and also from the point of view to which you have referred the Department is anxious to get this brought about, but there are difficulties in the way.)

5. *By the Chairman.*] According to the Official Year Book the number of Indians in the Union in 1904 was 122,734. The figures I have quoted previously are simply an estimate. The Union Official Year Book shows that in 1904 there were 122,734 Asiatics in the Union (82,809 males and 39,925 females). Of these 11,321 (9,799 males and 1,522 females) were in the Transvaal. For 1911 the total number in the Union was 152,309 (92,201 males and 56,108 females). Of these 11,072 were in the Transvaal (9,018 males and 2,054 females). There were 10,242 Asiatics in the Cape in 1904, as compared with 7,690 in 1911. In Natal there were 100,918 Indians in 1904 as against 133,439 in 1911. In the Free State there were 253 Asiatics in 1904 and 108 in 1911.

6. *By Mr. O'Brien.*] There are many cases in the Transvaal where land in townships has been acquired by the Indians who have turned themselves into limited liability companies for the purpose of acquiring land.

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[Mr. H. Hamel.

(Thursday, 3rd April, 1919.

## PRESENT:

MR. ROTH (Chairman).

Mr. Alexander.

Mr. Duncan.

Mr. Joubert.

Mr. de Beer.

Mr. Blackwell.

Mr. J. Stewart.

Mr. Meyer.

Mr. O'Brien.

Mr. Herbert Hamel, examined.

7. *By the Chairman.*] I am the Mining Commissioner of Boksburg, and I am acquainted with the position of the Indian situation as affecting my district. There has recently been an influx of Indians into the Township and the Mining District of Boksburg. This started about two years ago—perhaps a little less. As far as Boksburg was concerned, there was only one Indian living there before that time, a man named Bhyat, who figured in the settlement arrived at between General Smuts and Mr. Gandhi. He formed an item in the general settlement arrived at between General Smuts and Mr. Gandhi. When Mr. Gandhi left the country, he found that he had committed this man, who is a fairly wealthy merchant, to a line of action which he found himself unable to accept. The line of action was that he was to disappear from Boksburg and resume operations at Heidelberg, where he had formerly been trading. We know that there was that understanding because we have it on record. That was in the year 1914. The Government at that time had an action pending against Bhyat for a breach of the conditions of his lease. In 1912 certain stands in Boksburg were sold by one Thomas to L. W. Ritch, who himself acknowledged that the real owner, the real transferee, was Bhyat. The Government brought an action against Ritch and Bhyat on the grounds that they had contravened the conditions of the freehold. In the High Court judgment was given in favour of the Government by Mr. Justice Mason. That was upset on appeal on the ground that the restrictive conditions of the title deed exceeded the conditions imposed by the law itself, and on these grounds the appeal was upheld. It was then decided after lengthy negotiations that the Government should proceed by motion in order to get redress against Bhyat, and while we were negotiating a wire was received from General Smuts that he had arrived at a settlement with Mr. Gandhi, which in-

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cluded the retirement of Bhyat from Boksburg and his re-opening business at Nigel or Heidelberg. It was after Mr. Gandhi had sailed that it transpired that Bhyat had not been consulted by Mr. Gandhi before he sailed, and difficulties arose, and it was thought that the whole settlement of the Indian question might be jeopardised, and thereupon the matter was referred to me by General Smuts to see if I might be able to effect a settlement. I was then Mining Commissioner. I have been there for nearly 13 years. I had an interview with Mr. H. S. L. Polak, who was virtually Mr. Gandhi's successor in the Indian representation on the Rand, and he proved to me quite clearly that it would be impossible for Bhyat to give up business at Boksburg without being ruined. At that time the agitation against Indians at Boksburg was strong, so much so that they had threatened to burn out Bhyat. It was agreed after discussion with Mr. Polak that Bhyat should remain at Boksburg and that I should try to allay public feeling, which I did. I got into touch with a number of the leading agitators, and, after having put the position to them, it was agreed that he should remain and that no one would molest him. Both sides have conscientiously stuck to that arrangement until quite recently. There had never been any trouble about Indians residing at Boksburg until about a year ago, when a new man appeared on the scene, a man who called himself Ackotee, Limited, who had floated himself into a company, and who started a business at Boksburg, which he transferred to Naike, Limited, a company which, as far as I could make out, consisted of one man. The Municipality refused to grant this Naike, Limited, a grocer's licence. They (the firm) got a stand at Boksburg North, but I do not recollect whom they got it from. It was sold by some white man. It was in leasehold. I put the transfer through myself. The transfer was to the company of Ackotee, Limited. Had it been an individual Indian I would not have passed transfer, but I had no option here. Immediately after that the same stand was transferred to another Indian firm of Naike, Ltd. The stand was transferred to a Limited Liability Company and was occupied by an Indian for trading as a company at Boksburg North. Naike, Limited, applied for a grocer's licence, which was refused—I think on the ground that they did not consider the man suitable to carry on a grocer's business by virtue of his unsatisfactory sanitary habits and that sort of thing—but on appeal to the Magistrate the Municipality was ordered to issue the licence. That is the only recent case at Boksburg. In Springs a number of Indians have occupied premises within the last 12 or 18 months. The arrival of Naike at Boksburg is the only new one at that place. There are two

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Indians at Boksburg now, Bhyat and Naike, Ltd.; the one is in Boksburg and the other in Boksburg North. There are three Indians trading on the farm Klipfontein, which is the farm on which Boksburg North is situated, but there has been no agitation about that and nobody seems to object. The Municipality has never objected, although these people are within the municipal area. The one man runs a laundry in the immediate neighbourhood of Boksburg North. The other man is a Chinaman—I do not think that there is any evasion of the Company Law so far as he is concerned. None of those people on Klipfontein are limited liability companies. Then the third man runs a small grocer's business, but I have no definite information there. I do not know for certain whether he is a limited liability company. At Springs there have been several cases lately. A certain property there was sold, I believe, by a man named Goodman, a former Mayor of Springs, to some Indians whose names are Suliman Mia Pasha and Co. Goodman parted with his property to a firm named and trading under the name of the Transvaal Investment Company, Limited, which is believed to consist of Suliman Mia Pasha and Company. I could not prove that, but it is pretty generally known to be the case. In the block occupied by these people there are quite a number of Indian traders. That is in the Township of Springs. There are six firms, and then I think there are some fruiterers, too, who are trading there. I have had no complaint about the Indians carrying on business as fruiterers. As a rule complaints are made to the Mining Commissioner, because where proclaimed ground is concerned people always consider that redress can be got through the Mining Commissioner. It is almost invariably the Municipality who makes the complaints, and it is very rare that I get complaints from private individuals. Generally it is the Municipality or the Chamber of Commerce who make the representations. In the Boksburg North case the complaint was made verbally by the Chamber of Commerce, and also by the Municipality. In the case of Springs no very strong representations were made until quite recently. At that place there is this firm of Suliman Mia Pasha and Co.; then there is E. E. Sidat; Patel and Co., who are tailors; Gopal Nothoo, a bootmaker; Baba Jamal, a barber. All those people are in the building sold by Goodman to the Transvaal Investment Company, who are in fact Suliman Mia Pasha. In regard to the fruiterers I have had no complaints. I have made general enquiries and got the names of those new arrivals.

8. *By Mr. Duncan.*] Those fruiterers are not hawkers; they have places of business there.



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9. *By the Chairman.*] They are apparently lessees of the Transvaal Investment Company and the building which they occupy is the largest building in the place. I do not know how many stands are occupied by the building—I did not trouble to go into that. I could not say what is the value of the building, but it certainly is a very valuable one. I should say that the stand was sold some time towards the middle of last year. My report is dated the 24th of September, 1918, and the stand had changed hands some two or three months before. (In regard to the position of Bhyat, I had negotiations with Mr. H. S. Polak on the 14th of July, 1914. I wrote a Minute at the time on the subject. I first had an interview with Bhyat himself. The arrangement come to was in reference to the Indian community generally and also in reference to Bhyat's position in particular. The interview took place just after Mr. Gandhi had left. These are my minutes:—

“ Mr. Polak explained that, although Bhyat settled in Boksburg at his own risk the action then pending necessitated his case being dealt with as part of the general settlement. He also cited as another special case that of a certain Post Office official, who, having been dismissed the service owing to his participation in the passive resistance movement, has been offered reinstatement. Bhyat is a prominent and influential member of the Indian community, on whom many others depend financially. He is a direct importer who has heavy engagements to meet. He carries in Boksburg a stock worth £4,000. If he were to close down his business now, not only would he be unable to let the premises, but would, probably, become insolvent. It is impossible to state in figures what his losses would amount to. Mr. Polak assured me that it was part of the settlement that no Indians will move from one town to another and there could thus be no further invasion. Certainly any attempt on the part of the individuals to depart from this understanding would not only receive no support as a political matter, but would be opposed by the Indians themselves. He considers the difficulties in the way of Bhyat's removal to be insuperable and suggests that the action be dropped, its issue being by no means a foregone conclusion and that it be tactfully explained to leading citizens how and why the case has come to be one for special treatment.” )

I can read you the report which I then made to the Secretary for Mines which briefly summarised the position as it was. The date of the report is the 31st of July, in which I said:—

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“ In terms of paragraph 3 of your Minute 47 herein I had an interview with Bhyat on the 27th instant, and another with him and Mr. H. S. L. Polak on the following day, the 28th. The gist of our conversations is summarised in Minutes 48 and 49.

“ 2. Although the discussions were carried on in the best possible spirit, it will be seen that I quite failed to induce Bhyat to abide by the undertaking given to General Smuts by Mr. Gandhi. For reasons, which seem to me sufficiently convincing, Bhyat is not prepared to leave Boksburg.

“ 3. I have explained Bhyat's statement that there is no European agitation against him in Boksburg, in Minute 119 of file M.C.K. 420/13 (M.M.2157/12) attached.

“( 4. The most important information I gathered in my interview with Bhyat and Polak on the 28th is Polak's unequivocal statement that it is part of the general settlement that there shall be no migration of Asiatics from one town to another. There is also his definite assurance that there will be no further invasion of Boksburg by Asiatics. I am quite clear that my notes on pages 2 and 3 of Minute 49, if not containing Polak's *ipsisima verba*, do correctly reflect his meaning.)

“ 5. We appear, therefore, to be faced with the alternatives of (1) proceeding with the action versus Ritch and Bhyat, or (2) with abandoning that action, at any rate for the present.

“ 6. If I may be permitted to express an opinion I would say that it would be taking a false step to adopt the first alternative, namely, to proceed with the action, because I have little doubt it would be interpreted, although quite wrongly, as a breach of faith on the part of the Government, and no amount of correspondence and explanation would remove that impression. No doubt recriminations would follow and the settlement arrived at might conceivably be seriously jeopardised.

“ 7. If, on the other hand the second alternative, namely, the abandonment of the action against Ritch and Bhyat, is resorted to, it lends itself to the interpretation that Government considers it has no case. There is also the point of the attitude of the Boksburg public when, and if, it becomes known that Bhyat is to be permitted to remain. That attitude, however, could, I think, be handled with a little tact.

“( 8. I do not know what reliance can be placed on Polak's assurances, but, assuming they may be accepted as sincere and as capable of being given effect, I think it will be best in all the circumstances to allow the action to drop without making any pronouncement on the subject as far as

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the public is concerned.) If, later, the agitation should show signs of being revived I would suggest that I be authorised to call together a few of the leading men in Boksburg whom I know to be particularly interested, and to explain to them, without going into too much detail, that Bhyat's case has to be treated as a special one, and the principal reasons why. I am satisfied that these men, however antagonistic they may feel towards Indians generally, would rise to the occasion and would gladly do all in their power to allay public feeling.

"9. I may add that I have considerable doubt whether our action against Ritch and Bhyat would succeed. If it failed, the position would, of course, be worse than it is now."

There was no correspondence, no written communication between Polak and myself. There was a subsequent interview when I communicated the Government's decision to Mr. Polak in the office of the Registrar of Mining Titles; Mr. Fleischer was present there. The communication was a verbal one and the date was the 22nd of August, 1914. Mr. Polak was looked upon as the accredited representative of the Indian community in the Transvaal.

10. *By Mr. Blackwell.*] I do not think that this interview took place with Mr. Polak as Bhyat's solicitor. Bhyat throughout represented himself. Mr. Ritch had been acting as Bhyat's solicitor. I am not quite sure on that point though I can ascertain the true position of affairs; possibly Mr. Gandhi and Mr. Polak acted for Bhyat in the litigation which took place.

11. *By the Chairman.*] The subject matter of our interview referred to the Indian question generally. I reported the interview in the Minute which I have just read and the recommendations which I have read were agreed to by the Secretary for the Interior. He said: "With reference to your Minute I have the honour to inform you that the Minister agrees with the recommendations made by the Mining Commissioner of Boksburg in this matter." I got a Minute from the Secretary for Mines agreeing with the recommendations made by me and the Department for the Interior agreed with what I had done. My Minutes read: "Had an interview with Polak in the Registrar's office, when I communicated the Government's decision and explained the proviso on lines of Minute 58." Then there is a subsequent Minute: "I would suggest that unless the Department for the Interior has already notified Bhyat of the decision arrived at, I be authorised to inform Bhyat verbally that the action was to be abandoned, but that at the same time the Government reserves the right to give effect to sections one

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*hundred and thirty and one hundred and thirty-one* of the Gold Law should the occasion arise, and also of reconsidering its decision in this particular case should there be a radical change in the existing circumstances or a serious departure from the undertakings given." These are the provisos referred to. I communicated the Government's decision and Mr. Polak expressed satisfaction and undertook to communicate with Bhyat. He also confirmed the undertaking that there should be no migration of Asiatics from town to town. Mr. Fleischer was present at that interview. From that time until recently there has been no Asiatic trouble so far as Boksburg or the East Rand generally are concerned. I am of opinion that until recently the undertaking was observed that there should be no migration from town to town and that no new businesses should be opened up. The only cases which have occurred since on the East Rand are the cases at Boksburg and Springs. Until they started to form these limited liability companies there was no trouble. There are no Indians trading at Benoni.

12. *By Mr. Duncan.*] I think it would be made too hot for the Indians if they tried to settle at Benoni.

13. *By the Chairman.*] There is nothing more on the East Rand which I know of, unless the old Asiatic Bazaar were made a cause of grievance. I do not think there have been any cases lately where Municipalities have recommended the granting of licences to Indians for trading purposes. At Springs the Municipality must have granted the licences to Indians. At any rate they are trading there and I am not aware of any licences having been refused in the first instance and subsequently granted on the order of the Magistrate. I do not think that at Springs the licences were refused. There are no cases where Indians are trying to open new businesses which were not in existence at the time the arrangement was made by General Smuts; the cases I have mentioned are the only ones to my knowledge in my district. There has been no objection on the part of the public to any Indians carrying on business outside the township, although they may be within the Municipality. The Municipalities cover very large areas. Boksburg covers 45 square miles, and Benoni, until the severance of Brakpan, covered 85 square miles. I do not know of any cases of Indians who were carrying on business at the time of the arrangement with Mr. Gandhi and who, subsequently, desired to retire and hand over their business to somebody else. (I think that if such businesses were handed over to other Indians coming from other towns, it would be regarded as a breach of the agreement. If the people to take over the business came from the same town as the man whose business they took over, if they conducted their business in the same place, I do not think that there would be

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any objection, but if a man came from another town I certainly think it would be regarded as a breach of the agreement. I think Mr. Gandhi himself in his letter to General Smuts admitted that definition of vested rights. You say that Mr. Gandhi used the term "and his successors." Of course, I do not know what was in Mr. Gandhi's mind in regard to successors, but I do not think that General Smuts accepted his definition of vested interests. I am not acquainted with any cases in which there have been transfers of licences, and I do not know of the transfer of business from Indian A to Indian B in respect of the same premises. There may have been some such cases.

14. *By Mr. de Beer.*] It is quite possible that Indian B may be trading in the name of Indian A.

15. *By Mr. Alexander.*] I think it would be the explanation that a man's successor is the man who takes over the other's business. The successor would presumably include the successor in title. It is quite true that if the Municipalities are now going to avail themselves of Clauses One hundred and thirty and One hundred and thirty-one of the Gold Law every Indian living or trading on proclaimed ground can be turned off without any compensation being paid to him. Every Indian trading on proclaimed ground, no matter how long he had been trading there, no matter what the size of the business he was conducting, would be turned off. Most of the townships on the East Rand are on proclaimed ground. Boksburg is. There is no provision for compensation or time to be given to the Indians at all. I think the policy in the past has been that the existence of townships on proclaimed ground took the traders in such townships out of the provisions of sections *one hundred and thirty* and *one hundred and thirty-one*. I think that has been the reason why sections *one hundred and thirty* and *one hundred and thirty-one* have not been enforced. The Government apparently thought that they could control the policy, but now the Municipalities seem to have taken the control of matters into their own hands. That is how the position would appear to be. I agree that it would have been as well if the arrangement in regard to Indians not migrating from one town to another had been committed to writing. I have never had any communication from any member of the Indian community to make it clear that the mantle of Mr. Gandhi had fallen on the shoulders of Mr. Polak. It may be quite true that since Mr. Gandhi's departure there has been a considerable amount of opposition to Mr. Polak among a certain section of the Indian community. I cannot go so far as to say that Mr. Polak did not have great influence. At the time he was regarded as representing the Indian community on the Rand. I do not know of anything the Indians did to let the

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Government know that they regarded Mr. Polak as their representative. The new arrangement was made very hurriedly a few days before Mr. Gandhi left. It may be quite true that even Mr. Gandhi had his opponents and did not represent the whole of the Indian community. I remember seeing statements to that effect, but of course we are not concerned with politics. It might be true that there were sections of the Indian community which told the Government that Mr. Gandhi did not represent them, and it may be that the same applied to Mr. Polak. There was nothing, so far as I know, which indicated that the Indians or a certain section of the Indians regarded Mr. Polak as their representative. I said in one of my minutes that I did not know what value to place on Mr. Polak's representations. I had nothing before me to show what that value was. I had to arrive at the best settlement I could under the existing circumstances. (I am under the impression that there is a reference to the understanding that there shall be no migration of Indians from the one town to the other in Mr. Gandhi's own letter. I understood the arrangement to be that an Indian could not sell his business to another Indian not living in the same town, but I had overlooked the word "successors." I do not say that an Indian can sell his business only to a man living in the same town—it all depends on the meaning and the interpretation of the word "successor.") The business of "A" would remain in the particular place where it was, although conducted by Indian "B." I would not like to express an opinion whether the meaning of the agreement was that it was not desired to increase the number of Indian businesses and that therefore if a man sold or disposed of his business he could only do so to a man in the same town, so that two businesses would become one. I think there is one case at Springs which is not included in the list and which I should have mentioned. Quite recently there has been an agitation for the ejection of an Indian named Denath, who a short while back opened a business on erf 120 in Springs. There is a possible action pending. This is a new business, and there was just some doubt whether it would be policy to proceed against this man in view of the doubt as to the interpretation of the settlement. This is a man who resided within the area for a long time, although apparently he did not carry on trade until recently, when a property was leased to him by a lady who owned the stand. She was proceeded against at the instigation of the Municipality, and judgment was given against her in terms of the lease. Originally the Municipality asked me to take action under section *one hundred and thirty*. That was in March of last year. I refused to take criminal proceedings under Clause One hundred and thirty, and advised the

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Municipality that I considered that if they felt that this man was wrongfully living there and committing a breach of the law or the title deed, they should take action under the title deed, which was issued by the Municipality itself. It contained a condition prohibiting occupation by Indians, and I pointed out that their proper procedure was to take action themselves before invoking the Department to take criminal action.

16. *By Mr. Duncan.*] I think that man had got a licence from the Municipality.

17. *By Mr. Alexander.*] It would seem that Mr. Gandhi took it for granted that there would be no migration from one town to another under the agreement. As regards the purchase of property by these limited liability companies, the companies have been constituted under the law as it now stands, and money has been paid for the properties. I cannot express any opinion in regard to your question whether legislation should be introduced to sweep away everything these people have secured. I should be very sorry to express any opinion as to what legislative action should be taken. I express neither sympathy nor antipathy. Whatever my personal opinion may be with regard to the Indian position, I would not like to express it nor would I like to say what I regard as the correct attitude for the Government to adopt. I am only dealing with facts.

(18. *By Mr. Duncan.*] As far as I am aware section *one hundred and thirty* of the Gold Law has only occasionally been invoked in regard to traders on mining ground, Indians or others, but not in townships. There is no reason at all why it should have been treated almost as a dead letter, except as a matter of policy. I cannot express any opinion as to the reason why the section is now being made use of.) As I have pointed out the position on the East Rand is by no means acute. There has been no marked invasion of Asiatics. On the West Rand I believe the position is very different, but I have no direct knowledge. I can only speak from hearsay. I regard what has happened at Springs as a symptom of what may happen unless the matter is dealt with.

19. *By Mr. Blackwell.*] There is undoubtedly a very acute feeling among the public of Springs in regard to this matter. There has been an Indian invasion on the East Rand, and the feeling in Boksburg is very strong on that matter. Some years ago an action was fought in the court after the money for the action had been subscribed by means of public subscription; the case was that of *Alexander versus Johns*. The case was where a man permitted an Indian in breach of his title deed to live in Boksburg North. The case went right to the Court of Appeal where it succeeded, and the man was ejected and an interdict was granted against the owner. The

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money for that action was collected by means of public subscription. The title deeds at Boksburg North are leasehold, but they are gradually being converted to freehold. I think the wording of the clauses is that no coloured person other than a domestic servant shall be allowed to occupy the land. The original title deeds on the Boksburg public stands are the old Voorkeur Recht and nothing more. There is no reference at all to occupation by coloured persons so far as I remember. I think it is more or less governed by the Gold Law. I think this man, Naike, Limited, is occupying his premises contrary to the terms of the title deeds. I cannot tell you why none of the neighbouring standowners have taken steps for his ejection, but it could be done. Steps could immediately be taken. I know that it was decided the other day that the clause referring to occupation by a person also referred to occupation by a company, and if steps were to be taken there would be service on Naike, Limited. I am not quite sure what the wording of the clause in the title deed is. In one title deed they refer to the *bona fide* servants of the owner, and in the other to domestic servants.

20. *By Mr. Alexander.*] The Gold Law speaks of *bona fide* servants—it is the lesser of the two.

21. *By Mr. Blackwell.*] The impression certainly was in the minds of most people that Mr. Polak was Mr. Gandhi's chief lieutenant in the passive resistance movement. It certainly was my impression. I do not know whether action has been taken for ejection of Indians at Boksburg or Springs; I am only aware of the action which was taken in the case of Denath on erf 120. My view in the case of Denath is that he started an entirely new business. He did not take over any existing Asiatic business, but started quite afresh. I held my hand because I did not think it politic at the time the matter was brought up to take criminal proceedings. The Municipality had its own remedy and could take action under the wording of the title deed. I did not think it politic to take steps myself, because at the time the question of the Indians was prominent before the House of Commons. They were discussing the question of giving a larger measure of self government to India, and knowing how Indians here have managed to embody any purely local matters in their grievances, I considered it wiser not to take steps. I still feel, however, that this case of Denath was a breach of the spirit of the agreement, and I also think that this invasion of Indians into Springs is a breach of the spirit of the agreement and of the law.

22. *By Mr. O'Brien.*] The invasion became acute about a year ago. There does not seem to be any objection to the Asiatic who has a laundry, but the objection is against trading. There is no opposition on the part of anybody to the



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laundry man. No steps have been taken under the law, but a public meeting has been held. Nothing, however, has been done. I had an interview with the Chairman of the Chamber of Commerce, and after we had discussed the matter, he was satisfied that these particular Indian troubles formed really part and parcel of the larger question and that it would be unwise to proceed further.

23. *By Mr. J. Stewart.*] The acute public feeling at Springs was raised by the trading community throughout the Municipal Council, but I think that the feeling throughout the East Rand is shared by the general public, although the general public is very inconsistent. They patronise the Indians and buy fruit and vegetables from them to the exclusion of the white hawker, and certain classes of the community are forced to deal with the Indians because they sell their articles at lower prices. I am not saying that the Indian is not serving a useful purpose, though I think that the general feeling is against the Indian.)

24. *By Mr. Alexander.*] The case of Naike, Limited, went to appeal to the magistrate, as I have already mentioned. Mr. Walton gave a very clear judgment on the matter.

25. *By the Chairman.*] As I understood the position at the time, the understanding arrived at between Mr. Polak and myself was not in any way different from that which was made by General Smuts with Mr. Gandhi. Mr. Polak himself mentioned at the time that it was one of the conditions of the settlement that there should be no Indian migration from town to town. It certainly is my impression that he was the first to mention that himself.

*Messrs. Julius Wertheim and Alfred Lewis Cohn, examined.*)

26. *By the Chairman.*] (*Mr. Cohn.*) We are the representatives of the Federation of Ratepayers' Associations of Johannesburg. (*Mr. Wertheim.*) I am the chairman. (*Mr. Cohn.*) I am the chairman of the Indian Sub-Committee, which was appointed to deal with the question of Indian encroachment on land. We are acquainted with the terms of reference of your Committee. (*Mr. Wertheim.*) The Federation of Ratepayers' Associations was formed three years ago. There are 19 Ratepayers' Associations in Johannesburg, and the Federation is formed by each Association sending two delegates. Our area is the municipal area—that is to say that the municipal boundaries are the limits within which we work. On the east we extend as far as Cleveland and on the west as far as Langlaagte. We desire to give evidence on the question of the Indians obtaining land as limited liability companies. The position with regard to the Ratepayers' Associations is that for some con-  
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siderable time past they have expressed the strongest disapproval of the manner in which the Indians were circumventing the law which prohibits coloured people from owning land. This law was circumvented by the Indians forming themselves into limited liability companies and then acquiring land. (*Mr. Cohn.*) As you are aware, the position is that one man can form a company, provided he has one other person nominally to hold one or more shares in that company. We know that large numbers of these companies have been formed on the Rand. (*Mr. Wertheim.*) In fact, I was informed by the Assistant Registrar of Companies that latterly Indian companies had been formed on the Rand at the rate of from 40 to 50 per month. By means of these companies the Indians have now been able to acquire land. The Judge-President of the Provincial Division of the Transvaal in a recent case of the Johannesburg Municipality *vs.* an Indian Company laid it down that these companies were formed *in fraudem legis*, and the company concerned was prohibited the occupation of certain premises. The shares in such companies are subscribed direct by the Indians in their own names. I should like to give an illustration how this operates to the detriment of the European. I am chairman now of the Yeoville Ratepayers' Association, but when I was hon. secretary of that body it was brought to my notice that a European owner of property in Raleigh-street had let a shop to an Indian. I immediately took up the matter with the Johannesburg Consolidated Investment Company, and they approached the owner with a request that he should give this Indian notice, as he was acting in conflict with the terms of his title deed. They thereupon received a letter that the Indian had been given notice and had left the property. However, the next day an Indian company started operations in the same premises. I do not know the name of the company at the moment. There was a distinct example, and a very telling example, of the method in which the Indians are circumventing the present law. I think that the commencement was probably brought about by one or two smart lawyers in Johannesburg, who originally got round the law by forming Indian companies and by taking the land of such companies in their own names. Matters, however, became rather complicated there owing to one of them going insolvent, and the property, which was in the name of that lawyer, fell into his estate, and as a result this new method was invented. This would be about four or five years ago. (*Mr. Cohn.*) The idea comes from Japan and Singapore, because in both these parts these things are being done. They have similar prohibition laws there. In Japan the law is against the European, and in Singapore against the Chinaman. (*Mr. Wertheim.*) I just wish to show how all this

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operates to the detriment of the European. A white man who had a small shop in Beit Street, Doornfontein, came to me one day and told me that the premises in which he was trading had been acquired by an Indian company, and that twice within the short period of three months his rent had been raised by the Indian company, and he assured me that it was the policy of the Indian company to continue raising his rent to such an extent that it would be economically impossible for him to exist there, and then they would step into his shoes. I do not say that raising the rent is specially confined to the Indian community, but I use it as proof that this is the economical pressure used by people who can live more cheaply than members of the white community. I would like to say this further—that the feeling of the white community in Johannesburg is unanimous on this point that the Indians should be prevented from acquiring land in their own names as they have been doing. A lot of the leases contain the provision that no coloured person or Indian shall be allowed to reside on the premises except domestic servants of the owner. The leases say “domestic servants or employees.” The wording of the Yeoville leases is “domestic servants or *bona fide* employees.” The Courts have interpreted the word “reside” as “sleeping on the premises.” The Indians, being a live community, have quickly found ways of circumventing that. They do not sleep there, and they come there in day time only. So it has been held that they are not contravening the lease if they do not sleep there. An Indian company can have Indian employees in the business so long as they do not sleep on the premises. That is the effect of these decisions. As to the legal position of these Indians, the Federation cannot possibly hold any opinion on that except as following on the judgment of the Courts, and the latest judgment—that of Judge-President de Villiers—will, if upheld in the Appellate Division, naturally make it illegal, but in the meantime we can only hope that it will be held illegal. If, however, it is held that the present position of the Indian companies is legal, then the only way out will be to consider an amendment of the Company Law. (*Mr Cohn.*) As regards the existing companies, the question will be a very difficult one. It will open up a very thorny question. (*Mr. Wertheim.*) I cannot honestly say that the Federation has considered that point of view. The Federation as such has not considered what should be done in regard to the existing companies. The decision of Judge-President de Villiers, if upheld by the Appellate Division, will do away with the whole difficulty.

27. *By Mr. Blackwell.]* I take the effect of the Judge-  
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President's decision to be that Asiatics or Asiatic Companies cannot hold land.

28. *By Mr. Duncan.*] The point to my mind is that these companies were actually formed to do what individuals could not do, and that, therefore, the companies were formed in contravention of the law. The effect of it would be to my mind that the lease required that only *bona fide* employees of such companies shall be entitled to occupy such premises, and if the companies themselves are not entitled to occupy the premises, then their employees shall not be entitled to occupy them. The effect of the judgment as I read it is that you must be able to show that a company was formed to do something which the law did not allow the individual forming the company to do himself.

29. *By Mr. Blackwell.*] There is a clause in the title deed prohibiting occupation by Asiatics. The person who had previously been ejected as an individual went to register himself as a limited liability company and re-occupied the premises, and the Judge-President held that this was merely a subterfuge. In his judgment the Judge-President said the company was formed for the purpose of evading the law and that the law was not such an ass that it could be evaded in that way.

30. *By the Chairman.*] Each case will have to be taken on its own merits—I do not dispute that for a moment.

31. *By Mr. Blackwell.*] I meant to convey that I hoped that the effect of the judgment of the Judge-President would be that the companies could not occupy these places. If the object were obtained that, where there is a clause in the lease that occupation by Indians or coloured persons is prohibited, occupation would be prevented, it would go a long way in the direction desired, but there are a large number of properties where there is no such clause.

32. *By the Chairman.*] The Federation as such has not considered the matter as to what it should suggest in regard to the properties where there is no such provision in the lease, and I would not be justified in expressing an opinion. We recognise that this is a very important position. All sorts of wild statements are made, but the one thing which we do realise is that vested interests must be protected. (*Mr. Cohn.*) We thought it wise as feeling was running pretty high in Johannesburg not to put our deliberations and enquiries before the public, but in Committee we went into the technicalities and the details of the question and as far as the Committee is concerned, I can inform this Committee what the Sub-committee thought and what are the various remedies proposed. Our work started at a time when the war was at its height and when it was felt that any publication of our views would have a very harmful effect and, therefore,

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we preferred to deal with these matters in camera and as we heard that the Government could not at the moment listen to us, we decided to keep these things private until such time as we should be able to voice our feelings in public. That is how it came about that the Federation itself has not definitely gone into the question of the remedies to be suggested. With regard first of all to the decision affecting limited liability companies that has been must fully dealt with in the case of *Reynolds vs. Oosthuisen*. Mr. Justice Ward then went very fully into the whole position. This was in 1916. I have a verbatim report of the case here. It deals not only fully with the technical aspects, but it has been endorsed by leading counsel in Johannesburg. I, as the legal adviser of the sub-committee, have taken the opinion of counsel, and after reading the judgment of Mr. Justice Ward, they have had nothing to say to it. The opinion of Mr. Stratford and Mr. John Taylor merely is that after having gone through the case they have nothing to add. Mr. Justice Ward refers to the decision given in the House of Lords with regard to the question of going behind the registration certificates of companies and I think that as his conclusions are so logical that unless our Company Act is altered, we can do nothing. Our Company Act in the opinion both of counsel and of Mr. Justice Ward is such that the Judges cannot help us, so that unless we get an amendment of the Company Act nothing can be done. With regard to that clause in title deeds referring to occupation by Asiatics and coloured people generally, unfortunately only a very few township companies have thought fit to embody that in their titles. Generally it seemed that the township companies were prepared to rely on the existing law, which is that there is no free right of residence in the Transvaal so far as Indians are concerned. That law has been in existence since 1886 and has become the Common Law of the Transvaal, and it is for that reason that the majority of the township companies did not embody a special clause. The most stringent provision as regards residence and occupation and the holding of leasehold stands on the Reef is in the Gold Law. I may say, Mr. Chairman, that from the year 1904 to 1914 I personally took a great interest in the settlement of the Indian question. I happened to be a personal friend both of General Smuts and Mr. Gandhi, and I came to the conclusion that the best thing would be to bring these two men together, and I did so. The negotiations went on with various intervals and breakdowns until 1914, when some kind of finality seems to have been reached, but of course the 1914 settlement, in the very nature of things, could only be temporary. The question of the settlement was not fully considered by our Association, but we considered it to a certain extent. We say that we

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have not broken the terms of settlement—it is the Indians who have done so. We are satisfied with the terms of settlement, but they have been the first to break the *bona fide* arrangement entered into, and that was, as a matter of fact, argued at a public meeting. We said that we could not do anything, and we said that that was not the time to break an arrangement. We did not break the arrangement of 1914, but it is the other side who are trying to circumvent it. The cause of the agitation is the alleged breaking of the agreement. If you will look at the settlement you will see that there was an expressed promise on both sides to carry it out genuinely and in a *bona fide* manner. (The 1914 settlement never dealt with land-holding; it merely went so far as to redress certain grievances of the Indians in regard to immigration, etc.; then there were certain grievances as to the marriage laws, and they were also redressed in favour of the Indians, but it was distinctly understood by both sides that for the rest the position would remain as before according to the laws of each particular Province.) I have refreshed my memory by reading through the correspondence which passed between Mr. Gorges, the Secretary for the Interior, and Mr. Gandhi, which contained the final settlement. I understood that both sides were satisfied with the agreement arrived at. That is how I understood the position in 1914. (*Mr. Wertheim.*) The question whether the position which had been created was merely objected to by the traders or by the general public as well was raised at a general meeting at Malvern, which we attended some six weeks ago. It was decided there to frame a resolution asking the white people to support white people, and especially returned soldiers, in preference to giving their custom to Indian hawkers. The laundrymen are not so much affected, as they are mostly Chinamen and Malays. The Indian hawker is accused of giving long credit to the housewife, and at that very meeting a case was cited where housewives were not only obtaining big credit from the hawker, which they could not get from the white man, but in certain cases the Indian actually acted as banker to the housewife. She was actually getting money from the Indian, and that led directly to inter-communication between the white woman and the Indian hawker while the husband was away. The position was that the wife borrowed money from the hawker in the absence of the husband. You can well imagine that that kind of thing leads to a position of affairs which is most dangerous. It leads to closer intercourse between the white housewife and the Indian and to greater familiarity than seems to be wise in the absence of the husband.

33. *By Mr. Duncan.*] (*Mr. Cohn.*) The white people have been trying to stop dealing with the Indian hawkers in some

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suburbs, but there is always the economical pressure. After all the housewife gets a limited amount of money wherewith to defray her household expenses. While we reckon in pounds, she reckons in shillings and pennies, and it comes hard on her to buy from the white man and pay ten shillings or twenty shillings more per month than she would have to pay to the coloured hawker. (*Mr. Wertheim.*) We have advocated a boycott of the Indian hawker for some considerable time, and such boycotts have been suggested at public meetings, and the public have been told that they have the matter in their own hands. We cannot get into touch with everyone. There is a large section of the public which has no knowledge of what we are doing and does not care either; and they will go on trading in the cheapest market.

34. *By the Chairman.*] (*Mr. Cohn.*) One of the reasons for the formation of the Federation of Ratepayers' Associations in Johannesburg was the necessity of united action in regard to the Indian question. Hitherto the law had been strong enough to prevent Indians acquiring land for trade purposes. The existing laws have been reinforced by certain of the large township companies introducing into their title deeds provisions making it illegal to transfer or sub-let leasehold stands to Indians, or allowing them to trade or reside on them. Many companies, however, did not embody leasehold restrictions in their titles. (The device employed to circumvent both the law and the restrictive covenants was the formation of small private companies. Any Indian could and can register himself as a private limited company. He can hold all the shares himself excepting one, which can be held by his clerk or office boy. In 1916 the Witwatersrand local division of the Supreme Court decided in the case of *Reynolds versus Oosthuizen* that a limited company, although consisting entirely of Asiatics could not be prevented from holding land. Since then these private companies have multiplied exceedingly—the number to-day being between 400 and 500 who have acquired land and leasehold stands for the purpose of trading and immediately oust the white trader. It is perfectly clear that in trading and many other vocations the white man cannot compete with the Indian. Wherever the Indian is allowed to trade he will soon acquire the absolute monopoly.) My committee have had complaints from almost every quarter of the town and also from the country. Indian shops were springing up everywhere. They were ruining the white man's trade, and at the same time depreciating the neighbourhood for residential purposes. In Johannesburg, for instance, any amount of property is now being held by Indian Limited Companies. I think the value is about £200,000. They raise the rent of the white trader and undersell him generally. Owing to the success of the richer Indian trading [S.C. 11—19.]

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as a limited company, the poorer Indian has also taken heart, and in some cases with the connivance of an obliging landlord is occupying a shop where he has no right to be. In other cases the leasehold stand is turned into freehold merely for the purpose of getting rid of the restrictions as regards trading and coloured occupation. During the war the Indians could not send money to India, and therefore they invested their money by acquiring land here. The evil was accentuated by the fact, firstly, that owing to the war Indian traders made very large profits. They could not send their money to India owing to war restrictions. The feeling also is that the number of Indian residents is increasing tremendously, and that in some way or another the Immigration Law is still being evaded. Meetings of protest were held everywhere, and boycotting was attempted but proved futile. The Government was approached to put a stop to this illegality by amending the Company Act. The Federation circularised various associations and public bodies asking for support, and in all twenty-two bodies, including the Township Owners' Association, the Master Builders' Association, the Real Estate Agents of the Transvaal, the Retail Traders' Association, and others passed a resolution approving and agreeing with the motion of the member for the Bezuidenhout Division asking that the Company Law be so amended as to prevent its being used as a means of evading the land law. However, at that time being in the midst of the war and having regard to the feeling in India, the Government apparently felt that it was inadvisable to do anything just then. Immediately the Armistice was proclaimed, the agitation, however, was started again, and public feeling became so strong that various Municipalities have sought to give effect to the wishes of the ratepayers by refusing trading licences and ejecting Indians unlawfully holding land. (Hence the case of the *Municipal Council of Krugersdorp versus T. W. Beckett & Co., Ltd.* A further decision has also been given by Judge-President de Villiers in regard to Indian companies occupying land. He held that the company in question was formed purely in fraud of the law and was a transparent device for doing something which the individual shareholder personally could not do. He therefore held that the company in question could not occupy land. If limited companies are to be treated as separate individuals and as unaffected by the status or disabilities of its individual shareholders, then, of course, there is nothing to prevent Indian companies also acquiring farms, and once they do that there is every reason to believe that they will be equally successful against the white farmer. There is nothing to stop Indians there. To-day they are market gardeners and once they can evade the provisions of



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the Company Act to enable them to acquire land outside—there will be an end to the white farmer.) The remedies suggested are firstly to enforce the existing law with regard to individuals. Secondly, to introduce into the Companies Act preventive and restrictive clauses. Thirdly, to amend the land laws making similar provisions in regard to Indian companies as obtain under the Native Segregation Act. Fourthly, to introduce a law on the lines of the trading with the Enemy Act compulsorily winding up companies holding land and which are controlled or owned wholly or principally by Indian shareholders. We say that after all the acquisition of property by Indians has been very recent and the Committee therefore makes the above recommendations. We understood that the whole position was one of the evils caused by the war and that as soon as the war was over the evil would be remedied and seeing that expropriation would not result in any very great losses being suffered, because even though Indians have acquired property they have always obtained value for their money, there could be no great exception taken to such a course. Supposing the property held by Indians if worth £200,000 and supposing the position is taken up that the companies have been formed for the purpose of circumventing the law, we thought that the companies could not be wound up in so far as they are engaged in legitimate business, but the land could be expropriated and the purchase price repaid to the company and the property sold. That is on the presumption that the companies have been formed in defiance of the law as it stands.

35. *By Mr. Meyer.*] The presumption is that there has been an influx of Indians into the Transvaal recently. Somehow or other people run away with the idea that there are more Indians in the country than there should be.

36. *By Mr. Blackwell.*] Mr. Justice Ward's decision amounted to this: That if a number of people formed themselves into a limited liability company, then you cannot go behind the composition of the company, no matter who the members of the company are and no matter with what object the company is formed. Mr. Justice Ward's decision is in direct conflict with the decision of Mr. Justice de Villiers. (*Mr. Wertheim.*) It was based on an English decision. The whole position was raised both before Mr. Justice Ward and Mr. Justice de Villiers, so that until we get a decision from the Appellate Division we shall have two conflicting decisions. (*Mr. Cohn.*) We have never had a verbatim report of Mr. Justice de Villiers' decision. It was simply a newspaper report and you know what newspaper reports are. We say the State should expropriate the land held by these Indian companies, because the companies have been formed in  
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*fraudem legis.* It is quite true that in 1916 it was stated in a decision which was not challenged that they were not formed in contravention of the law. (*Mr. Wertheim.*) You say that we are asking the State to say that what they did was an illegal action and that the effect of what they did should be set aside by the Courts, although they had secured a decision from the Judge that what they did was perfectly legal. I do not think that that is correct. I do not think that Mr. Justice Ward decided that what they were doing was legal. He said that it was not competent to enquire into the nationality of the persons holding shares in a company. That company was an entity, a *persona*, and that it had no nationality, and it was not competent for him to enquire into the nationality of the persons holding shares. He held that if an Indian chose to register himself as a limited liability company, then it was not for him to enquire into the nationality of the company. (*Mr. Cohn.*) You ask whether Parliament should not be asked to set aside the transactions on the ground that they are a breach of the agreement entered into between Mr. Gandhi and the Government. I consider that it is open to any individual to take advantage of any loophole in the law—it is always done. If we cannot get out of the difficulty in any other way, I hold that we must go so far as to say that we must compensate the Indian for his land, but it must go back to the white man. It may be found that the Indians had no moral right, but if it is found that they had a legal right, then we cannot blame the individual, nor can we punish the individual for taking advantage of a defect in our law. I hardly think that I am asking the State to involve itself in considerable expense. The Government would be buying in a rising market. You would naturally have to make a most careful enquiry into the land held by the Indians. If it is found that the Indians do not hold the land legally, then of course the law must take its course. If, on the other hand, it is found that they are legally in possession, then the Government would have to go into the question of compensation and would have to consider whether the cost which would have to be incurred would be worth it, but we have arrived at the time when an investigation must be made.

37. *By Mr. Alexander.*] There is no law against aliens holding property in the Transvaal, nor does my Federation suggest that legislation to bring that about should be introduced. There is no suggestion that people who are not British subjects should not be allowed to hold land. (*Mr. Wertheim.*) It is very probable that the people who are concerned in this matter are British subjects. I take it that they are. (*Mr. Cohn.*) Some are, but others are not. (*Mr.*

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*Wertheim.*) British Indians would, of course, be British subjects. (*Mr. Cohn.*) What we call British Indians also include subjects of the protected Indian States. (*Mr. Wertheim.*) I do not think we need trouble about that. Let us take it that they all are British subjects. We are concerned with the economic side of the whole question, and I do not think that it is quite right to say that we object to their colour. It all opens up a very big question—the question of white *versus* coloured, the question of how the white man is to exist properly as against another person—never mind his colour—who is able to under-sell and under-live him. You say that the fact remains that these people are coloured men. We are concerned chiefly and probably wholly, if we may put it that way, with the fact that they are able to under-sell and under-live the white man. You say that the white people have the matter in their own hands. To some extent that may be so, but I shall give you a typical instance of what has happened. In Norwood, a suburb of Johannesburg, there are a number of Indian traders. The white community there have decided to boycott the Indians there, and they do so, but they find that it is impossible effectively to do so because of the very large coloured and native community who deal with the Indians. You ask me whether we want legislation to prevent the white and coloured man from dealing with the Indians. I cannot answer that. My personal point of view is that the Indian should not be allowed to enter into competition with the white man. I leave the conclusion on the question whether the coloured man must buy from the white man and not from the Indian to the members of the Committee. You ask whether I want the licences taken away from Indians who have been trading on the Rand for over 30 years. I can only say in reply to that that I am not here as representing the Ratepayers' Federation to do an injustice to anyone. We want to see feasible means of bringing about the position which we desire, and it is for the Select Committee to unravel the problem. We have come here to give you facts and we have to leave it to Parliament to find means of unravelling the problem. We want Indian trading in white townships to be done away with entirely. I could not tell you whether it is correct that some Indians have been trading in these townships for over thirty years. I have no idea. I am here as representing the Federation of Ratepayers, and I can only say, as I have said, that the Federation has not considered the question as to what should be done with the existing businesses of Indians. I may say that this particular point, which has been dealt with by the sub-committee, as Mr. Cohn has told you, is news to me and therefore I am not in a position to answer your question. You

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ask me what I suggest myself that should be done. I cannot say. I am not prepared to say. I do not know whether there are private individuals who carry on business. (*Mr. Cohn.*) In 1914 it was decided by both parties that those matters should remain *in statu quo*. It was not specially mentioned, because, naturally, the idea of forming companies had not cropped up, but it is one of the loopholes which has now been taken advantage of to break the spirit of the agreement. I say that wherever they have, since 1914, tried to extend the rights which they had then, those rights should be cancelled, and my reason for saying so is this. I am not against colour, and it is not putting it very high to say that it is a question of colour. It is not a question of colour at all. It is a general principle. It has been found that the area which can be inhabited by the white man is smaller to a great extent than the area which can be inhabited by the coloured man. The area which can be inhabited by the coloured man is exceedingly large. We are here on the border-line and we have to decide here whether this is to be a white man's country or a coloured man's. And unless you decide that this is to be a white man's country you will evolve a coloured man's land. We are here holding the borders of the white man's area. I am as much in sympathy with the Indians as anybody, but unfortunately, physically speaking, the white race has only a small area placed at its disposal. Everywhere else the white race is bound to degenerate. In India there are 70,000 whites among 310,000,000 of Indians. The white man cannot exist in India. There are certain cold climates where the Indian cannot exist, but in proportion the Indian has a greater portion of the world to live in than the white man. Why then should he contest the white man's rights to hold this country. (*Mr. Wertheim.*) If it were only a question of them being here, perhaps one could hope that they would die out, but unfortunately they also propagate. (*Mr. Cohn.*) My suggestion is that whatever the decision of the Appellate Court is, these Indian companies should be wound up, because they are here in contravention of the spirit of the agreement entered into in 1914. The amount of £200,000 which has been paid for the land which has been acquired has been handed over and possibly the people who have received it may have left. The Indian should get his money back instead of the property. (*Mr. Wertheim.*) The Natives Land Act contains similar provisions to the effect that in certain parts natives cannot hold land. There has been a provision in the Transvaal for years prohibiting natives from holding land. My idea is that Indians, in regard to the holding of land, should be placed in the same position as natives. (*Mr. Cohn.*) On the question of Indian trading, we have received no mandate. We are concerned with the question of Indians acquir-

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ing and occupying land. You say the one includes the other—surely they must have been trading before 1914. You say that if they have no land, they cannot do any trading, but they must have been trading long before 1914. A man who has not the right to own land can hire it and can hire premises. It is true that under the Gold Law the Indian could not occupy. Most of the land is held under Gold Law title. (*Mr. Cohn.*) I think there was some reason why the provisions of sections *one hundred and thirty* and *one hundred and thirty-one* of the Gold Law have not been enforced until quite recently. You will find that the Mining Commissioner has the right to allow occupancy on proclaimed land. I admit that the law is so harsh that it is very rarely enforced, and I should say that in some respects the Gold Law might be amended so that it can be enforced. However, in the first 11 years of the Gold Law there were no limited liability companies of Asiatics. (*Mr. Wertheim.*) The enforcement of the Gold Law has also arisen out of the judgment of the Judge-President. (*Mr. Cohn.*) Your question is whether we want it both ways—the Municipality to have the right to go on as they are doing and at the same time to prevent the existence of limited liability companies. My view is that limited liability companies should not be allowed to circumvent the law and I want that passage in the Gold Law to be in force under which the Mining Commissioner has the right to allow the occupancy of proclaimed land. Indians should certainly not be allowed to come into the hearts of the towns. I think that in some respects the Gold Law might be amended, because it is better to have a law which can be carried out than a law which you do not carry out. I quite agree that we must give the Indians the right to live, and personally I have always thought that if both sides were to carry out *bona fide* the *statu quo* as it existed in 1914 the whole of this acrimonious discussion and of this controversy might be avoided. (All you have to do is to go back to 1914 and accept the position as it was laid down there. In those days the Act of 1908 was not being enforced and it was understood by the Indians that it would not be enforced. The provisions of that Act were so stringent that it was thought better to keep them in abeyance, and as is always the case when you have a law like that, you have in the end to do a bit of climbing down. The Law of 1908 was couched in such terms that you could not enforce it. The settlement of 1914 was the outcome, but to-day the new trouble which has arisen is in connection with these limited liability companies which are an encroachment on the spirit of the settlement of 1914.)

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[Mr. J. A. Nesor, M.L.A.]

(Friday, 4th April, 1919.)

## PRESENT :

MR. ROTH (Chairman).

Mr. Alexander.

Mr. Joubert.

Mr. de Beer.

Mr. J. Stewart.

Mr. Meyer.

Mr. O'Brien.

*Mr. Johannes Adriaan Nesor, M.L.A., examined.)*

38. *By the Chairman.*] I am the member for Klerksdorp in the Union House of Assembly, and I reside at Klerksdorp. I am acquainted with the question of Indian trading in the Transvaal, having lived at Klerksdorp since the beginning of 1888. Ever since I settled in the Transvaal the Asiatic question has caused trouble and friction from time to time. Law 3 of 1885 was placed on the Statute Book with the object of preventing Asiatics from living in any town or village, except in bazaars, squares or streets specially assigned to them by the Government. Some 25 years ago, or thereabouts, the Government of the Republic made great efforts to compel the Asiatics to live in bazaars, and in various towns bazaars were surveyed and set apart for Asiatic occupation. In our town, that is Klerksdorp, and so far as I know in other towns as well, they never succeeded. The Asiatics would not go there, and in spite of the provisions of the law they have been steadily and constantly encroaching on the areas which were intended for European occupation. The Gold Law has also all along contained provisions against the occupation of stands and other fixed property in towns on proclaimed gold fields or mining areas, and during the days of the Republic the question cropped up frequently with greater or lesser vehemence, and was the cause of constant friction between the British Imperial Government and the Republican Government. You know that on one occasion the matter was submitted to the Chief Justice of the Free State, Mr. Melius de Villiers, and he gave an award on the matter submitted to him, but all these efforts seem to have been in vain because the Asiatics simply went on, and although the white people were prohibited under the Gold Law from letting their stands to Asiatics, the prohibition was more honoured in the breach than in the observance. The white people repeatedly let their property to Asiatics, and they have been carrying on their business for all these years, and their number has been constantly increas-

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ing. There is a very large firm established in Klerksdorp, called Mahomed Ismael & Company. They have their headquarters at Klerksdorp, and have their branches all over the Transvaal. Curiously enough, although these people were Asiatics and the law was against them, they acquired their stands from the Government. At a Government sale of stands on the 8th of March, 1888, that firm bought three or four stands at Klerksdorp from the Government auctioneer, Mr. Japie Celliers, and therefore they got Government title. It is not as if they got it from a private individual—they actually got it from the Government. These stands, like all in a mining township, were sold on condition that the licence was to be paid monthly in advance, but very soon it became the custom to pay the licences six months in arrear. That is quite a general custom. I have paid for quite a number of stand-holders and always, save under exceptional circumstances, the practice was accepted of licences being paid at the end of the six months. Non-payment of the licences at the beginning of the month, according to the provisions of the sale, rendered the stands liable to forfeiture, and after Ismael & Company had been in occupation for quite a long time, I forget quite how long; there was a strong anti-Asiatic agitation on one occasion, and although the licence of every European standholder was renewed, the Government refused to renew the licence of these people. I cannot remember exactly when it was, but they had been in possession for several years. I should say that this must have been early in the nineties. The Government refused to renew their licence, which meant that their stands would be forfeited. They had been carrying on all these years. They had bought their stands in March, 1888, and a few days after they took out trading licences from the Mining Commissioner before even they had put one stick upon the other. Then they started building, and they put up a building very quickly—a wood and iron structure, a fairly large building. It is in existence to this day. They thereafter stocked the place and opened up. Then the Mining Commissioner tried to stop them, and the case came before the Landdrost, who decided that they could not be stopped as they held Government Title to their stands, and that they had obtained their trading licence in the ordinary regular form of law, and so they carried on. When the renewal of their licence was refused, a petition was made up by them and backed up very largely by Europeans, and it was considered that it would be a great injustice to deprive them of their stands on the technical ground that they had omitted to pay their licence according to the conditions of sale, and I may say here in parenthesis that 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 [S.C. 11—19.]

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to the present day. Farmers and consumers generally deal very largely with the Asiatics, because they believe that they are cheaper, and I suppose they are, because they live very much more cheaply. They pay their clerks very low salaries; they can fill a shop with clerks for an aggregate salary which would hardly pay one European clerk a decent wage. And therefore they can do business very much more cheaply than the European trader can. People supported them very largely, and the petition was presented to the Executive Council under the Republican Government, and the Government then agreed to the renewal of the licence on the expressed condition that the stands were to be transferred to a European—to a white person. They accepted that condition, and the stands were accordingly transferred to a European, but the firm remained in possession of the place, and they were never disturbed. The Government were aware at the time that these people would remain in occupation. And they were never disturbed in their occupation. They transferred the stands to a European, but entered into an agreement of lease for the stands, and that exists to the present day; they still occupy like that; they have been carrying on their business since March, or at the latest since April, 1888, so that they have been there for over 30 years. Of course, it is a matter of opinion, but I think that it would be a very great injustice to shut up people like that. I am speaking about that firm in particular, and I think it would not be right to go and confiscate their property now after all those years. There are quite a large number of others who have not the same ground to rely upon, but there are several Asiatic firms in Klerksdorp who have been there a long time, also on leases from Europeans, and that notwithstanding the fact that there have been complaints and agitations against them. I have been very prominent at one time in the anti-Asiatic agitation, but notwithstanding all that, the Republican Government, the Crown Colony Government and the Responsible Government as they succeeded one another, although they were repeatedly asked for restrictions, have done nothing, and Asiatic trading has grown to such an extent that quite a number of European shopkeepers have had to close up. I am very well acquainted with the means and the methods of business done there in Klerksdorp and the income of people, and I must say no European can hold a candle to these Asiatics. They make profits when Europeans make a loss and the result has been that the European shopkeepers have been closed up one by one after the other and the Asiatics have bought them out. They bought out several firms who did a considerable amount of business there and paid them very big prices for their premises and stock in trade, and in those same premises where these



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Europeans were bound to come to grief, these Asiatics flourished. I ascribe it to their standard of living. It is entirely due to that. They live so very much more cheaply than the Europeans and deal in a different class of stock too perhaps. I think that they possibly have a cheaper kind of stock but many people do not realise that, they do not recognise that the quality of the things is not the same and they buy from the Asiatics because the thing is cheaper than if they bought from the European—although they might get a better article from the European. That, of course, is not always the case, because similar goods to those sold by Europeans, such as buliding materials, iron goods, hardware, etc., they always seem to be able to sell more cheaply than the European. They deal particularly in soft goods and do not trouble so much about hardware. These big firms like Mahomed Ismael & Co. deal in hardware, ploughs, farming implements, etc.

39. *By Mr. Joubert.*] They sell these goods more cheaply too than the Europeans, but generally speaking that is not the Asiatic's line; they deal principally in soft goods.

40. *By the Chairman.*] In hardware the difference in prices is not so marked. They also deal in groceries, but that is more a side line which they undertake in order to keep their customers. All the shopkeepers tell me that there is no profit in groceries but the Asiatic firms keep a grocery department in order to keep their customers, and when people come to buy other goods and can get their groceries cheaply and easily they buy from them. There seems to me to be a conflict between the Gold Law and the Townships Amendment Act as well as the Law of 1885 and our Licensing Law, because although the Gold Law and the Townships Act and the Law of 1885 are strict in regard to the restricting of Indian trade and occupation, the Supreme Court has decided that the Receiver of Revenue cannot refuse the Asiatic a general trading licence as apart from the Grocer's licence which is issued by the Municipality. In the Transvaal it is the Municipality which issues grocers' licences. Under the general trading licence you could sell practically everything excepting groceries and eatables. The Supreme Court decided that the Receiver of Revenue cannot refuse a licence to an Asiatic, and when he tenders his money he is entitled to get his license. In 1914 an agreement was arrived at between Mr. Gandhi and General Smuts who was than the Minister of the Interior and the effect of that agreement was to protect the vested rights of the Asiatics. (Mr. Gandhi defined vested rights to be that those who were at the time—in 1914—actually in occupation of business premises in any town and their successors should be protected in those rights and that they should have liberty [S.C. 11—'19.]

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within the area of any town or village to shift from place to place. Those Asiatics who were in actual occupation at the time of business premises and their successors should be protected and they should be allowed to shift their quarters within the boundaries of any town or village thereafter. Now the other day when I had an interview with the Minister of the Interior, he complained that the Asiatics had broken that agreement because quite a number of them had taken out new licences and occupied new premises since then. It seems to me that the Government should have taken steps to have the law amended so that they should have prevented these people from taking out new licences. So long as the law allowed them to take out licences they would do so. That would be in conflict with the agreement with Mr. Gandhi. A man who did not have a licence at that time could not have vested rights. When Asiatics took out new licences it would be in conflict with the agreement, but the Government is also to be blamed for issuing new licences. Mr. Gandhi got that agreement for the Asiatics and I consider that they are largely bound by that agreement, but if the law did not prevent them from taking out licences, then I do not think that Mr. Gandhi can be held responsible for it, nor do I think that these other people who actually have these vested rights can be held responsible, except when they themselves break the agreement.) Take this case for instance, the firm of Ismael & Co., of whom I have been speaking, have taken out a new licence at Krugersdorp. They have acquired new business premises at Krugersdorp and they have succeeded in compelling the Municipality by an appeal to the Magistrate to issue a licence to them. Of course such people like that complain very much, but they cannot complain if they are prevented from spreading out because clearly their rights were vested in Klerksdorp and in other places where they actually carried on business in 1914 when the agreement was entered into, but if they thereafter proceeded to take out licences in other places where they did not have business premises before and the licence was refused to them, then I do not think that they have much reason to complain. (I think that we should honourably carry out the agreement arrived at in 1914; of course, the question of those who acquired rights since 1914 complicates the position again. The date when the agreement was arrived at, July, 1914, is nearly five years ago, and it is difficult to say what should be done, because it is the Government who allowed the licences to be issued.)

41. *By Mr. de Beer.*] Legislation should have been enacted for the purpose of preventing the issue of licences, but now that they have got these rights it is difficult to say what should be done, and (I think that they would have reason to

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complain of hardship when they were allowed first of all under Government licence to trade, and if we should now prevent them from carrying on.) If one wanted to legalise the whole position I think their case would have to be taken into favourable consideration at the present time. It is very difficult, if you first of all allow people to acquire rights or privileges, later on to go and confiscate these rights or deprive them of their rights. I do not think that we could ever expect to have peace and good relations between the various sections of the community if we were to proceed on these lines.

42. *By the Chairman.*] True, they may have acquired these rights in defiance of the agreement, but I think all the same that it was incumbent upon us to legalise the position, and have provided against the issue of further licences. I have always been very much in favour of restricting Asiatic immigration and I am still of that same opinion. I think it should be restricted to the narrowest possible limits. Of course the Immigration Law at present in force goes a long way in that direction, but I should like to see it go even further and prevent Asiatics altogether from coming into the country, but on the other hand I think that it is our duty to treat these people who have been allowed to settle in the country and obtain vested rights with the utmost fairness and consideration. As to the word "successor," I take it that by "successor" is meant a man's descendant or successor in business. (Take, for instance, this firm of Ismael and Co. Supposing they took a new partner into the firm. If it were a son, then naturally there would be no doubt that they would have a perfect right under the agreement to do so; but if it comes to a perfect stranger, even then I think that the word "successors" in the agreement is so wide that it would cover new partners, even if such new partners were perfect strangers. The question is even whether it would not cover a man who buys out a business from an established Asiatic.) It is unfortunate that the term was not more specifically defined. In one of Mr. Gandhi's letters he said that he hesitated about defining "vested rights," as it might injure his compatriots in their further agitation for their rights. Now, of course, this word "successors" might be variously interpreted, and they would claim a very wide interpretation. I have frequently spoken to Asiatics, and to very prominent Asiatics, and told them what my policy was with regard to them—that is, restrict immigration to the narrowest possible limits, for reasons which I explained to them, that is to say that we have a very complex population, various races and nationalities of white people. Then we have the aboriginal natives, and we also have a very large coloured population, and I told them that for these reasons I [S.C. 11—19.]

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did not think it wise to increase our difficulties by allowing a very large Asiatic element to creep in. And I have never found any of these leading Asiatics to contradict that. They saw the difficulties and they accepted the position, and so far as I know they would still be prepared to accept the position, except that when they are keen upon getting a relative in—a grandson or near relative—they do their very best to get him into the country to embark upon business. The particular class of Asiatics whom I am now speaking about are the traders, pure and simple; they are not people who work with their hands. They are all business men, traders, and although they might be quite willing to have other Asiatics restricted and prevented from coming in, they are very keen on getting their relatives in. I can give you a number of instances to prove that.

43. *By Mr. J. Stewart.]* I do not say that many do come in, but they are very keen indeed on getting them in.

44. *By Mr. Alexander.]* The Government have given instructions that Asiatics should be prohibited from coming in in excess of the number agreed upon. Although they are not allowed to come in, there are a good many cases of Asiatics trekking in from across the border. Quite a number, I believe, are periodically deported. They are found in the country without the necessary permits and are deported.

45. *By the Chairman.]* There has been an influx of Asiatics into Klerksdorp since 1914 and several new stores have been opened. I could not tell you how many, but I know that several new trades have opened up. A return of the Asiatics who have come in and who have left the country would not help you a great deal, because the large majority of those who have left are not of the trading class at all. You might get a return showing a distinction between the Indian labourers and the others. I have said that I consider the immigration of Indians into South Africa should be restricted to its narrowest possible limits. I do not think it is compatible with good Government to have constant friction between the governing authorities and people who live in the country and, therefore, I should say that those who are in now and have vested rights should be treated with the greatest fairness and if possible their position should be legalised so that you should know where they stand and they should know it too.

46. *By Mr. J. Stewart.]* I did not mean to convey that the firm of Ismael & Co. were supported by the whole European population when they were going to be interfered with and when the renewal of their licence was refused, but they were supported by the consumers. The traders did not support them. The trading community have always been up against them and the agitation against them has always come from

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the trading community. I certainly would not like to see an extension of Asiatic trading in this country. Those who are here, those who have obtained vested rights should to my mind be protected. Even if their vested rights are not strictly legal, but if they have been countenanced by the Government they should be protected.

(47. *By Mr. Alexander.*) If they had meant that the word "successors" should mean heirs only, I take it that they would have used the word heirs in the definition. The word successor might mean any person to whom a man sells his business. When we draw up an agreement between parties, we mean that by the word successors. When we speak of successors, we mean anyone who lawfully acquires the right to succeed in property or business. In the ordinary interpretation of the law, I take it that if Ismael & Co. sold their business to a man who lived in Waterberg and came to settle in Klerksdorp, that would be their successor. They cannot move, of course, from province to province, but I find no reference to them not being able to move from town to town in the Transvaal. A man could not go from the Transvaal to the Cape. Gandhi said nothing in his definition of vested rights about there being no migration from town to town. If a man is not trading, then I do not see that there should be any restriction in regard to a man moving from Klerksdorp to Johannesburg. I do not know that there has been any great difficulty about these matters, in fact at present they do move from one town to another and take out licences and conduct trade. The Government has never prevented them, and the first time I heard about the breach of agreement was when I interviewed the Minister a few weeks ago. I said that the trading community are up against Asiatic trading. I do not know much about the composition of the Town Council of Krugersdorp, and I do not know that there are many business people, many traders, on the Krugersdorp Town Council. There are a few on the Klerksdorp Council, and because they are not largely represented on the Town Council of Klerksdorp not much action has been taken there. There is something in the Local Government Ordinance of the Transvaal which militates against merchants acting on the Town Council, because Councillors are prohibited from having dealings with the Council. So many prominent men who would otherwise have been on the Council are not on it now. I do not know in regard to Krugersdorp who has started the Council there to take action against Indian traders. In Klerksdorp the anti-Asiatic agitation has come from the mercantile, from the trading, community.

(48. *By Mr. de Beer.*) The word successor would mean the man who can lawfully purchase a right—so it would not apply to any new Indian coming into the country. It would [S.C. 11-'19.]

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refer to an Indian who at the time would be allowed to start a business. I think it would be unfair to remove those people from the Government areas who have come there after the agreement between General Smuts and Mr. Gandhi. If they have been carrying on business there for any length of time under Government licence it would be unfair to remove them now. Mr. Gandhi claimed to represent the whole Indian community, but I do not think he actually did, although I believe that on the whole the Asiatic community accepted the arrangement which was come to.) Unfortunately the Government continued to issue licences, and when they made an attempt to refuse, they were compelled by the Supreme Court to issue. There was a case from Pietersburg, I believe, where the Receiver of Revenue refused to issue a licence and the highest judicial authority in the land, the Judge-President, ordered him to issue the licence, and therefore our Gold Law, and Townships Act and Law 3 of 1885 are in conflict with the Licensing Law. (If the man is prohibited by the one law, there should not be another law under which he can get his licence. You say the establishment of limited liability companies is an evasion of the law. But is it an evasion? The law does not say so. The law says that they cannot own property on the gold fields, but even supposing they acquired property as a limited liability company there is still a further provision of the law to the effect that they cannot occupy it. The Chief Justice has decided that, and I think it is quite clear. If an Asiatic company owns stands, that does not give individual members of the company or any other persons the right to occupy. I would not advise a drastic step as ordering the winding up of all those companies. It might be lawful but still it would be very inadvisable to carry it out. One should not allow things like that to proceed apace and then afterwards jump on people. I think that steps should have been taken at once to have prevented such a state of affairs arising.)

(49. *By the Chairman.*] How can you say that it is an evasion of the law if the highest court says that it is legal. The Registrar of Deeds refused to register the property in the name of the Company, but he had to do it. I cannot say whether it is an evasion of the Law of 1885. I cannot see how one legal step can be an evasion of another. It is against the spirit but it is not illegal.) I have recently had a case in which I took the opinion of the Registrar of Deeds. The question arose whether in the Transvaal fixed property could be transferred in the name of a coloured person. The opinion I held was that there was nothing to prevent it except in Townships where the Townships Amendment Act of 1908 was in force. I consulted the Townships Registrar. I got his opinion the other day. The Registrar said that

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there was nothing in the Law to prevent him from even registering stands in the townships in the names of coloured persons or Cape boys. The question of occupation was another matter. Even if he knew that the person in whose name the property was to be registered was a Cape boy there was nothing in the law to prevent him registering it. There was nothing to prevent the registration even in townships in the names of coloured persons, but under the municipal law it was a different thing whether he could occupy it when once he had got it. When you start making colour and race distinctions you end in a hopeless mess.

(50. *By Mr. Alexander.*) They made no point of the question of ownership of land in the arrangement between General Smuts and Mr. Gandhi. Asiatics do not buy land with a view to becoming land holders—they buy it for the purpose of business. It is in order not to be restricted in their business that they form companies for the possession of land, but the position of the Asiatic with regard to the ownership of land is very precarious. Until they discovered this device of forming limited liability companies, they always had to get land in the name of a white person, and there is one case on record where the European registered owner, who was nominally the owner, went insolvent and the Asiatic lost his property. That was the position in which they found themselves.

51. *By the Chairman.*] The Law of 1885, which is still in force to-day, says that they may not be owners of property.

52. *By Mr. Alexander.*] In the arrangement between General Smuts and Mr. Gandhi the point of fixed property was not raised. The Indians were living in the townships when General Smuts gave them their vested rights, so I do not think that there has been any breach there. I think that General Smuts contemplated that people who were in occupation of land in contravention of the law at the time should be allowed to remain.) I suggest that the enforcing of Clauses One hundred and thirty and One hundred and thirty-one of the Gold Law should be left in the hands of the Minister of the Government, just as it has been all along up till now. Until the Krugersdorp Municipality took action the people had always been under the impression that nobody but the Government could enforce Law 3 of 1885 and Clauses One hundred and thirty and One hundred and thirty-one, and that is why action was never taken. People always thought that the only authority who could take action were the Government. But now the Municipalities found that they had power, and they proceeded apace.

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[Dr. F. E. T. Krause, K.C., LL.D., and  
Mr P. K. Naidoo.]

(Thursday, 10th April, 1919.)

## PRESENT :

MR. ROOTH (Chairman).

The Minister of Justice.  
Mr. Alexander.  
Mr. Duncan.  
Mr. Joubert.  
Mr. de Beer.Mr. Blackwell.  
Mr. J. Stewart.  
Mr. Meyer.  
Mr. O'Brien.

Messrs. Paragon Krishman Naidoo, Hajee Habib, Hajee Dadoo, Frederik Edward Traugott Krause, K.C., LL.D., Lewis Walter Ritch and Bernard Alexander, examined.

53. *By the Chairman.*] (*Dr. Krause.*) We are the representatives of the Indian community of the Transvaal. (*Mr. Naidoo.*) On behalf of the Transvaal British Indians we desire to nominate Dr. Krause, Mr. Bernard Alexander and Mr. Ritch as our spokesmen before this Committee.) (*Dr. Krause.*) I have seen your references and the points which the Committee has been instructed to enquire into. I think that it is best for me, in order to present the case on behalf of those persons who have made me their spokesman, to put the position before you more or less in historical form. I think it is necessary that you should have knowledge of all the facts which I wish to submit to you, facts which are absolutely material in order to give you an opportunity of judging the case in the right manner. (I understand that the Indian population of the Transvaal numbers something like 14,000 at the present moment, but before the Boer war the number was something like 17,000. Those numbers include men, women and children. Of course, the figures are simply approximate, because we have no correct statistics, but the point which I have been asked to emphasise is that the Indian population, instead of increasing, has decreased.) All those people are British subjects. Of course, a number of these Indians originally came from Natal, but a very large number too have been born in the Transvaal. (The number of wholesale merchants among them is, approximately, 150, while the number of retailers is between 850 and 900. I understand that throughout the whole of the Transvaal, the capital invested by these merchants—wholesale as well as retail—is something like eight millions, while on the Rand, the gold-fields, the proclaimed areas, the capital invested by them is



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something like six millions.) Now, that is the position as far as the traders are concerned. The first complaint and the first disability under which the Indians of the Transvaal have been suffering has been under your Law 3 of 1885, and with regard to that Law they wish me to point out one or two very salient features which possibly may not have been emphasised by any witness before you. If you look at that Law, you will see that it refers to "Coolies, Arabs and other Asiatics." The word "Coolies" is prominently placed forward, and also in the first section you will find these words used: "This Law . . . shall include so-called Coolies, Arabs, Malays and subjects of the Turkish Dominions." The point I wish to emphasise on behalf of the Indian community is that evidently the wording of the Law of the Transvaal Republic was due to the fact that a large number of indentured Indians had at that time been brought into Natal. The indentured Indian or the labourer in India is the only person, I understand, who is designated by the name of Coolie. That name does not apply to the higher classes or to the traders; it only applies to the manual servants—to the low-class servants. It may be in the knowledge of the Committee that if you were to apply the word "Coolie" at the present day to any respectable Indian he would consider it an insult, just in the same way as to have called a person a German during the war would have been said to be an insult. So the word "Coolie" as applied to the respectable trader is an insult, because he does not belong to that class or caste. It appears, therefore—and this they want to point out—that (the Legislature of that day, only having come into contact with the indentured Indian or with the Indian of a lower class, did not intend to deal drastically with the respectable Indian, but only with the undesirable class, the labouring class, and intended, if possible, only to prevent that class from acquiring property in the Transvaal. The late Legislature was very generous notwithstanding, and very just, in so far that they made special provision in section two (b) that this provision was not to be retrospective in regard to the acquisition of property. And, as a matter of fact, I think you will know that there were a few Indians who had acquired property—fixed property—under the old Law, and that property is still registered in their names. I think there is only one at Pretoria who acquired property in those days—Haboo Baker. That property has gone in succession to his children) but the fact is that the Transvaal Legislature, although there were very few, specially provided that the rights of these people—this one in Pretoria—should be protected, and that there should be no confiscation of the property. That is the first point which we wish to emphasise distinctly—that it was never the intention of the [S.C. 11—'19.]

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old Legislature to deal with the class of Indians which you have before you at the present moment. In regard to the Company Law, the charge is brought against the Indians that they are going against the Law; but they wish to point out that the spirit of the Law, of the old Law dealing with the acquisition of property, was not directed against the respectable Indian or against the mercantile class, but was only directed against the lower classes, the Coolies, the indentured labourers, Malays and subjects of the Turkish dominions. It also follows incidentally, naturally, that if these people were coming to the Transvaal they would try to trade, but the old Legislature was not afraid of that. I should like to emphasise this point: that up to 1908, right from 1885, from the earliest days of the Transvaal to 1902 when the Gold Law was passed, there were no restrictions to trade so far as the Indian community was concerned. As a matter of fact, until 1919 the Government had taken no steps in order to restrict the right of the Indian community to trade, and, naturally, in that is included the right to occupy premises for the purpose of trade. (The only restrictions placed on the Indian community under the Law of 1885 as far as trading rights were concerned were first that the Indian had to be registered, and secondly he had to pay a registration fee, which originally was £25, but later on was reduced to £3. This was in 1890. Evidently the Legislature came to the conclusion that they did not have to fear competition from the Indians, and therefore they reduced the registration fee, That registration fee was in reality what you might call a trading fee.) (There is a third principle in this Law which should not be lost sight of, and it is this. The Indians had the right, the potential right, to live and reside even among the white community if they so desired. There was no prohibition. There was no prohibition on the part of the Government against allowing the Indian to reside where he pleased. I am not speaking of occupation, because the right of occupation was conceded. The only right which was reserved to the Government in the Law was where it was laid down that the Government would have the potential right of preventing the Indian from living next to any white person.) (The reason for that has been explained by one of our leading cases, and that is the case of *Habid Motan vs. The Transvaal Government*, in 1904, reported in the Supreme Court Reports of the Transvaal of 1904 on page 404. It might perhaps be well if I were to read some parts of the judgment in that case in order to show that the principles which I have enunciated are the correct principles as deduced from the Law itself. The questions raised in that case were in regard to residence and trading. The headnote reads:—

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“ Inasmuch as Law No. 3 of 1885 imposes disabilities upon one section of the community it should be strictly interpreted, and the benefit of any doubt should be given in favour of those affected by it. Section *two (d)* of that Law, as amended by Volksraad Resolution of the 12th August, 1886, art. 1419, does not apply to the business places, but only to the residences of Asiatics. The Government has not the power, therefore, 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.”

Then in his judgment, the Chief Justice, Sir James Rose Innes, said :—

“ It is quite clear from the terms of section *two (c)* that the Legislature contemplated the case of Asiatics settling in the country for the express purpose of trading; and if it was intended to confine the business operations of such settlers within the limits of locations, some definite provision to that effect would surely have been inserted. For it was no small matter, but one of great importance to European and Asiatic alike. If the Indian was to enter the country without restriction and to trade where he pleased, he would be a most formidable competitor to the white store-keepers; and if, on the other hand, his commercial dealings 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. The Law, while recognising his right to settle in the country for the purpose of trading and while charging him a registration fee on arrival, would be insisting on conditions which made such trading impracticable and unprofitable. It would be giving with one hand and taking away with the other. That being, as it seems to me, the position, 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. A man's residence is where he lives, where he sleeps, where his family dwells—not necessarily where he works. True, it has been held in England that, for the purposes of

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certain Statutes, a man's residence may mean the place where he carries on his business. That does not seem to have been the view taken by the Cape Courts. But, even accepting the English decisions, they have no bearing upon the present enquiry, because, so far from there being anything in the language or scope of this Statute to indicate an intention to use the word 'residence' as equivalent to 'place of business,' the indications, as I have endeavoured to point out, seem to be the other way. And in this connection 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.")

That is how the Law stood, and has stood until the Gold Law was enacted in 1908. (You may remember that there were other Gold Laws before that. There was a Gold Law, for instance, in 1895, but it did not affect the position in the least. The next Law we have to deal with is the Law of 1898, Law 15. Now, sir, even in that Law no alteration or curtailment of the rights of the Indians in respect of their trading took place. The particular section is No. 133, where it says that no coloured person may be a licence-holder or in any other way be connected with the diggings, except in the service of Europeans. This particular section and the corresponding section *ninety-two* has been the subject of judicial interpretation of the Courts. That section runs through all the Gold Laws. Now I shall show you how in the Law of 1908 that section has been tampered with, evidently unwittingly, without the Legislature realising what it was doing, and that is what has led up to the present *impasse*. I shall refer you to the case of *Khotas and Co. vs. The Colonial Treasurer* in 1909, reported in the Transvaal Supreme Court Reports of 1909.

The headnote says:—

“The fact that section *ninety-two* of the Gold Law of 1898 prohibited any but white persons from being the holders of stands granted under the section, HELD, not to prevent coloured persons from acquiring and exercising leasehold rights to such stands. Section *one hundred and thirty-three* of the laws, prohibiting coloured persons from being licensed holders or from being in any way connected with the working of the diggings, refers

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only to such licences as diggers' and claim licences, and does not prohibit such persons from holding general dealers' licences to trade on diggings. Section *one hundred and thirty* of Act 35 of 1908 provides that the holder of a stand acquired under Law 15 of 1898 shall not permit any coloured person to reside on or occupy such stand. Where a coloured person was occupying such a stand under a current lease entered into with the holder before the taking effect of the Act, and not due to expire until 1915, HELD, that the holder was not 'permitting' such coloured person to reside on or occupy the stand within the meaning of the section.")

I want to point out to you that this case was brought against the Government, against the Colonial Treasurer, and therefore the Government at the time had full cognisance of the rights of the Indian community and also of the state of the law. I do not think it necessary to read out portion of the judgment, because it only bears out what I have said. (Now we come to the next phase of the legislation. That is contained in our present Gold Law, and although I was a member of the Transvaal Parliament at that time, and I think some of you gentlemen were with me in that Parliament, and although I have gone through Hansard very carefully to find out whether there was any indication of any agitation against the Indian community or any disorder or complaint on behalf of the public for the purpose of curtailing the rights of trading of the Indians, I can find absolutely nothing at all to show that anything of the kind took place. I do not remember from personal knowledge that there was any such agitation, and I have asked these people whom I represent whether they are aware of any agitation which took place at that time against the Indian trader, but they have replied that they know of no such agitation, nor do they know of any disorders.) Before dealing any further with this point, there is one other matter which I should like to bring to your attention, because it is intimately connected with the present position. You will remember that the Law of 1885 was the subject of arbitration between the British Government and the Government of the Transvaal Republic. You will remember also that when the Boer war broke out and justification was sought for the war by the British Government, and when they were attacked and told that they had no justification for making war, Lord Lansdowne made public statements as to the reasons of the British Government, and it was then publicly stated by him that the misdeeds perpetrated by the Boer Government, their treatment of the Indians, especially under the Law of 1885, was one of the greatest justifications of the war. That was the statement made on behalf of the British Government, show-  
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ing what was their feeling in regard to this matter. Lord Lansdowne was a member of the Government, and Mr. Chamberlain was the Colonial Secretary. I have that information from Mr. Ritch. There is, of course, a great deal of rhetoric in a statement of that kind, but I have just given the effect of it, and I understand it is in Blue Book form. At any rate we could send you an extract showing the exact words, but what I have given you is just the gist. Now, I think one should realise that as we are after all living in a world of turmoil, and in days when old prejudices and ideas are being jettisoned, it is only right that you should know what was the feeling of the British Government in 1899—which is 20 years ago. I have not been able to discover anything to show that there was any popular outcry or any popular desire to curtail the rights of the Indian community as far as trade is concerned. I find in the Transvaal Hansard of 1908 on page 717 a speech made by the then Minister of Mines, Mr. de Villiers, in introducing the second reading of the present Gold Law. This was on July 30th, 1908. Mr. de Villiers then only dealt with the principles of sections *one hundred and thirty* and *one hundred and thirty-one*. The speech was a long one, and I do not think it necessary to quote it at length. But even in those days the Indians were quite alive to the fact that their rights were being attacked. The section to which the Indians particularly objected was that which touched on the question of residence. They never realised, however, that section *one hundred and thirty* was going to extend the meaning of section *one hundred and thirty-three* of the old law and was going to deal with the question of their acquiring trading rights or licences. The objection which was made by the Indians at the time was against section *one hundred and twenty-eight*, which is now section *one hundred and thirty-one*, and which was rectified because Mr. de Villiers himself expressed the opinion that it went too far. Mr. de Villiers there said: "I think this section goes too far. It deals with the residence of coloured persons on proclaimed areas, but the matter can be dealt with in Select Committee. I think we should protect the rights of coloured people who have already acquired these rights"—and Mr. Hosken there interrupted with "hear, hear." The Indian community, as I have said, were alive to the fact that their interests were being threatened, and in April of 1908 the Chairman of the British Indian Association, Mr. Mia, addressed a letter to the Colonial Secretary protesting against these two clauses. It appears that in June a petition was presented to Mr. Speaker and members of the Legislative Assembly also protesting against these two sections and especially against section *one hundred and twenty-eight*. (In replying to the second reading debate on the Gold Law

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Mr. de Villiers pointed out that the Government had been criticised for administering the law which was in existence at the time too sympathetically—a fact which he, Mr. de Villiers, regarded as a virtue rather than a fault. Mr. de Villiers also pointed out that everyone seemed to be satisfied with the principles of the Gold Law and that there was no public agitation.) That is the very point which I wish to emphasise: nobody realised definitely at the time that with one stroke of the pen in the future the Indian community would be deprived of the right to occupy premises for the purposes of their trading. Their right to trade was not interfered with, and if you grant and concede the right to trade you must also grant the right to occupy. If the right to trade is given but the right to occupy premises is refused, then it seems that you are giving with the one hand and taking away with the other. If you refer to sections *one hundred and thirty* and *one hundred and thirty-one*, there are one or two points which I should like to point out. Section *one hundred and thirty* is very wide in its terms. It says: "No right may be acquired under this Act by a coloured person." In the old Law the wording was: "No coloured person may be a licence holder." Here it is made wider. (As to what a "right" is, that is a very wide term. I can only give you my personal impression, and it is this: that what the Legislature contemplated were rights under the Gold Law in respect of mining and in respect of the holding of claims and working the claims, because the underlying principle of our Gold Law was not to allow any coloured person to deal in or possess unwrought gold.) It seems to me that the intention never was to curtail any other rights of the ordinary inhabitants of the goldfields, and I shall tell you a reason why I am strengthened in that opinion. According to section *one hundred and thirty-one*, you will see that the Government and the Mining Commissioner have the right to indicate locations and places to live in. It is remarkable that the Government has never taken steps to do so. You have 14,000 Indians in that area, and the most inadequate provision has been made for these people. With the exception of what has been done by a few Municipalities, no provision whatever has been made for this large section of the community, although the Government knew that these people were not employed as servants and were not in the employ of white people on whose premises they could live. I say that no provision has been made. In Johannesburg we have no places for them. There is the so-called Malay camp, of course. I am speaking of the Johannesburg Municipality. There is the native location outside the town, but there is no Indian location, and the Indians have to live all over the [S.C. 11—'19.]

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place. They live in Vrededorp, Doornfontein, Ferreirastown, and have lived there for years. There is the Malay camp. Formerly that was railway property, but it is now under the control of the Municipality for sanitary purposes. It has not been allocated to Asiatics, and I do not know how they live there; at any rate, it is only a small section of the Indian community who live there. No attempt whatever has been made by the Municipality to find a place of residence for these Indians, although there are from six to seven thousand Indians within the Municipal area. I could not tell you how many of those are traders; there are hawkers, merchants and others; there must be a couple of hundred dealers, but it is difficult to say how many. At Germiston there is an Asiatic location, and at Boksburg and Benoni they had some kind of location, which, however, was illegal and has only lately been legalised. As far as the Government is concerned, if it ever was their intention to prevent these people from residing among the whites, no definite attempt has ever been made to meet their requirements. And from that you must arrive at the only logical conclusion—that it was never realised for one moment that you wanted to get rid of the Indians. As the Chief Justice, Sir James Rose-Innes, said in the case of Motan, the Law of 1885 was enacted for sanitary reasons only and for no other reasons. The objections against the Indians in the days of the Law of 1885 were not against the respectable Indians, but against a lower caste, the indentured labourers. There were very few Indians in the Transvaal in the days when that Law was passed. (Hajee Dadoo lived in Pretoria at that time, and there were very few shops there then. Patel is another who has been in Klerksdorp for many years. He came to the Transvaal in 1883. His whole family resides in the country, and he sends no money to India. He is really a citizen of the country.) It was clearly decided in the case of Motan that the Law of 1885 applied more especially to the residence of the Indians and not to their trading. (For the purposes of trading the Indian has the right to be among the white population, but for sanitary purposes the Government has the right to tell the Indians to go and live in certain streets or wards or squares.)

54. *By Mr. Alexander.*] The Law did not prevent the leasing of land to Indians in 1885. The prevailing tenure in those days was not leasehold.

55. *By the Minister of Justice.*] In 1885 the question of leasehold was non-existent; there was quitrent in those days, and leasehold came in in 1886.

56. *By Mr. Alexander.*] The Law of 1885 did not prevent the leasing of land to Indians. The Townships Act came into force subsequently with a view to enabling people to get freehold and give relief to the inhabitants generally.



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(57. *By the Chairman.*) With regard to sections *one hundred and thirty* and *one hundred and thirty-one*, there is a point which I wish to bring to your notice. You will see that in section *one hundred and thirty* the words "reside or occupy" are used. This is rather peculiar, because in section *one hundred and thirty-one* the question of residence is dealt with. It says there "to reside on or occupy ground." And that is really a hardship. The hardship lies in the word "occupation." If the word "reside" had only been there and the words "occupy land" had been omitted, then the Indians, as in the case of Motan, could have occupied premises in respect of trade, but the insertion of that word "occupy" has done all the mischief in the Law, and has taken away therefore any future rights of the Indians to occupy premises and acquire rights of leasehold for the purpose of trade.) Up to that time the Law of 1885 had always given the right of occupation clearly in order to give the right of trading. This Law amends that Law. Section *one hundred and thirty-one* only speaks of the word "reside." It says "no coloured person shall be allowed to reside," but it does not say that he is not allowed to occupy. It says "he shall not reside there." Where that word "occupy" in section *one hundred and thirty* was used advisedly, one cannot understand why in section *one hundred and thirty-one* the word "occupy" was not used, and why a direct prohibition was also made in respect of the occupation by coloured persons of property in proclaimed areas or on the Rand generally. The submission which I wish to make is this, that if you look at the spirit of our Law, the history of our Law, if you accept the principle of our Law that no man shall be deprived of rights which he has possessed unless he shall be duly and fully compensated in the future, because these rights were vested rights which should have continued, and if the Legislature ever intended that these rights should be taken away, then there should have been some indication to that effect. I say that if you look at all these facts, you will come to the conclusion that the mistake which was made was that the Legislature did not fully realise the effect of those clauses, and that, therefore, it was never intended that those clauses should be interpreted in the manner that has been done. And I think that that has been borne out by the decisions which I have submitted. The very fact that the word *Coolie* appears in the Law of 1885 shows that it was never intended to apply to men of the description we are representing, and who have become citizens of our country. At the time your Select Committee was appointed, it was decided to get the Indians to prepare lists in concrete form to place before you, giving under the correct headings details about the various Indian

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traders. Owing to the short time at our disposal we have so far only received 81 of those lists, but we hope to have a number more to send to you later on. These lists show, firstly, the name of the trader, the class of trade he carries on, whether he is a general dealer or a wholesale or retail trader, the time he has occupied his premises, how many years he has been resident, and how long he has been trading in the Transvaal, and also the approximate value of his stock and outstandings and the number of people employed by him. We have not got the succession, and in fact it is very rare that the Indian has succeeded another; generally he has established the business himself. Now you have Hajee Dadoo. He is the man against whom the Krugersdorp Municipality are making an application to oust him. He has been resident in the Transvaal for the last 23 years. He started business originally long before the Municipality existed. He has a value of stock and outstandings to an amount of £50,000. He employs 15 Indians and 4 natives. He is still on his original stand, but they are making application now to oust him under clause 130. He also occupies premises which he has from a Mr. Smit. He has his own premises as a company. I have the petition against him here. You are asking about the case of T. W. Beckett. We are not appealing in that case. The Indian was not a party to the case. Now we also have Mohamed Ismael & Co. here; they are general dealers, wholesale and retail. They have been in occupation at Klerksdorp from 1888 to 1892. I think in 1892 they increased the size of their premises. They have been resident in the Transvaal since 1883, that is 36 years, and they have been trading in the Transvaal since 1885, 34 years. They have stock to a value of something like £30,000, and they employ 15 people. I think that in most cases you will find that the bookkeepers of these Indian traders are white men. I will give you another case, that of Tely & Co. They are wholesale and retail merchants of Klerksdorp and Schweizer Reneke. They have been at Klerksdorp since 1904, and at Schweizer Reneke since 1912. They have been residents of the Transvaal for many years and have been trading for many years. They are affected as regards their property, and in Klerksdorp they will fall under the provisions of the Gold Law. Here is another case, that of Osman & Co.; they live at Boksburg. They have been resident in the Transvaal since 1896, and their capital is something like £6,000. There is this Mr. Tely of Klerksdorp. He has been resident in the Transvaal for 26 years. I have 81 of these lists and they are all signed by the persons concerned. These 81 people, according to a summary which I have here, represent a capital of close on £900,000, and they are all on the Goldfields.

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58. *By Mr. Alexander.*] If section *one hundred and thirty* of the Gold Law is interpreted as it was in the case of T. W. Beckett & Co., then all these men could be turned out at a moment's notice without any compensation, although they are all holding licences. Most of them hold rights acquired under the Gold Law. The amount of capital involved in the Transvaal is about eight millions, but on the Reef, on the Goldfields alone, the amount involved is something like six millions.

59. *By the Chairman.*] Now I should like to draw your attention to a very remarkable circumstance. (You may recollect that when the passive resistance movement was on in 1913 and in 1914, there was no complaint or grievance with regard to the interpretation of sections *one hundred and thirty* and *one hundred and thirty-one*. The Indians were not suffering that hardship, seeing that the Government was not applying these sections to any extent, and therefore the interpretation of these sections was not one of the grievances placed in the forefront by the Indian community. The whole question which was causing the trouble was in regard to the Immigration Law, the question of finger prints, etc.) And in the letter written to Mr. Gandhi by Mr. Gorges on the 30th of June, 1914, these very significant words appear: "With regard to the administration of the 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." And if you will look at the reply to that letter, you will see how Mr. Gandhi understood it and how the Indian community understood it. Mr. Gandhi in the course of his reply says:—

"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

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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."

You will see from that how it was understood, namely, that the existing laws would be administered in a just manner and with due regard to existing rights.

60. *By Mr. Alexander.*] There is nothing in the correspondence that I can find undertaking that there shall be no migration from town to town. Mr. Ritch will be able to inform you further on that particular point. As to the question of holding of landed property, you have seen the reference to that in Mr. Gandhi's letter. They felt no particular grievances on those matters because in the past the law had been administered justly and quite sympathetically.

61. *By the Chairman.*] I have seen an open letter which Mr. Gandhi addressed to "Indian Opinion" before he left South Africa. (As to the meaning of the word "successors," I understand that word to mean anyone who is another person's successor in law. A man may sell his place of business, or may dispose of it in whatever way he pleases, and the person who takes over is the successor. There is one thing which supports that view. The Indians can only bring their heirs out to this country if the latter are under 16 years of age. The word successor could therefore not mean successor by testate. I think the interpretation of the word successor means that you should not stop the man from handing over his business, if he so pleases, to a man who lives in another town.)

62. *By the Minister of Justice.*] I take it from the contents of Mr. Gandhi's letter that the provisions of the Gold Law were actually discussed between General Smuts and Mr. Gandhi, and that General Smuts said: "I am prepared to

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protect the vested rights." You ask me whether the Indians are asking you to go further now. In answer to that I must make the position clear. The people on whose behalf I am speaking here think that the time has now arrived not to speak of vested rights, but they consider that they are entitled, as far as their trade, residence and occupation are concerned, to the full rights of any citizen of South Africa. That is their attitude at present. They are not dealing with the interpretation of the Law, but they are coming to you as the Committee appointed by the Legislature to make representations and to say that the time has now arrived when they should have full civic rights like any other British subject in South Africa.

63. *By the Chairman.*] Yes, they do want to go further than the agreement. It was an agreement not for all time, but until the prejudice of the white race could be overcome and until the white man had learned to understand that the Indians were an industrious and law-abiding people and were among the people of South Africa as part and parcel of the community.

64. *By the Minister of Justice.*] As to the question of vested rights, the position as I understand it was this: General Smuts agreed to administer the existing laws in a just and sympathetic manner and to recognise the vested rights of the Indian community. The interpretation which they give to this is that Mr. Gandhi and General Smuts were not dealing at the time with A, B, or C as traders, but they were dealing with the rights of the Indians as a whole, and therefore these rights do not refer merely to those rights which exist, but to any potential rights which they may get. The vested rights of a community I understand to mean that everyone should have the right to trade—it is an inherent right. Let me give you an instance of what I mean. Some of these men started trading as hawkers; to-day they are big merchants. The hawker had the vested right of trading; surely there was no intention of saying "You have the vested right to trade as a hawker, and therefore a hawker you shall remain." Would he not have the right to expand? And after all, that is all it would amount to.

65. *By the Chairman.*] The vested right of the Indian to trade was not a right attaching merely to a few people, to the few people who were trading at the time, but it was the inherent right of any Indian in the country; it was the right even of the child unborn at the time the agreement was entered into. I take it that under the understanding arrived at between General Smuts and Mr. Gandhi the rights which the Indians had acquired and which had been vested would be protected, even if those rights might possibly be interpreted to be in conflict with the then existing Law. The

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agreement which was arrived at did not solely affect the Indian community which was living on the Goldfields; it affected the whole of the Indian community throughout the whole of the Transvaal. The agreement of 1914 brought into line the Law of 1885 as affecting certain areas; it does not affect the Law of 1885 as affecting other areas. The Indian community as a whole had a vested right to trade. This right to trade and occupy on the Rand only had been curtailed to a certain extent. It had been taken away, but the other rights had not been affected. The right to trade of the Indian community was a recognised right under the Law of 1885; it was taken away only in regard to a certain area, but the mere fact that an Indian had not opened a shop on the Rand did not deprive him of the right to do so. The locality in which he could exercise that right was curtailed, and that was set right under the agreement.

66. *By Mr. Alexander.*] General Smuts, as far as I know, did not ask the Indian community to supply him with a list of the names of the Indians who were trading at the time.

67. *By the Minister of Justice.*] It is quite true that every Mining Commissioner has lists of the Indians trading on proclaimed areas. I find the following interesting remarks in "Indian Opinion" of the 29th of July, 1914, in a farewell letter written by Mr. Gandhi before he left South Africa: "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 in themselves are 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 total prohibition by administrative measures 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 have read that to show that he specifically refers to the right of trade. That is in the open letter which Mr. Gandhi wrote at the time.

68. *By the Chairman.*] I understand it is one of your terms of reference to consider the question of the repeal or otherwise of sections *one hundred and thirty* and *one hundred and thirty-one*, and also to consider the question of the Law of 1885, and I understand it is also one of the terms of your reference to consider the question of the acquisition of property by the Indian community in the guise of companies which have been registered under the Company Law. The

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Indian community wish me, on their behalf, seeing that you have to consider the repeal or otherwise of these provisions, to place a few considerations of a general nature before you, so that you should at any rate be able to appreciate their position. I think there is no doubt—and this is their considered opinion—that the reason of the opposition at present against the Indian trader, is not, as was the case in the days of the passing of the Law of 1885, animated by sanitary considerations, but is purely one of race prejudice and trade opposition. (As far as the race prejudice is concerned, well, it is hardly possible to deal with that. It is ingrained to a certain extent in the South African community, and it has been transferred from the opposition to the native to the Indian community. Why they should transfer this race prejudice which exists against the native to the law-abiding and loyal citizens of the British Empire is difficult to say. As far as trade competition is concerned, there is an allegation made to the effect that the reason why people do not wish to have the Indian trader is because he is an unfair competitor against the white trader. That is the only argument. It is said that he is an unfair competitor for two reasons. The first reason is that he lives on next to nothing, that his modes of life are not those of a white man, and that his needs are less, and that he therefore can sell his goods cheaper than the white man; and, secondly, that the money or profits which he makes in this country are not used for any purposes in this country, but are diverted and transferred to other countries, and especially India. Until such time as our economic ideas regarding competition have entirely altered, they say they have always understood that competition was the soul of any community. The greater your competition, the better the interests of the community are safeguarded, because the general idea has been that where there is no competition, there is a monopoly, and it is also a pretty general feeling that monopolies are responsible for high prices, and are in conflict with public interest. They do not understand what you mean by unfair competition. They say competition may not be good for the competitor, but it is good for the public, and if you have to consider the public interest and the public rights, you ought, instead of speaking of unfair competition, to support them. They hold that competition safeguards public interest. They say that that is logical, and you cannot get away from it. As regards the statement that their standard of living is not as high as that of the white man, and that therefore they can sell more cheaply, they want to tell you this. They say that that is a fallacy—it is more than that, it is untrue. They say that the persons who use that argument are persons who know nothing about the Indian community. They say that they

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are able to prove to you that the standard of living, the mode of living and the money they spend in their households is equal, if not greater than what is spent by the white man. They are certainly more careful in their living and they are cleaner, especially in what they eat, and they hold that they spend more in luxuries than possibly the white man does, and the luxuries they indulge in are certainly not detrimental to the individual. Then they say that you tell them that they are unfair competitors because they send their money out of the country, and they ask you whose fault that is, if it is so. They say that it is the fault of the Legislature. How can they invest their money here in South Africa? What can they invest their money in? You give them no opportunity of investing their money in fixed property. They can invest their money in mortgage bonds, but after all that is only a very small field in which they can invest. And if they invest in property in that way, they can never foreclose and they can never buy, and therefore they are at the mercy again of the white man. So you see if there is anyone to blame in regard to allegations of that description, it is the law and the white man who are to blame. They say, "If you give us the right to acquire property we shall avail ourselves of it, and where we have had the right to acquire property we have invested our money here and we have increased the prosperity of the country." Their contention is that the standard of living of the Indian is equal to the standard of living of the white man in the same class. The standard of living of the average Indian, they contend, is at least the same as the standard of living of the white man in the same class. I can give you an instance of one man who pays his clerks better than the white man pays his clerks. It is the case of one big Indian merchant, Mr. Coovadia, who has been in the country for many years. He has 13 clerks, you might call them shop assistants. Their wages average from £10 to £20 per month, plus free board and lodging, washing, tobacco, and whatever they want in the shop. They are all Indians, and with regard to their food, they are very particular. No man who works for him will be content with rice, they all want meat. There is only a certain class of Indians who do not eat meat. As to their lodging, special quarters are provided for them. They do not each have a house of their own. Proper rooms, however, are provided for them. Mr. Coovadia tells me that he himself has a house for which he pays £25 per month, and his actual expenses are something like £350 per month—those are his trading expenses.

69. *By Mr. Alexander.*] They cannot spend their money on going to theatres, in fact they cannot go anywhere, but in spite of that people complain that they send their money out of the country.)



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70. *By the Chairman.*] They wish me to point out that the Legislature is to blame to a very large extent. They also wish me to bring to your notice that these people who are resident here in South Africa have no desire to go back to India, and they give you proof of this by the fact that they are providing for the education of their children. Only very recently they had a school built which cost them £7,000. They have provided their own teachers. These people are true residents of the country, and their children are born here and mean to live here. Their connection with India has practically ceased. Ever since the Immigration Law has been passed they have been cut off from India, and their only salvation is to live here and become as civilised as they can. They have their own hospitals, and they have their own funds. They are a law abiding section of the community, and you do not hear of any strikes among them. The passive resistance movement was a very different matter from a strike—it was a movement against the Government. They want you to bear into consideration that they are a law abiding section of the community, and as far as the Indian community is concerned, you will find that they do not belong to the criminal class—the proportion of criminals among them is extremely small; very few of them go wrong. They say “we are loyal and law abiding subjects, and we appeal to you to do us justice. It is now said that you do not wish to live next to us, but in the war you fought next to us. Your blood mingled with ours. You people who speak of patriotism, are you going to allow your sense of justice to be overridden by your own prejudices? Are you going to forget that in war time we were standing next to each other; fighting side by side, dying side by side, sharing dangers and perils together? Are you who have fought next to us going to say in peace time, ‘We do not want you’? Are you going to prevent us from living? We have died for you, and are you now, now when the dangers are passed, when the enemy has been defeated, are you now going to prevent us from living?” And those, sir, are the facts which I have been asked to put before your Committee.

(71. *By Mr. J. Stewart.*] About 850 Indians from South Africa went to the war.)

72. *By the Chairman.*] I have been asked to appeal to the sense of justice of the white population and to point out that it is, after all, only prejudice which you have to deal with. As Mr. Gandhi pointed out in his letter in the “Indian Opinion,” it is prejudice which you have to overcome, and it is the sense of justice of the white population which has to overcome that prejudice. Now in regard to the forming of these companies, the position which the Indian community takes up is this: They say it is true that the law of 1885

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prohibits us from acquiring immovable property, but at that time nobody thought of a Company Law. It is a truism to say that everything which is within the Law is legal and everything which is out of the Law is illegal. What is in the Law is legal, and if the Legislature has not provided against it then you cannot prevent anyone from availing himself of his rights—the rights which he has under the Law and in order to protect himself and to increase his wealth and prosperity. They say that the argument against them is that the spirit of the Law is against them acquiring property. The spirit of the Law was that the Indian should not acquire property. They say what is the difference if Mootan sits on property and holds property and is not allowed to do so, but the next day Mootan and his clerk hold the property and are allowed to do so? It then belongs to Mootan and Company. People speak of an evasion of the Law, but they submit that that is really a misnomer. “Evasion” is a shibboleth which to a lawyer—a good lawyer—should have no meaning at all. Everything is within the Law or it is not. But they go further and say that even if you accuse them of having evaded the spirit of the Law they have done so with the full cognisance of the Government. Ever since 1909, when they registered their companies, the Government has registered them. The Government was aware of these registrations, and the Government had every right to have gone to the Courts of Law to prevent them from doing so. The Government had the right to refuse the registration of the companies, and it is not for the Government to say now “You have evaded the law,” seeing that the Government has been a party to it. The Indians say that ever since they went in for the registration of their companies the Government never for one moment attempted through the Legislature to bring in a Law preventing them from doing so, and they hold that, in view of all the facts, the Government cannot come forward now and accuse them of having evaded the Law. The argument that they have broken the spirit of the Law, they submit, is merely another argument under which you are hiding your self-interest and prejudice. That is their attitude. They say: “Perhaps you are not doing it consciously, but unconsciously you are doing it.”

73. *By Mr. Meyer.*] The object of the Law of 1885 was not to prevent the lower-class Coolie from trading in the Transvaal, but to prevent him from acquiring property. The Court has laid it down that the reason why these provisions were inserted was for sanitary purposes, and that was the attitude which the Boer Government took up when the matter was raised by the British Government. We reserved the right to tell the Indians to live in certain parts for sanitary

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reasons. They did not know the Indians—they were only acquainted with the indentured Indians, the low-class labourers in Natal. The trader is not a Coolie. The labourer is a Coolie. There were very few traders in the Transvaal in those days. They feared that this lot of indentured labourers might emigrate into the Transvaal. There were very few traders in the Transvaal in those days. Hajee Habib was one of those who were there. He was allowed to trade at that time and was not interfered with.

(74. *By Mr. Joubert.*) The ordinary public, the people who do not think, and who do not come into touch with the Asiatic, they call every Asiatic a Coolie, no matter what he is. One does not, however, expect that from the Legislature. Apparently that was the position in 1885. They were only acquainted with a particular class of Indian. There were a few of the better class, but they were in a very small minority. The Legislature in those days was afraid of an influx from Natal, and that was what they desired to provide against. I hold that in 1885 the word Coolie was used in order to indicate the man coming from Natal. The Indian who traded at the corner of Church Street and St. Andries Street, where Mr. Hamilton's shop is now in Pretoria, was M. C. Camroodien. He is dead now. That was in 1884. It is quite true that even in those days the decent class of trader was to a certain extent known to the people—although there were very few of them; the legislation, undoubtedly also applied to them, but their right to trade was never restricted.) So far as I know there has never been any agitation against the Indian dealers on the part of the rural population. The rural population gives great support to the Indian traders. The Asiatic dealer has been a friend of the rural population. I spoke of race prejudice against the Asiatics. I did not mean to convey that it was prejudice on the part of the Dutch or English race against the Asiatics—it is a prejudice against the coloured race. I do not wish to go so deeply into the matter as to say that it is a prejudice on the part of any particular section, and I do not mean to say that the prejudice comes from the rural population. It is not a general racial feeling coming from the rural population—the prejudice comes from the dealers and traders. I do not think that when General Smuts made the agreement in regard to vested rights, he referred only to rights existing at that time. I think General Smuts dealt in general with the rights of the Asiatic community—he dealt with the inherent rights of the Asiatic community of South Africa, their right to trade—that was their vested right. Their right to trade was affected only in certain areas of the Transvaal, but none the less theirs was a vested right. The position is that even if they did not all exercise

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that right at that time, even if they were not availing themselves of that right, they could have that right—it was theirs. (Say, for instance, to take another example, a man was a hawker at the time; that fact would not prevent him from becoming a wholesale dealer later on. Surely nobody wishes to say that he should always have remained a hawker. He had the right at the time to trade—consequently, carrying the point to its logical conclusion, he had the right to expand his trading.) Many of those men were only hawkers in olden days, and have become great traders since, just as many of our present day millionaires started as hawkers in olden days. You ask me what were their rights which were not vested then—they had no right to acquire property, but the law did not interfere with them and it specially protected those who owned property at the time in 1885. They cannot acquire property yet, but they get property as companies to-day. According to our Company Law the property does not belong to the individual but to the corporation. You ask if they are not just availing themselves of a loophole in the Law—but I ask, how can you abuse the law if the Law allows you to do a thing, if it does not disallow you? There is another point; they say “you tell us that we must not have property, but why not? Here in the Cape the coloured man and the Asiatic have acquired property, and they have not done any harm in having property.”

(75. *By Mr. de Beer.*] You ask me to give an explanation of the word bazaar as appearing in the Law. I should say it is a place where trade is carried on. In the Law of 1885 the word bazaar is not used at all. There are a number of other words used indicating the places where they should live, the Law speaks of streets, squares, etc., but it does not make any reference to bazaars.) In regard to the use of the words vested rights and the interpretation given by Mr. Gandhi, you must not forget that he also speaks of successors there. Say a man has a business in Johannesburg, and the successor lives in Pretoria, there is nothing to stop the man who is living in Pretoria to go over to Johannesburg. If you grant that, and I submit that you cannot get away from that, then you must also grant that the man has the unrestricted right to shift his place as often as he wishes. The successor is always a newcomer, but my contention is that the successor need not necessarily have been carrying on a business such as the man from whom he is taking over. I hold that they all have the inherent right to trade. None of the men who are here were indentured labourers in the past. I do not say that they all had capital when they came in, Some of them worked themselves up, while others came with capital.

76. *By Mr. O'Brien.*] You will find that the petition which has been presented does not really say that the agreement

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entered into between General Smuts and Mr. Gandhi should be maintained. The petitioners are concerned with the safeguards and privileges which they have hitherto been allowed to enjoy. The effect of the agreement was that the question of immigration was settled and a general promise was made by the Government that in respect of the administration of the existing law, where the Indians suffered under disabilities, the law would be administered in a just manner.

(77. *By Mr. Duncan.*) I interpret the word "successor" to be any person, any successor in title, no matter how he acquires his right to succession, whether he purchases it or otherwise. That is the only way in which you can explain it. It cannot mean, as has been contended, a man's heirs, because he cannot bring any of his heirs over the age of 16 into the country.) (As to the place where a successor has to come from, I do not think it necessary that a man to succeed another must live in the same place. There is no reason why a successor should not come from a different place. One man may live in Johannesburg, and his successor can come from Pretoria. The position as it appeals to me is this; either the man has the right to trade, or he has not. You ask me how a man can succeed to the right to trade; you succeed to the other man's rights by purchasing his goodwill with his business. It must have been realised by General Smuts and those people that some of these Indians only had short leases and could not acquire fixed property. Surely you are not going to take away that right to trade when the man's lease runs out. There could never have been the intention that the man living at 6, Commissioner Street, for instance, could not move to 66, Commissioner Street. I say that the right to trade is a vested right which the Indians can exercise anywhere in the Transvaal. The position really is that the successor does not succeed to the right to trade; he succeeds to the business. He has his inherent right to trade; -it has been given him by Law.) Every Indian has the right to trade according to the Law of 1885. There is no question of a man in Krugersdorp saying: "I am giving my right to trade to another man from Boksburg." That man from Boksburg has the right to trade, but the man in Krugersdorp is handing him over his business. I say that every Indian in the Transvaal has the inherent right to trade, whether he was or was not trading in 1914. The child unborn has the right to trade. The word "successor" means the successor to a man's goodwill and business. As to the question what is the good of using the word "successor" if every Indian has the right to trade, I submit that that is purely a legal question which the Committee will have to decide. It is not a question of interpretation by me.

(78. *By the Chairman.*) Even under the agreement with Mr. [S.C. 11-19.]

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Gandhi an Indian, after having made another man his successor, would have the right to set up a business again for himself in a different place. It was never intended that you should restrict the man's right to trade in any way. If a man has been in business for twenty years and gives up, would he not be able then to go away for a little while and come back to restart. The man, after all only disposes of his business, but not of his right to trade. You are referring to that letter containing Mr. Gandhi's interpretation and definition, and you ask me what is in my opinion the necessity of putting in the words "no matter how often he shifts his residence from place to place in the same township." I only saw that letter for the first time to-day. I think it was merely used as an illustration and nothing else.)

79. *By Mr. Blackwell.*] I say that undoubtedly if an Indian in Johannesburg sells his business to an Indian in Pretoria, the latter can transfer to Johannesburg. I do not accept that the man in Johannesburg or the man living in a particular township only has the right to shift about in the same township. If the interpretation were correct that the man could only shift about in the same township, then of course the successor would have a greater right, but we do not accept that as the correct interpretation. If an Indian sells his business and his stock and his rights, whatever they be, the man who buys would have the right to carry that stock and business wherever he pleased. He could even become a hawker if he so decided. I contend that the successor could if he liked shift the business to another township. You have Mr. Gandhi's letter before you dealing with the question of vested rights. I have indicated to you what the Indians on whose behalf I am speaking have taken that letter to mean. I have given you the position as it is understood by these Indians. I said in my evidence that the Indians claim that they carry on their business in the same way and at the same expense as the European traders; I said that their competition was not unfair. (I have not read the whole of the Profits Report of the Cost of Living Commission; we have not had it in Johannesburg; we have only had the extracts published in the press, but I have read in the papers that it was stated in Parliament that the Indian trader has not been a profiteer. I did not see any statements to the effect that the expenses of the Indian wholesale trader were one-third of those of the European and those of the grocers five-eighths of those of the Europeans.) I did not say that the Law of 1885 was specially directed against the Indian Coolie as apart from the Indian trader. I said that the Indian indentured labourer in Natal was known to the Legislature, and there was a fear that the same kind of people would come into the Transvaal, and that was borne out by the use of the word "coolie."

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The object of the Law was to prevent as far as possible an invasion of coolies from Natal. The Law was not aimed against the Indian trader. His right to trade was unrestricted except for a registration fee. It is quite correct that among the public generally the fine distinction is not drawn between the words "Coolie" and "Indian," but you cannot say that that should be so in the legislation. I have known that there was a marked difference since my childhood days. Having been born in South Africa and having lived among the people, I knew that there was a distinction between an Indian and a Coolie. It is generally correct to say that in those far back days of the Transvaal all Indians were known to the general public of the Transvaal as Coolies. The Law speaks of the native races of Asia—they are not Indians; you have the Chinese and the Japanese, too, but you will find that in enumerating the various classes of people concerned in the Law that they only referred to the Coolies and not to the Indians. What I mean to convey is that in specifically selecting the Coolies the Law meant to direct its restrictions specially against the Coolies. In speaking of Coolies, it appears to me that the Legislature did not have in mind the respectable class of Indian population, but only the Coolie, and it was against the Coolie that they intended to legislate. I do not think the reason for the introduction of the Law was that the Indian trader had started to settle in the Transvaal. I said that until the passing of the Gold Law of 1908 there were certain restrictions affecting the Indians, but they did not affect their trading. If you hold that under Clause One hundred and thirty-three it was the opinion of the Legislature to exclude the Asiatics from proclaimed ground, then I can only say that your opinion is against the opinions of the Court. I can only give you what was the view of the highest Court. If you wish to pit your opinion against that, very well. The Courts have interpreted our Law to mean what I have stated, and I cannot get behind that. I have given you the opinion of the highest tribunal of the land, and we have to respect that. In regard to the question of vested rights, I said that at the time of the settlement the Government was not dealing with A, B, and C, but with the community as a whole. Mr. Gandhi on the one side was representing the Indian community and General Smuts on the other was representing the Government. The agreement entered into was binding in so far that the Indian community were grateful to the Government for the concessions made. But it was merely a temporary arrangement, and the Indian community reserved to themselves the right to press for any further rights in the future. Mr. Gandhi at the time was certainly acting on behalf of the Indian community. Since 1914 fresh Indians

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have undoubtedly continued to come on to mining property—Indians who were not on mining ground in 1914. They have been allowed to go there by the Government without having been stopped and we now claim that they are allowed to remain. The Government have seen them come and they have granted them licences for years and years. (Even the Municipalities have done so, and even grocer's licences have been given them time after time since 1912. It was in 1912 that the Law laid it down that grocers' licences should be left in the hands of municipalities. I do not agree that it was part of the arrangement entered into in 1914 that no further businesses should be opened. That certainly was not how it was understood by the Indians. If other people understood the agreement in that sense, the Indian community certainly did not understand it that way at all.) I know nothing about the case of Mr. Bhyat at Boksburg, and about the agreement which you say was arrived at in that case.

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## PRESENT:

Mr. ROUTH (Chairman).

The Minister of Justice.	Mr. De Beer.
Mr. Alexander.	Mr. Blackwell.
Mr. Duncan.	Mr. Meyer.
Mr. Joubert.	Mr. O'Brien.

*Messrs. Paragon Krishman Naidoo, Hajee Habib, Hajee Dadoo, Frederik Edward Traugott Krause, K.C., LL.D., Lewis Walter Ritch and Bernard Alexander, further examined.)*

(80. By Mr. Alexander.] (Dr. Krause.) I understand that companies have been registered in the Transvaal since 1909. I can give you a little information on the question of the formation of these companies, which I have from Mr. Bernard Alexander. This is merely a statement of fact. Mr. Alexander was registering some Indian companies at the time, and he went specially to the Registrar to do so. An objection was raised by that official, who said, "No, these people are Indians." Mr. Alexander replied, "Yes, I admit that," and the Registrar said, "I cannot register them." Mr. Alexander then asked the Registrar if he would give that decision in writing so that he could go and put it before the Court. The upshot of it all was that the Registrar registered the companies. Then afterwards Mr. Alexander went to the Registrar of Deeds for the purpose of registering the immovable pro-



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perty of the companies. Exactly the same thing happened, and Mr. Alexander again asked that the Registrar should give his decision in writing, but the end of it was again that the immovable property was registered, the Registrar having full knowledge that the property was owned by an Indian company. This was in 1909, long before 1914. (*Mr. Bernard Alexander.*) It was before the Townships Registrar in Johannesburg; I think it was Mr. Fleischer, but I am not certain whether it was he.) (*Dr. Krause.*) It was a generally known thing to the public, and consequently the Government must have had cognisance of it. In regard to the question of Indians shifting from town to town, I have seen the letter to Mr. Gorges in which it is said that some Indians are dissatisfied that full inter-provincial migration is not permitted. I understand that the point raised was that difficulties were placed in the way of Indians to go from one province to another, but the question of migration or movement in the province itself was never denied nor was that right ever questioned. I can only tell you, of course, what they tell me. These are the facts which have been communicated to me, and I find nothing in the correspondence about inter-town migration. I have looked into the papers, but I can find no reference whatsoever to inter-town migration. The limitation that a successor can only be a man living in the same township as the person he succeeds is not justified by anything in the correspondence. The Mr. de Villiers referred to in the letter of the 7th of July must be Mr. Jacob de Villiers, who was Minister of Mines in the Transvaal Responsible Government. The letters conform absolutely with the statement which I have made—that it was never the intention of the Legislature to take away any rights of the Indians or any of the privileges which they were enjoying up to that time.

81. *By the Chairman.*] I quite see the point that this Committee is dealing with the matter from the point of view of policy—from the point of view what the expressed intention of the Government was.

82. *By Mr. Alexander.*] The assurances which were given in the British Parliament and in the Transvaal Parliament lulled the Indians into a sense of security that their rights would not be interfered with at all, and I may say, too, that the Government itself up till now has never taken any action at all under that Law—the Gold Law. I do not think that Mr. Gandhi, when he wrote that letter of the 30th of June, had it in his mind that the settlement was the final settlement of the whole Indian question. I think the letter of the 30th of June itself shows that the matter was not finally settled. In regard to the question how the agitation against the Indians started and whether the general community or the farming community asked for any restrictions to be imposed, I can

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give you some facts from my own personal knowledge to show how this agitation has arisen. I was in the case which came before the Magistrate and which led practically to the action by the Krugersdorp Municipality. You will remember that in 1912 the Local Government Ordinance was passed by the Provincial Council of the Transvaal, whereby the right to issue certain licences was vested in the Town Councils, and among those licences were grocers' licences. The Johannesburg Municipality has not availed itself of that right, but the person who goes to the Receiver of Revenue and receives a general dealer's licence is entitled to carry on business as a grocer at the same time. The Krugersdorp and other municipalities have availed themselves of that power to make bye-laws in respect of the granting and the refusal of grocers' licences. We shall send you a copy of that Ordinance. (The Local Government Ordinance only gave the Town Councils the right of refusing the granting of licences on certain specified grounds. For instance, a man's place was not suitable for the sale of food-stuffs, and a licence could be refused on that ground. There is one clause—90 (e)—which says that if a man is, in the opinion of the Council, an undesirable individual to hold a licence, such a licence can be refused.) (The whole of the trouble in Krugersdorp has arisen from competition among the various trading concerns. Certain traders who are members of the Council have been the cause of the trouble which has now arisen, and the first step which the Council of Krugersdorp took was to refuse the granting of a licence under the general clause that the person is an undesirable person to hold a licence. There is an appeal to the Magistrate from that decision, and the Council must satisfy the Magistrate that the reasons are valid according to law. Our Courts have decided that you cannot ask for actual reasons unless it is covered by the section of the Law. You cannot go behind their methods in arriving at such a conclusion, and it is quite sufficient to state that that is the decision, and only by a clever way of driving them into a corner can you get at the reasons. We went to appeal to the Magistrate. I had the case. At that time the councillors still came to Court to give evidence. Now it has been decided that you cannot even subpoena them because the Magistrate is sitting only as an administrative officer. Therefore the Town Council can nullify the inquiry by simply refusing to attend. They did attend, however, and by judicious cross-examination and by eliminating all other reasons, which could be reasons, I obtained answers from these gentlemen that the only reason why the licence had been refused was that the man was an Asiatic and that for that reason he was regarded as an undesirable person to hold a licence. That is against our law, and the Magistrate therefore granted the licence. He counted the number of votes for

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and against and eliminated those who had taken that as a reason that because the man was an Asiatic he was an undesirable, and after that the majority was in favour of the granting of the licence. Shortly after they did the same thing again. I may tell you that the resolution of the Council was typed out before these men had even come into the Council, and as soon as they had heard the address of the attorney of the applicant the resolution was pulled out and read out. That appeared from my cross-examination of the man who moved the resolution. The next case was even more important because that was the case which led to the putting into operation of section *one hundred and thirty* of the Gold Law. It was the case in which Mr. Patel was implicated. I appeared on his behalf. He has most beautiful premises, most excellent premises in Krugersdorp, which would be a credit even to Adderley Street. One of his men applied for a licence, a grocer's licence. The Municipality came forward with their stereotyped resolution that he was, in their opinion, an undesirable person, and the licence was refused. I could not put the councillors into the witness-box. I produced evidence from prominent men at Krugersdorp that the man had been in Krugersdorp for 28 years and that there was not a single black mark against him, and the result was that the Magistrate came to the conclusion that the matter had not been considered at all. He asked them how they had arrived at this resolution, and then Mr. Phillips, the attorney of the Krugersdorp Municipality, held up section *one hundred and thirty* of the Gold Law. The Magistrate retorted that if these people had contravened the law there was a law which the Municipality could avail itself of. He said, "I am not here to deal with that. I am here to find whether this man is an undesirable person to hold a licence, and I find that he is not." The Krugersdorp Municipality then availed itself of the Gold Law and rushed to the Court against T. W. Beckett and Co. and got judgment. In that case the Indian concerned was not even joined; the Municipality went for the white man. To show that the attitude taken up by the Krugersdorp Town Council and the assertion that they are the protectors of the ratepayers is mere camouflage and nothing else, let me draw your attention to these facts and let me show that they assume an authority which they do not possess. Now they go under the cloak of being protectors of the ratepayers, but they are really taking action against rival traders. There is a case which was decided in the Transvaal High Court, Maserowitz and Maserowitz *versus* the Johannesburg Town Council, in 1914. It was a question whether the Municipality could or could not refuse to grant a cycle dealer's licence. The trouble arose in respect of the refusal of the Municipality to grant a licence. Mr. Justice Mason, who gave the judgment, defines [S.C. 11-19.]

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the duties and powers of Town Councils, in which he says: "It is not, of course, easy to specify the powers which are necessary or incidental to municipal government, which varies so much with both place and time, but they may be grouped generally under the heads of Public Health and Sanitation, the control of streets, traffic and public places, the regulation of buildings, the provision of public amenities, and the establishment, management and control of what are known as the public service utilities, such as water and lighting, the prevention of fires and similar objects in which public combination is necessary for effective results, or individual activities require local supervision." In other words, Mr. Justice Mason holds that the Local Government Ordinance is *ultra vires* in respect of these very licences which were decided. I mean to say that the Central Government is the right authority to deal with the matters affecting trade and commerce and it is not for the Local Government authorities to try and oust Indians from trading. This is a matter which we consider should be dealt with by Parliament, and you should not allow Municipalities, as Mr. Gandhi prophetically remarked in his letter, to use laws and call in the assistance of provisions which were never intended that way as means of oppression against Indians.)

83. *By the Chairman.*] We are testing the question of the Transvaal Local Government Ordinance being *ultra vires*, and we have a decision in our favour already. The matter is not under appeal; we want them to arrest one of these men.

84. *By Mr. Alexander.*] It would not affect the position of the Indians because they are now being proceeded against under the provisions of the Gold Law. In regard to the remarks concerning Indians in the Profits Report of the Cost of Living Commission, I think it was pointed out there that Indians were not profiteers.

(85. *By the Chairman.*) (*Mr. Ritch.*) I propose to touch only on certain aspects of the case with which I am perhaps rather better acquainted because of my more intimate association with the Indian community during something like 20 years and also because I understand the Indian psychology. I have perhaps had certain advantages in this respect which Dr. Krause has not had. In what I am asking to be allowed to submit I shall be acting as the mouthpiece of the Indian community and these gentlemen here. (What I am asked to submit is this—that stripped from all camouflage the whole of this thing boils down to a question of status. It was a question of status as far back as 1885; it was a question of status in 1903 when the first Registration Ordinance was introduced in the Transvaal by Lord Milner; it was a question of status in 1907 when the first Registration Law was intro-

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duced; and similarly in 1908. In 1913 again when the Immigration Act was introduced it was a question of status, and the same again in 1914 when the Indian Relief Act was passed. And also it is equally a question of status in regard to this particular Statute which is at present under discussion, the Gold Law and the Townships Amendment Act, and so I am asked to submit to you that right away from a little beyond 1885 this condition of things, this relegation of these people to the status of undesirables has been protested against in season and out of season by the Indian community.) Blue Books are full of it. One has only to turn up Cunningham Green, who was the British Agent in Pretoria. I know that a deputation waited on him and that protest after protest was entered into with the Government in Pretoria through his medium. That culminated in the war; at any rate it was one of the pretexts for the war. (In 1903 when Lord Milner was Governor, or acted as Governor, this question of registration arose for the first time. The protest was so emphatic that Lord Milner called the Indian community together and told them that their acceptance of this document—which was not statutory, as there was no legislation—would be a protection of the Indian community and that it would not be enforced by law. The first registration certificate was a little pink document which each Indian carried with him. What these people protested against was this mark of inferiority being imposed upon them, this system of having to carry passes like Kaffirs. Lord Milner told them not to object as the thing would protect them, and he asked them to accept it. I was present myself. The whole business is on record, and if you wish I can supply you with the Blue Books dealing with it which will give you the information in printed form. In 1907 the first Registration Law was enacted, and in that year the Indian community at once rose up in arms.)

86. *By the Minister of Justice.*] That was the first Act passed by the Responsible Government—it passed in one day. The Indian community rose *en masse* and the whole business culminated in the Passive Resistance movement which was only stilled when legislation was introduced calming the Indians and purporting to remove to some extent what was regarded as this bar sinister on the community.

87. *By the Chairman.*] The campaign was renewed in 1912, 1913 and 1914; it resulted in a number of deaths, in hundreds of imprisonments and in huge sacrifices in life and money; the people were twitted about this campaign, making all this fuss about a matter of sentiment. You will recollect that the people were twitted again and again with making all this fuss, sacrificing their businesses, their lives even, and going to gaol in hundreds over what was a matter of sentiment. What I was just about to observe is this. It is true that a great [S.C. 11—19.]

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deal of that agitation was agitation in respect of what others called sentiment, but what these people called self-respect, and what I have been asked to submit is this—that if that be true, it is not true that they were influenced by sordid motives and considerations, and people who can do what these people did year after year and stand by this protest against having to submit to this mark of inferiority are a people whose undesirability might well be emulated here. I have lived here, sir, for thirty years; I have married a woman here who may fairly claim to be a daughter of the soil, and I have children who are born here. My interests lie in this country, and I submit that that kind of undesirability might well be emulated; a people who are prepared to stand by ideals in that manner cannot be called undesirables. I was saying that these people have protested throughout against this stamp of inferiority, and it is that which they are protesting against even to-day. During the war they suspended any agitation at all. They have never lost sight of this 1908 Gold Law. And they determined—I know because I have been in their counsels all the time—that during the war they would in no wise agitate against these things. The Gold Law, sir, was a grievance even in 1914, although it was not made the main grievance. As a matter of fact, the agitation in those days was against the Immigration Restriction Law. The Gold Law had not been so much to the fore. They relied on the Government's assurance that the Law would be ignored and very little attention was directed to it, although it was never lost sight of. Now the war is over and these people have lately been feeling that the time has arrived for this old bar sinister to be removed. I am perhaps using their possibly crude, but none the less very picturesque, language. They have not come to ask how many kicks they are going to get in the future; they feel that there is a feeling abroad that they must submit to more kicks. They have come to say that they have been kicked undeservedly. They stand where they have always stood in their contention that they have never been undesirables, that they are not coolies, and that they do not deserve to be subjected to differential legislation, and they want these old disabilities to be removed. They have been waiting for a better feeling to be engendered, and now that the war is over they have come forward to ask you to have those disabilities removed. They have proved their merits as British subjects in other parts and here. They have contributed in life and money to the big struggle for liberty, and they now ask that their own liberty and their claim to liberty shall be recognised. They tell you that they do not acquiesce in this proposition that they are undesirables, and they want to have that bar sinister removed. They say that the tendency at the present moment is, so far from removing

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the bar, to impose certain further statutory disabilities and to affirm that they are undesirable, and they do not want that position. As to the agreement made between Mr. Gandhi and General Smuts, the arrangement arrived at was in substance this, as I understood it: it settled once and for all the question of immigration. The question in regard to immigration was this: there should be no further influx; or in other words, the door of South Africa should be closed to future Indian immigration, save and except a few exempted men, a dozen or so each year, who might be admitted in spite of the Immigration Law in order to supplement educational or other requirements of the Indian community.

88. *By the Minister of Justice.*] No, there has been no grievance about this immigration; that has been acquiesced in. There have been certain difficulties, but on the whole it has been carried out, and nobody is complaining about it. True, a good many children have been shut out, and wives have difficulties in getting through, and obstacles have been raised; but all those difficulties are only administrative in their nature and have not caused trouble.

89. *By the Chairman.*] People have to hold registration certificates, and there is no quarrel about that. In regard to this question of inter-provincial migration which has been raised, that is a position which has also been acquiesced in, though very grudgingly and very reluctantly, as it was felt to impose a considerable hardship. Mr. Gandhi made it clear that as far as this was acquiesced in, it was for the time being, and he expressed the hope that that bar would in due time be removed. In regard to the question of migration from town to town, there was no understanding of any kind arrived at that there should be none. You ask me what is the meaning of the words "that they shall be able to carry on in the same town". I should like to point out to you that this is not correspondence in connection with the settlement. This is private correspondence between Mr. Gorges and Mr. Gandhi. As a matter of fact, I have seen this particular letter, but I do not know what led up to that correspondence. I do not even know what the subject matter of the correspondence was; I can see nothing more or less in the letter than there is, and I am certain of my own knowledge that there was no understanding, nor was there any promise that a trader who was to-day trading in Krugersdorp might not be a trader in Pretoria to-morrow, and might not be a trader at Benoni the day after, or Johannesburg or anywhere else for that matter. In regard to this question of vested rights, it seems to me that one can easily reduce that to an absurdity. One of my Indian friends here has been here for 31 years; Mr. Fancy is a large storekeeper at Vrededorp. Is it to be urged that he may not sell his business in Vrededorp and open another business [S.C. 11—19.]

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again? In other words, does it mean the vested rights of each individual Indian, or does it mean the actual vested rights, the rights existing at the time of the whole of the Indian community? This is a distinction which appeals to me. Say Mr. Fancy chooses to go home for six months and chooses to part with his business, intending to come back in six months. Has he deprived himself of the right to carry on business in the Transvaal again? This would cut down and curtail the potential rights of the Indian community. (Does it mean that a man who is to-day in a small business is precluded from extending his business operations at all? One can reduce the whole thing to an absolute absurdity.) (What it was intended to conserve were these rights, the actual and potential rights of the Indian community—their vested rights, that is their rights as human beings.) I do not say their rights to hold land, although Mr. Gandhi hoped that that was a statutory limitation of their rights which would be removed. In regard to the registration of Indian companies, I may say that I have registered most of them through my office.

90. *By the Minister of Justice.*] As to who started this business, I am too modest to reply to that question. I should be the last in the world to question Mr. Cohn's statement that the system hails from Japan. For a considerable time before a single property was registered I myself held as trustee property to the value of one million. I want to explain this. I ask you: is it not better that things should be done openly and above board than that back-door methods should be resorted to? I will tell the committee quite frankly what the position is. (The scheme devised was this. A European would buy property, and it would be registered in his name, but he would pass a bond to such and such an Indian, and that would cover the purchase price. In addition he would give the Indian an irrevocable power of attorney and would receive an indemnity in return, indemnifying him against any loss or damage. It answered quite well. It was an evasion of the Law, but it was not illegal, but it was a kind of expedient to which the people were driven in order that they might invest their money in the country and in order that they might on certain stands work more conveniently and have a place where to carry on their trade. To the best of my knowledge it started shortly after the Boer war. (*Mr. Bernard Alexander.*) It started before the Boer war; I understand that Mr. Canisius, a lawyer of Johannesburg, held a number of properties in that way. (*Mr. Ritch.*) I did not know that.) Personally that was an expedient which I think was undesirable, but it illustrated this fact, that whatever legislative means you may devise, you can never shut out all the possibilities of the Law being evaded. I can understand the objections of the rival trader to the Indian being next



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door to him, but I think that this statement of unfair competition is absolute nonsense. I have fed with the Indian; I have lived with him, and I can assure this committee that the statement of unfair competition is ridiculous. It is all rubbish. I can understand the attitude of the rival trader in regard to an Indian holding land, but the Indian does not send the land to India; why then all this fuss?

91. *By the Chairman.*] The *modus operandi* in regard to the Indian companies is quite simple. Say there are a number of Indians who have businesses on a number of stands which they have held on monthly tenancy—which, by the way, is very insecure—where a profiteering landlord is continually raising the rent. These Indians decide to form themselves into a company and purchase land. They form themselves into a limited liability company with from two to fifty persons, and they purchase land in the name of the company. These people will put up a building on the stands they have purchased worth a few thousand pounds, whereas before there was a tin shanty, a rubbishy little place there. They will pay for the building material, they will pay for the work that is done, and they will increase the revenue of the country. That is what happened in regard to these properties. There are very few Indians who hold rack-renting properties; the rack-renter among the Indians is very scarce, and wherever Indians have floated limited liability companies they have generally done so for business purposes; in some cases they have built on the stands in order to be able to carry on their business better, and in others they have acquired the places also with a view to being in a position to carry on their trade unhampered. There are about 200 of such companies.

(92. *By the Minister of Justice.*) I think the first company of the kind registered under the new Companies Act was in 1909. The new Act is very convenient for the purpose. I understand that Messrs. Findlay, MacRobert and Niemeyer, of Pretoria, registered the first company. The Indians are palpably shareholders; there is no camouflage about that.)

93. *By the Chairman.*] I do not know of any companies where shares which originally were held by Europeans are now held by Indians.

94. *By the Minister of Justice.*] I do not think Indians go in for share speculation. I very much doubt whether you would find a thousand shares in gold mining companies held by Indians.

95. *By the Chairman.*] The sole object of the registration was to enable the man to acquire a place to carry on his trade. Not all the companies, however, have been formed for that purpose; there are also companies which have been held for charitable purposes, companies formed by the Mahomedan and by the Hindu community. Quite a few of these charitable

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companies have been formed and incorporated and the objects of a number of them are educational. Still, the great majority of the companies have been incorporated for trading purposes. I would like to add this—I should wish very earnestly to ask the Committee to try and meet the appeal of these people here that no further disabilities shall be imposed and that these existing disabilities, this mark of inferiority, this bar sinister shall not be perpetuated. They have come to ask you not by Statute to affirm what they have protested to for years, and they have asked me to submit to you that to-day is not the opportune moment to go further and impose any further disabilities. At Krugersdorp a controversy is being stirred up. This is only an appeal to prevent further unrest and to prevent steps being taken to stir up and impose further disabilities on the Indian community. They will say, “we Indians are still regarded as undesirables, but we cannot submit to be regarded any longer as outcasts.”

96. *By Mr. Alexander.*] I have been asked by the Chinese community to submit certain figures. I understand that you kindly invited them to place certain facts before you in regard to the formation of companies. I understand that among the Chinese there are something like 25 or 30 companies, and the aggregate capital involved is probably £25,000. These companies have been in almost every case formed in order that Chinese shopkeepers should have land upon which to carry on their business.

97. *By Mr. Blackwell.*] You ask me whether I think that European civilisation and Oriental civilisation can exist side by side with impunity to the European civilisation. In India the European shopkeepers and merchants have not been killed out by the Indian competition. In regard to the position at Mombasa, I have not found that European tradesmen have found it impossible to make an existence there alongside of the Indians. In Mombasa the biggest businesses are European. Zanzibar, of course, is a very old Arab settlement, and I do not think it is a fair illustration to take the European's position there. European trade at Zanzibar is practically non-existent for the simple reason that the Europeans did not settle there. It is quite true that the bulk of the trade in East Africa is in the hands of the Asiatics, but that is due to the simple reason that the Asiatics settled there long before the European trader. You ask me whether I support Dr. Krause's contention that the scale of life and the scale of trading of the Indians is precisely the same as that of the Europeans. When you say “precisely” you are going perhaps further than I would like to, but I say that, taking the one class alongside of the other, the Indian spends in his business and on his home and his feeding as much as the European. Those who do not intimately know the life of the

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Indian think that the old story of a feed of rice and a straw mattress is true—it is not. You say that the Profits Report of the Cost of Living Commission states that the expenses of the Indian wholesale merchant are one-third of those of the European, and the expenses of the Indian grocer are five-eighths of those of the European grocer. All I can say in reply to that is that one knows from experience that one can juggle with figures, but as far as the Indians are concerned I am quite prepared that they shall produce a balance sheet comparing the measure of their profiteering with the measure of profiteering by the European. As to their expenditure—well it all depends on how one allocates one's expenditure. Mr. Coovadia here may add in the list of his expenses the cost of his own feeding, and others may not. It all depends what items you include. I do not suggest that the wholesale white merchants will put the cost of their feeding into their expenses, but take the case of a traveller. He may go out and include in his items of expenses so much for motor car hire, joy rides, etc. My clients may do nothing of the kind. I hold that it was the Krugersdorp Municipality which has upset the apple-cart, and which has broken away from the existing agreement. What is the harm and what is the wrong if the Indians opened up fresh businesses and registered companies? I personally do not admit that the Indians have in any way broken away from their promises, and in regard to your contention that the agreement with Mr. Gandhi meant that no fresh businesses should be opened, I deny the right of anyone to mortgage the future of the children, and that is what it would have amounted to if such an agreement had been made. The mere fact that you may agree on a disability being imposed, does not give you the right to say that that disability shall remain for all time. I say that the compromise which was arrived at was a purely temporary affair. I question whether you have any right to bind the future generation by what the present generation does.

98. *By the Minister of Justice.*] The main object of the petition which has been presented is to safeguard the interests of the trading community, that is to say, the interests not merely of the man who to-day happens to have a shop, but the interests of the man who to-day has not got a shop, but who may wish to have one to-morrow. I should think there must be quite a number of people who have opened new business places since 1914. I could get the figures for you. In regard to the Indian companies, while it is true that an individual Indian may not hold land, the Law as it stands does not forbid an Indian company to hold land because it does not recognise that company as an Indian company, but simply as an entity, a corporation without a soul. You ask me why, if Indian companies are allowed to hold land, you should not

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wipe the whole Law out. I may say that I have been asked to offer that as an alternative remedy. You say that even if the Indian company were forbidden to hold land the old device could still be resorted to. If I might have the pleasure, I could sketch you out quite a few little projects which have not been tried. We are not supposed to be very disingenuous persons.

99. *By Mr. Joubert.*] There are a number of large Indian country storekeepers who deal largely in produce. The Indian country storekeeper seems to be able to succeed in competition with the other country storekeepers because he is more accommodating than his rival. He seems to be of very great assistance to a class who need his services. In towns like Johannesburg the European storekeeper has not been knocked out of existence by the Indian storekeeper; in fact, in Johannesburg the Indian storekeeper is not in the ascendancy at all. There is no Indian storekeeper like Stuttaford and Thrupp, for instance. The Indian storekeeper seems to have a particular kind of customer whose needs he knows how to supply. I do not think that you find in the country districts that the Indians as a rule sell up their customers in the way another type of storekeeper does. I do not think I have heard of any who have taken up farming; there is some farming done, but it is more in the nature of market gardening. Cattle farming or the cattle trade is a trade in which they do not indulge. You ask me whether an Indian eats meat—all these gentlemen here, with the exception of two, eat meat. Meat is a regular diet with them, and they would not be able to keep any servants if they did not supply them with meat.

100. *By Mr. Duncan.*] You ask me whether I think that there should be no restriction at all in regard to Indians and Europeans living next to each other and being allowed to mix up in towns. I do not know how far my own opinion would carry weight. I do not know in what respect it would be good or bad. In some respects it might be considered undesirable. It is a matter for the individual. I do not think that there is more than that in it. I think it is a bad thing to put a discount on Indian aspirations and desires, and to prevent those who wish it to live in decent surroundings. I do think there should not be any restriction on the ordinary township property, forbidding Indians to live there. I have my own views on that. I do not think that if one were to regard the conditions which at present prevail in some of the townships, like Ferreiras for instance, that the Indians could make those conditions any worse. From some points of view there is no doubt about it that there would be depreciation in the value of lots, in Norwood for instance, if the Indians were allowed to live on lots adjacent to those of Europeans, but from other points of view there would not.

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I have known cases where the effect has been regarded as good and others where it has been regarded as bad. I know that there was trouble at Norwood, and I know that there was also trouble at Boksburg North. I was interested professionally in both cases. In some cases there might be a serious depreciation in the value of a man's property, say at Norwood, if the land adjacent to that of a European were occupied by an Asiatic. These are cases where you cannot generalise. What might apply to Norwood would not necessarily apply to other parts. It does not follow that the Indian is particularly anxious to live next door to me any more than I am anxious to live next door to him. All these matters can be arranged by the Townships owners, and the Townships owners do so by the inclusion of a covenant. That is a matter for private arrangement between the people who want to settle on certain plots of land. Yes, it is true that I have told you that I back myself to find a way through, but that cannot be avoided. No disabilities are imposed by the Government on the Statute-book in regard to restrictive conditions as to places where Indians can live. These are matters for the arrangement of the communities. But even if you were to remove all these disabilities, Mr. Coovadia would not go and live next door to me. The Indians would still gravitate together, because that is their natural tendency. They may have a business on Market Square, and they are not coming to live next door to me in Yeoville. You can see what the position is in Durban. I object to any legislation, municipal or statutory, in regard to separation of the Indian community from the European because I think that the same thing can be achieved without legislation and without imposing this bar sinister. You ask me whether I was expecting any new disabilities to be imposed or any new kicks to be given. Little straws sometimes show which way the wind may be going to blow. We knew that the Krugersdorp people were coming here; we had had a test of their quality. And knowing that the Krugersdorp people were trying to urge you to inflict upon the Indians another dozen kicks, we hoped that as a result of our representations you might decide only to give four new kicks. The Krugersdorp people are the people who have taken the initial step to try and put the Law of 1908 into operation. The Indian people were hoping that the old kicks would be wiped out by some kind of admission, "we were mistaken in kicking you." We have no new legislation in mind, but we were afraid that the Indians might be ousted with some kind of compensation. I do not know how it would be paid, but we were afraid that the Indians might be kicked out of their places. If Parliament were to step in and prevent Indian companies from being registered, it would be one of the kicks. It would be

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amending the Law of 1885, which, as a matter of fact, has always been a thorn in the flesh of the Indian, because it has the first mark of his inferiority. We understood that there was a prospect of that Law being amended, and that would constitute a reaffirmation of the old doctrine that these people were undesirables.

101. *By the Chairman.*] (*Mr. Bernard Alexander.*) I would like to say this, that when a company is formed, the object clause generally says for what purpose such a company is formed. It will say that the company is formed for the purpose of acquiring a particular stand or property, and that brings to the knowledge of the world for what purpose the company is formed. (*Mr. Naidoo.*) I am secretary of the Transvaal British Indian Association, and I live in Johannesburg, the headquarters of that branch. At present I think that the membership of the whole of the Transvaal British Indian Association numbers about 14,000. The object of our Association is to watch the political welfare of the Indian community of the Transvaal. I fully endorse the representations which have been made on behalf of the Indian community by our three spokesmen. I should like to add a few words, as I have been closely connected with the Passive Resistance movement ever since its inception right up to the date of the compromise. In the last struggle the question at issue was one of sentiment and principle. I took part in the whole struggle right through. It began many years ago, and then stopped and broke out again. I remember when the late Mr. Gokhale visited South Africa to try and settle the Indian question, the Ministers made a promise that they would have the £3 tax removed from the Natal Indians. That tax was not removed: the Natal Indians also joined the passive resistance movement. There were a number of other grievances, some of which were sentimental in their nature but were serious grievances none the less. Mr. Gandhi gave us to understand that the Government understood that it was their duty to administer the laws sympathetically, that the disabilities would be removed and that the Indians would not be placed in an inferior position to the other subjects of the British Empire. We have assurances given to us by our leaders and by British statesmen such as Lord Selborne and Lord Lansdowne and others that it was the duty of the British Empire to see to it that these disabilities were removed, and that the Indians were placed on the same footing as other British subjects. The Immigration Law has shut out fresh immigration, and as the importation of indentured labour has now stopped, I think there should be no disabilities placed on the Indians. It was made clear in arriving at the settlement which was arranged between General Smuts and Mr. Gandhi, that the Indian would in due course strike out for

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the removal of these laws. That was made quite clear. We attached a lot of importance to what was said by the Government, that the Laws would be sympathetically administered. As to vested rights, we say that if an Indian has decided and has been allowed to live in the Transvaal, he should live there unencumbered, and, provided he complies with the municipal requirements, he should be allowed to live without being troubled. The war broke out then, and as loyal subjects, we considered that we should help the Empire out rather than cause further troubles. We did not embarrass the Government, although an attempt was made to interfere with us. We restrained ourselves, but no sooner was the armistice signed when we found that the Municipalities were enforcing a Law which had been a dead letter. I consider that that was a breach of the settlement arrived at with Mr. Gandhi. The Government had promised that the Law would not be put into effect and would not be administered unsympathetically. We consider that the agreement is not binding on us nor on the Government, but they should treat us sympathetically. The settlement arrived at was purely in regard to immigration. There was a Law of 1907 which was regarded by the Indians as being humiliating to them. I consider that the settlement with Mr. Gandhi is not a final settlement, and I consider that it is binding only in regard to immigration, and that the administration of the existing laws should be sympathetic. It is not necessarily a binding agreement—it is an understanding. The Indians have carried out their part of the settlement. There was no restriction in the settlement in regard to the opening up of new businesses—there was nothing about it. The Indian is entitled to open businesses, and has always been entitled to do so till now. The Indian has simply been continuing his business and has done nothing wrong. The feeling of the Indian community is that the time has come now when they should be considered, and when all these restrictions should be removed. We are not aspiring to political rights, but we are looking forward to have the right to live in the country as self-respecting men.

102. *By Mr. Alexander.*] The petition deals with a serious problem which has arisen, but that is not the only grievance which the Indians are suffering under; there are other grievances as well. We recently had a very successful Conference at which all the Indians in the Union were represented. After the Conference a deputation waited on the Minister of the Interior, and a full list of the Indian grievances was submitted to the Government, who promised to give those grievances their consideration. These matters are still open. The matter which the Committee is considering is a matter which arose out of the action of the Krugersdorp Municipality, and unless the Committee suggests a way to help us, the Indian community is faced with utter ruin.

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103. *By Mr. Blackwell.*] “Indian Opinion” was, and still is, the organ of our Association. It published the settlement which was arrived at in its issue of July 8th, 1914. The settlement only dealt with the matter involved in the passive resistance movement. I say that the Indian who had never traded in the Transvaal at that time had the fullest right to open business on mining ground or on any ground in the Transvaal. If a man acquired the right to enter the Transvaal, he should have the right to trade there—it is a human right. I said that if the war had not intervened we would have pressed for a further extension of our rights. When we saw the feelings of the municipalities we protested. If the war had not intervened we would have pressed for the immediate removal of some of these further restrictions under Law 3 of 1885. Mr. Gandhi’s letter may not have spoken of any immediate further pressure, but it all depends on one’s feelings.

104. *By Mr. O’Brien.*] We originally come from Madras, but I was born in Durban. My family are in Johannesburg, not in Maritzburg. The name Naidoo is a Clan name.

105. *By Mr. Joubert.*] I live in Johannesburg now, in Market Street, where I have lived close on 30 years. I do not live on my own property; I rent a house for which I pay £5 per month. I think that I am fairly influential among the Indians; I do not hold a very high position. I am the secretary of the Transvaal British Indian Association, which is an honorary position. I am a general agent. I am not a trader, though I was one and may be one again.

(106. *By the Chairman.*) (*Hajee Dadoo.*) I live in Johannesburg, and I have been in South Africa for 40 years. I was born in India. I represent the Indian community in connection with this petition before Parliament. I am a general merchant, and I endorse what our spokesmen have said, but I could say more than they have done if I could only speak proper English. I should, however, like to deal with some of those allegations which have been made to the effect that we do not spend any money and that we send our money away from the country. In regard to the allegation that we send money away, I should like to direct the Committee’s attention to the Loveday report of 14 years ago. It was stated in that report that the Indians of the whole of South Africa had that year sent away £500,000. At the same time it was pointed out in the report that £4,500,000 had been sent away that same year by the Germans in South Africa to their own country. The Indian population of South Africa numbered 120,000, so they sent something like £4 10s. per head. The German community, which sent away 4½ millions, was only 3,000 strong. People say that we do wrong in sending money away, but are we to let our fathers



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and mothers in India starve, must we not send them a penny for their keep? I cannot understand how people can argue like that. We cannot spend any money here—we cannot eat gold. We are not allowed to go to theatres, we do not drink, we live quietly, and we eat food. Now, as regards unfair competition. The European people may sell goods to an extent of £400, and make £200 profit on that, which they put in their pockets, whereas the Indian sells the same and only makes £50 profit. At the same time, however, you must not forget that by making less profit the Indian benefits the poor people. Out of the £50 the Indian has made, he will spend £20 and he will keep £30. The European makes his £200 profit, and after a time he “clears off home.” Now, I ask who is doing more good, the European, who makes £200 profit, or the Indian, who makes £50. I can help a hundred families by selling more cheaply, and I am only doing harm, possibly, to one man, who is in competition with me, but who all the same makes £200 profit. Is it not better to sell cheaply? I pay the same prices to the wholesale merchants as the European does. Since the Municipality has got power they have given us as much trouble as possible. Apparently they want to kick us out of the country, that is the idea. You can go thirty years back and take the position of the European at that time and compare it with his position today. The European population has been increasing in those years, while the Indian population here has been decreasing. I want to answer Mr. Blackwell’s question about Zanzibar and Mombasa. He does not want us to do trade with our own country, Zanzibar and Mombasa are closely connected with the trade of India. We must do our business there, we have been doing it hundreds of years. The European does not live there, because the climate does not agree with him, and therefore there are very few Europeans there, but those who are there are very strong.)

107. *By Mr. Joubert.*] My business is in Johannesburg; we mostly buy our goods locally, but we also import a little from England. We buy from the wholesale merchants in Johannesburg, from Jagger’s, Brown, Randle Bros. and Hudson, and others. We buy mostly from Europeans, but from Indian wholesale merchants, too. These Indian wholesale merchants mostly get their stocks from England. We pay the same price as the European merchants. I remember the olden days when we could trade without having any licences.

108. *By the Minister of Justice.*] My business is in Johannesburg, and, therefore, it is on mining ground, on a proclaimed area. The property is Indian property—it is a Limited Liability Company. I live in the same building where my business is; it is a very large property.

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[Mr. L. J. Phillips.]

(Messrs. Llewellyn James Phillips, Harry Friedman and Frederick Albert Cooper, examined.

109. *By the Chairman.*] (*Mr. Phillips.*) Mr. Friedman is a member of the Krugersdorp Town Council, Mr. Cooper is the Town Clerk, and I am the attorney of the Council. We are here as representing the Krugersdorp Municipality, and we are aware of the objects with which this Committee has been appointed. We have a memorandum here which I should like to hand in, and the points which I should like to raise are those which are contained in that memorandum. Our attitude is that if the existing Laws should be amended the status of the Indian should remain as it always has been. We have discovered recently, as the result of a confidential communication which was made to the Council, that an arrangement was come to in 1914 between General Smuts and Mr. Gandhi. The communication was made to us by the Department of Mines and Industries, but we have felt before we left the Transvaal that the agreement arrived at in 1914 had been so consistently broken by the Indians that the Government could not consider it to be any longer binding on them. I think we are prepared to recede from that position to-day, and we accept the position as it appears to have been created in 1914, and if that position is safeguarded for the future, then I think that the public of Krugersdorp would loyally support the Government in whatever endeavours it might make to settle the question up to that time, but I feel quite sure that I express the feeling of the Krugersdorp public when I say that if that agreement were extended in the slightest, it would not be satisfactory to the whole of the Transvaal and certainly not to Krugersdorp. I am referring to the arrangement made with regard to the vested rights in 1914. We feel that we cannot get away from that. We object to any new rights which have been acquired by the Indians since that date; we fear it opens up the whole question of colour in the Transvaal. We regard the presence of the Indians in the Transvaal as having been directly influenced by the fact that the goldfields are there; it seems to be the greater wealth which attracts these people, and if the way is opened, surely there must be an influx of coloured people of all kinds, and I would rather not see that opening given; I would prefer to have the people of this country there. We do not wish to see any interference with the colour bar in the Transvaal. As far as the terms of the agreement are concerned, I believe it is perfectly clear, as far as we can understand it, that the Indian community of the whole of South Africa was intended to be bound by that, and yet that correspondence was hardly dry before they devised a system of registering small companies for the purpose of acquiring land. That is in direct

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contravention of the letter and the spirit of the agreement. It certainly is in contravention of the spirit, and we protest against the legalisation of any rights which have arisen in contravention of the agreement. Take the position which we have had since the agreement has been arrived at; 78 new applications for licences have come in in direct contravention of the agreement. I say that because, so far as we have heard, and according to the terms communicated to us, there was to be no migration from town to town and no new licences to be applied for after that, in other words, we understood the agreement to be that the licences in existence at the time should continue, but no new licences should be sought. I have not seen all the correspondence on the subject, but we have had a copy from the Mines Department—we got it some 14 months after we had applied for it. In that correspondence (Mr. Gandhi defines the vested rights of the Indians. Take the construction of "successor." In regard to that I should respectfully submit to this Committee that it was never the intention of General Smuts to create any Indian corporation in perpetuity. I understand that a man's successor, unless he be a Crown Head or a corporate body, are the people who immediately succeed him—his personal successors. He should not be allowed to pass the business on. We think that there should be a certain degree of finality with regard to this matter, and that that was the intention of General Smuts.) I do not think that people in the Transvaal view the great and strong growth of the Asiatic population with anything like equanimity. In the year 1902 there were 14 Asiatic businesses between Langlaagte and Randfontein. You may recollect the case from Pietersburg when, in the year 1903, the Government had issued instructions to Receivers of Revenue against the granting of general dealers' licences to Asiatics. An Indian named Motan brought the case to Court, and the Government was ordered to issue the licence. Within eight months there were 45 Asiatic places of business in the same area. They were all new businesses. (Mr. Gandhi in his letter speaks of successors, in the plural; there may be two or three or four successors to an Indian, his immediate successors. You will notice that the letter goes on in the singular. It may be that his immediate successors may be more than one. If his successor is only one, then that will be his last successor. I put this matter in the way I have done because this is the first time that I have heard of any person being considered a sort of body in perpetuity. It would be going pretty far if in a hundred years' time one could still say that a particular Indian is the successor of the Indian who held the business in 1914.) It is absolutely untrue that the Krugersdorp Municipality refused the Indians their licences because they were Indians and without making any enquiries. Every [S.C. 11—19.]

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individual case was carefully gone into. The police always report, and the Council have the Indians brought before them, and they consider the evidence placed before them, and they come to a conclusion on that. If you will allow me. I should like to take it one degree further. In 1914 the whole of the Indian licences were automatically renewed, and that proves that that charge is untrue. When the Indians who were in Krugersdorp at the time when the power to issue licences was vested in the Council came to have their licences renewed, they were automatically renewed, and it was after that date, when they continued to increase in numbers, that the Council had, in self-protection, to scrutinise matters more closely. There is not a case in which an Indian carried on business before 1914 where the licence has been subsequently refused. There is no such case in Krugersdorp, the only refusal was to men who applied after 1914. The grounds on which these licences were refused were that these Indians had come in from the outside, and after their cases had been duly considered by the Council, they were regarded as undesirable people in the opinion of the Council. You ask me for what reason—there you come to a matter on which any individual councillor can hardly give an answer. The opinion of the Council, ascertained by resolution was that they were undesirable persons. There were appeals to the Magistrate, and the decisions of the Council were latterly upset, and here again I would like to say something in regard to the confidential nature of the communication received by the Krugersdorp Municipality from the Department of Mines. Had the Council broken that confidence and had they made representations to the Magistrate in his administrative capacity that that was the Government's policy, I have no doubt that his decision would have been very different. The Magistrate sits in an administrative capacity in these appeals, and he might have considered himself bound to have carried out the Government's policy. We did everything we could through applications to the Government through the Departments of Mines and Interior to have the matter brought to a head, but we could not break the confidence which had been placed in us. I remember in the last case the Magistrate made reference to the fact that he had heard rumours about some understanding, and he asked me what it was, but I could not give away the confidence of the Government, and we have suffered because of that. We have suffered to a small extent, but we have suffered none the less. There is a firm here of Mahomed Ismael. These people first applied to trade in Krugersdorp in 1916. They have flouted the agreement which they had with General Smuts, and by dint of persistence they have won their way into the town. Since 1914 only three new grocers' licences have been taken out, but there has been a

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considerable increase in hawkers and general dealers. They latter obtain their licences from the Receiver of Revenue. You ask me whether the Indians are competitors of the European merchants—I show in the statement in my memorandum that they have ousted three of the largest European merchants who were in their vicinity. There was one firm there which was doing business in quite a large way. It was in 1906 that they had to pass certain securities, I think covering bonds amounting to £18,000. In 1912 when they assigned their estate, their liabilities were something like £30,000. They ascribed the cause of their failure to the unfair competition of the Indians. All these failures took place in the stores within a stone's throw from the Indians. There was another place, Macloskie and Te Water. They had carried on their business ever since 1891, and that is the place which Dadoo is occupying to-day. In other parts of the town there are other business places of Europeans remaining, but I can only name you four white grocers in the town to-day—that is all, while there are 27 Indians. Only a few of the European firms are remaining. In regard to your question whether the sole cause of these European businesses going in is the Indian competition, I can state you a fact which is more eloquent than anything I can say. Proceedings were taken quite recently against Dadoo in terms of the Appeal Court decision in regard to an Indian occupying premises. In opposition to the order asked for, he filed an affidavit stating that his interests in Krugersdorp to-day amount to over £40,000, and all that, presumably, has been acquired by him since 1904. I am perfectly safe in saying that there is not any white man in the town worth £40,000 acquired from trade in the same period. I put it to a prominent business man in our town the other day, and he said there was not a European trader in town who had acquired half that. You would certainly have the general support of the European population of the town in this objection to the Indians if the element of cheapness were not present. We have not arrived at the time yet when people go openly to the Asiatic store. People do not like to be seen going openly into Asiatic places. They go surreptitiously, but if those places are recognised, then we fear that people will go quite openly and buy in the cheapest market. They are not legalised to-day to my mind. We say that an agreement was entered into in 1914, but we have not until the last day or two spoken openly of that agreement. We hold that the agreement arrived at in 1914 must be observed, and from that point we proceed. The Indians get a great deal of European support, and I mentioned the case of Dadoo as the man having made £40,000. I do not know whether he went in for any speculation, but he said that his interests in Krugersdorp in business amounted to £40,000. I do not know

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what capital he put into the business. The affidavit created the impression on my mind that the money had been made since his arrival there.

110. *By Mr. Duncan.*] We have not yet checked that against his income tax return, but I dare say it will be done.

111. *By the Chairman.*] We feel that nothing should be done in the direction of legalising these people who have come in since 1914. To legalise such people would be bound to interfere with the existing legislation, and we do put it before you that if the position is to be legalised, there should be special legislation for the purpose. One obvious way of legalising them would be to amend your Gold Law. We regard that as an extremely dangerous proceeding. You immediately open the door for an influx of coloured people from anywhere. If that were to occur in the Transvaal there would be extreme dissatisfaction in our District. I firmly believe that there would be grave dissatisfaction all over the Transvaal, and we should deplore it very much if that were the only solution of the matter. As regards the registration of companies, I am aware of the fact that under the Law of 1885 Indians are not allowed to possess land. Quite a number of companies have now been formed for the purpose of acquiring land, but we hope on the 1st of May to have a decision that that is illegal. The case to which I refer raises that point specifically, and that will come before the Supreme Court in Pretoria on the 1st of May. The question of owning will be specifically raised in the case against Ismial. The question to be raised is what is the legal position of such shareholders and also the restrictive effect of sections *one hundred and thirty* and *one hundred and thirty-one* of the Gold Law of 1908.

112. *By Mr. Blackwell.*] That point was also decided by Mr. Justice Ward in 1916. We are seeking to have the logical effect of the Judge-President's decision applied to individual companies. The application has been made and the affidavits in reply have been filed.

113. *By Mr. Alexander.*] We feel that the agreement arrived at in 1914 is a matter which binds the Government, and we would be quite prepared to support the Government in carrying out its obligations. You may legalise the position by special legislation, but we should like to see such legislation as would prevent the influx of the coloured people to the Gold Fields. The Municipality would submit to legislation allowing people who were established in 1914 to carry on and we would suggest that in the future the Municipality should be the policeman to see that the provisions of the Law are observed. The special legislation which I suggest might legalise the position created departmentally in 1914. The Municipality would watch that every trader who

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was there in 1914 was registered. We should get particulars in regard to each man, take his photograph and prevent periodic rejuvenations of Indians which we observe at the present time. In regard to the interpretation of the word "successors," that should be a man's immediate successors. I suggest that that is the legal definition. It might have been simpler to have said so, but it is an unusual expression. In regard to the communication of which I have spoken as being confidential, I am not aware that those letters have been published in newspapers long ago. The Minute was not merely marked "confidential," but we were asked not to divulge the contents. I can assure you that the correspondence, which you say appeared in "Indian Opinion," never appeared in the Rand papers. I do not know "Indian Opinion" at all. But if these letters were published, then I ask, why these contraventions of their terms by Indians? We certainly were not aware of the fact that these letters and the effect of the communication had appeared in public print. Had we known it, we certainly would have placed the full position before the Magistrate. The Magistrate apparently did not know it either. The action taken by the Municipality was not taken as a result of the Magistrate allowing the appeals made by the Indians. The action of the Indians. The action of the Municipality was in direct consequence of the decision of the Appellate Court, in which it was held that the Municipality had a *locus standi* to move the Courts in cases of illegal occupation. Before that we were advised that we had no *locus standi*. That is quite recent. It was only last year that, with one exception, the Magistrate ever did reverse the Councils decisions; he never did so before that. It was after that that the Appellate decision was given and once that was given the Council set their face to uphold the legal position as they understood it. In regard to the document produced by Mr. Friedman in the Council, which you say Dr. Krause stated was a resolution typed out beforehand to the effect that licences should not be granted, that statement is incorrect. The document produced by Mr. Friedman was merely a copy of the old Minutes of the Council which had been sent out. There was no prejudging of the applications. It was a copy of the old Minutes which had to be confirmed, or otherwise, and it was used for the motion. The Magistrate upset the Council's decision on the ground that there had been no consideration. I do not think that the fair interpretation of the Council's attitude is that they considered that these Indians were undesirable people merely because they competed with the Europeans. The Magistrate's decision was on the distinct ground that the application had not been considered. Since 1914 we have granted eight Indian licences while 78 have [S.C. 11—19.]

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been refused. The licences granted, as far as I can remember, were to men who had been in Krugersdorp for some time. They were granted between 1914 and 1918. There have been 102 applications for licences for people to trade in drink and food. Of those 75 were refused, eight granted, five withdrawn one applicant left the district, two were held over and a number of applicants did not appear. The eight that were granted were new licences; 78 were marked as new, and of these 36 were resident in the municipal area. I could not tell whether they actually were new, they were marked as such. Two European licences have been refused as well. The reasons why the European licences were refused were that the applicants were not considered to be desirable. I could not tell you whether the police representations were unfavourable. This was between 1914 and 1919. I would suggest that the Committee should go outside the correspondence between Mr. Gorges and Mr. Gandhi. The position we take up is that there should be no migration from town to town and no new licences, and I take it that that was the essence of the agreement arrived at. I understand that is in the correspondence. In regard to the registration of Indian companies, you will find that it was after 1911 that this scheme was first of all resorted to in the Transvaal. I understand that this scheme was devised since the new Company Act came into force, and after the agreement had been entered into between Mr. Gandhi and General Smuts. I think that these companies were never contemplated in the agreement; I do not know that there had been registrations before that time. If there were companies at the time, I can only conclude that the fact was never brought to the attention of General Smuts. If companies had been formed before 1914, then I say that they should be respected, but if any companies have been registered after 1914, we know that they have been registered for the purpose of acquiring land which should not be registered in their name, and we think the Government should prevent that. It is true that Dadoo has been trading in Krugersdorp since 1904, but the reason of the present proceedings against him is that his company acquired this land in 1915 and 1916. He was trading on certain stands before that, and if you will read my memorandum you will see how he has ousted white traders. In 1904 when he was first trading, he had a small "winkel," but now he has most commodious premises, occupying nearly a whole block. He has never moved out of Krugersdorp. The Council was advised that no rights had accrued after 1908, and in regard to the confidential agreement, we did not regard it as binding on the Government because it had been so flagrantly broken by the Indians all the time. In the actions which we are



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bringing, we make no distinctions between people who were there before or after 1914. You ask me whether the man could have accumulated all that money if the European public had not trade with him—if he had carried on business like a European, paying European wages and living in the same style as a European, he would not have been able to make all that money. I think it is quite fair to say that if people had not bought from him, he could not have made all that money. In 1904, at Vereeniging, there was only one Indian trader and several white stores. To-day there are many Indian stores and only two white stores, and the same condition of affairs is found in other places. You say Mr. Nesor said that the people who are against the Indians are principally the traders; he may be speaking of Klerksdorp, but that does not apply to Krugersdorp. I have a petition here from the people of Burgershoop; they are of the farming population, and they petitioned the Government against these people living cheek-by-jowl with them. I have not seen any petitions against these people trading. (*Mr. Friedman.*) I am the chairman of the health committee of the Town Council of Krugersdorp, and I may say that everything I have to say is embodied in this memorandum which has been put in. I wish to add just one thing. It is in regard to your question to Mr. Phillips in connection with licences having been refused to Indians on the excuse that they are undesirable persons. The same thing has been done to white persons. You ask me what attitude we would take up if an Indian came before us with a certificate of good character from the Chief of Police and if he had a certificate from the Medical Officer of Health that his premises were in good order; the question of granting him a licence would depend on other circumstances as well. Personally, I am not in favour of Indians at all, but before 1914 we did grant them their licences. I am not a trader, nor am I personally interested in trade. I am a property owner; I gave up my business about ten or eleven years ago. I have property in Krugersdorp and in Johannesburg; all my tenants are white people. There are very few traders on our Council—only one, as a matter of fact, a butcher. There are fifteen members of the Town Council of Krugersdorp. In the returns which we have submitted in the memorandum there are some small mistakes in the number of Indians residing in the town. The number of Indian waiters is higher than is stated. Our Council goes so far as to object to Indians who hawk about with foodstuffs. Our objection is particularly to dealers in foodstuffs and to those who are acquiring property. The position has become very acute in regard to those who are living in the town. In most cases the property which these people hold has been acquired during the last three or four years; we want the Law to be applied and to stop that.

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We are proceeding to put these Indians out now, but in the past we did not know that we could do so. A few of the Indians have been in Krugersdorp for over 20 years. As regards Dadoo, we are only taking up his case because he tries to get hold of a large block of buildings in town. We object to an Indian increasing his business if that means, as it does, ousting half of the white traders of the town. We say that an Indian should remain in the same premises, and to that we do not object. I personally object against them being there, but I admit that as they are there we have to put up with them. The danger come in with a man like Dadoo. If we admit that Dadoo has the right to buy half-a-dozen more properties, he may lend his name to other Indians, another dozen or so, and the result will be that Dadoo will not be the trader, but that there will always be other newcomers there. It is being done and even to-day Dadoo has two businesses there.

114. *By Mr. O'Brien.*] As an owner of property, I object to Indians. The fact of Indians owning property depreciates the value. We have it in the case of Dadoo. The position is that where these Indians are trading, there is, with the exception of the Standard Bank, not a white firm which does business in the neighbourhood. Some of the white firms have been closed up, and the only case where property changed hands was where it went to Indians. No white persons would invest any money there.

115. *By the Chairman.*] I absolutely deny that the resolution refusing the grant of these licences was all ready and typed out before we had heard the evidence. We got the applications and had them submitted and listened to the evidence. The document I read from was a copy of the minutes in which resolutions appeared in the proper form. I absolutely deny that we had come to a conclusion before we had heard the evidence.

116. *By Mr. Duncan.*] The European population of Krugersdorp has very much increased in the last ten years; judging from the voters' roll, I should say the population has increased more than 50 per cent. The European traders, however, have decreased—they are much less. The Indians have ousted all these firms; one firm which went under had been in existence since 1888. (*Mr. Phillips.*) In regard to a question put to me by Mr. Alexander, I may say that all the Indian assistants in the Indian businesses live in the town to-day. We strongly object to that. I take it that the agreement does not cover them, and does not give them the right to reside in the town.)

