

# Indian Opinion

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## EDITORIAL NOTICES.

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CORRESPONDENCE.—Letters and other communications should be written on one side of the paper only. When articles of "Correspondence" are signed with the writer's name or initials, or with a pseudonym, or are marked "Communicated," the Editor must not necessarily be held in agreement with the views therein expressed. In such instances, insertion only means that the matter or point of view is considered of sufficient interest and importance to warrant publication. Space being a consideration, correspondents are requested to be brief and to the point. Letters should be addressed:—The Editor, "Indian Opinion," Phoenix, Natal.

## Indian Opinion

SATURDAY, OCTOBER 31ST, 1908.

### The Breaking of the Clouds

THERE are not wanting signs to-day of the close approach of a satisfactory settlement. Cable advices from India show how meetings are being held in every place of note, and the Indian mail to hand indicates how seriously the Indian newspapers are studying the question of the position of British Indians in the Transvaal, and how they are bringing their readers to a proper perception of the state of affairs, and the lesson to be derived therefrom. It has been remarked that India is not nearly so awake to the inwardness of the present Transvaal situation as South African Indians are prone to think. It is impossible, however, to accept that view, when we learn that a meeting was recently convened in the Punjab, presumably at Lahore, whereat five million Mussulmans were represented. The seriousness of this news may be gauged from the fact that there are comparatively few Indians in the Transvaal who hail from the Punjab, and that that Province is the recruiting ground of a large portion of what is best in the Indian army. There can be no doubt but that the current of affairs in the Transvaal must greatly influence the feelings of loyalty in many quarters in India, at a time, especially, when it is felt that the Government of India is generally out of touch with Indian sentiment. It is not difficult to understand how this influence comes to be felt, since Indians generally cannot be expected to make fine distinctions when they are informed that, notwithstanding the explicit terms of

the late Queen-Empress's Proclamation, the Imperial Government can now state that it is impossible for it to interfere in the affairs of a self-governing Colony. Be that, however, as it may, there is no doubt whatever but that Indian feeling is rapidly rising over the Transvaal question.

And signs are not wanting, too, of an awakening in London on a large scale. Lord Amthill has announced his intention of raising a debate on the question shortly in the House of Lords. Members of both Houses of Parliament are to wait upon the Secretary of State for the Colonies to urge the claims of the Transvaal Indians. Great activity on the part of Mr. Ritch and the South Africa British Indian Committee is only to be expected. Lord Crewe has stated that he himself is in favour of the Indian claim to have the free entry of a limited number of cultured men of their own kind to minister to their higher needs. The Rev. Mr. Meyer has raised the problem out of the rut of ordinary politics by his passionate denunciation of the method of treatment of passive resisters and conscientious objectors in the Transvaal, as exemplified by the case of Mr. Gandhi.

All these things are good, but they are not everything. We learn with the greatest satisfaction that the Transvaal Indians are much encouraged by Mr. Gandhi's imprisonment and the message that he has sent them from Volksrust Gaol; for it gives them the opportunity of showing to the Government that they have assumed entire control of the position, that the leaders are staunch, that the followers are loyal, and their certainty that, with Mr. Gandhi's imprisonment, a settlement is brought materially nearer. That, after all, is the greatest asset—the self-assurance, the self-confidence, the self-reliance, without which it is impossible for a community to thrive and achieve its just ends.

THE WIFE OF MR. ISMAIL AMOD Maimee accompanied him on his return from India, recently, en route for the Transvaal per s.s. *Gouverneur*. When they arrived at Durban, they were refused permission to land by the Principal Immigration Restriction Officer, on instruction from Maritzburg, instigated by the Pretoria authorities, on the ground that Mr. Maimee would, if he proceeded to the Transvaal, join in a conflict with the Government of that Colony. Mrs. Maimee was, however, expecting the birth of a child at an

### Another Case of Culpable Homicide?

early date, and an application was at once made to the Supreme Court that she might be allowed to land, so that she could secure the attention necessary for her condition. The Natal authorities, however, produced a medical certificate to the effect that Mrs. Maimee could safely remain unattended for another month, and on the strength of this statement, the application was refused. Shortly afterwards, it was decided that she should be allowed to land on a visiting pass, but the shock of the ordeal of being kept like a criminal on the detention hulk had already produced its result, and, a day or two after she landed, she gave birth to a still born child. Possibly, this may have been due to any one of a number of other causes. But the circumstances too closely resemble those attending the unfortunate case of Mrs. Thambi Naidoo for us to come to any other conclusion than that Mrs. Maimee is another victim of Mr. Smuts' miserable administration of the anti-Asiatic legislation. We have all along felt that, however generous might be the spirit of give and take on the part of the British Indians, it was in no way reciprocated by the Pretoria officials, who, on the contrary, seem quite prepared to wage war upon innocent women and children. A case in point is that of Mrs. Jethashanker Vyas. Her husband is in Pretoria, and had recently sent for her from India. She sailed by the s.s. *President*, arriving at Delagoa Bay a few days ago. The Lourenco Marques representative of the Transvaal Immigration Office refused to interere when he was asked to secure her safe passage to the Transvaal, on the ground that, having taken passage to Durban, she should proceed there, though she desired to travel through to the Transvaal *via* Lourenco Marques. Telegraphic instructions to that effect were sought from the Registrar of Asiatics, who, before he would even consider the matter, demanded to know whether Mrs. Vyas' husband, who was a resident of Pretoria was a duly registered resident of the Transvaal, and requiring, if possible, the number of his new registration certificate! Meanwhile, private representations were made with the result that the desired instructions were at length issued—but the steamer had left for Durban an hour before. Presumably, had Mr. Vyas not been voluntarily registered, his wife would have been prevented from coming to him. It is not British, this sort of thing, and its only effect is still further to exasperate an already exasperated people. But such a policy of vindictiveness carries its own Nemesis with it. We are sure it will not be long delayed.

THE TWO PRINCIPAL SECTIONS OF THE Indian community, Hindus and Mussulmans, have this week celebrated the commencement of a new era. They, in the Transvaal, must have celebrated the festivals of Divali and Id with much of sorrow mingled with their rejoicings. They will have remembered, no doubt, that the great days found their noble compatriots, Messrs. Dawad Mahomed, Anglia, Rustonjee, Gandhi, and a large number of others, some well-known and others nameless, eating the bread (or, rather, the mealie-pap) of affliction in gaol, pending the settlement of the questions at present outstanding with the Government. If Mr. Gandhi's thoughts had tended in that direction, it must have been a strange contrast for him—his co-religionists celebrating the New Year last Sunday, whilst he was being brought to Johannesburg from Volksrust in convict dress, in charge of a warder, and marched thus, in the full gaze of the public, in broad daylight, from Park Station to the Fort! There is much to attract the attention of the cynic in these incidents, much to arouse the foolish activities of the mocker and the scoffer. We prefer, however, to take a higher stand. We see in all this wretched travesty of justice, this wanton refinement of cruelty, the matrix whence a bright and beautiful jewel of glorious experience and grand national life shall be extracted. If the Indians of the Transvaal and the rest of South Africa will but realise that truth, this is, indeed, an era of rejoicing and happiness. And we believe that, deep down, they do realise it, and will do more and more as its real inwardness grows upon them.

**BRITISH INDIANS THROUGHOUT SOUTH Africa may rejoice at the definite manner in which the Natal Supreme Court has shown that, in matters of law and justice, politics must not be allowed to prevail. It is, as we have remarked before, an elementary lesson, but one which neither the Natal nor the Transvaal Government appears yet to have learnt. The Chief Justice, in delivering judgment in the case of the application for the release of the detained Indians, made it clear that Mr. Tatham's argument, that the detention of these unfortunate people was absolutely lawless and perilously near contempt of Court, had a great deal of truth in it. We will not enter into the legal aspect of the case, however. It does not require a lawyer to detect the shocking weakness of the Government's legal position, but the point that is really to be considered is that the judges have made it perfectly plain to the people of two Colonies, neither of which appears to realise that Indians have any common-law or constitutional rights at all, that Indians**

may not be prevented from fighting their own battle by every legal means in their power, so long as they are prepared to suffer for their convictions. Had the Natal Government exercised the normal degree of common sense with which it is customary to credit governments, had it shown a little less anxiety to truckle to the behests of its "old man of the seas," the Transvaal Government, it would not now find itself the laughing-stock of every Indian blessed with the sense of humour. For ourselves, it is painful to note the indignity that this Government seems intent on heaping up for itself in its administration of Indian affairs. If Natal's Ministers wish to take this flattering unction to their souls, let them be happy in the knowledge that the Transvaal Authorities have received an even ruder shock than they themselves. It is not much consolation, but we offer it to them for what it is worth.

THE STEAMSHIP "PRAESIDENT" ARRIVED at Lourenco Marques on the 21st ulto., bearing a number of Indians returning to the Transvaal from a visit to India. Representations were made to the Mozambique Administration to the effect that the arrivals should be allowed to land and proceed at once to the Transvaal. But the cloven hoof appeared at once for it seems that Lourenco Marques is also underorders from the Transvaal and has yielded up its independence to the greedy desire to accumulate wealth, and the representative of the Indians was informed that they could land on the condition that they remained at the port, and made application from there under the new Act. It was pointed out that the Administration was thus preventing the Indians from seeking their remedy against the Transvaal Government in the Supreme Court of that Colony, but the argument fell upon deaf ears, for Mozambique has to obey when the Transvaal commands. The Transvaal-bound Indians naturally refused to land on any such conditions, and proceeded instead to Durban, where they could avail themselves of the privileges offered by British Courts of Justice. But it is sad to see British officials carrying the bad tradition of the Transvaal into foreign soil, and holding the pistol to the head of the foreign administration. Apparently, the only community that is retaining its self-respect to-day is the Indian community.

THE SWAMI'S VISIT TO CAPE TOWN. We regret to learn that in the Life Sketch of Swami Shankeranaand published in our columns recently we omitted to mention that representatives of the United Hindu Association met the steamer on arrival. We now hasten to add this information.

## Some Scandalous Incidents

Mr. Polak sent on the 26th ulto., the following letter to the press:—

It will be remembered that, amongst the passengers who proceeded to Durban from India by the *Gouverneur*, about a fortnight ago, en route to the Transvaal, were a certain Mr. Ismail Amod Mamee and his wife. Because Mr. Mamee preferred to go to the Transvaal without making application for registration from Durban under the new Act, he was prevented from landing, and would have been sent back to India, but for an injunction granted by the Chief Magistrate pending inquiry as to his legal status. His wife was expecting, within a short time, the birth of a child. An application was made to the Supreme Court that she should be allowed to land on a visiting pass in order that she might receive the care and attention necessitated by her condition. This application was refused, owing to the production by the Crown of a medical certificate to the effect that the lady would suffer no hardship for at least another month. Within a few days, however, of the refusal of this application, Mrs. Mamee was landed on a visiting pass, and, a couple of days thereafter, gave birth to a child still-born. Apparently, the shock and uncertainty had had their effect upon the unfortunate lady; and, thus, with Mrs. Naidoo, she has proved another victim to the vindictive policy of Mr. Smuts' administration.

Last Wednesday, the *Praesident* arrived at Delagoa Bay carrying the wife of a well-known Indian resident of Pretoria. He had sent for his wife from India, they having not seen each other for a long period. She had booked her passage to Durban, but, learning that there were friends in Delagoa who would escort her safely to her husband in Pretoria, she decided to proceed to the Transvaal via Delagoa Bay, thus shortening the steamer and train journey. Application was made to the local representative of the Transvaal Immigration Office to facilitate her landing and transit to the Transvaal, where she would meet her husband. The Immigration Officer, however, declined to intervene without direct instructions from Pretoria, on the ostensible ground that, having taken a ticket to Durban, she should proceed there. Whether or not that was the real reason I would not care to affirm. Representations were immediately made to the Registrar of Asiatics at Pretoria, requesting him to issue immediate instructions by wire to his subordinate to afford facilities for the landing and transit of this lady, as the steamer was due to leave at 3 o'clock on Thursday afternoon. A reply came half-an-hour after the steamer left, inquiring whether her husband was a duly registered resident of the Transvaal,

and the number of his new registration certificate. As it happens, her husband is personally known to the Registrar, who should be aware that he received a voluntary registration certificate some months ago. Further representations, however, were made at Pretoria, with the result that a later telegram was sent authorising the landing and transit of the lady, but the instructions arrived one and a half hours after the boat had left. Presumably, although her husband was a resident of long standing in the Transvaal, had the replies to the Registrar's inquiries, in his opinion, been unsatisfactory so far as his Department was concerned, he was careless as to what happened to her so long as she did not come to the Transvaal. It thus appears that, not content with prosecuting the Indian male population of the Transvaal, General Smuts will not be satisfied except he wage war against innocent women and children. The whole policy is one of malignant vindictiveness.

Mr. Gandhi has been sentenced to two months' hard labour for the offence of failing to give totally unnecessary finger prints for identification purposes. He has been set to work upon the public streets at Volksrust. Nobody complains about that. It is part of the punishment to be borne by people whom General Smuts calls conscientious objectors. But is there any excuse for bringing Mr. Gandhi from Volksrust to Johannesburg in convict garb, as happened yesterday, and marching him from Park Station to the Fort publicly? Doubtless it was all part of the regulations. I believe that when the Spanish Inquisition desired to degrade its victims, among whom were probably ancestors of mine, it clothed them in bag-shaped yellow garb and marched them in this fashion through the streets prior to despatching them at the customary *auto-da-fe*. We, Transvaal Britishers, do not seem to have gone far beyond those mediæval torturers in our desire to bring our victims to what, in our opinion, is a sifter frame of mind. Can you wonder that the Indian community is getting more, and more embittered and exasperated; and do you not marvel how, in spite of all these injuries and insults, they remain content to be passive resisters, suffering themselves rather than imposing suffering upon their European fellow-colonists? Contrast the Christian example shown by these non-Christian people with the Pagan cruelty of their Christian rulers. It makes one flush with shame to think of it all.

**INDIAN EDUCATION.** The Indian Woman's Association and the Hindu Young Men's Society have passed resolutions protesting against the introduction of the age limit in the Higher-Grade Indian Schools

## Fate of the Anti-Indian Bills

### Press Comments

Commenting on the news of the probable refusal of the Imperial Government to allow the recent anti-Indian Bills to become law, the *Natal Mercury* says:—

The Natal Acts are an attempt to enforce a totally different policy. Their effect would be to deprive British subjects, who have been allowed to acquire domiciliary rights in this Colony, of the ordinary privileges belonging to such status. Under one of the Acts, it is even proposed to deprive Indians born in the Colony of the civil rights that belong to them as persons to whom Natal is their native land.

Had our Government and Parliament been content to strike at the root of the Asiatic encroachment by decreeing an end to the indenture system, and making our immigration laws prohibitive to all newcomers from Asia, they would have been standing upon unassailable ground, and the Imperial Government could have been relied upon to concur with them, as it has acquiesced in the Transvaal legislation. It has now been accepted in the fullest terms that a self-governing Colony is entitled to regulate and restrict alien immigration as it may deem fit. Our Government did introduce one Bill last session for the purpose of attacking the evil in this legitimate way, by putting an end to the system of indenture; but it was the one Bill of the three which they dropped, and they wasted the time of the session by pushing forward the two Bills which we warned them would be obnoxious to the Crown, because of their transgressing the canons of national equity. Under these measures, which Lord Crewe now intimates that the Crown is unlikely to sanction, certain of the King's subjects who have acquired the right to live in Natal, or have been born on its soil, would be debarred from making a livelihood in trade. Such legislation is vicious from every point of view. It is a glaring injustice, for one thing. Further than that, it could only relieve social pressure in one direction by increasing it in other. If the Indian population could not make a living in trading, they would be driven in larger numbers into the industrial ranks, and would aggravate the competition which our working classes have to face, from cheap forms of coloured labour, in employment where the European has hitherto had a practical monopoly. These two Asiatic Acts are an outrage on British principles of justice, and are class legislation of the crudest type. The only effect of their having been passed in our Legislature will be to prejudice the Colony's future

efforts to deal with the Asiatic evil on better lines.

The *Advertiser* remarks:—

It will create little surprise in Natal, and, possibly, less to the Natal Cabinet, that, as will be seen from a cablegram in this issue, Lord Crewe, the Secretary for the Colonies, has officially announced that it is improbable that the Imperial Government will advise his Majesty to grant his assent to the latest Natal Asiatic Trading Bills. It was apparent to everybody who took the trouble to think the matter over for a minute, that the Imperial Government could not possibly agree to a Bill that lumped Natal-born Indians and imported Indians together, and forbade the whole bunch to trade any longer. This was so apparent, in fact, as to rouse suspicions here as to whether the Natal Government was really so keen on getting the Asiatic difficulty settled as it protested it was. The position now is that the Bill to prevent the further importation of indentured Indians is indefinitely hung up, and the Bill to prevent Indian trading is to be vetoed. The whole agitation for a settlement of the Natal Indian problem has been in vain, and the time and money that has been expended over Parliamentary debates on the subject, wasted. The Natal public has every right to be exceedingly angry at this trifling—we had almost written fooling—with questions that are vital to the colony's progress and prosperity.

The *Times of Natal* has the following criticism:—

That the Bill proposing the abolition of licences would be vetoed was a foregone conclusion; and it has always been a matter of surprise to us that the Government introduced such a measure. In moving the second reading, Dr. Gubbins conveyed the impression that the Government were very much in earnest, and intended to persist with this legislation until sheer importunity won the day. The Colonial Secretary, however, failed to bring forward any arguments in support of the measure, except the "argument" that it would be to the interest of the white storekeeper to remove the competition of the Indian trader. We have no sympathy with the Indian trader, and we think that no new licences to trade should be granted to other than Natal-born Indians. But it was an absolutely unheard-of thing to propose to abolish the licences of men who had been allowed to settle in the colony and invest their money in certain commercial enterprises; and it was still more monstrous to propose that no Indian, even although born in Natal and knowing no other home, should ever be permitted to engage in any form of trading requiring a licence. No such flagrantly unjust measure has ever been anterior to our country, and we are

should have been the first to propose it. It is open to Parliament to pass laws which may limit the scope of the Asiatic trader, and prevent unfair competition, but it is not open to Parliament to propose the suppression of one section of the community for purely racial reasons.

The *Transvaal Leader* comments as follows:—

The news that the Imperial Government is unlikely to sanction the Natal Asiatic Trading Bill will not surprise those who recall its provisions, which lumped together Natal-born and imported Indians in an impossible manner, and dealt with their trading rights unfairly. The pity of it is that this also apparently hangs up indefinitely Natal's other Bill—that to forbid the further importation of indentured Indians. This is deplorable. Whatever differences of view there may be as to the treatment of Indians already here, surely no responsible person wishes to complicate South African ends and difficulties further by importing more Indians.

### Durban Notes

[BY OUR OWN REPORTER]

#### The Detained Indians

Last Saturday about 40 passengers arrived by *S.S. Praesident*, 35 being bound for the Transvaal and 5 for Natal. The Transvaal passengers were given the choice of giving bail and submitting to finger-impression requirements or being detained on the Detention Hulk. They chose the latter.

Whilst being conveyed to the hulk, one of the three women passengers fell and injured her foot severely, there being only a very rough gangway on which to walk on board.

All the passengers, including the Natal people, were taken to the hulk immediately the boat arrived. Mr. Vaudev was amongst the number. On Saturday he underwent examination under the Immigration Act as an educated man, but it was not until late on Sunday that he was allowed to land. His wife, who accompanied him from India, was forced to remain on the hulk until her husband could make out an affidavit for her. It was two o'clock on Monday when she was allowed to land.

The wife of Mr. J. P. Vyas, who is living in Pretoria, was also detained on the hulk.

There were already there the passengers per *Kronprinz* and *Gouverneur*. These were locked up for some time so that they could not even speak with the new arrivals.

Mr. Romer Robinson's representative was not allowed to speak with the new passengers, and they were prevented from receiving or sending letters. It was only with the greatest difficulty that the names of the pas-

sengers were secured for the purpose of obtaining an interdict.

And now a word or two about this hulk which the Attorney-General so eloquently described as a place fit to accommodate 100 persons in comfort. It is solemnly declared by those who have been there that, although there were 70 passengers, there was not room for more than 25 or 30 people on the boat. Fresh water was obtained with the greatest difficulty and only in very small quantities. Only one cooking stove was provided for all the people, and the 70 men, women and children had to put up with only one w.c.

The Supreme Court application has now been granted and the *Kronprinz* and *Gouverneur* passengers have landed, but not so the passengers of the *Praesident*. Until their ship sails, they will probably be kept on the hulk.

#### Divali and Id Festivals

The celebration of the annual Divali Festival was commenced on Saturday last, when a sacrificial ceremony was performed by the Durban members of the Hindu community. Swami Shankaranand was present and addressed the gathering on the significance of the day. It was, among other events, the anniversary of the return of Shri Ram from exile. Mr. C. Desai performed the sacrifice of sandalwood and spices.

The Mahomedans of Durban and suburbs celebrated their annual Id festival on Tuesday. This marks the conclusion of the fasting month of Ramazan, the ninth month of the Moslem calendar. Business was suspended, and all Mahomedan stores were closed for the day. Special services were held in the West Street, Grey Street, and Lower Umgeni Mosques, at 8 a.m., and the rest of the day was spent in social enjoyment.

**PRISON DIET.** The *Rand Daily Mail* comments as follows on the food question:—The curious feature about the letters printed in another column regarding the diet for Indians in prison is that there seems to be no regular scale for the whole Colony. In one prison the Indians receive their national food; in another they have to eat—or to reject—mealie pap and fat. The complaint made seems to us to carry a good deal of weight. To a strict Hindu, animal fat might be so objectionable that he would die rather than touch it; and the punishment of starvation is not included in sentences in this country. There would be a great outcry if a European vegetarian in prison was forced to eat beefsteak or starve, or if a Hebrew was compelled to take pork or go without anything, or if a teetotaler was made to drink whisky and soda or else die of thirst. The Indians might well be allowed their rice and ghee, whatever prison they may happen to be in.

## Away with the Hawkers!

### Barborton's Ambition

The *Transvaal Leader* of the 21st ulto., reports:—

A special meeting of the Barborton Chamber of Commerce was held to discuss the question of hawking as affecting trade in the district. The Chairman said that the existing law did not afford the protection to trade which the Chamber for years had been striving for, and it was necessary to urge the Government to legislate to protect the country traders. Parties of hawkers made a business of visiting the outside mining centres at intervals during the month, and secured the bulk of the native trade.

The secretary read a letter from Mr. Loveday, regretting that representations on the subject had not been made to him during the session, as he might have persuaded the Administration to introduce an amending Ordinance dealing with the matter. As the law stood at present, it was impossible to prevent the abuse complained of. He would suggest, with a view of securing an amendment of the law, doing away with hawkers altogether, except perhaps the ordinary pedlar in municipal areas.

Correspondence from the Law Department was read, giving the following opinions in reference to trading on mining grounds:—(1) The occupier of a stand under the Gold Law has the right to order off any person trespassing on the stand so occupied; (2) the same rule applies to claimholders; (3) a hawker is not restricted by his licence to trading upon public roads.

A resolution was passed asking the Government to amend the Hawkers and Pedlars Act so as to place hawkers and pedlars on such a footing as to equalise the responsibilities borne by the European storekeepers in having to keep up respectable and proper establishments wherein to carry on their respective businesses. It was also carried that the resolution be submitted to all the other Chambers of Commerce in the Transvaal for their earnest support and co-operation. A committee was appointed to draft a petition to be sent to the Government with a view to removing these grievances.

Mr. Bayly drew attention to a statement that was circulating, that in connection with the sale of stands advertised to take place in a few weeks' time it was the intention of certain Asiatics to acquire interests in some of the stands for the purpose of securing trading sites. The chairman was asked to interview the District Registrar with a view to ascertaining what truth there was in the statement so far as applicants were concerned,

## Notes on the Transvaal Struggle

(FROM OUR CORRESPONDENT)

**A PRACTICAL SPIRIT.** Realising that the struggle may continue for yet a considerable time, the community is showing a commendably practical spirit. Collections are being widely made, and considerable sums have lately been contributed to the funds of the Association. As in every movement of importance, so here the war-chest and its contents require most careful attention, but the financial genius of the community finds ample scope for discovering ways and means. Its resources are far from being exhausted and the people look forward quite calmly to a prolongation of the fight.

**A SHOCKING SIGHT.** On Sunday last, Mr. Gandhi was removed from Volksrust Gaol to the Fort, Johannesburg, he having been subpoenaed as a witness for the Crown in the case of Daya Lalla, who was charged with using a forged registration certificate; the case being now sent to the Criminal Sessions for trial. Mr. Gandhi was removed in convict dress, in charge of a warder, in whose company he travelled to Johannesburg. A few members of the Committee of the Association had got wind of the removal, and met the train upon its arrival at Park Station at six o'clock in the evening. Mr. Gandhi, carrying his bundle of clothes in a large bag marked with the broad arrow, a basket of books, and, of course, wearing the convict suit, was then marched in custody from Park Station to the Fort. It was then broad daylight, and the streets were filled with onlookers, some of whom recognised Mr. Gandhi, even in the hideous disguise that he wore. Mr. Gandhi, of course, wore the convict garb of coloured prisoners, a particularly conspicuous one. Doubtless all this happened in terms of the regulations, but it is typical of the anti-Asiatic policy of the Government that no instructions were issued that Mr. Gandhi should be transferred in civil dress, and taken to the Fort in a cab. So long as cultured Indian passive resisters and conscientious objectors are treated as though they were aboriginal native felons of the worst type, so long must this fight continue.

**A MESSAGE OF SYMPATHY.** The following telegram has been received from Chinde:—"Chinde Indians deeply feel your great trial. Praying Almighty justice for sacred cause. Sincere sympathy with sufferers."

**A QUESTION OF BOYCOTT.** The British Indian Association has received the following telegram from the Fruiterers' Association, Durban:—"Durban Fruiterers' Association, have heard 18 Krugersdorp fruiterers taken licences, we unanimously resolve

to boycott all Krugersdorp Fruiterers, except those Committee recommends as trading without licences."

**SYMPATHY FROM INDIA.** The British Indian Association has received copy of a resolution passed, at a public meeting of the citizens of Kathor and the neighbouring districts, of all castes and creeds, assembled at a public meeting on the 19th of September, expressing indignation at the sentences passed upon the Natal leaders, and urging the Imperial Government to protect the Transvaal Indians from persecution.

**AT VOLKSRUST.** It will be remembered that, amongst those who were deported from Volksrust Gaol on Monday, the 19th inst., were Messrs. H. I. Joshi and M. N. Goshlia. They however, applied for a remand to the 27th after they had returned and on the same day. Last Tuesday, they appeared before the Court, and were sentenced to four months imprisonment with hard labour, or to pay a fine of £50 each. They elected to go to gaol. On the same day, Hira Mulji, the boy of 12, who was sentenced on the same day as Mr. Gandhi to 14 days without hard labour as a prohibited immigrant, his father being at the same time sentenced to one month's hard labour, was released, though his father was still undergoing sentence.

**A CASE OF REPENTANCE.** Mr. Balya Naidoo was one of those unfortunate men who applied for registration under the old Act during last October. He received his badge of slavery on the 28th of that month, and was promptly boycotted by his brethren of the Tamil community. He has now returned his certificate to the British Indian Association, to be destroyed or otherwise dealt with as the Committee thinks fit.

**AT CHRISTIANA.** Mr. Mirza Ameerbeg came from Kimberley some days ago holding a Peace Preservation Ordinance permit. He, however, refused on demand to give his thumb impression for purposes of identification, was arrested, charged, and convicted for the offence, being sentenced to three weeks' simple imprisonment. The President of the Gujarat Indian Association of Kimberley has sent a telegram of sympathy to the British Indian Association in regard to this matter. Mr. Ebrahim Adam Nimbara has been sentenced to six weeks' hard labour for trading without a licence.

**ARRESTS AND IMPRISONMENTS.** At Germiston, last week, a number of Indians were arrested and sentenced for hawking without licences. Among these was Mr. Hazura Singh, the Chairman of the local Indian Committee. All went to gaol without paying fines. At Boksburg, a number of storekeepers have been summoned to appear before the Court for trading

without licences. They have decided to go to gaol. At Standerton, the storekeepers are threatened with further prosecutions for again failing to take out licences. Mr. E. M. Kajece of Paardekop has a second time been summoned to appear before the Magistrate at Volksrust on a similar charge. He being a brave man also prefers gaol. A number of hawkers have been arrested at Pretoria, and will be dealt with in the ordinary way, and Krugersdorp has suffered similarly. In Johannesburg, hawkers go to gaol day by day. On Tuesday, four were brought before Mr. Cross in D. Court, Mr. Polak pleading guilty on their behalf. Unfortunately, however, for them, the arresting Constable, who was the principal witness for the Crown, failed to turn up, and the unhappy men were accordingly discharged! Benoni seems to be sunk in the depths of ignorance. There hawkers were sentenced for trading without licences, but paid the fines imposed. Theirs is an unenviable notoriety.

**DELAGOYA BAY.** The Delagoa Bay community are taking a lively interest in Transvaal affairs, especially since the arrival of the *Gouverneur*. It is understood that a big effort is being made to contribute to the funds of the British Indian Association.

**A TRANSVAALER'S TESTIMONY.** "LUCIUS LUCULLUS" writes as follows to the *Morning Leader*:—

I have just received a letter from an old friend, a Transvaaler and a former burgher, in which he says:

I have now an Indian cook on my farm, and prefer him to anything I have had, either British or foreign. He and his fellow-countrymen are so courteous, hardworking, sober, and modest in demeanor, that we have no anxieties now about our culinary department, and yet you see these men get pushed out, though, to my mind, they are superior to the usual run of "white" men around here (I am not arguing with you on the Asiatic question now). All that I know is that I wouldn't exchange my Indian cook for any white I know.

Many of my Transvaal friends are of the same opinion.

**THE EMPHATIC NAV.** The Pretoria official clique do not seem to have the courage of their convictions. The Chairman of the British Indian Association, it will be recollected, last week asked the Government to reconsider their decision not to appoint a Commission of Inquiry to publicly and thoroughly investigate the allegations made in connection with Transvaal-returned Indians via Delagoa Bay and who were eventually taken to Barberton. A reply has now been received by the Association once more refusing the inquiry. It is significant that all these official documents bear the initials "M. C." It is easy, therefore, to indicate their author, nor is it more difficult to discover, from that fact, the reasons for refusal. Where there is much to conceal, either of incompetence or negligence, it may be admitted that it

is unwise to submit oneself to cross-examination.

AT BOKSBURG. At Boksburg, before Mr. T. C. R. Sladen, on Wednesday last, Messrs. Moosa Ismail Daya, Vassanji Kursonji, Juma Cassim, Moosa Sale Daya, Essop Hassan Bodhania, Ismail Essop Daya, Baba Jan, Mahomed Moosa, Gurusamy Naidoo, Hassim Alli, and E. H. Daya were charged with trading as General Dealers without licences, and also with failing to produce licences upon demand. All pleaded guilty, Mr. Polak appearing for them. They were found guilty on both charges, and sentenced, on the first, to pay each a fine of £5, to be recovered by distraint of their goods, and, on the second, they were cautioned and discharged. At the same time, Messrs. Sheikh Adam, Mahomed Sidik, Mahomed Essop, Baba Jan, Sidu Mia, and Ali Jaffer were charged with carrying on the trade of butchers without licences. They all pleaded guilty, and were fined £5 each or one month with hard labour, since they had nothing upon which distraint could be levied. Messrs. Moses, Naransamy, and Arnachellam were charged with carrying on Kaffir eating-houses without a licence. They were fined £1/7/6 or ten days' imprisonment with hard labour, they also having nothing to distraint upon. All decided not to pay fines, but to go to gaol, or allow their goods to be seized and sold by auction.

## Indian Soldiers in the Transvaal

### Letters to the "Spectator"

The following correspondence appeared in the *Spectator* of the 26th September:—

Certain Indian soldiers in the Transvaal have again appealed to be shot "on the battlefields where they served." The leaders of the Indian community are aware that such an appeal will not, under a British Government, lead to martyrdom; and their skillful use of melodramatic utterances is characteristic of their signal ability. But in the South African War the employment of coloured troops as combatants was scrupulously avoided, and the credentials of these warriors cannot pass unchallenged. There are in the Transvaal some Indian soldiers who have earned in Indian campaigns. It is possible that some of these, or some other Indians, were attached in a non-combatant capacity to some corps during the South African War, and in that capacity they may perhaps have received medals. But the practice of parading medal-wearers in the streets of Pretoria or Johannesburg, and the allusions to soldiers who fought with "British troops" or "fought on battlefields" is calculated to convey an impression which is not

warranted by the facts and to represent Britain as false to her word.

I am, etc.,

A. B. BROWNE.

The question raised by your correspondent, Mr. A. B. Browne, is but a re-statement of that put by Lord Ripon in the House of Lords on the 4th February last. It is perhaps needless to add that Lord Ripon's remarks were free of any taint of cynicism.

The following quotation is from *The Times* of the 3th February:—

"THE MARQUIS OF RIPON: . . . His noble friend (Lord Curzon) would remember however, that from beginning to end of the Transvaal War it was a principle that natives and persons of another race should not be allowed to take part, and Asiatics and natives were not allowed to take any part in the active operations of the War."

"LORD CURZON: I was responsible for sending from India from ten to twenty thousand men. They acted as Transport Corps, Ambulance Carriers, and in other capacities and they were under fire on most battlefields of the campaign." (Hear, hear.)

"THE MARQUES OF RIPON: They were not active soldiers."

"LORD CURZON: Many of them were killed."

To the North of Johannesburg on an eminence that overlooks the whole city and the East of the Witwatersrand, stands an obelisk erected by public subscription as a memorial to Indians in South Africa. On the east side a marble tablet is let into the monument, bearing in English, Urdu, and Hindi this inscription:—

Sacred to the Memory of  
British Officers, Warrant Officers, Native  
N.C.O.'s and Men,  
Veterinary Assistants, Nalbands, and  
Followers of the  
Indian Army who died in South Africa,  
1899-1902.

On the other sides are three tablets bearing respectively these words:—

Musliman.  
Christian—Zoroastrian.  
Hindu—Sikh.

The braggadocio that your correspondent sees fit to impute is, moreover, hardly warranted by recent events. It may be that the appeal to which he refers will not, under a British Government, lead to martyrdom, but Mr. Browne may be interested to learn that during the last two years over 350 British Indians claiming lawful domicile in the Transvaal, have submitted to fine, imprisonment, or deportation rather than to the dishonour they feel would attach to them by compliance with the requirements of the Registration Law of 1907. Indian soldiers need no apologist. They would hardly consider readiness to die on the field a boast, but that Indian civilians peaceful, simple, merchants, shopkeepers, hawkers, and clerks, should, in defence of a principle, be willing to suffer the martyrdom of slow destruction of their businesses, not to speak of bodily discomfort, should provide material for very serious reflection.

I am, etc.,

J. W. RITCHIE.

## Canada and Asiatics

Mr. R. L. Drury, who, six months ago, was sent out to Japan by the Dominion Government for the purpose of supervising the arrangement made necessary by the Lemieux agreement regarding Japanese immigration to Canada, has returned to British Columbia. He says:—"I believe the Japanese question is now on a satisfactory basis, and I have every confidence that Japan will faithfully observe the terms of the agreement. I must say that the various proposals made by me and formally submitted to the Japanese Foreign Office through the British Ambassador were met in a friendly spirit by the Japanese authorities, and throughout they have manifested a desire to be fair and reasonable. For example, I proposed that the Japanese Foreign Office should furnish us with monthly statements of the Japanese going from Japan into Canada, showing their occupation, etc. They acceded to this request, and are now sending these returns every month. We have our own Canadian immigration officials, who keep a complete list of the arrivals from Japan, and if the terms of the agreement should be violated the Japanese Government would be involved in self-condemnation by their own reports. So far as Canada is concerned, every class of Japanese labour is now shut off, and cannot enter Canada without the consent of the Dominion Government. Surely it is better to have arrived at this result by means of diplomacy and friendly negotiations than by abrogating the treaty with Japan and passing hostile legislation, as has been proposed."

Surely a similar arrangement with India is within the resources of Pretoria diplomacy?—*Rand Daily Mail*.

## British Indians in America

### The General Test

Mr. Straus, Secretary of Commerce and Labour, authorises the following statement:—"The Immigration laws, with the exception of those relating to Chinese, do not take cognisance of race, creed, or nationality. All immigrants are subject to the same laws, which exclude for various reasons—such as disease, likelihood to become a public charge owing to inability to find support—clearly laid down by statute. Indians entering the United States from British Columbia are often frailly built and entirely unfitted to do the heavy railway and lumbering work which are alone open to them. This, together with the prejudice on the Pacific Coast, has caused many who have been admitted to fall into distress, and it is to avoid a repetition of such instances that the law regarding physical inability to work is being strictly enforced, not because it is wished to discriminate against the race as a whole."

## Sir Charles Bruce on the Transvaal Crisis.

The *Empire Review* for October contains an article by Sir Charles Bruce, G.C.M.G., on "British Indians in the Transvaal." Part I. deals with the history of the struggle from the commencement of passive resistance. In Part II. Sir Charles says:—

The question of the British Indians in the Transvaal cannot be isolated from the larger issue of British India's place in the Empire. Mr. Chamberlain's tribute cannot be too often repeated:

The United Kingdom owns, as its brightest and greatest dependence, that enormous empire of India with 300,000,000 subjects who are as loyal to the Crown as you are yourselves, and among them there are hundreds and thousands of men who are every whit as civilised as we are ourselves, who, if that is anything, are better born in the sense that they have older traditions and older families, who are men of wealth, men of cultivation, men of distinguished valour, men who have brought whole armies and placed them at the service of the Queen, and have in times of great difficulty and trouble, such for instance, as on the occasion of the Indian Mutiny, saved the Empire by their loyalty. I say, you who have seen all this cannot be willing to put upon those men a slight which, I think, is absolutely unnecessary for your purpose (i.e., the restriction of wholesale immigration), and which would be calculated to provoke ill feeling, discontent, irritation, and would be most unpalatable to the feelings, not only of Her Majesty the Queen, but of all her people.

Lord Middleton not long ago, in speaking of India's partnership in the Empire, recalled the military services rendered in China and at Suakim.

A few days ago *The Times* reminded the Australians that without India Australia would never have been a British colony, and that the maintenance of British power in India is a factor in far Eastern politics with which Australia is closely concerned.

But the British Indians in the Transvaal illustrate another area of activity in the partnership of the Empire. They form a small section of a large community—the community of His Majesty's Indian subjects who have migrated to many parts of the Empire in the belief that a British subject must be a British subject all over the world. Between the various groups of this community and between each and their common country of origin there exists the relation of the branches of a tree to each other and to the trunks and roots. It does not differ in principle from the relation of the United Kingdom to the communities of English, Scotch or Irish origin in our colonies, and of these communities to each other. And in all the history of the Empire there is perhaps nothing more remarkable than the relations which have been brought to exist between the colonists of British and Indian descent, wherever these relations have been developed under the control of the British Parliament, and the mutual advantages that have been the outcome of these relations. These relations con-

stitute a partnership in colonisation between the United Kingdom and British India.

The process of ages, during which the inhabitants of temperate and especially of northern zones have struggled against the difficulties of their environment, has evolved a race strong of will, abounding in energy and enterprise, and above all fertile of brain in finding clues to the operations of nature and turning them to account by the application of science to economic uses. Further, the climatic conditions of their environment, by compelling the race to provide in summer for the exigencies of winter, have developed the faculty of acquisition and the habit of accumulation. Accordingly the British colonists, the predominant partners in the enterprise, had at their command capital, skill in organisation, and scientific methods of production. But the climatic conditions, which had been a main factor in determining their character, had unfitted them for the physical labours necessary to develop the resources of the heat-belt of the world, and their endeavours to supply the capacities they lacked form an instructive chapter in the history of civilisation. The methods which led to the wholesale extermination of native races were followed by the African slave trade. With the abolition of slavery it became inevitable that many of the most fertile regions of the world must be abandoned unless they could be developed under some system in which consent should take the place of compulsion. After the failure of many experiments there has been established a partnership of European and Asiatic colonists under the joint control of the Colonial Office and the Government of India. I need not discuss the terms of the partnership, but it is ruled by two conditions; first, by the restriction of Indian immigration to the requirements of the Colonial Governments; and secondly, by the condition that all immigrants shall be potential citizens. With a long, varied and intimate acquaintance of the Indian communities thus domiciled in our tropical colonies, I can bear testimony that, taking them generally, they are as faithful to their employers, as fair in their dealings, as obedient to the laws, and as loyal to His Majesty's throne and person as any community of the King's oversea dominions.

It would be difficult to exaggerate the importance to the Empire of this partnership in colonisation. It has withdrawn from congested districts of India and established in comfort, often in opulence, a part of the community constantly exposed to famine and disease; it has developed the resources of many fertile territories and supplied revenues adequate for their good government; it has enabled us to maintain our naval supremacy in the Caribbean Sea—according to Captain Mahan, the greatest nerve-centre in the whole body of European

civilisation—and in the Indian Ocean; and above all, it has confirmed in the people of India, of every race and creed, the inspiring sentiment of an Empire established by their aid and to be maintained by their loyalty.

Lord Curzon in the House of Lords lamented a want of imagination on the part of the Government in dealing with the question of the British Indians in the Transvaal. In truth, very little imagination is required to appreciate the indignation with which British India, as a partner in making and maintaining the Empire, has resented the treatment of its colonists in South Africa, and the apathy of the Imperial Government in allowing the unassorted humanity of whites in the Transvaal to decree the degradation of the whole people of India on the ground of racial inferiority. Lord Amphill has declared that the whole course of our administration in India justifies this resentment.

### Civis Britannicus.

I have asserted that the British Indians in the Transvaal are a branch of the great community of His Majesty's Indian subjects who have migrated to various parts of the Empire in the belief that a British subject is a British subject all over the world, but it would be absurd to claim for them any more than for other British subjects, nor do they claim for themselves an unrestricted liberty of migration and residence. I will endeavour to make clear the nature and extent of their claim.

It is getting to be more and more evident that the existence of the Empire depends on a settlement of the question of the rights of His Majesty's Indian subjects beyond the jurisdiction of the Indian Government. On July 31, Lord Crewe intimated as much in a sympathetic reply to a deputation of the South Africa British Indian Committee, and on the same day Colonel Seely, in replying to questions in the House of Commons on the position of the Indians in the Transvaal, frankly associated himself with this opinion.

A great deal has recently been written on the subject, and the recent visit of the American fleet to Australia has called attention to the general question of the relation of the white to the coloured races, in its influence on the cohesion of the Empire, in a way I have no intention to discuss, but which it would be folly to ignore.

A proposal, originally made, I think, by *The Times*, that the Imperial Government should take the initiative in securing a thorough discussion of the whole question of Oriental migration into British colonies by calling a conference, has been advocated by Lord Amphill, and more recently by Mr. Munro Ferguson and a group of Liberal members of Parliament. There is much to commend it, but it is doubtful how far the colonies are prepared to enter the conference with an open mind.

Whether the moment is opportune for such a conference is open to doubt. There is at present an epidemic of prejudice against the coloured races which has been justly compared to the outbursts of anti-Semitic fury in the Middle Ages. The question whether the hatred between the races is inherent and permanent or whether it will yield to the influences that have controlled the position of the Hebrew race is not yet finally decided. It is well to consider the present position of the Jews in the Empire after three hundred years of absolute exclusion from England and many centuries of endeavour to extirpate them as recorded by Lord Beaconsfield:

The attempt to extirpate them has been made under the most favourable auspices and on the largest scale; the most considerable means that man could command have been pertinaciously applied to this object for the longest period of recorded time. Egyptian Pharaohs, Assyrian kings, Roman emperors, Scandinavian crusaders, Gothic princes and holy inquisitors, have alike devoted their energies to the fulfilment of this common purpose. Expatriation, exile, captivity, confiscation, torture on the most ingenious and massacre on the most extensive scale—a curious system of degrading customs and debasing laws which would have broken the heart of any other people, have been tried, and in vain.

There is a curious analogy in the cases. If, in accordance with the sentiment of the time, it has been the modern policy of the white man to resort to degrading customs and debasing laws rather than physical torture and massacre, the unwritten law of lynching in America is being constantly applied to the coloured population with almost incredible ingenuity of malice. Quite recently an untried offender was placed on a pile of cordwood, both being saturated with kerosene oil. "A match was touched to him," and not only was the conflagration watched with shouts of joy, but within a few hours thousands of post-card photographs were being sold in the streets. And this in days when it is declared to be the duty of all coloured races to acknowledge the inherent and permanent superiority of the white man. Nevertheless, deplorable as are such incidents in their nature and frequency, they do not disturb my confidence that the nobler instincts of humanity which have controlled the destiny of the Jewish race will in time secure for his Majesty's Indian subjects throughout the Empire a position free from legislative dishonour and disqualification.

President Roosevelt has declared that there is but one safe rule in dealing with black men as with white men—it is the same rule that must be applied in dealing with rich men and poor men—that is, to treat each man, whatever his colour, his creed or his social position, with every possible justice, on his real worth as a man. That was the faith of Cecil Rhodes; I believe it to be the faith of the people of England.

In the meantime, however, we have to consider the specific case of the Indian as *Civis Britannicus* in the

Transvaal. It is admitted by the Asiatic community that the right of entry must be restricted, and it is important to remember that they have constantly urged this. Mr. Chamberlain, in the extract I have quoted from his speech at the Colonial Conference in 1897, clearly showed that it was not the restriction of wholesale immigration he condemned but the methods by which the South African Republic sought to enforce it. Colonel Seely, in the speech to which I have referred, seemed to assume that the doctrine known as *Civis Britannicus* means that a citizen of the British Empire has a right to roam all over the world, reside where he will, behave as he will, and demand the constant protection of the Imperial Government. And he added that the doctrine has been temporarily abandoned. I agree with him in believing that the abandonment of the doctrine in this sense, if it exists at all, need not be regarded as a disaster. But the question of the rights of the Indian in the Transvaal as *Civis Britannicus* is of a quite different order.

The claims made on his behalf are two: first, that his right of entry should be limited by reasonable restrictions; and secondly, that when legally domiciled he should be given civil rights. I do not think I need add anything to what has been said as to his claim in respect of right of entry; it is, briefly, that the right of re-entry on the same conditions of voluntary registration as were accepted under the agreement of January, should be given to all who can establish a legal domicile in the Colony, and the right of entry to educated Indians entitled to enter under the Immigrants Restriction Act, but, according to General Smuts, barred by the Registration Act. As regards the civil rights claimed, Colonel Seely made a declaration of policy, which has commended itself to the general sense of the nation, in saying "that if any one is admitted under the British flag he must be a potential citizen and must sooner or later be given equal rights with all other men." In allusion to the policy of the Transvaal having for its object to squeeze the domiciled Indians out by the methods I have indicated he was equally clear. "He did not pretend that the Government was without concern for what must happen to the Indians when the policy underlying exclusion was carried beyond exclusion and pushed to the point of dismissing those who were in the country. It was a strong thing to ask that any subject of the King should be deprived of his living and sent about his business through no fault of his own."\* It is good to find that in the only sense in which the doctrine of *Civis Britannicus* is urged on behalf of the British Indian in the Transvaal it is accepted by the Government.

But Colonel Seely suggests difficulties in the way of obtaining a re-

\*I quote from *The Times* Report, August 1.

cognition of the claim from the Transvaal Government on the ground that it is a self-governing colony. In my article in the February number of this *Review* I endeavoured to make it clear that whatever may be the constitutional position of other self-governing colonies, the Constitution of the Transvaal provided an elaborate machinery, designed expressly for the protection of the community excluded from the franchise by the purely arbitrary interpretations placed on the terms of the Treaty of Vereeniging. It seems nothing less than an insult to the intelligence of the Empire to declare that the issue of Letters Patent and Instructions setting up responsible government destroys the validity of the reservations they expressly enact.

The only alternative is to admit that the Constitution of the Transvaal gives the Imperial Government ample powers to give effect to the policy it advocates with the assent of the nation. But in the exercise of these powers there is no reason why the reservations of the Constitution should not be dealt with as obligations under a treaty concluded with a foreign power and negotiations for their fulfilment carried on, by the Imperial Government and the Transvaal, in the same spirit and by the same methods as negotiations are carried on between allied or friendly nations. In the last resort there is, of course, the same tribunal of appeal. Otherwise the position of his Majesty's Indian subjects must become untenable, seeing that the Imperial Government is the sole trustee of their extra-territorial and international rights, and has the sole control of the power to have those rights respected.

If friendly representations to the Transvaal are made, as no doubt they will be made in this spirit, there seems every reason to hope that the policy declared by Colonel Seely may lead to an early settlement of the questions immediately in dispute, and finally to an effective and permanent settlement of the British Indian difficulty, not only in the Transvaal but throughout South Africa.

ULTRA VIRES. A measure has been laid before the Natal Legislative Assembly whereby it is proposed that land let to Indians and natives should not be registered as "beneficially occupied," the owner thereby becoming subject to a quadruple tax. The intention to prevent Indians or natives from all access to the land is obvious, and the spirit in which this measure has been framed is responsible for most of the native troubles with which that colony in particular has been afflicted. Fortunately there is little chance of such an outrageous piece of oppression being legalised. It would be an infringement of the constitution granted to Natal, which lays down that no law shall be passed which imposes disabilities upon any British subjects on account of race.—*Morning Leader*.



## A Richmond Licence Refused

### Supreme Court Judgment

In the Supreme Court this morning (says the *Times of Natal*) his Lordship the Chief Justice delivered judgment in the case of *Haffagee v. the Richmond Licensing Board*. He said, *inter alia* :

This is an application by Hoosen Mahomed Haffagee for a rule nisi directing the Licensing Board for the Division of Richmond, and John Marwick, Harry George Gordon, and William Sink, to show cause why a peremptory writ of mandamus should not issue quashing the proceedings in an appeal heard and decided by the board.

The applicant is the lessee of certain land at Richmond under a lease granted to him in March, 1901. The applicant erected a building upon this land, and carried on business therein for a short time under licence. He sub-let the premises from time to time to tenants who carried on business therein as retail dealers. The last sub-tenant, Ismail, carried on business until April of this year, when contrary to his agreement with the applicant he removed it to other premises in the village, obtaining from the Licensing Officer the requisite transfer of the licence. The present applicant thereupon applied to the Licensing Officer for the issue of a licence to himself to carry on the trade of a retail dealer, which, on the 3rd of April, 1907, was granted under the provisions of Act 18, 1897. Upon objection taken in respect of some defect in the advertisement of the application, the Licensing Board allowed an appeal. The applicant again applied to the Licensing Officer, and on the 16th of June last the licence now in question was granted to him. It appears that at a meeting called and held at Richmond on the 27th of June for the purpose of taking proceedings in respect of the granting of this licence, strong disapproval was expressed of the action of the Licensing Officer in granting the licence in question without having given an opportunity of petitioning against it. At this meeting the following a nong other resolutions irrelevant to this application were passed :—

1. "That Messrs. John Marwick, J.P., W. Sink, and H. G. Gordon are hereby authorised to represent us, as appellants in the appeal to be lodged on Monday on our behalf against the granting of a licence to one Hoosen Mahomed Haffagee by Mr. von Gerard, and any expense to be defrayed by us.
2. "That Mr. R. A. Marwick, solicitor, is hereby authorised to appear on our behalf in the forthcoming appeal."

A special power of attorney was granted to Mr. R. A. Marwick by Messrs. J. Marwick, Gordon, and Sink, in their capacity as members of committee appointed by resolution

passed at the public meeting to institute proceedings of appeal against the decision of the Licensing Officer. The appeal was heard on the 9th and 23rd of July last, when certain exceptions were taken which are in substance embodied in the grounds of this appeal. None of the exceptions were allowed.

The grounds of the present application are as follows :—

(a) That the Board was unable to exercise a free, impartial and unbiased judgment and decision at the hearing of the said appeal by reason of the publication by the objectors to the licence in the public Press of the proceedings of, and resolutions passed at, a public meeting of the residents of Richmond village, whereat protests were recorded against the granting of such licence.

(b) That the said objectors caused the publication of such proceedings at a date subsequent to the lodging of notice of appeal to the Licensing Board.

(c) That the record of the proceedings at such public meeting was forwarded to the public Press by the secretary appointed at such meeting for the purpose of carrying out the resolutions passed thereat.

(d) That the said Board was biased and prejudiced by reason of the publication of such proceedings.

(e) That the objectors (the appellants before the Licensing Board) were members of the community appointed for the purpose of prosecuting the appeal, at and by a public meeting of all classes of the community, and, as such, they had no status entitling them to appeal against the decision of the Licensing Officer.

(f) That the appellants before the Licensing Board (John Marwick, H. G. Gordon, and W. Sink) did not appeal to the said Licensing Board as individuals, but as delegates, or nominees, of a public meeting, and as such they had no *locus standi*.

(g) That the said John Marwick, H. G. Gordon, and W. Sink, appealing in their capacity as delegates of a public meeting, were not persons having an interest in the question, within the meaning of Section 6 of Law 18 of 1897.

(h) That the Licensing Board should have held, upon the evidence, that the appellant (H. M. Haffagee), having been the first licensee, and being the owner of the premises in respect of which the licence was sought, was entitled to a renewal of such licence notwithstanding that his tenant Ebrahim Ismail, had obtained a transfer of such licence to other premises.

(i) That the Licensing Board was wrong in not holding that the appellant had a vested right and interest in respect of such licence over his premises, and that he was entitled to a renewal transfer thereof.

(j) That there were no real proceedings of appeal.

Mr. Tatham contended that this Court had not jurisdiction to hear

this appeal, in view of the provisions of Section 5 of Act 18 of 1897, which provides that "a decision come to by a licensing officer as to the issue or refusal of a licence shall not be liable to review, reversal, or alteration by any Court of Law, or otherwise than is in the next section provided"; and of the next section, which provides for an appeal by the applicant, or any other person having an interest, to the Licensing Board of the division, appointed under the Liquor Act, 1896, who may direct the issue or cancellation of the licence granted by the Licensing Officer.

Mr. Tatham, in further support of his objection as to our jurisdiction, presented an argument which, as far as I know, has never before been addressed to this Court in connection with appeals against the decisions of licensing boards. His contention was that a licensing board was not a Court or tribunal under Section 8 of the Supreme Court Act (30, 1896), which confers upon this Court power to review the proceedings of all inferior Courts of justice or tribunals, and to exercise full supervision and control over all magistrates and other judicial officers, and, if necessary, to set aside, amend or correct their proceedings. We ourselves have held that it is not a judicial, but an administrative body. This Court has, in a series of cases, held that it has jurisdiction to quash the proceedings of licensing boards in cases coming within the Act, for irregularity in procedure, and the like.

The first objection is founded on the publication in the public newspapers of a report of the proceedings of the meeting held at Richmond prior to the lodging of the notice of appeal. The doctrine that the members of a board are incompetent because they may have read (though there was no evidence that they had) the report which gave opinions as to the advisability of an appeal, and in a matter of great public interest, were strongly expressed is a novel one to me. If the argument is sound, we might often have to recuss ourselves because we may have read the newspaper reports of meetings at which questions coming before us may have been discussed. I have never heard of a case in which judges have refused to sit because they knew that the subject on which they were required to decide was one affecting the interests of, or agitating the mind of, the community of which they were members. There is nothing to show that any member of the Board was present at, or took any part in, the meeting. There is nothing upon record from which we can infer bias. The mere fact, if it be a fact, that they were interested as members of the community, in the question, is not, in my opinion, sufficient.

The Board is an administrative rather than a judicial body. In *Kajee's* first case, Acting Chief Justice Maslin said that the question as to the competency of a person to sit as a member

of the Board was one which was for the Board itself to decide, as, indeed, Mr. Tatham contended in this case, and that the Roman-Dutch authorities were clear that if a member of a court is recused, the Court itself can decide the question. In the second case, I said upon a similar question that we could send the matter back in order that the licensing authority might consider and determine it. We, however, decided the question affirmatively ourselves, so that, however the matter may be viewed, whether as a question for the Board to decide, or as one proper for our decision, we cannot interfere on this ground. The Board has decided it, and I think that the decision of the Board was right upon this question.

As to the next objection, that the respondents had no status to object, while it is true that they were appointed at a public meeting, on behalf of those present, most of whom I assume were rate payers, or otherwise interested, it would be monstrous, I think, if the mere appointment of persons qualified in their own right by a large number of persons similarly qualified operated as a disqualification of those appointed to move for the reversal of the Licensing Officer's decision.

The next question, which relates to the sufficiency of the interests of the objectors as entitling them to object, is one which requires careful consideration. As the three objectors were ratepayers and householders, and two of them resident in Richmond, and one a competitor in business, I am of opinion that they had a sufficient interest to entitle them to appeal under Section 6 from the decision of the Licensing Board.

As regards the last question, that the appellant had a vested right and interest, it is clear to me that he had not. Although the appellant had at one time held a licence to carry on the business of a retail dealer upon the demised premises, he was not the holder of it at the time when he made his application. We are not entitled upon this application to consider whether the Board was right in granting a renewal of the licence to his tenant in respect of other premises, in view of the covenant in the lease between the appellant and his tenant Mahomed, that upon the termination of the lease the licence was to "again be transferred to the name of the lessor." This might have afforded a good ground of objection to the transfer or grant of a licence to the tenant. To my mind, the licence applied for was a new licence, but whether it was or not, the Act draws no distinction between a new and an old licence. The licence has to be taken out annually. I think the application must be refused.

The Bench concurred.

No order was made as to costs.

INDIAN MAIL. S.S. *Umfuli* sails for Beira, Ceylon, and India, to-morrow (Sunday). Mails close at 8 a.m.

## The Real Agitators

### "White" Storekeepers

The following letter appears in *The Times* of the 30th September:—

Sir,—Mr. Stuart Helps' letter on the British Indian question in the Transvaal throws new light into a dark corner; but it was so dark that I should like, if you will let me, to hold the light even closer in. Mr. Helps says truly, "It is not the case that the whole of the white population in the Transvaal is antagonistic to the British Indians of that colony or that all the whites in the Transvaal are in favour of their expulsion." My experience is also like his, that many, especially of the poorer classes, both Boer and British, have had good reason to be grateful to the Indian trader, who in a country of very high prices is willing to carry on the work of distribution at a reasonable profit. It is also the bare truth, however ugly, that "the agitation against the Indian trader was started by the white storekeepers—the only real agitators the Indian need fear." The retort that both parties in the Transvaal (and so presumably the whole white community) are agreed upon this point—you yourself, Sir, appear to make this suggestion in a leading article—is not so very convincing when one reflects that in the Transvaal, as in some other countries, a wealthy and powerful class may sometimes procure legislative assistance upon which the electorate has not been definitely consulted.

This same astute "white storekeeper," who affects to voice Transvaal sentiment, would also identify his petty interests with the whole white self-governing Colonies, and thus enlist their powerful support. The cry of "white" may perhaps catch the colonial fighting for a "white Australia," who may think the Transvaal problem like his own. But it is very different. Canada and Australia are—and long may they remain—a "white man's land." South Africa never has been and never will. The only question there is whether, among all the various coloured races (some ten to one against the white) the one marked for expulsion shall be the one probably the most advanced in civilisation, the one certainly to which we are the most bound in honour and interest, and whose only fault is that, instead of being content to compete with the other coloured races in manual labour, it dares to compete successfully with the "white storekeeper," and thus helps to bring the necessities and comforts of life nearer to a large majority of the white population.

One more lantern slide for those who have not lived in the Transvaal. These "white storekeepers"—the "whiteness" is not always very clear. Among those who boast the name and claim racial distinction are to be found Continental undesirables of a very low type, whose class of trade

often brings them into the Police-courts. It always seemed to me the extreme of impudence that those who, without any personal worthiness, had themselves but recently received the benefits of British protection, should often be the first to howl as "white storekeepers" for the exclusion on racial grounds of British born subjects so infinitely superior to themselves in all the essentials of civilization as were many of these Transvaal Mahomedans and Hindus.

Yours faithfully,

E. ELLERSHAW.

Common-room,  
Middle Temple, E.C.

## Selections from the Home Press

### On the Transvaal Question

The *Saturday Review* of the 26th September says:—

A fight to a finish is the only description which fits the attitude of both the Transvaal Government and the British Indians. The Registration Amendment Act has this week come into force, and the points on which the Government have modified the original measure do not satisfy the Asiatics. According to Mr. Drummond Chaplin, the Progressives are with Mr. Botha and his colleagues in the action they are taking, but if the whites are united, the Asiatics are determined. The agitation is spreading and the British Indians, not in the Transvaal alone but in India itself, are appealing to the Imperial Government. Mr. Gandhi is coming to England, and Lord Crewe and Lord Morley have their work cut out in trying to reconcile the differences of those whose interests are in the charge of their several departments. The conflict, embittered as it has been by the spirit in which the Transvaal took up the question, is unfortunately only another illustration of the loose system we call the British Empire.

On the same date the *Statist* remarks:—

This week the Asiatic Registration Amendment Act came into force in the Transvaal, our Government having declined to recommend the King to negative it. The measure was passed unanimously through the Transvaal Legislature, and it appears to meet with the approval of nearly all parties, here at home. The approval of home parties, however, signifies little. Every historical student knows that the impost of a fee duty in the 13 original American colonies was approved practically by all parties in England. Now it is condemned with equal unanimity. We most sincerely hope that the result will not be as serious in regard to India as it was in regard to the 13 original colonies.

## The Detained Indians

### Supreme Court Proceedings

#### Hulk Described as a Palace

In the Supreme Court, on Tuesday, before the Chief Justice (Sir Henry Bale), Mr. Justice Beaumont, and Mr. Justice Broome, the matter of Ismail Amod Mamee and other Indians v. the Principal Immigration Restriction Officer was heard. In this matter a rule was granted on Oct. 20, calling upon the Principal Immigration Restriction Officer to produce before the Court, on Oct. 27, the body of Ismail Amod Mamee, and to show by what authority he detained the applicants, and why he should not be directed forthwith to release and discharge them; and, further, why he should not be called upon to pay the costs of the application.

In an affidavit, Mr. Harry Smith, Principal Immigration Restriction Officer, said that the Indians in question were placed on the detention ship in terms of the provisions of Section 17 of Act 30 of 1903, they having been declared prohibited immigrants, on the ground that they were unable to satisfy him that they had been formerly domiciled in this Colony, and on the further ground that they were unable to comply with the educational test submitted to them, under Section 5, sub-Section (a). Notice had been given to the Government of Natal by the Government of the Transvaal that Asiatics who refused to comply with certain requirements of the latter Government would not be received as immigrants into the Transvaal, and he (Mr. Smith) had been informed by the representative of the Transvaal Government that the said Indians repeatedly refused to comply with the requirements set before them. Two, however, had since done so, and had been released from the detention ship, and furnished with visiting-passes to enable them to pursue their journey to the Transvaal. The Indians could only come before him (Mr. Smith) on two grounds: (a) As applicants for leave to appeal against his decision in terms of Section 10 of Act 30 of 1903, or (b) as applicants for visiting passes under Section 22 of the Act. The Indians now on the detention ship had not come before him on ground (a), but on ground (b), and he had refused to accede to their application. He rested his refusal on the discretion given him by Section 25 of the Act, and his discretion had been guided by the considerations that the applicants having notified their refusal to comply with the requirements mentioned—compliance with which alone would enable them to be received as immigrants in the Transvaal—the granting of visiting passes to them would be an act of

supererogation, and one likely to be prejudicial to the interests of this Colony. It was also stated that the Indians in question had from the first been offered every facility for procuring necessaries. Also that the detention ship was a vessel fitted up within the past three years by a leading citizen of Durban for the accommodation of his wife and family, and that the vessel offered a degree of comfort for those now living in her in excess of that they would enjoy as deck passengers of many Indian-carrying steamships. She had been certified by the Port Captain to be fit to accommodate over 100 persons, and was provided with a good supply of fresh water, fuel and cover against weather. Mr. Smith also said that he had acted throughout this matter as Principal Immigration Restriction Officer, and not in his private capacity.

Mr. Romer Robinson, in a further affidavit, submitted that the Indians referred to were not such prohibited immigrants as were contemplated by Section 17 of Act 30 of 1903, not being immigrants intended for this Colony, but for a neighbouring State. With regard to other allegations in affidavits, by Mr. Smith and Mr. Burgess (the representative in Durban of the Transvaal Colonial Secretary's Office, Asiatic affairs branch), Mr. Robinson said that Mr. Smith had personally informed him that the only requirement of the Transvaal Government which the said Indians were unable, or refused, to comply with was the finger-print regulation, and that they were otherwise fully entitled to transit passes.

There were also affidavits by the Indians themselves, stating that they had a domicile in the Transvaal, had been on a visit to India and now merely wished to pass through Natal on their way to the Transvaal. They admitted the refusal to give their finger-prints until they had consulted a solicitor.

On the matter again coming before the Supreme Court yesterday, Mr. Tatham, K.C., with him Mr. Romer Robinson, appeared for the applicants, and the Attorney-General (Mr. Carter, K.C.) appeared for the respondent.

The Indian Ismail Amod Mamee was in Court.

Mr. Tatham, after mentioning that since the matter arose both vessels, the *Gouverneur* and the *Kronprins*, had left the Colony, went on to submit that the action of the Principal Immigration Restriction Officer had no sanction whatever in law, and that he was wrong in subjecting these persons to detention. They were domiciled in the Transvaal—there was no serious dispute on that point—and were merely passing through Natal to take up their residence in the Transvaal. It was perfectly apparent from the affidavits that the ground for making prisoners of these people, and for keeping them prison-

ers, was not that they had committed any violation of the law of this Colony, but that they were persons who were passing through Natal for the purpose of resuming their rights of citizenship in the country in which they were domiciled, and they might not comply with the legal requirements of the Transvaal in entering. That very curious ground for making prisoners of people had probably never been advanced in any civilised community before, and yet, on such a ground, the Court was seriously asked to sanction that illegal imprisonment. Surely, no law could possibly be construed by their Lordships to mean that the police authorities were entitled to seize the person of a man who happened to be passing through their country because, when he got into the other country he might commit an offence. A touching solicitude for the welfare of the Transvaal was apparently the only ground on which it was sought to justify the detention of these persons, under circumstances of great hardship, as the affidavits showed. Since the first application, the Indian woman who had been expecting confinement had been delivered of a still-born child, probably due to the harsh treatment she had received. The detention of the Indians was anticipating closer union with a vengeance. What on earth this Colony had to do with carrying out the laws of the Transvaal it was difficult to say, but to see the machinery of this Colony put to the use of arresting and subjecting people to rigorous imprisonment, because they might, at a future date, be guilty of a breach of the laws of another State, was so monstrous and preposterous, that one felt it difficult to argue against it. Proceeding, Mr. Tatham argued that these Indians could not be dealt with under the Natal Immigration Restriction Law, because they were not immigrants in Natal, being simply on passage through this Colony. Where they had oppressive and restrictive legislation of that kind the law must be construed very strictly, and in that connection he referred to the dictionary definitions of the word "immigrant," to show that it did not mean a mere passenger through a country, but a person who entered a country for the purpose of permanent residence.

The Chief Justice: Supposing the Transvaal authorities won't allow these Indians to cross their border, and they had to remain in Natal, is there no power then to expel them?

Mr. Tatham said there was power under the Act, but that did not affect the present question. Proceeding, Mr. Tatham argued that nothing in the Act gave the Crown authority to detain these Indians after their ships had sailed, and he also pointed out that they had never been brought before a magistrate. In conclusion, Mr. Tatham asked their Lordships to say that, in detaining these people, the

Principal Immigration Restriction Officer had wrongly exercised his discretion—if he had discretion in the matter—and that the Indians should be released forthwith.

The Attorney-General replied at length, and submitted that, if they looked at the Act in question, it would be found that the respondent in this case had acted strictly within the letter of the law. He contended that the interpretation intended by the Legislature must be given to the word "immigrant," and they could not be restricted by Webster in defining that term. The intention of the Act was to prevent the coming into Natal, whether in guise of passengers, or otherwise, of persons who were not suitable as immigrants of Natal.

The Chief Justice: Was it not the intention to prevent the settlement of undesirable persons?

The Attorney-General: Yes; and prevention will not be had if an undesirable person can come in by claiming to be a passer-through, and then change the desire with which he started. Proceeding, the Attorney-General said that, according to Mr. Tatham's definition of the term "immigrant," there could be no prohibited immigrants, for until a man acquired a domicile he could not be an immigrant. He (the Attorney-General) submitted, instead, that the interpretation intended by the Legislature must be given. He pointed out that the present applicants were unable to read, or sign, in any European language, a requirement under the law, and he thought he might rest his case on that fact alone. He also relied upon the provision in the Act that any person might be prohibited who seemed undesirable to the Minister, on account of information received by him from any Secretary of State, Colonial Minister, or other reliable source. In this instance the applicants had told the Restriction Officer that they would not comply with the Transvaal law as to finger prints, and he thought that sufficient justification for the prohibition. It was inadvisable, when two States were peaceful neighbours, for one to introduce persons who intended to break the laws of the other. Continuing, the Attorney-General pointed out that, under the Act, the Principal Immigration Restriction Officer had discretion in the matter, and was not even bound to give reasons for his action. In this case the applicants had not complied with the law. If they were not prohibited immigrants, but appeared to be so, their course was to deposit £100 with the Restriction Officer, before landing, which sum would be returned them on the establishment of their *bona fides*, and they have not obtained a certificate from the magistrate or Minister that they were not prohibited by that Act. Instead, the course they took was to go straight away to the Chief Magistrate for a temporary interdict, no doubt, with the object

of preventing their being deported until their ship had gone away, so that they could come and plead that to strengthen their position. The Restriction Officer had complied with all the provisions of Section 17. With regard to the vessel on which these people were detained, and about which so much had been said, he did not know why it was called a hulk. It was a place such as thousands of these people would be only too glad to live in; compared with their homes in India and elsewhere it was a palace. To describe what was really a palace to them as a dungeon was an argument which he had no doubt would be treated as it deserved. After submitting at length his contentions that these people were not entitled, under the Act, to either a visiting pass, or an embarkation pass, the Attorney-General said that, supposing a thousand of these people were allowed to pass through to the Transvaal border, they would just be put back over the border for refusing to comply with the law, and the result would be that the Government would have to take them back to the port, and either find a ship for them to go back to their country or keep them until the ship which had brought them returned here, which might be months. The Attorney-General concluded by asking for the dismissal of the application, so that arrangements could be made for the deportation of these people as soon as possible.

Mr. Tatham was heard in reply, and emphasised that no considerations, political or otherwise, must be allowed to weigh, in construing the intention of the Legislature as shown in the Act. He also pointed out that, as a matter of fact, these people had never landed, and, therefore, had not contravened any Act whatever.

The Chief Justice announced that he hoped the Court would be able to give judgment this (Wednesday) morning, but they might not be able to do so. However, judgment would be delivered as soon as possible.

The Court then adjourned.

#### The Decision.

In the Supreme Court, on Wednesday morning (says the *Times of Natal*, judgment was given.

His Lordship the Chief Justice said he inclined to De Villier's opinion as to the safeguarding of the liberty of the subject under the Roman-Dutch Law. He had frequently acted upon the principles of that law, which were not very different from those which the English Judges enforced in considering applications for a writ of *habeas corpus*. The questions in this case were of vital importance, and came before the Court for decision, as far as he knew, for the first time. He quite agreed that the Court had held, and not seldom, that, in interpreting such statutes, the Court should, where there was any question of doubt, lean to a construction in favour of the liberty

of the subject, and, where any difficulty occurred, they would be justified in adopting a benign interpretation. He also suggested that there might be expected from the Government, and from the officials who administered such statutes, a benign interpretation of the law. They had already had occasion to criticise the action of the Government in refusing intercourse between the applicants and their legal advisers, but he did not think that action could be characterised as one of harshness, or lawlessness. He had no doubt that the refusal, improper as he thought it, had been brought about by a misconception on the part of the Restriction Officer of his rights; and, further, it was clear that he had acted on instructions from the Government. The first thing to be decided was the meaning to be given to the term "prohibited immigrant." The Court has been referred to various dictionaries, but he could not say that references to dictionaries always afforded guidance to the determination of the wording of statutes. If it were necessary to have dictionaries to determine what was an immigrant, and what was meant by "to immigrate," he thought he would be able to find authority in consistence with the meaning he meant to give to the words as used in the Act. In the preamble of the Act it stated that it was expedient to place closer restriction on immigrants, and to make provision for the removal of prohibited immigrants. Even though it might be expected, there was no actual definition of the term in the Act, but he did not think there would be any difficulty in determining the meaning from the wording of the Act itself. In Section 4 they were told what was not a prohibited immigrant—those specially provided for by law, as were indentured Indians. Other official persons were also excepted. But he thought they would be able to find the proper definition in Section 5. Amongst those persons who were prohibited were any persons who, when asked to do so, were unable to make out and sign, in some European language, the application required by law, to the satisfaction of the Minister; and any person without visible means of support, and likely to become a pauper, and a public charge. Other persons were mentioned, but it would be unnecessary to consider them. It was stated, and not denied—in fact, he thought it was admitted—that the applicants were persons who were unable to write out and sign the application. He thought the Act was intended to apply to all persons who came within the disqualifications, other than those who were expected under the preceding section, or any other section—as, for instance, those persons who, under Section 10, had deposited £100, and who had, within a week, been able to obtain from the Minister a certificate to the effect that they did

not fall under the prohibition clauses. They had not to deal with that case. He thought there could be no doubt, after a consideration of the purview of the Act, that the Act was intended to apply to all persons who came within the definition, whether they intended to remain in the Colony or not. That this was so, he thought, was clear from the wording of Sections 6 and 7, which provided that any police officer or other authorised official might, subject to certain exceptions, prevent any prohibited immigrant from entering Natal by land or sea. The next section provided that any prohibited immigrant making his way into, or found in, Natal, might be removed. This evidently contemplated a residence in Natal lacking in permanency.

After careful consideration of the statute, and of the arguments advanced by counsel, he thought he could arrive at no other conclusion than that the applicants were prohibited immigrants within the meaning of Section 5, and not entitled—or not shown to be—to any consideration under the exemptions contained in the Act itself. He came now to the consideration of the next question—as to whether the applicants were entitled to visiting passes. It was clear that they were not entitled to embarkation passes. These were provided to meet the case of persons who, being prohibited immigrants, desired to pass through Natal in order to embark at Durban. He was not prepared to say, nor was it necessary at that stage to decide, whether the applicants would be entitled to obtain visiting passes, even though they intended simply to pass through the Colony to the Transvaal. He did not think it necessary to decide that question, because, even presuming that they were entitled to ask for visiting passes, he was not by any means certain that they would be entitled to demand those passes as a right. It was provided in Section 25 that the officer appointed under the Act should have discretion to grant or refuse visiting embarkation passes. The Courts of Law in Natal and in England did not lightly interfere with the exercise by statutory officers of their discretion, even when that discretion was vested in them in words less absolute than those of the present Act. He doubted, having regard to the decisions of the Courts, whether they could hold that the refusal of a visiting pass was improper. In connection with the third question, as to whether the applicants were entitled otherwise to be discharged from the place where they now were, it would be necessary to briefly refer to the facts of the case, which he did. He said nothing as to whether the Restriction Officer had wisely exercised his discretion, for the reason that the applicants had refused to have their finger-prints taken on arrival in the Transvaal. Whether he did or not, the Courts of Justice in Natal or any-

where else had to be absolutely uninfluenced by any political consideration, or by any regard to the consequences that might result from their decisions—decisions which were based upon the law they had to administer; also he did not think it had been necessary to cite high authorities in that respect. He associated himself with the opinion of Chief Justice de Villiers, who when asked to consider the troublous state of the country, had refused to do anything but administer the law without fear, favour, or prejudice. The Court was not concerned with the consequences. The Restriction Officer had stated, in a letter to Mr. Romer Robinson, that the removal of the prohibited immigrants had been carried out in accordance with Section 17 of the Act, and he had given reasons for his action. Afterwards, in an affidavit, he said the same thing—that the applicants had been unable to comply with the educational tests. This was enough to satisfy him that the applicants were restricted immigrants. He was not satisfied that the detention boat in question was an improper place, in terms of Section 17 of the Act. It was quite comfortable—probably more so than many rooms on shore. He was satisfied that, in selecting the boat for the applicants, the Government had not treated them with want of consideration, or with harshness. The question he had to ask himself was: Was the detention of the applicants justified by Section 17 of the Act. Prohibited immigrants were only detained in the detention ship on representations being made by the master of the vessel on which they arrived. They had, however, to be returned to the ship when it was about to sail. He thought the Restriction Officer, in his affidavit, might have given fuller particulars about the circumstances under which he caused the applicants to be removed from the ship to the hulk; but he was not prepared, in the absence of any denial, to say that they were not so removed and detained in terms of the provisions of Section 17. He presumed they had rightly been placed there, and, for a time, had been rightly detained there; but the question he had to now ask himself was: Were they still rightly detained? He understood that the ship in which they arrived had left Natal, and it was, therefore, impossible to put the applicants aboard unless it returned to Durban. In looking closely at the section, they said the object was to provide for the temporary detention of prohibited immigrants, only during the ship's stay in the port, and no longer. It was also provided that the cost of landing, removal, maintenance, &c., should be borne by the master of the ship. The object of this was to cast upon the ship the burden and responsibility of providing for prohibited immigrants while in Natal. It was quite clear to his mind that it was not intended by Section 17 to

provide for the detention of prohibited immigrants for an unlimited time, but merely during the time their ship was in port. It might be inconvenient, and even cruel, to keep the people aboard the ship during the process of discharging or loading cargo.

It was impossible now to return the applicants to their ship. This might be due to the action of the people themselves, in obtaining an interdict, but he did not think that for exercising what they thought their legal rights they should be punished. It was not necessary for him to determine what the rights of the Government might be in the event of the applicants being released. It was not necessary to consider the many provisions of the statute concerning prohibited immigrants who might be landed. He had no shadow of doubt that these persons were not liable to be detained after the departure of their ship. The Court had nothing to do but to order the release of the immigrants. It was said that the applicants had obtained an interdict preventing their removal; but even so that in itself would not justify the Court in allowing them to be kept on the hulk. Courts of law were open to all persons, and, if a person thought he had a right, he did not think he should be punished for trying to exercise that right. The Crown might have another remedy, and, no doubt, if so, it would be exercised. The order asked for should be granted.

Mr. Justice Beaumont concurred. He pointed out that if they depended upon the dictionary for the word "immigrant," there would be contradictions of terms and anomalies enough in the Act to make it unintelligible. He thought the word in the Act meant one who came into Natal, and gave his reasons for so thinking, "Immigrant" in the Act was referred to as one "entering Natal by land or sea," "making his way into or found in Natal," "whose entry is prohibited," and "deemed to have entered the Colony contrary to this Act." There could be no doubt that the applicants came under the prohibition. The Act imposed serious liabilities on the masters of ships—one penalty was a fine of £100—the opportunity being given them of having such immigrants looked after by the Government while the ships were in port. There was no denial of the fact that the Restriction Officer had acted within the law, and had intended to send them back by the ship they arrived in. They must, however, be now released. He expressed no opinion as to the right of the Magistrate to restrain a statutory officer from doing what the law required him to do.

Mr. Justice Broome said he agreed with the general verdict. As Section 17 made no provision for such a case, and as the applicants could not be kept in custody until the ship came back he agreed that they must be released.

An order was granted, calling upon the Restriction Officer to forthwith release and discharge the applicants. Costs were given the applicants.

The Chief Justice suggested that visiting passes might be issued to them.—*Times of Natal.*

### Sir West-Ridgeway's Letter

The following letter from the pen of Sir J. West-Ridgeway dated Sept. 22nd, appeared in *The Times* :—

The recent discussion in your columns regarding the question of British Indians in the Transvaal has fully justified your Correspondent in his statement that the grievances of these people have been redressed and that they are now claiming the unrestricted right of immigration into the Transvaal for their fellow-countrymen, or, at any rate—which is much the same thing—the right of immigration subject only to such restrictions as they themselves approve. It is beyond question that the compromise, which, to quote Lord Amphill's words, "only related to registration, it had nothing to do with immigration," has been loyally carried out by the Transvaal Government.

There would be no objection to the British Indians' urging and pressing the claim for unrestricted immigration if they did so by constitutional methods only; but this is not the case. They are seeking to attain their ends by deliberate violation of the law; and unhappily their lawless proceedings are countenanced and approved by well-meaning but injudicious friends in England, who have evidently not realized the mischievous consequences which may follow. If it is permissible for British Indians in the Transvaal to defy a law of which they do not approve, then why should it be a criminal offence for their fellow-countrymen to take the same course in British India? It is particularly unfortunate that Lord Amphill, who has been Governor of Madras and officiating Viceroy of India, should unwarily have placed himself in this somewhat compromising position. Evidently, as I surmised, he has been misled by his informants, and he will now have learnt for the first time from your leading article of yesterday that the British Indian leaders knew perfectly well when they accepted the compromise that there was to be no further immigration of Asiatics into the Transvaal. He will also have realized, what he evidently did not know before, that the Transvaal Government has made, even in respect of immigration, greater concessions than those suggested by his Majesty's Government, inasmuch as under the new law the Governor—not the Governor in Council—may approve the issue of permits authorizing any Asiatic—not merely "ruling chiefs or high officials of Asiatic descent"—to enter the Transvaal.

### The Prospects of a Settlement

#### Imperial Government Active

The *Transvaal Leader* says:—Readers will have learned with interest that Lord Crewe, the British Colonial Secretary, who has shown his usual tact in handling this most awkward of Colonial problems, endorses the view put forward in these columns, that, while this Colony should emphatically refuse to allow the free entrance of Indians, educated or uneducated, we run no danger in admitting not over half-a-dozen per year. It is to be hoped that along these lines a settlement of the existing *impasse* will be found possible.

London, October 26,

At question time in the House of Commons this afternoon, Col. Seely expressed the hope that Lord Crewe's communications to the Transvaal Government with reference to Asiatic immigrations, would secure concessions whereby Indian professional men would be allowed the right of entry. He added that considerable concessions already had been made.—*Reuter.*

London, October 28.—The dinner given to-night by the Liberal Colonial Club was eagerly anticipated, as it was understood it would be the occasion of an important pronouncement by Colonel Seely with reference to Oriental immigration to the British colonies.

The gathering at the dinner was thoroughly representative. It included Sir West Ridgeway, Sir Albert Hime, Mr. J. A. C. Graaff, Sir Godfrey Lagden, Mr. Honey, Transvaal Director of Customs, and a score of members of Parliament.

Colonel Seely, on rising, had a most enthusiastic reception. In the course of his speech he dwelt upon the Asiatic problem in the Transvaal as more difficult of solution than that in Natal. The people of South Africa, in the interests of humanity and good government, refuse to have a yellow problem. He entirely agreed with that position, but it was essential that Indians who were resident in the Transvaal before the war should receive generous treatment. Nevertheless he regarded the statements as to Indians suffering great hardships as a total delusion. He paid a tribute to the conciliatory attitude of General Botha and General Smuts in the matter, and stated he expected an early settlement would be arrived at. The speech was followed by a discussion in which the colonial view of the immigration question was urged by several speakers. The debate soon became quite animated.—*Reuter.*

### Latest Telegrams from the Transvaal

Johannesburg, Thursday.

Yesterday Mr. Gandhi was brought to the High Court in mistaken expectation of the hearing of Lalla's case, wherein he was subpoenaed for the Crown. The case comes on to-morrow.

Mr. Gandhi looks thin, but otherwise well. I understand that all Indian prisoners at the Fort are suffering from partial starvation on account of the unnatural diet.

The *Transvaal Leader*, to-day, commenting on the order of the Natal Supreme Court regarding the detained Indians, says editorially: The judgment is of significance throughout the Empire, adding that the Court affirms that the Government of the Transvaal and the Government of Natal cannot carry out secret agreements to override laws enacted by their respective Parliaments. The paper continues: We imagine every lawyer in South Africa and every other person who has regard for law and liberty, will rejoice at a judgment which vindicates afresh the elementary rights of members of the British Empire.

Friday.

Messrs. Imam Abdul Kadir Bawa zcer, Moosa Essackji, S. P. Rajoo, N. Govindu, and Padiachy were sentenced yesterday at Volksrust to six weeks' hard labour for refusing to give means of identification on returning from Charlestown.

At Boksburg twelve hawkers were arrested yesterday. An appeal was noted in the case of the eleven traders convicted on the previous day on the ground of their being wrongfully convicted.

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