Indian Opinion

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NOTES AND NEWS

A MASS MEETING under the auspices of the Natal Indian Congress was held last Sunday afternoon at Rawat's Bio Hall, Victoria Street, Durban, when the Rt. Hon. Srinivasa Sastri explained the Government's Condonation Scheme and advised the Indian community that while the scheme was no doubt defective in certain respects it was in the interests of the community to take advantage of it. There were also present in the packed hall those representing the Vigilance Committee and the Federation and were given the fullest opportunity to clear any doubts that may be in their minds. Mr. Sastri's speech was therefore followed by a number questions from the audience which were all satisfactorily answered both by the chairman of the meeting Mr. Sorabjee Rustomjee and Mr. Sastri. Pundit Bhawani Dayal Sanyasi translated Mr. Sastri's speech in Hindustani.

An opportunity was also taken at the meeting of expressing the appreciation of the community for the valuable services rendered in the direction of Indian education by Mr. K. P. Kichlu and Miss Gordon and to bid them farewell. Both Mr. Kichlu and Miss Gordon who had other important engagements attanded the meeting for a short time and thanked those present for their kind expressions.

The Executive of the South African Indian Congress met last Wednesday in Durban to discuss important matters. The question of Condonation was finally decided and it was decided to give publicity to the correspondence that took place on the subject between the Congress, the Union Government and the Agent of the Government of India. The decision of the Executive was to follow the advice of the Rt. Hon. Mr. Sastri and ask and assist those who may be in possession of illicitly obtained documents to get protection certificates. Elsewhere in this issue we reproduce from the *Gazette* the form of Condonation. We hope to publish the correspondence on the subject in our next issue.

Mr. Sorabjee Rustomjee entertained the members of the S. A. I. C. Executive to dinner last Wednesday evening at Peter's Lounge the Rt. Hon. Srinivasa Sastri also being present. Representatives from the Transvaal included Messrs M. D. Bharoochi, P. K. Desai, E. Mall, C. K. T. Naidoo, S. B. Medh, and Willie Joseph, and from the Cape Mr. A. Ismail.

The Rev. B. L. E. Sigamoney arrived at Durban on Thursday from Johannesburg with forty Indian Boy Scouts. They were welcomed at the Central Station by officials and members of the Congress. They will be spending about three weeks in Durban during which time they will be the guests of the Natal Indian Congress.

CONDONATION

LAST Sunday the Rt. Hon. Srinivasa Sastri explained lucidly the condonation Scheme and the necessity for the Indian cnmmunity to take advantage of it. He admitted that the scheme was defective in that it did not allow those taking advantage of the scheme who had not already brought their wives and children to this country to bring them after they had received Condonation. But this defect, he said, we could urge upon the Minister at a later date to remove. He also referred to the opinion expressed by legal men on the condonation certificate to be given to the condoned (published elsewhere in this issue) which they say is not a sound document. But in this respect the Agent of the Government of India has been given a written assurance by the Minister that if at any time the document is proved illegal the Government will bring in a legislation to legalise it. This assurance on the part of one Government to another must be taken as an honourable one. However good this scheme may be, Mr. Sastri said, there are some people who will never be satisfied with it, for the question of their bread and butter is involved in it. After the wrong having righted themselves such people who were living on them by harrassing and fleecing them owing to their unsafe position will no longer be able to do so, and thus they will have to seek other means of livelihood.

To those who had any doubts about the

scheme and wanted any assistance in connection therewith Mr. Sastri asked them to approach the officials of the Congress or to go to their legal advisers or even to approach Mr. Sastri personally but he warned them not to fall into the clutches of such agents whose main object will be to fleece them.

There are extremists amongst us, however, who are still persisting in asking the people not to accept the Condonation Scheme. We do not know how far they are wise in adopting this course. Will these extremists protect the rights of those illegal entrants who may not obtain protection certificates and are subsequently arrested for holding illegal documents? What will they do when such people are deported? Will they be patriotic enough to be deported themselves? We doubt very much. The community, we think, will be better advised to follow Mr. Sastri's advice. After all it is for those immediately concerned to think for themselves what course will be safer for them to adopt. If they think they are safer with the documents they hold at present they may by all means keep those documents but should they, at any time, find themselves in trouble, neither the Congress nor the Government of India nor even the people of India will be able to defend their case. Whereas if they obtain protection certificates and should their rights at any time be questioned or should the Union Government be found breaking faith, they will have a just cause, and the Congress, the Government of India, the people of India and the whole world, for that matter, will be able to defend them. To enlighten the public with the agreement arrived at between the Union Government the Government of India and the Indian community, the Congress has decided to give the widest publicity to the whole correspondence that has passed between them. We will be able to place it before our readers in our next week's issue. Meanwhile we would ask all those concerned not to delay another minute in getting their protection certificates for they have only hree monts within which to do so 30th of September being the last day.

AN UNFOUNDED STORY

WE have had occasion to comment upon the ways of Reuter's Agency in India before and we have now another instance which cannot be allowed to pass without comment. The following message has been received from Reuter's Agency at Bombay dated July 3:—

"A situation unique in the annals of the British Administration in India is reported in a message from Bardoli, one of the richest districts in the Bombay Presidency, which appears in the *Times of India*.

"The "no tax" campaign has completely paralised the Government Machinery, and the result is that nobody will even stir from their homes without the knowledge and consent of the leaders of the campaign, and the subordinate Government officials themselves are practically dependent on the goodwill of these leaders for supplies, conveyance, etc.

"Vallabhai Patel controls the campaign, which is backed not only by local wealth, but also by a monthly "dole" of five lakhs of rupees from fellow villagers who are now settled in South Africa."

While street fights between Hindus and Mohomedans and how the Government Police intervened and restored order are items of news deemed of the utmost importance by Reuter's Agency to be transmitted throughout the world it has never thought fit to send any news about the important activities in the country. Even in giving the above item of news not a word has been said about the origin of the campaign referred to. There is naturally a misunderstanding among those who are not in touch with the doings in India that this is a part of the Swaraj or the non-cooperation movement, while it is nothing of the sort. This is a struggle between the peasants of the Bardoli district and the Bombay Government. The land assessment in that district was increased this year by twenty per cent by the Government and owing to the disastrous floods and drought crops had failed and the peasants were not able to bear the extra tax. They therefore urged upon the Government to appoint an impartial committee to enquire into the position and that they would willingly abide by the decision of such a committee. But the Government did not budge. Mr. Vallebhbhai Patel who is leading the "no tax" campaign pleaded with the Government and in doing so exhausted every possible constitutional means to come to some understanding but it was perhaps lowering the prestige of the Government to accede to the just request of the peasants.

There was, in the circumstances, no alternative left for the peasants but to stand on principle and refuse to pay tax. The campaign has lasted now for three months and the Government have tried the dirtiest imaginable methods to make the peasants yield but their efforts have failed the peasants having stood firm. The Government have gone to the extent of selling the cattle—the cows and buffallows—reared by the peasants like their children and which were more to them even than their children to the butchers at trifling prices. The campaign has won the sympathy of the whole of India including even the Anglo-Indian Press. There are many Indians belonging to the Bardoli district resident in South Africa who have interests in that district. They have, therefore, collected funds amongst themselves and sent them in aid of the sufferers in Bardoli.. Most of such collections have been acknowledged in the Gujarati

section of these columns and although we have not the exact figure before us that has been sent, we are able to say, without the fear of being contradicted, that it has not exceeded £500 in all. "A monthly 'dole' of five lakhs of rupes" being sent from South Africa is an unfounded story.

The Case Of Educated Entrants

Principal Immigration Officer vs. S. B. Medh

Judgment By Appellate Division

The following is the text of the judgment delivered by Mr. Justice De Villiers in the Supreme Court Appellate Division at Bloemfontein in the case of the Principal Immigration Officer vs. S. B. Medh. The Appellate Division has upheld the decision of the Supreme Court (Transvaal Provincial Division) which was in favour of Mr. Medh :—

This is a case stated by the Immigration Appeal Board under section 3 (2) of Act 22 of 1913. The only question of law which was before the Transvaal Provincial Division was the fifth :—

> "Whether the exercise of the Minister's discretion to exempt the appellant (Medh) in terms of section 25 (1) of Act No. 22 of 1913 as recorded in the letter set out in paragraph 11 hereof is or is not valid authority to the appellant to enter and remain in the Transvaal even if the appellant failed after the year 1918 to comply with the condition requiring him to maintain a domicile in the Transvaal."

Section 11 of the stated case reads as follows :—

> "On 30th July 1914, when all differences in connection with the Passive Resistance struggle had been composed, appellant's (Medh's) temporary permit was changed for a Letter of Exemption issued by the Minister of the Interior under the provision of the Immigrants' Regulation Act No. 22 of 1913, in the following terms, viz :—
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> "I am to say that it appears desirable with the expiry of the Temporary Permit issued to you as one of the specially selected Indian entrants who, in terms of the understanding with the Government, were to be admitted to the Transvaal during the year 1911, that you should be placed in possession of some written intimation from this Department that your entry was permitted and that so long as you maintain a domicile in the Transvaal you are authorised to reside in that Province. This letter will therefore serve to show that your entry into the Transvaal was permitted by the Minister of the Interior and that your residence there, so long as you maintain a domicile, is authorised."

The respondent had, as appears from the above, taken part in what is known as the Passive Resistance Struggle. He had entered the Transvaal for the first time in August 1908, and was several times deported as a prohibited immigrant. On 22nd May 1911, however, a temporary permit was issued to him to enable him to remain in the Transvaal for nine months. This temporary permit was renewed from time to time until it was finally changed for the Letter of Exemption set forth above. In September 1916 the respondent left the Transvaal for India and returned to the Transvaal on 30th September, 1917. He again left the Transvaal for India in 1918 and remained there until he returned to the Transvaal on the 30th June, 1927. Under these circumstances the Board found that respondent had never been lawfully resident in the Transvaal for a continuous period of three years otherwise than under terms of conditional or temporary residence, and expressed itself as satisfied that respondent, when he left for India in 1918, did not intend to return to the Transvaal. The Transvaal Provincial Division answered the question in the affirmative, and the appeal is from that decision.

The answer to the question of law reserved turns upon the construction of section 25 (1) of Act 22 of 1913, which reads as follows :—

> "Anything to the contrary notwithstanding in this Act contained, the Minister may, in his discretion, exempt any person from the provisions of paragraphs (a), (b), (c), (d) of sub-section (I) of section 4 or, subject to the provisions of section 7, may authorise the issue of a temporary permit to any prohibited immigrant to enter and reside in the Union or any particular Province upon such conditions as may be lawfully imposed by regulation."

There is a preliminary difficulty in the question as to what is meant by the phrase to "exempt any person from the provision of sections (a), (b), (c), (d) of sub-section (1) of section 4." These paragraphs all deal with provisions the effect of which is to make a person or class of persons a prohibited immigrant or prohibited immigrants. If, therefore, the Minister is given the power to exempt such persons from these provisions, it would seem that he has the power to declare that they are not prohibited immigrants. Let us take the case of an Asiatic. All Asiatics as a class are pronounced to be prohibited immigrants under section 4 (1) (a) as appears from the judgment in the case of the Principal Immigration Officer vs. Purshotam. But under section 25 (1) the Minister is entitled to exempt individual Asiatics from the provisions of section 4. The individual Asiatic exempted from the class of prohibited immigrants would therefore not be a prohibited immigrant, and would be allowed to enter and remain in the Union and even acquire a domicile. So far there would be no difficulty. But paragraph (a) of sub-section (2) of section 4 of the Act does not deal only with classes of persons; it also deals with individuals. Does the same argument apply as in the case of classes? There is a difficulty here, for before the exemption can be given the Minister must have first declared an individual person on economic grounds or on account of habits or standards of life to be unsuited to the requirements of the Union or any particular Province thereof. And having done that, he has declared such individual a prohibited immigrant. If then the exemption of such individual from the provisions of (a) means that the Asiatic ceases to be a prohibited immigrant, the Minister would have declared a person a prohibited immigrant only to take him out of the category of prohibited immigrants again. The same difficulty arises under each of the paragraphs (b), (c) and (d). Take the last paragraph. Before a person can be exempted from the provisions of (d), he must first, through information received from any Government through official or diplomatic channels, have been pronounced by the Minister to be an undesirable inhabitant of or undesirable visitor to the Union, and therefore a prohibited immigrant. And when once he has been expressly declared a prohibited immigrant on these grounds, then the Minister once more steps in to exempt him from the provisions of (d) and declare that he is not a prohibited immigrant. The only alternative view is that the person exempted remains a prohibited immigrant but he is exempted from the prohibition to enter or remain in the Union or in a particular province of the Union, and has therefore an opportunity of acquiring a domicile in the Union or in such Province. But even on this

view the anomaly of including a person in the category of prohibited immigrants only in effect to take him out again is not avoided. For there is no substantial difference between the two views. In either case the person exempted is entitled to enter and remain and to acquire a domicile. Under these circumstances the better view, in my opinion, is to take the only grammatical meaning of the words and hold that a person exempted under section 25 is regarded by the law as having been taken out of the class of prohibited immigrants. This view is further borne out by the use of the word "exempt" in section 5 (g) of the Act. Here persons exempted by paragraph (f) are expressly stated not to be prohibited immigrants.

And if that is the meaning of exemption, the question remains whether the Minister was entitled to grant to respondent an exemption conditional upon the latter maintaining a domicile in the Transvaal as he has done. Here two questions are involved: (1) Can the Minister in exempting a person attach terms and conditions to such exemption, and (2) if not, what is the effect on the Letter of Exemption where a condition has been attached?

Section 25 contemplates two methods by which the Minister in his discretion can prevent a prohibited immigrant from being hit by the provisions of section 4 (a), (b), (c) and (d),—(1) by exempting him therefrom, and (2) by authorising the issue of a temporary permit. If a temporary permit be issued, conditions may be inserted, but the section expressly provides that the conditions should only be those "lawfully imposed by regulations." Any other condition imposed, being *ultra vires*, would be read *pro non scripto*. In dealing with the power of exemption the section is silent as to conditions to be imposed. But an exemption conditional upon maintaining his domicile can hardly be called an exemption. A person is either exempted from the class of prohibited immigrants or he is not. There is no intermediate position. The Minister is given the power to take a prohibited immigrant out of the class of prohibited immigrants or not, as he pleases. But if he decides in favour of the former course, he must take the person out of that class entirely and once and for all. It might be, however, said that the power to grant exemption includes a power to attach whatever conditions the Minister might consider reasonable. But the argument begs the question. The powers of the Minister must be found within the section. The Minister only has power either to exempt or not; there is no third course. In the absence of specific provisions to that effect, such power cannot be construed as embracing the wider power of attaching conditions. If it had been the intention of the Legislature to confer upon the Minister the additional power of attaching conditions to the exemption, it should have said so, as it has done in the case of temporary permits as well as in section 31 (2), Act 38 of 1927. Besides there would have been no necessity for temporary permits if the Minister could attach terms and conditions to the exemption. It is true that section 25 also authorises the Minister to exempt an undesirable visitor to the Union falling under section 4 (1) (d), but the temporary character of the exemption contemplated in this case is determined by the nature of the person, —in other words the prohibited immigrant *qua* visitor, and as such the exemption is necessarily limited as to time. In every other case the exemption is permanent. There is no authority in the Act for the view that in every case the Minister's exemption operates *pro hac vice*, and that a person, although exempted once, must be exempted again every time he seeks to re-enter the country. An Asiatic once exempted is *qua* Asiatic always exempted from the provisions of section 5 (1) (a). There is authority for the view that the discretion possessed by the Minister does not give him the power to attach conditions. In Fincham v. Herbet Licensing Board (1 Gr. H. 343) a licensing court imposed the condition that the licence should lapse in the event of the applicant incurring a criminal conviction. Section 14 of Ordinance 16 of 1872 empowered the licensing court "to grant or refuse the licenses applied for as it shall see fit." It was held that the licensing court might in its discretion have refused to grant the licence; it could not, having granted it, impose a condition as to the result of other proceedings in which the applicant was concerned.

On the second question it was argued for the appellant that what is called the Letter of Exemption is in effect a temporary permit, but the statement of the case assumes that the document was a Letter of Exemption, and in the face of that, this Court can hardly put a different construction upon it. But it was also contended that in any event the fact that the Minister had added the condition shows that he has not exercised his discretion. On this point it is sufficient to say that the Minister by the express terms of the letter purported to exempt the respondent, but attached a condition which he was not entitled to attach, and which must therefore be regarded as *pro non scripto*. Under these circumstances the respondent is entitled to rely upon the letter of exemption to enter and remain in the Transvaal, regardless of whether he had maintained a domicile in that Province or not. The stated case is silent on the point, but I have assumed that the letter of exemption was an exemption under section 4 (1) (a) only.

The question of law reserved must be answered in favour of the respondent. The appeal is therefore dismissed with costs.

Retrospective Effect of Clause 5

Appellate Court Judgment

In the Case of Principal Immigration Officer vs. Purshotam

The judgment in this case was not unanimous Mr. Justice Stratford having given a dissenting judgment which was in favour of the respondent. The following is the judgment in favour of the appellant delivered by Mr. Justice De Villiers:—

The following facts appear from the statement of case submitted by the Immigration Appeal Board in terms of section 3 (2) of Act 22 of 1913. On the 30th January 1915 the respondent, an Asiatic, on arrival at Delagoa Bay under the name of Daya Purshotam, made a statement regarding his relatives claiming that his father's name was Purshotam Jivan. On the 11th February of the same year Parsooth Jivin (Purshotam Jivan) made a statement at Pretoria in which he claimed to be the father of Daya Purshotam. Thereafter on 17th February 1915 an application for the registration of Daya Parsooth (Daya Purshotam) was made at Pretoria, and Transvaal Asiatic Registration Certificate No. 13849 issued to him in that name. Respondent now admits that Parsooth Jivan (Purshotam Jivan) is not his father, but that his father's name is Odhav Morar and that his own name is Govind Odhav. On the 20th September 1927 the respondent was served with a notice of prohibation as a prohibited immigrant. On the 22nd September 1927 notice of appeal was given to the Immigration Appeal Board by the respondent, the grounds being that the respondent "is lawfully domiciled in the Province under a certificate of registration and that he does not fall under the provision of section 10 of the Act or the amendment thereof." Section 10 of Act 22 of 1913 reads as follows:—

"No prohibited immigrant shall be exempt

from the provisions of this Act or be allowed to remain in the Union, or in any Province wherein his residence is unlawful, or be deemed to have acquired a domicile therein, by reason only that he had not been informed that he could not enter or remain in the Union or (as the case may be) in that Province, or that he had been allowed to enter or remain through oversight, misrepresentation, or owing to the fact having been undiscovered that he was such a prohibited immigrant."

And the amendment referred to is section 5 of the Immigration and Indian Relief Act No. 37 of 1927, which is to the following effect:—

"Section ten of the principal Act is hereby amended by the addition at the end thereof of the following new subsection (2), the existing subsection becoming subsection (1)—(2) Any such prohibited immigrant shall be dealt with in terms of section nineteen. If he is in possession of a registration certificate or a certificate of domicile, or any other document authorizing him to enter, reside or remain in the Union or any province, it shall be competent for any board to which he may appeal, if it is proved to the board that such certificate or other document was obtained by fraudulent representations made by him or on his behalf; to order that such certificate or other document be cancelled and that he be dealt with in terms of this Act; Provided that if he does not appeal to a board, the principal immigration officer concerned shall, subject to the approval of the Minister, cancel such certificate or other document."

The board reserved the following question of law for the determination of the Court: "Whether or not section 5 of Act 37 of 1927 is retrospective?" The question was answered in the negative by the Transvaal Provincial Division, and the same question is now on appeal before us.

In Pardo V. Bingham (4 Ch. App. Cas. at 740) Lord Hatherley L. C., in considering whether a statute was retrospective, said: "We must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, ans what it was that the Legislature contemplated." I therefore proceed to consider the state of the law when the amending statute of 1927 was passed. Act No. 22 of 1913 came into operation on the 1st August 1913. On the same date a notice was published by the Minister of the Interior under the powers conferred on him by paragraph (a) of subsection (1) of section 4 of the Act, in which he declared that he deemed all asiatic persons to be unsuitable on economic grounds to the requirements of the Union and of every province of the Union (a) in which such person is not domiciled; or (b) in which such person is not, under the terms of any statute of such province, entitled to reside. The effect of this notice was that from that date all asiatics, with the two exceptions (a) and (b), became prohibited immigrants under the act. Then section 10 of the Transvaal Asiatic Law Amendment Act no. 2 of 1907 provided that every certificate of registration should be accepted as conclusive evidence in all places that the lawful holder thereof was entitled to enter and reside in the Transvaal. Section 11 of the Transvaal Asiatics Registration Amendment Act No. 36 of 1908 repeated this provision, and defined "lawful holder" of a certificate of registration to mean the person whose registration is thereby certified. I ought to add that section 4 (2) (b) of Act 22 of 1913 safeguards tha rights of Asiatics holding registration certificates. It reads:—

"Nothing in subsection 1 (a) contained shall be construed—

(b) as abrogating or affecting any right conferred by Act No. 36 of 1908 of the Transvaal upon the lawful holder of a certificate of registration defined in that Act."

In the case of Rex V. Purbhoo (1914 T. P. D. 110) the Transvaal Provincial Division had occasion to consider in how far the provisions entrenching the position of the holder of a registration certificate were effected where the certificate was obtained by the fraud of the "lawful holder." Mason J. considered it unnecessary for the purposes of the case before the Court, to determine whether the registration certificate could be disregarded, but inclined to the view that if the certificate could be annulled on the ground of fraud, the only method was by an express proceeding for that purpose. And Gregorowski J. said: "It seems to me that a certificate of registration once granted can be set aside if there is proof that it has been obtained by impersonation, by fraud or forgery, perjury or the like, but then proceedings would have to be taken for this purpose. The personation, fraud or frogery would have to be proved in the proper proceedings." The same question again arose in 1921 in the case of Ismail Moosa v. Registrar of Asiatics (1922 T. P. D. 66). The facts as stated in the head note were as follows: "A registration certificate in terms of section 4, subsection 2 (b) of Act 2 of 1907 was granted to an Asiatic minor on the strength of an affidavit by an Asiatic who claimed to be the father of the minor supported by affidavits of two other Asiatics. Some years thereafter the Asiatic who had claimed to be the minor's father made a second affidavit "to the effect that the allegations in his previous affidavit were false, and that the minor was not his son. The Registrar of Asiatics thereupon applied for the cancellation of the registration certificate issued to the minor. Held, that the Court would not cancel such certificate in the absence of strong corroborative evidence as to the truth of the allegations in the second affidavit." The case first came before Mason J. in Chambers, who granted the application and cancelled the certificate. Upon appeal the full Court reserved the order on the ground set forth above, but expressed no opinion whether a registration certificate obtained by fraud could be set aside. Finally the question once more arose in the case of Registrar of Asiatics v. Salajee (1925 T. P. D. 71). In this case the fraud alleged was not the fraud of the person holding the certificate, but of a third person, and the Court held that a certificate cannot be annulled unless the holder is proved to have been guilty of fraud in its procurement, in which event he would not be the "lawful holder" thereof within the meaning of section 10 of Act 2 of 1907. At the moment when the amending Act was enacted, the position was therefore as follows: The notice of the Ministr of the Interior of 1st August 1913 had declared all Asiatics (with two classes of exceptions which do not affect the present case) prohibited immigrants, and under section 4 (1) of the Act it makes no difference whether they seek to enter or are found in the Union or in a Province where they are not lawfully resident. Section 19 (1) of the Act provided for the procedure to be adopted when a person intends to enter the Union. Every such person "shall, if required, appear before an immigration officer to satisfy such officer that he is not a prohibited immigrant either in respect of the Union or in respect of any particular province." And section 10 declared that prohibited immigrants cannot rely upon the fact that they had been allowed to enter or remain through misrepresentation as a possible ground for exemption from the provisions of the Act. Finally Courts of law, and individual judges in the Transvaal, had expressed different opinions as to the value of registration certificate obtained by fraud.

It was under these circumstances that the Legislature stepped in and enacted section 5 of Act 37 of 1927. I confess, looking at the words of the section, which in their grammatical meaning cover all cases past as well as future and connects up the new section with section 10;

it is difficult to escape the conclusion that section 5 was intended by the Legislature to cover registration certificates obtained by fraud before the amending Act was passed.

According to the clear assumption of the Legislature in section 5, even persons in possession of certificates of registration fall within the category of persons who had been allowed to enter or remain through misrepresentation within the meaning of section 10 and are prohibited immigrants. The words "any such prohibited immigrant" in subsection (2) show that the Legislature in that sub-section was dealing with the same class of prohibited immigrants with which section 10 dealt, andthe case where "such prohibited immigrant" is in possession of a registration certificate obtained by fraudulent representations whether made by him or on his behalf, is then dealt with, clearly showing that even where the person is in possession of such a certificate, in the opinion of the Legislature, he falls under section 10. It is necessary for me to enquire what view the Legislature took as regards the point of law which had occupied the attention of the Courts; it is sufficient for my purpose that the Legislature clearly expressed the opinion that prohibited immigrants holding certificates of registration obtained by fraudulent representations made by themselves or on their behalf are included in one of the categories mentioned in section 10 and are therefore not exempt from the provisions of the Act. Section 5, therefore, while it provides new and more expeditious machinery for giving effect to section 10, does more than that; it also declares the proper construction to be placed upon section 10 of the principal Act. That being the case, the rule that statutes regulate future conduct and are construed as operating only on cases or facts which came into existence after they were passed *nova constitutio futuris formam imponere debet, non praeteritis* does not apply. And from that it follows too that there is here no interference with any vested rights, if such a term can be applied in the case of persons holding registration certificates obtained by fraud. (cf. "The Ironsides," 167 E.R. at p. 210). For in spite of the fact that such a person was in possession of a certificate of registration obtained by fraud, whether his own or that of another, on his behalf, he remained a prohibited immigrant and could not claim exemption from the provisions of the Act.

In Moon v. Durdan (154 E.R. 389) the section to be construed was to the effect that "all contracts and agreements by way of gaming or wagering shall be null and void, and that no suit shall be brought or maintained in any Court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event upon which any wager shall have been made." It was held by a majority that the statute had not a retrospective operation, so as to defeat an action for a wager, commenced before the statute passed. Baron Parke, who agreed with the majority, is reported as follows: "The language of the clause, if taken in its ordinary sense, as in the first instance we ought to do, applies to all contracts, both present and future, and to all actions, both present and future on any wager, whether past or future." He then refers to the rule quoted above and proceeds: "But this rule, which is one of construction only, will certainly yield to the intention of the legislature; and the question in this and in every other similar case is whether that intention has been sufficiently expressed."

Cases decided under other statutes are no safe guide to us in construing this statute but may be helpful in assisting the Court to come to a conclusion. The case of Attorney-General v. Theobald (24 Q.B.D. 557) is instructive. The Customs and Inland Revenue Act of 1881 by section 38 (c) imposes stamp duty upon personal property "passing under any past or future voluntary settlement" if a life interest is reserved to the settler. The Customs and Inland Revenue Act, 1889, section 11, enacts that the above section "is hereby amended as follows: 'The description of property (c) shall be construed as if the expression 'voluntary settlement' included any trust . . . in favour of a volunteer . . . and whether such deed or other instrument was made for valuable consideration or not as between the settler and any other person." Upon demurrer to an information for stamp alleged to be due, under section 38 of the Customs and Inland Revenue Act, 1881, in respect of personal property to which certain persons became entitled in 1885, under a settlement, it was held that the provisions of section 11 of the Act of 1889 were retrospective, and that the construction provided by that section must be applied to the description of the property sought to be taxed, and this although the property passed to the beneficiaries, and the proceedings to recover the duty were taken, before the second Act came into force. And Baron Pollock is reported as follows: "The case of Attorney-General v. Hertford in the Court of Exchequer is a strong authority that, if an Act is in its nature a declaratory Act, the argument that it must not be construed so as to take away previous rights is not applicable. The present case is, in my opinion, a stronger one in favour of the Crown. Here the earlier Act of 1881 provides what documents are to be stamped and what property is to be affected, describing it as "any property passing under any past or future voluntary settlement." These words 'voluntary settlement' having given rise to doubts, the legislature in 1889 passed an Act which, in section 11, sub-section 1, provides that 'sub-section 2 of section 38 of the Act of 1881 is hereby amended as follows.' 'Now, although that section begins by using the words 'is hereby amended,' yet the material part is that which follows, in sub-section 1, 'the description of property marked (c) shall be construed as if the expression 'voluntary settlement' included any trust . . . in favour of a volunteer . . . whether such deed or other instrument was made for valuable consideration or not as between the settler and any other person.' Therefore "the earlier Act must be read as having the meaning declared by the later Act." In my opinion the same reasoning applies to the present case.

In the face of the clear language of section 5, the argument for the respondent that section 10 has no reference to persons holding registration certificates, whether obtained by fraud or not, but only applies to those classes of prohibited immigrants expressly mentioned in the section cannot be supported. The respondent founds this argument upon the words "by reason only" in section 10, and the absence in that section of a specific reference to persons holding registration certificates. But the section does speak of a prohibited immigrant who has been allowed to enter or remain through misrepresentation, and that is certainly wide enough to embrace prohibited immigrants who had obtained their registration certificates through fraud. The rights of "lawful holders" of certificates of registration, not obtained by fraud, are safeguarded by section 4(2)(b) of the Act. It must not be forgotten that Act 22 of 1913 is a general Union Act, and is not confined to Asiatics. Then it was also said that what the Legislature has done in section 5 is to create a new class of persons, viz. those who held certificates fraudulently obtained, and to say how they should be dealt with. But the language of the section is against that view, as I have pointed out above. The respondent, upon his construction, is driven to contend that a registration certificate obtained by the fraud of the holder before the amending Act came into operation can only be set aside by a Court of law. In my opinion section 5 is retrospective, and lays down a simple procedure for setting aside all registration certificates obtained by fraud whether before or after the passing of the amending Act and whether by the fraud of the holder himself or of others on his behalf.

For the above reasons I have come to the conclusion that the question of law reserved must be answered in the affirmative and the appeal allowed with costs in both Courts.

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The Story of My Experiments With Truth

[By M. K. Gandhi]

Part IV. Chapter XXI.

Polak Takes the Plunge

It has been a perpetual regret with me that though I started the settlement of Phœnix I could stay there only for brief intervals. My original idea was gradually to retire from practice, go and settle at Phœnix, earn my livelihood by manual work there, and find the joy of service in the fulfilment of Phœnix. But it was not to be. I found in my experience that man makes his plans to be often upset by God, but I have also seen that where the ultimate goal is the search of truth, no matter how one's plans are frustrated, the issue is never injurious and is often better than expected. The unexpected turn that Phœnix took and the unexpected happenings, were certainly not injurious, though it is difficult to say that they were better than our expectations.

In order to enable every one of us to make a living on manual labour, we parcelled out the land round the press in pieces of three acres each. One of these fell to my lot. On all these plots we, in spite of ourselves, built houses with corrugated iron. Our desire was to have mud huts thatched with straw or small brick houses such as would become ordinary peasants, but it could not be. They would have been more expensive and would have meant more time and every one was eager to settle down as soon as possible.

The editor was still Mansukhlal Nazar. He had not accepted the new scheme and was living in Durban where there was a branch office for Indian Opinion. Though we had paid compositors, the idea was for every member of the settlement to learn type-setting, the easiest, if the most tedious, of the processes in a printing press. Those, therefore, who did not know it already, learnt it. I remained a dunce to the last and Maganlal Gandhi surpassed us all. Though he had never before worked in a press, he became an expert compositor and not only achieved great speed but, to my agreeable surprise, quickly mastered all the other branches of press work. I have always thought that he himself was not conscious of his own capacity. We had hardly settled down, the buildings were hardly ready, when I had to leave the newly constructed nest to go to Johannesburg. I was not in a position to allow the work there to remain unattended to for any length of time.

On return to Johannesburg, I informed Mr. Polak of the important changes I had made. His joy knew no bounds to learn that the loan of his book had been so fruitful. 'Is it not possible,' he asked, 'for me to take part in the new venture?' 'Certainly,' said I. 'You may if you will join in the Settlement.' 'I am quite ready if you will admit me.'

His determination captured me. He gave a month's notice to his chief to be relieved from the Critic, and reached Phœnix in due course. By his sociability he won the hearts of all and soon became a member of the family. Simplicity was so much in his grain that far from feeling the life at Phœnix in any way strange or hard, he took to it like fish to water. But I could not keep him there long. Mr. Ritch had decided to finish his legal studies in England, and it was impossible for me to bear the burden of the office single-handed, and so I suggested to Polak to join the office and qualify as an attorney. I had thought that ultimately both of us would retire and settle at Phœnix, but that was not to be. Polak's was such a trustful nature that when he reposed his confidence in a friend he would try to agree with instead of arguing with him. He wrote to me to say that though he loved the life there, and was perfectly happy, and had hopes to develop the settlement, still he was ready to have leave and join office to qualify as an attorney, if I thought that thereby we would realise our ideals quicker. I heartily welcomed the letter. Polak left Phœnix, came to Johannesburg and signed his articles.

About the same time a Scotch Theosophist whom I had been helping to get ready to qualify for a local legal examination also joined as an articled clerk, on my inviting him to follow Polak's example. His name was Mr. MacIntyre.

Thus with the laudable object of quickly realising the ideals at Phœnix I seemed to be going deeper and deeper into a contrary current, and had God not willed otherwise I should have found myself entrapped in the net spread in the name of simple life.

It will take a few more chapters before I describe how I and my ideals were saved in a way no one had imagined or expected.

Condonation Certificate

Union Gazette dated June 29 contains regulations under the Immigrants Regulation Act No. 22 of 1913 as amended by Act No. 37 of 1927. Section 20 thereof deals with Permits and Certificates and in annexure 5 (a) the form of the Condonation Certificate is given. Neither space nor time permits us to give all the regulations in this issue. We, however, reproduce below the form of Condonation Certificate as reflected in Annexure Five (*a*) :—

Subject to the conditions and requirements stated hereunder, the illegal entry of.....
into the Province of.....is condoned and he is permitted to remain in the said Province.

CONDITIONS AND REQUIREMENTS.

1. This permit is issued subject to the following conditions and requirements and to the provisions of the Immigrants Regulation Act, No. 22 of 1913, as amended by Act 37 of 1927, and the regulations thereunder :—

(*a*) This permit is valid until it is cancelled by the Minister

(*b*) This permit preserves to the holder all the rights and privileges enjoyed at the commencement of Act No. 37 of 1927, viz., 5th July, 1927, and the holder is regarded as having entered the Province of..... in terms of section *twenty-five* of Act No. 22 of 1913, except that he will not be permitted to claim the rights and privileges conferred by section *five (f)* and (*g*) of the said Act, that is to say that if his wife and/or children have not been admitted at date hereof he will not be permitted subsequently to introduce any of snch persons.

(*c*) This permit entitles the holder to retain any registration certificate, certificate of domicile, or other document authorising him to enter, reside, or remain in the Union or any Province thereof, provided that if this permit is cancelled by the Minister such document or documents shall be dealt with under the provisions of section *ten* of Act 22 of 1913, as amended by section *five* of Act No. 37 of 1927. The documents referred to in this paragraph are as described below, viz. :—

.....

.....

.....

(*d*) The Minister undertakes not to cancel this document unless the holder is, subsequent to the 5th July, 1924, convicted of an offence as specified in section *twenty-two* of Act No. 22 of 1913 as amended by Act No. 37 of 1927. In the event of cancellation, the holder shall forthwith be dealt with in terms of section *ten* of Act No. 22 of 1913, as amended by section *five* of Act No. 37 of 1927.

.....
Commissioner for Immigration and Asiatic Affairs.

Date Stamp.

I,....., agree to the above conditions.

(Holder's signature).....

Witness.....

Place.....Date.....

The conditions of this permit have been interpreted/read over by me to the holder in.....

(Signature of intepreter).....

Left Thumb Impression.	Right Thumb Impression.

માફીપત્ર

તા. ૨૯ જુનના યુનીયન ગેઝેટમાં ઇમીગ્રેશન કાયદાને લગતા ધારાઓ પ્રસિદ્ધ કરવામાં આવ્યા છે તેમાં સરકાર તરફથી આપવામાં આવનાર માફીપત્રનો નમુનો પણ આપવામાં આવ્યો છે. ધારાઓ અમે હવે પછી છાપીશું પણ માફીપત્રના નમુનાનું ભાષાન્તર અહિ આપી દઇએ છીએ તે નીચે પ્રમાણે છેઃ—

માફીપત્રનો નમુનો

આ નીચે દર્શાવવામાં આવેલી શરતો અને જરૂરીયાતો સાથે.....હું.....પ્રાંતમાં ગેરકાયદેસર દાખલ થવું માફ કરવામાં આવે છે અને તેને તે પ્રાંતમાં રહેવાની પરવાનગી આપવામાં આવે છે.

શરતો અને જરૂરીયાતો

૧ આ પરવાનો નીચેની શરતો અને જરૂરીયાતો અને ૧૯૨૭ના ૩૭ નંબરના કાયદાથી સુધારવામાં આવેલા ૧૯૧૩ ના ૨૨ નંબરના કાયદાના વિધાન અને તેને લગતા ધારાઓની રૂએ આપવામાં આવ્યો છે.

(અ) આ પરવાનો પ્રધાન તરફથી તેને રદ કરવામાં ન આવે ત્યાં સુધી ચાલશે.

(બ) આ પરવાનો ધરાવનારના ૧૯૨૭ ના ૩૭ નંબરના કાયદાના આરંભની તારીખે, એટલે કે, તા. ૫ જુલાઇ ૧૯૨૭ ના દિને તે જેટલા હકો અને છુટો ભોગવતો હતો તે સઘળા હકો અને છુટોને નિભાવી રાખશે, અને આ પરવાનો ધરાવનાર.....પ્રાંતમાં ૧૯૧૩ ના ૨૨ નંબરના કાયદાની કલમ ૨૫ ની રૂએ દાખલ થએલો હોય તેમ લેખવામાં આવશે, સિવાય કે, મજકુર કાયદાની કલમ ૫ (એફ) અને (જી) થી આપવામાં આવેલા હકો કે છુટોનો દાવો તેનાથી થઈ શકશે નહિ, એટલે કે, જો તેની ઓરત અને/અથવા બાળકો આ પરવાનાની તારીખે દાખલ થઈ ચુકેલા નહિ હશે તો તે બાદ તેમાંના કોઇને દાખલ કરવા દેવામાં આવશે નહિ.

(સી) આ પરવાનો ધરાવનારથી તેને ચુનીયનમાં કે તેના કોઈ પણ પ્રાંતમાં દાખલ થવા, વસવા કે રહેવાનો હક આપનાર રેજીસ્ટરેશન સર્ટીફીકેટ, ડોમીસાઈલ સર્ટીફીકેટ કે કોઇ પણ બીજું દસ્તાવેજ જે કંઇ હશે તે પોતાની પાસે રાખી શકાશે, અપવાદ એટલો કે, જો આ પરવાનો પ્રધાન તરફથી રદ કરવામાં આવશે તો તેવાં દસ્તાવેજને કે દસ્તાવેજના સંબંધમાં ૧૯૨૭ ના ૩૭ નંબરના કાયદાની કલમ ૫ થી સુધારવામાં આવેલા ૧૯૧૩ ના ૨૨ નંબરના કાયદાની કલમ ૧૦ ની રૂએ પગલાં લેવામાં આવશે. આ પારિગ્રાફમાં સુચવાયલા દસ્તાવેજો નીચે પ્રમાણે છે. નામેઃ.....
.....
.....
.....

(ડી) આ દસ્તાવેજને પ્રધાન રદ નહિ કરવાની કબુલાત આપે છે સિવાય કે તે ધરાવનાર ૧૯૨૪ના જુલાઈની તા. ૫ મી પછી ૧૯૨૭ના ૩૭ નંબરના કાયદાથી સુધારવામાં આવેલા ૧૯૧૩ના ૨૨ નંબરના કાયદાની કલમ ૨૨ માં દર્શાવેલા કોઇ ગુન્હા માટે સજા પામેલો હશે. પરવાનો રદ થવાના સંજોગોમાં તેના ધરાવનારની સામે ૧૯૨૭ ના ૩૭ નંબરના કાયદાની કલમ ૫ થી સુધારવામાં આવેલી ૧૯૧૩ ના ૨૨ નંબરની કલમ ૧૦ ની રૂએ તુરતજ પગલાં લેવામાં આવશે.

.....
તારીખની છાપ ઇમીગ્રેશન અને એશીયાટીક એફેર્સના કમીશનર

હું.....ઉપલી શરતોને કબુલ થાઉં છું.

(પરવાનો ધરાવનારની સહી.....

સાક્ષી.....

સ્થળ.....તા.....

આ પરવાનાની શરતો તેના ધરાવનારને મારી તરફથી.....ભાષામાં સમજાવવામાં/વાંચી બતાવવામાં આવી છે.

(દુભાષીયાની સહી).....

ડાબા અંગુઠાની છાપ	જમણા અંગુઠાની છાપ