

# Indian Opinion

No 24.—Vol. XXX.

Friday, June 17th, 1932

Registered at the G.P.O. as a Newspaper.  
PRICE FOURPENCE.

## IMPERIAL CITIZENSHIP ASSOCIATION

### ON CAPETOWN AGREEMENT

**M**R. K. Natarajan, Hon. Secretary of the Imperial Indian Citizenship Association, Bombay, has addressed the following letter to the Secretary, Government of India, Department of Education Health and Lands, New Delhi:—

"The Secretary of the Education Department, Mr. G. S. Bajpai, announced on the 5th April, 1932, in the Legislative Assembly the main heads of the Agreement arrived at as a result of the recent Conference in Cape Town between the Delegation sent by the Government of India, headed by the Hon. Sir. Fazl-i-Hussain and the representatives of the South African Union Government. Sir Fazl-i-Hussain and his colleagues, with Sir Kurma Reddi, the late Agent in South Africa, were good enough to attend an informal meeting of the Council of the Imperial Indian Citizenship Association on the day of their arrival in Bombay, but unfortunately they could not spare time for full discussion that day. The Council, however, later has had the advantage of having a full statement of the circumstances in which the agreement was reached, from Mrs. Naidu, one of the Indian delegates, who is also one of its members.

"The agreement refers to two main questions—namely, the future of Indian in South Africa and their position in the Transvaal province. In this letter the Council confines itself to the first and larger issue.

"With the object of facilitating repatriation a plan of 'assisted emigration' was formulated which, it is now recognised, has failed. The 10,000 persons who took advantage of this plan and returned to this country, have not found it feasible to readjust themselves to Indian life after their long residence under entirely different conditions in South Africa. The Council notes with satisfaction that the plan has been abandoned in the new agreement.

"In the opinion of the Council the failure of the repatriation scheme is conclusive proof that the great body of the Indians in South Africa is a permanent element of the population of that country and that the means of its uplift must be the same as those found suitable and necessary in the case of other sections of the population. The Council is sure that the Indian Delegation must have been moved by weighty considerations outside the simple merits of the case in undertaking to recommend that the Government of India jointly with the Government of the Union of South Africa, should appoint a Committee to explore the possibilities of lands other than India as an outlet for Indians in the home country as well as in South Africa.

"The Council is aware that in the first Cape Town Agreement the alternative of emigration to other lands as a way of relieving South Africa of such Indians as were unable to adopt the Western standard of life had been suggested. But it was not taken seriously even by the Government of the Union of South Africa, who did nothing to implement it during the last five years. Mahatma Gandhi, however, put his finger on it at that very time and

warned the country of the dangers lurking therein. He wrote:—

"Repatriation could only be to India. Re-emigration can be to any country. The following sentence in the settlement clearly points to that interpretation:—'The Union Government, therefore, will organise a scheme of assisted emigration to India and other countries where Western standards are not required.' This assisted emigration to other countries, I hold to be dangerous, for there is no knowing what may happen to the poor ignorant men going to an unknown land where they would be utter strangers. Such countries as would take them would only be Fiji or British Guiana. Neither has a good name in India. It is decidedly a disadvantage to have been a party to assisted emigration to any other part of the world."

The Council cannot help thinking that Mahatma's observations have as much force to-day as five years ago.

The Council appreciates the patriotic work of the Indian Delegation under the leadership of the Hon. Sir Fazl-i-Hussain, confronted as it was with inherent difficulties of the Indian problem, which notwithstanding signs of an improved social attitude towards Indians noticed by the delegatin, seem rather to have become aggravated in the political sphere. It is, however, given to understand that the arrangement arrived at with the Government of the Union of South Africa in connection with the proposal to explore the possibilities of Indian Colonisation in lands other than India, does not commit either party to anything beyond exploration. It further understands that the Indian Congress in South Africa has agreed in the spirit of pioneering to this exploration and has consented to send a representative to work on the Commission of enquiry, when it is set up, on the condition that they are generally satisfied with the rest of the agreement. Bearing these two factors in mind the Council of the Association does not wish to strike a jarring note at this stage, but it considers its duty to place on record its strong conviction that, should the exploration which is to take place as a result of the Conference, lead to nothing feasible, the fact that the Indian delegation agreed to it should not prejudice in the slightest degree directly or indirectly, the inherent right of South African Indians to citizenship in the land which to 80 per cent. of the population is the land of their birth, as recognised by the Agreement of 1927 and reaffirmed by the 1932 Cape Town Conference. If this is made unequivocally clear to the South African Government the Council of the Association would await with interest the result of the revision to explore the possibilities of Indian Colonisation in other lands.

## ANOTHER DEATH BLOW

ON the 5th of June last year the Transvaal Provincial Council passed the Licensing (Control) Draft Ordinance. The Ordinance deprives the Indian community in the Transvaal of the right to get new licences to trade. In the Witwatersrand area on the proclaimed ground the Indian community has no hope to get new licences since the much criticised Tenure Bill has now become an Act. In the whole of the Transvaal Province the Municipalities and Local Boards are given arbitrary powers in regard to the issuing of general dealers licences. It is provided in the Ordinance that the Local authority or Board shall within the Municipality or the rural area, as the case may be, have a discretion to grant or refuse a certificate without assigning any reason therefor. Hitherto in the Transvaal no such arbitrary power was placed in the hands of the local authorities. If the local authorities refused to grant a certificate they were bound to give reasons for refusal and the applicant had a right to appeal. Thus Indians were protected and often got relief from the courts and the local authorities were checked. By the passing of this new Ordinance a further hardship has been inflicted on the Indian community. This Ordinance is yet another instance of how the Capetown Agreement is flouted by the Union Government. In regard to licensing laws there is a clause in the Agreement which lays down that:

When the time for the revision of the existing trade licensing laws arrives, the Union Government will give all due consideration to the suggestions made by the Government of India delegation that the discretionary powers of local authorities might reasonably be limited in the following way. (1) The grounds on which a licence may be refused should be laid down by Statute (2) The reasons for which a licence is refused should be recorded and (3) There should be a right of appeal in the case of first applications and transfers as well as in the case of renewals to the Courts or to some other impartial tribunals.

Any sane person will see clearly that this new Ordinance is against the very letter and spirit of the Capetown Agreement. When last year H.E. the Governor-General was prevailed upon not to assent the above Ordinance and His Excellency was gracious enough to withhold his assent we felt that the Union Government at least was desirous of respecting the Capetown Agreement. But the *Union Gazette Extraordinary* dated June 4, announcing His Excellency's assent came to us as a shock. We blame the Union Government because His Excellency only acts upon the advice of his Ministers. The Ordinance provides that upon the promulgation thereof it shall be the duty of every local authority or board to frame, keep and maintain a list containing the name of all persons then lawfully trading as general dealers within the Municipality or rural area, as the case may be, and a description sufficient for the purpose of identification of the various premises at which such persons are so trading and the nature of the trade or business. Every person whose name shall have been placed upon such list, shall be exempt from the necessity

of obtaining a certificate. Such persons now will not have to apply every year for a certificate as is done at present in the case of renewals.

Yes, the Government of India delegation came and they went. They entered into an agreement with the Union Government. They suggested modifications to the Asiatic Land Tenure Bill and the Bill passed with the modifications. They went home satisfied that they had made an honourable settlement. Mr. Sastri says that Mahatma Gandhi would no doubt bless their action. Mr. Andrews would have the world believe that the Delegation has been very successful indeed and with a strong new Agent our lot will greatly improve. Indeed, but what will they now say of the promulgation of this new Ordinance? Will they still make the people in India believe that it is in keeping with the Agreement or that it has nothing to do with the Agreement? Or will they be courageous enough to break up the Agreement on that score and thus save the honour of India? But once again we must cry: who is to blame after all? The Union Government is throwing challenge after challenge but we are too lathargic to take up the challenge. With all these blows we do not stir. We are waiting for the South African Indian Congress to be held. It was to be held at the end of May. So it was decided by the executive. It was indefinitely postponed for reasons best known to the secretaries, for we do not know of any meeting of the executive being called again. It is now learnt that it is postponed until the arrival of the new Agent. This is a time when an emergency session should have been held and some guidance given to the Indians in the Transvaal who are in the saddest plight they have ever been. But the officials of the S.A.I.C. have bitterly failed in their duty. We do not see the sense in waiting for the new Agent. It is high time that we shook off our lathargy and bestirred ourselves to some action. Else our days in this country as a self-respecting community are numbered.

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### Correction

The reader is requested to make the following correction in the text of the Transvaal Land Tenure Act 1932 which was published in our issue of June 10:—

Section 7 first line "the" instead of "this."

Section 11 fifth line "male" should be deleted.

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The Hon. Evelyn Baring, acting Agent of the Government of India, left for Johannesburg last Monday accompanied by Mr. Bozman the new Secretary to the Agent. Mr. Baring will return to Durban in about ten days time and will sail for India on July 11 by the *s.s. Kenya*. Mr. Baring has been appointed Assistant Commissioner in Dera the Northern Frontier Province.

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Kunwar Maharajah Singh, the new Agent of the Government of India will arrive in Durban on August 3.

## Mr. Sastri And Sir Kurma On The Agreement

Two welcome addresses were presented by the President and Councillors of the Corporation of Madras to the Rt. Hon. V. S. Srinivasa Sastri and Sir K. V. Reddi. The function was well attended. Besides the Councillors and the officers of the Corporation there was a large number of visitors. On arrival at the Ripon Buildings, the two distinguished guests were received by Mr. T. S. Ramaswami Aiyar, the President, and Mr. D. D. Warren, the Commissioner, and conducted to the Council Chamber. After the guests had taken their seats, the President read the civic addresses which were then presented to the Rt. Hon. V. S. Srinivasa Sastri and Sir K. V. Reddi, enclosed in two silver caskets. The two recipients were next garlanded.

The following is the address presented to Mr. Srinivasa Sastri—

Honoured Sir.—We, the President and Councillors of the Corporation of Madras, desire as the representatives of this historic city to bid you welcome home after your recent tours in the cause of India. We have watched your long life of service with growing admiration. As an educationist, as a social worker, as a political leader and as an ambassador of the Indian Empire, you have throughout your career rendered inestimable service to the land of your birth. Great Dominions have honoured you, ancient cities in Britain have given you their freedom, Ministers of State have acclaimed your eloquence and statesmanship and you have been admitted to His Majesty's Privy Council. We have no freedom or titles to bestow on you, but can offer you our affectionate and respectful homage. To us you will always be the true "Servant of India," like your great master, Gopal Krishna Gokhale. We trust and pray that you may live long to continue your work for our countrymen at home and abroad, and to see those ideals to which you have dedicated your life realised in an India, united, happy and free."

Rising amidst cheers, the Rt. Hon. V. S. Srinivasa Sastri spoke as follows:—

President and Councillors.—It is a great honour you have done me and my friend, Sir K. V. Reddi, this afternoon. I feel proud of this honour. It is true that I have appeared before on similar occasions but I can assure you from my heart that I have never been more pleased or more happy.

In the address which was read to me, no mention is made of South Africa. But I notice that in the other address there is a prominent allusion to that sub-continent and to the fact that I made a sojourn there. It is very good of you to have brought Sir Kurma and me together on this occasion and I am happy to receive this honour along with him. Having been in South Africa in the same capacity as he filled, I can bear testimony to the extraordinary difficulties which he had to face in the discharge of his work, and I sincerely pay homage to the ability, the integrity and devotion with which he looked after the interests of our countrymen in that land.

Speaking of South Africa it is impossible to keep out of our mind a great name in modern India—a name so great that it will, I am sure, come within your recollection at once. Believe me, ladies and gentlemen, it is not with happy or contented feelings that I bring in his name on this occasion. Twice before it has fallen to my lot to return from South Africa after fulfilling certain missions. On both those occasions, it was felt by all my colleagues that the first thing to do on return to the shores of India was to go to Mahatma Gandhi and make a representation to him of our doings. To no one could a

prior report be made. "If he approved of our work, that was enough"—this was the feeling not merely of myself, who may be considered to have a weakness for Mahatma Gandhi, but it was the feeling of all with whom I was associated. And, if I may, for the first time, publish a secret it was also the feeling of the members of the Government of India. How sad I must feel now, you can imagine, when it was not possible for me to make a similar report to the one man in all India who has a right to form a judgment of South African affairs and lead public sentiment in the country. But I have a feeling that if it had been possible to do as I did on the two previous occasions, the result would have been exactly similar. The Mahatma, I think, would have blessed our work and would have said that the Indian Delegation could not have done better. I say this with a special emphasis because some of you might have been reading the newspapers in which there is the intelligence published that in South Africa our countrymen seem to be somewhat restive. Our countrymen live there in circumstances that do not make for self-satisfaction. There are many disabilities still. They have a hostile public opinion to encounter at every turn. Very often indeed their position is one that can only be described as humiliating. It is no wonder that they are constantly complaining. If the work of reform went apace, in that country, several years would have to pass before our countrymen could be said to have come into a situation which can at all be described as tolerable. But it is not altogether that point of view from which the results of our labours should be judged. It is with reference to the circumstances in which the delegation began their work that you must formulate your estimate of our work. Judged by the extremely perilous condition in which our countrymen had been brought, a condition which was verging on material ruin, the results that have been published, and which I will not take up your time in recounting, must be considered to be not unsatisfactory. More upon this head I ought not to say; less perhaps, I could not well have said.

### Sir K. V. Reddi On The Agreement

Sir K. V. Reddi, replying, eulogised Mr. Sastri's services in South Africa. He claimed India's agents in South Africa had said or done nothing to besmirch in the eyes of the future historian the fair name and glory of India. Their aim had been not merely to protect the interests of Indians in South Africa but also always to keep in the forefront the honour and good name of India.

Proceeding, Sir K. V. Reddy added they had behaved not merely as representatives of the Indian Government but also of the people of India.

Alluding to the recent agreement, he asked the critics to remember that every agreement was a matter of compromise which involved "Give and take" and naturally there must be some losses as well as some gains, and if only they cultivated what might be called international mind, this agreement would appear to them in a different light.

Sir K. V. Reddy declared: "We are passing through very unfortunate times. The people on the one hand (at least a large section of the people) and the Government on the other are differing widely. Events are happening which cannot be said to be happy from the point of view of the Government or of the people. But let me pray the day will not be far off when these unfortunate conditions will be removed, when those who are in jails and are making terrific sacrifices will be released and that a declaration will be made either by the Prime Minister or the Viceroy, proclaiming that all that has been agreed to at the Round Table Conference, with all restrictions and guarantees, would become the constitutional law of the country within a few weeks."

## India On The Passing Of Asiatic Land Tenure Bill

### 'Bombay Chronicle'

According to a cable to the *Hindu* the Union Assembly at Capetown has rejected the motion that the South African Indian Congress be heard at the Bar of the House on the Asiatic Land Tenure Bill though Dr. Malan invited Indian leaders to give their written views on the question. He defended his refusal by saying that the Bill was not an attack on the rights of Indians, and that it was only intended to make all evasions impossible. We are not much convinced by the special plea of Dr. Malan who, before this, had refused to receive a deputation of the South African Indian Congress. Does it mean that he will not discuss the question with them in all its bearings? The Bill is a measure of the humiliation of South African Indians, and the powerlessness of the Government to protect them. The South African whites are strongly opposed to any modifications of the Bill. The laws severe though they were, were not put into practice very strictly, which it is now proposed to be done. The whites have apparently found it impossible to live honestly in South Africa without trenching on the rights of coloured people.

### 'The Leader'

It appears from a cable published by the *Hindu* from its Pietermaritzburg correspondent that Dr. Malan stated in a speech in the House of Assembly that the Asiatic Tenure Bill could under no circumstances be considered an attack on the rights of the Asiatics, that it was a new measure and only dealt with a situation which had arisen as the result of the evasion of existing legislation on the part of certain Asiatics. The evasion of existing legislation however which was not a new development, had been going on with the knowledge of the authorities concerned. Where was the occasion for reviving a musty old law which had fallen into disuse? The proper course for the Government would have been to repeal these unjust laws altogether. Failing that they could have continued to let the law lie dormant. The Union Government instead chose to introduce the Asiatic Tenure Bill which sought to drive the Indian community into locations and ruin their trade and commerce. If this was not an attack on the rights of the Asiatics, what else was it? Thanks however to the efforts of the Government of India and their agent in South Africa, the Bill has been to some extent modified. Even then the measure is objectionable enough. An unsympathetic Minister of the Interior has it in his power by an illiberal interpretation of the proposed legislation to cause much loss and suffering to the Indian community.

### 'Servant of India'

It is indeed very disappointing that the House of Assembly in the Union of South Africa chose to reject the motion of Mr. Morris Alexander, M.L.A., that the South African Indian Congress be heard at the bar of the House. Considering that Indians have no share in the choice of the members of the legislature, it was eminently proper that they should be given opportunities to make representation at the bar of the House. But those who know anything of the psychology of the racial politics of the Union will not feel surprised that Mr. Alexander's motion was lost. It is not fashionable in that country to stand up for the rights of Indians; it simply is not done.

It is, therefore, all the more to the credit of Mr. Alexander that he sponsored the motion. For over

twenty years that he has been a member of the House he has with uncommon courage and conviction publicly championed the cause of Indians as well as of all unrepresented communities in the Union. Mr. Alexander's services must be viewed in perspective to enable us to realise to the full the magnitude of the debt of gratitude that India owes him. The grateful Indian community in South Africa refer to him appreciatively as the "Member for India."

Disappointing, though not surprising, as is the rejection of the plea of the South African Indian Congress to be heard at the bar of the House, we hope that the Congress will not persuade itself to non-co-operate with the Government, as was mentioned in a recent special cable. Indians in the Union will do well to ponder carefully over the references to South Africa made by Mr. Sastri in his reply to the address presented by the Madras Corporation, published elsewhere in this issue. It will be long before the position of Indians in the Union will become even tolerable. In the meanwhile it is wiser to take advantage of every change, however slight, for the better in the attitude of the Government and nurse it carefully. It is satisfactory to note that Dr. Malan has agreed to meet certain points urged by the Congress.

## Parliamentary Debate On Asiatic Land Tenure Bill

### Doctor Malan's Speech

In moving the Second reading of the Asiatic Land Tenure Bill the Minister of the Interior made the following speech:—

I think those members of the House who have not made a special study of the Asiatic position in the Transvaal, will undoubtedly consider this measure to be a very complicated one. For that reason I must first of all shortly explain that position before I come to the various clauses in the Bill. The position of the Asiatics in the Transvaal is governed more particularly by two laws. The first is the Law of 1885 passed in the old republican days, and the other is the Gold Law which was passed in 1908. Now according to the law of 1885 Asiatics generally are prohibited from owning land in the Transvaal except in bazaars and locations and such places. The idea first in the Transvaal generally was that this prohibition against Asiatics included not only the ownership of land, but also the right to trade within the boundaries of municipalities except in bazaars and locations and such places. Subsequent judgments brought to light, first, that this law only meant residential segregation and not trade segregation, and then further it was brought to light that even this residential segregation could not be enforced because the law was not compulsory as far as Asiatics were concerned, that they had to live in these locations, and in any case no penalties were provided. The law merely empowers the Government to set aside certain areas for occupation by Asiatics. I now come to the Gold Law. According to sections 130 and 131 of the law, not only Asiatics, but coloured persons generally were prohibited from residing on proclaimed land, except in bazaars, locations, compounds and such other places as the mining commissioner might permit. An exception was made for bona fide servants. It was further found in the course of years, that both these laws which I have mentioned were very extensively evaded. As far as the law of 1885 is concerned, the Asiatics in the Transvaal discovered that the prohibition was only in respect of individuals, but if they formed companies there was nothing in the law to prohibit these companies,

consisting of Asiatics only, from holding land in the Transvaal. In this way the intention of the law was in any case nullified. As far as the Gold Law is concerned this prohibition of Asiatics or coloured persons generally was enforced in a very lax manner. In 1919, this position was brought to the notice of Parliament. A select committee was appointed and the result was that legislation was passed during that year. According to the Act of 1919, first of all, Asiatic companies were prohibited from owning land, so that loophole was closed. Further, it was laid down that as far as mortgages on fixed property were concerned, they could be allowed only in the ordinary course of business, but otherwise the Asiatics could not have any interest in fixed property. As far as the businesses were concerned which were started in the Witwatersrand as a result of these evasions and of contraventions of the existing laws, Parliament decided to make a clean slate and to condone all these illegalities of the past, but the select committee in 1919 was careful to advise the Government at the time to take such steps that these illegalities should not be repeated in future. Therefore it was suggested that after the Act had been passed the Government should take steps to have a register compiled of all local businesses on the Witwatersrand which had been legalized, which had been condoned, so that the licensing authorities in future would know exactly where they were. Unfortunately, those steps were never taken. About three years ago, it was brought to my notice that the contraventions of the existing laws had not only stopped, but had occurred increasingly on the Witwatersrand and there were hundreds of legal occupants on the Witwatersrand who had received from the licensing authorities licences to carry on trade. This was brought to light by various judgments of the Transvaal courts. These judgments affected three different categories of townships. First of all, there was the Norwood case. Norwood is a private township and the anti-Asiatic restriction there was contained in the title deeds. As a result of that judgment, a number of Asiatics who had come in were ejected. The other category was the township of Braamfontein. There was a well known case before the Supreme Court. Braamfontein is a Government township and in all Crown land which was alienated in that particular township the anti-Asiatic restriction clause was also incorporated in the title deeds. So far as this was concerned, Braamfontein stood on the same footing as the private township of Norwood. Then on proclaimed land generally it was found that really no action had been taken against the encroachment of Asiatics and against the contraventions of the existing laws. It was found that there was a further complication. The licensing authorities, as I explained, had issued hundreds of licences to Asiatics occupying land on the Witwatersrand illegally. They did so without any question. For some time there was some doubt on the part of these licensing authorities as to whether they had the right to refuse an application for a licence on the ground that the land occupied by the occupant was occupied illegally, or not. The Johannesburg municipality sought legal advice, and, according to that legal advice, they had not only the right, but they had the duty to refuse such an application. The Crown law advisers held the opposite view. During that period of doubt the Johannesburg municipality held over a large number of these applications, and the result was that hundreds of Asiatics on the Witwatersrand, even though it was known that they occupied the land illegally and had applied for licences, carried on their trade without licences. Therefore, there was

a really double illegality. Ultimately this matter was decided in the law courts. The lower court, first of all, held that the licensing authorities had the right to refuse on the ground that the applicant occupied his ground illegally; but the matter went to the Supreme Court and the Appellate Division reversed that decision. That is as the matter stands to-day. In addition to these direct contraventions of the law, it was found that Asiatics had discovered loopholes in the existing legislation, and that on a very extensive scale these existing laws were evaded. First of all, we have again the law of 1919, which Parliament passed to close as an existing loop-hole which had been discovered, namely the formation of companies to hold land. To evade that law and the law of 1885, it was found that Asiatics very often purchased land which was transferred in the name of a European. The European acted as a dummy. He gave his name and nothing more. That is one evasion which we afterwards discovered and which the select committee which was appointed reported on. Another way of evading the existing law was by means of a long leasehold which in actual practice amounted to ownership of fixed property. Another way by which the existing law was evaded was this. A company which was not according to the law an Asiatic one, but in which Asiatics had an interest, acquired fixed property; but as soon as that company was registered, the shares in it were transferred to Asiatics, and it became after registration actually an Asiatic company, and it owned land. That was another method by which evasion took place. Three years ago this whole question was referred by Parliament to a select committee. That committee went very thoroughly into the whole matter, heard a good deal of evidence from all parties concerned, and initiated the Bill which was introduced by me during that session. But there was no time to pass it and it has been standing over for various reasons until now. I may say with regard to the provisions of this particular Bill, that the select committee was entirely unanimous; there was no difference of opinion among the members of the select committee in regard to the provisions of the Bill. The select committee, in discussing the whole position, found that there were several other ways in which loopholes could still be discovered in the existing legislation by Asiatics and the select committee thought it best that these loopholes should be closed. For instance, it is quite possible under the existing laws for Asiatics, even if they are resident within the Union, to form a company and register it outside the boundaries of the Union, say at Delagoa Bay. That company would then be registered as a foreign company, and there is nothing to prevent a foreign company holding fixed property in the Transvaal. All that was necessary for a foreign company to do was to let the property be occupied by Asiatics, and in that way the law could very easily be evaded. The select committee thought this loophole should be closed. There is just one other point I should mention. According to the law of 1919 permission was given to British Indians who had established businesses on proclaimed land illegally to have that illegality condoned. But it was clearly the intention of Parliament in passing that law, that only the particular business which existed at that time should be protected. But some of these Indians multiplied their business in the same municipal area by starting branches. Now that was certainly contrary to the intention of Parliament. A case in connection with this matter was heard before the Supreme Court, which held that such extension or multiplication of businesses condoned in 1919 was

illegal. That being clearly against the intention of Parliament the select committee thought that legislation should be passed to make it impossible in the future. Further included in this Bill is a provision which deals with the situation which, more particularly, has arisen in the township of Springs. That was also the subject of a judgment by the Supreme Court. In Springs we have one part of the township which was laid out as a township before Springs was proclaimed as a gold diggings. It was taken for granted by everybody that as soon as such an area including such an existing township was proclaimed under the gold law, that the restrictive clauses numbers 130 and 131 would immediately apply. That was so understood by Parliament when it passed the law of 1919, to which I have referred. Springs is also specially mentioned in the select committee's report, but according to the decision of the Supreme Court it was found that these restrictive clauses did not apply to townships in that position. So Springs found itself in this position—that while it was included in proclaimed land it was undefended against the encroachment of Asiatics. Representations were made to the Government, and evidence was brought before the select committee on the part of the municipality of Springs and others interested, and the select committee unanimously agreed to deal with particular matters in this Bill; and while vested interests of Asiatics were protected in past legislation, it was agreed with the consent of Parliament, to make these restrictive clauses applicable to the future. As I said, the select committee was entirely unanimous with regard to this Bill. Even the alterations which I thought were necessary, after ripe consideration by myself and the Government, and after discussion with various parties, even these alterations I did not effect in the Bill without consulting the select committee again. I called the select committee together from time to time, and took them into my confidence, and consulted them in regard to any alterations which I thought ought to be effected, so that these alterations which I did embody also had the consent of the select committee. There is one important difference in the Bill as it is now brought forward as compared with the Bill originally introduced. As the Bill was introduced into Parliament originally, it was proposed therein to condone for a period those illegal businesses existing on the Witwatersrand to-day. The idea was to condone them for five years, but it was realised by the select committee that if these hundreds of illegal occupants were dislocated it would be a distinct hardship unless some other provision was made for them. So it was originally proposed that the municipalities, on proclaimed land, should be compelled to set aside areas to the satisfaction of the Minister where these dislocated Indians could settle and could also own land; and, if the municipalities did not comply, then the Minister, above the heads of these municipalities, could set aside in such municipalities areas for these Asiatics; and for other Asiatics who might wish to settle there. On further consideration we considered that such a provision might not work. If we carried the municipalities along with us it would work well enough; but if we did not it would be practically impossible. Therefore we considered it was much better to effect an alteration in the Bill to this extent, that all those illegal businesses on the Witwatersrand which were situated in localities occupied chiefly by Asiatics, or by coloured persons, and where such a business, or the presence of such an Asiatic, would not give offence, or probably would not give offence to other residents in that locality, it would be a distinct hardship to dislocate such an

Indian and then afterwards to make provision for him. It was better to live him undisturbed in such an area in such a case. But if we are to follow that policy, and leave undisturbed those we find it desirable or possible to live undisturbed, then the gold law has to be amended in this way, that instead of the mining commissioner merely having a right, as he now has, to permit Indians, in spite of the gold law, to reside on the Witwatersrand in locations, compounds, and bazaars and such like places, that that power should also be given to the Minister. Now, according to the Crown law advisers, that was the only way to carry out that policy which I have described, to give the Minister that power. What we intend to do is this—I think that is the most reasonable way of dealing with this whole difficult position which has arisen on the Witwatersrand—that immediately after this legislation is passed, a commission shall be appointed under the chairmanship of a judge—say, a small commission consisting of three members—to consider each particular case on its merits, to take into consideration what the locality is where such an Asiatic is occupying his land and carrying on his business; whether that Asiatic is of good character and whether his presence gives an offence to the neighbourhood or not, and then to advise the Minister who, under this Act, if it is passed, will have the power I have described, how to exercise his discretion. That would treat each particular case on its merits, and would generally give a minimum of hardship and be the best way of dealing with the very difficult and complicated position. Now I introduced this alteration in the Bill with the unanimous consent of the select committee that dealt with this matter. I may also say that it will be within the terms of reference of this commission to compile that register which was advised by the select committee of 1919 that was never acted upon; and it is absolutely necessary that if we are to create order out of the confusion we have on the Witwatersrand all these years we should have such a register. The licensing authorities will know where they are in future. After this general explanation I think it is unnecessary for me to go into many further details with regard to this Bill. First of all, it tries to close the loopholes, most of which I have already described; covering Asiatics by Europeans, and then there will be the difficulty as to fixed property to bring it into line with the provisions of the common law, and there is also the provision dealing with the position of Indians whose businesses have been condoned by the law of 1919 who, contrary to the intention of the law, have continued their businesses within municipal areas. Where we close these various loopholes in every case, vested rights are protected. We close these loopholes only for the future. Now there is one notable omission from the law of 1919, where protection or condonation of an illegal occupation and trading was given only to British Indians. No such protection was given to coloured persons generally, or to Chinese. What we propose now is to put all coloured persons on proclaimed land on the same footing as British Indians, especially mentioned in the law of 1919. Then there is another provision dealing with deproclaimed land. It is rather strange that the law-givers only made provision for land as long as it was proclaimed land. No provision was made for the future for the case of deproclamation. You find that on proclaimed land there has arisen a township, Crown land is alienated, and it became a private property. In that township the land becomes private property. The purchasers of that private property acquired their holding on the definite understanding that they were protected

against the encroachment of Asiatics, but when that land is deproclaimed, then all at once that protection vanishes, and, according to the opinion of Europeans generally, in the Transvaal, that land depreciates in value. The Johannesburg municipality and people generally in the Transvaal who are interested insist upon provision being made for the case of deproclamation, and so we have included a clause by which Clauses 130 and 131, that is, the restrictive clauses in the gold law, shall apply to proclaimed land, that is deproclaimed, but only in so far as such land is included in a township. As far as the duties and powers of licensing authorities are concerned, we provide in this Bill that in future certificates shall only be issued by the licensing authorities on which a licence can be issued only if the applicant, when he is an Asiatic, shall have given proof to the licensing authority that he occupies land legally. If he does not bring forward that proof, then no licence can be issued to him, but it is provided here that the inclusion of the name of such Asiatic in the register which is to be compiled of legal occupants of proclaimed land will be sufficient proof for the licensing authority that such a person occupies his land illegally. If there is any doubt and either party wishes to take the granting or refusal of a licence to court, then it is laid down here that a magistrate's court can be such a court for dealing with this matter, and from the magistrate's court there will be an appeal to the higher courts of law. There is one last clause dealing with a possible evasion of the existing laws by Asiatics in the Transvaal which has provided a loophole and which the select committee has sought to close. That is where an Asiatic marries a Malay woman. Malay women can hold fixed property in the Transvaal. It is the idea of a good many people in the Transvaal that a good many Asiatics purposely contract marriages of that nature in order practically to become entitled to occupy such land, and practically to own such land. I must say that personally I am very strongly in favour of a restrictive clause like this, because it does take away right which have purposely been given by Parliament to Malays in the Transvaal. Malays were not considered in the Cape Province, and later on by legislation we passed in 1924 were not considered in the Transvaal as Asiatics. They are included generally in our idea of the coloured people. I was talking to the hon. member for Yeoville (Mr. Duncan) who was the chief representative of the Opposition on the select committee, and we both agreed that possibly it would be best, seeing there is good deal of feeling on the part of the Malay community with regard to this matter, to drop this, and I would propose, personally, after I have spoken to the hon. member for Yeoville about this matter, to put on the order paper for the committee stage an amendment to delete this last clause. I think this much is to be said for the deletion of this clause that I think this evasion takes place on such a very small scale that it is, really not worth while, retaining this clause. I think I have explained the provisions of this Bill, and seeing the select committee was altogether unanimous with regard to its provisions, I may express the hope that this Bill will have an easy passage.

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## Message From Dr. Rabindranath Tagore

The following has been received from the Far and Near Press Bureau, London:—

"From the depths of the present atmosphere of suffering the cry has come from the inauguration of a new age of faith and reconciliation, for a fellowship of understanding between races and nations alienated by cruel politics and diplomacy. We in India are ready for a fundamental change in our affairs which will bring harmony and understanding into our relationship with those who have inevitably been brought near to us. We are waiting for a gesture of goodwill from both sides spontaneous and generous in its faith in humanity which will create a future of moral federation, of constructive works of public good, of the inner harmony of peace between the peoples of India and England.

"The visit of our friends from England has confirmed the immediate possibility of such an intimate fellowship and truth in our mutual relationship and I feel called upon to appeal to all who have the welfare of humanity at heart to come forward at this critical hour and courageously take upon themselves the task of fulfilling the moral responsibility which is before us, of building upon the bare foundation of faith, of acceptance of truth in a spirit of generous mutual forgiveness.

"The memory of the past however painful it may have been for us all should never obscure the vision of the perfect, of the future which it is for us jointly to create. Indeed, our experience of the futility of suspicion and hostility must inspire us with a profounder belief in the truth of the simple fellowship of hearts, in the mighty power of creative understanding between individuals as well as nations inspired by a common urge of love.

### Members of Friends' Society Visit India

Three members of the Society of Friends, Miss Hilda Cashmore, Warden of Manchester University Settlement, and Mr. Eric Hayman and Mr. Percy W. Bartlett of the Fellowship of Reconciliation, who recently travelled through India sounding feeling among leaders of opinion there were invited to stay with the poet Rabindranath Tagore. Dr. Tagore was deeply distressed at the effects of the ordinance regime and very anxious about the future relationship of the peoples of England and India. He gave his visitors a striking appeal for reconciliation showing that leading Indians are ready to help to break the present deadlock and to pave the way to peace. In the course of it he said:

"We are waiting for a gesture of goodwill from both sides, spontaneous and generous in its faith in humanity, which will create the inner harmony of peace between the peoples of India and England. I feel called upon to appeal to all to come forward at this critical hour and courageously to build upon the bare foundation of faith. Our experience of the futility of suspicion and hostility must inspire us with a profounder belief in the truth of the simple fellowship of hearts."

WANTED Agent in South Africa and East Africa for reputed Indian manufacture of Surgical Dressings Antiseptics, Insecticides, and Toilets. For terms apply to Ladco (1928) Ltd. Patel Building opposite to post No. 2, Bombay 2.

## Statement Submitted By S.A.I.C.

### To Government Of India Delegation

(Continued from last week)

#### LICENCE CLAUSE OF THE AGREEMENT

Laws governing the issue of trade licences remain unchanged in Natal, and are as stated in the Congress Statement to the Habibullah Deputation. In the Transvaal there have been hardships imposed, not only due to the enforcement of Sections 130 and 131 in respect of trade licences, but actually a new Ordinance, known as the licence (Control) Ordinance, was passed. This Ordinance, although passed, still awaits the assent of the Governor General. We shall deal with it later.

In Natal the policy of differential treatment of Indian applications for trade licences still continue, although the licensing laws are of general application. There has been and there is a tendency, based on racial considerations, to refuse to grant trade licences in localities which are regarded exclusively as European trade 'zone.' As long as the Licensing Laws remain unaltered, and unfettered discretion is vested with Licensing Authorities, so long will there be room for perpetration of injustice to Indian trade licences.

There is one significant fact which we would like to bring to your notice as shown in the attitude adopted by the Government of India between the years 1908 and 1909 in regard to treatment in Natal of Indian trade licences. Due to a feeling of antipathy which resulted in refusals to renew Indian licences on flimsy grounds, representations were made by Indian traders to Authorities both in London and in India on the grave injustice that was being committed. Mr. Gakhale was at this time strenuously moving for the stoppage of indentured labour. This led to negotiations between the Government of India and the Natal Government. The Natal Government wanted the continuance of indentured labour, and the Government of India agreed to do this if the rights of Indian traders were protected. Eventually a compromise took place whereby the Natal Government agreed to give right of appeal on refusal of renewal of trade licences, and the Government of India agreed to allow Indian Immigration to continue until 1911, when it finally stopped. Thus was Act 22/1909 originated. We have mentioned this point as showing the anxiety of the Natal Government to secure the continuous supply of indentured labour for the benefit of white Colonists, and it is bargained with India by allowing the right of appeal in respect of renewals which the 1909 Act provided. Even the protection given as to right of appeal has been narrowed down to the case of *S. Bhayala vs. Estcourt Town Council*. The decision in this case laid down that the Court had no power to interfere with the discretion of the Licensing Officer, properly exercised in such renewal cases just as it had no power in the case of new licences. Recently in the case of *Kharva vs. Lady-smith Town Council*, the Court held that a Licence does not lapse with the assignment of one's property. One of the Judges expressed the view that the Court could enter into the merits of the case. Although, on the face of it, the judgment may be regarded an advantage, yet how far it affects the dictum laid in *Bhayala's* case cannot be gauged now.

The case of *Gora Mahomed vs. the Durban Town Council*, heard before the Supreme Court, Natal, in October 1931, marks an important event in the history of licensing cases. *Gora Mahomed & Co.* a firm which had been trading for forty years in

West Street, Durban, was, due to change of ownership of the property, given notice to vacate the premises. They made application (which was in effect a transfer) for a license for premises two doors below their old premises. The Supreme Court in refusing the appeal, held that the distinction between two classes of business which the Licensing Officer made in the exercise of his discretion, if he considered it desirable that it should be done in the public interests and for the purpose of preserving the amenities of the Town for the benefit of all concerned. The effect of this decision, which is detrimental to Indian trade, is that there can be no hope of an Indian acquiring fresh trading rights in West Street, because the class of business he conducts, and the class of customers he attracts.

(To be Continued)

A Reuter's message from Johanesburg states:—

Great importance attaches to a judgment by Mr. Justice Krause, in the Rand Division of the Supreme Court, interdicting Surkhey, Limited, from allowing any Coloured persons, other than domestic servants, to occupy property in Norwood, states Reuter, Johannesburg.

The action, which began in 1928, was brought by the North Eastern Districts Association Prop., Limited, an Association formed with the object of evicting Coloured person from Norwood, and was based on the fact that the deeds of lot 96, which Surkhey, Limited, own, contains a restrictive clause reading: "No coloured person, other than servants, shall be allowed to occupy the property." Surkhey, Limited, had, however, let premises on the property to two Asiatic concerns for trading.

## In The Magistrate's Court

For The District of Durban Held At Durban

Case No. 8880/32

Between GANGIA No. 97375/7406/29635—Plaintiff and RAMOWTHAR, Free Indian Male No. 58087/90805, formerly of Durban, but his present whereabouts are unknown to Plaintiff—Defendant.

To the above-named Defendant,

Take Notice that a Summons has been issued against you in this Honourable Court by Gangia, Free Indian woman No. 97375/7406/29635, of Rooikopjes, Natal, for Divorce a Vinculo Matrimonii on the ground of unlawful desertion and costs of suit and that an Order has been made that the publication of such Summons shall be deemed to be good and sufficient service of Summons upon you.

You are hereby required to enter an appearance to the Summons on or before the 29th day of June 1932, and your failure to do so, a judgment will be given against you in your absence.

Dated at Durban this the 13th day of June, 1932.

By order of the Court,

(Sgd) BRIAN CAMP

Clerk of the Court.

(Sgd) J. W. Godfrey,  
Plaintiff's Attorney,  
Madoline Buildings,  
437 Smith Street, Durban.