

South Africa and Kenya

Imperial Indian Citizenship
Association.

SIR TEJ BAHADUR SAPRU AT THE LIBERAL FEDERATION, 1923

Dr. Sapru in his Presidential address at Poona said:—

“It was only on the 30th of the last month that I returned from England after an absence of over five months. During a part of that period I had to work at the Imperial Conference. I assume that you all have read the proceedings of that Conference relating to the question of Indians overseas and I therefore do not propose to trouble you with much of what has appeared in the press. I desire simply to explain the position as it strikes me and while I shall no doubt express my own opinions, I shall leave it to you to form your own judgment.

The position which arose when the Kenya decisions were given by His Majesty's Government in July last was to my mind a most critical one. Important negotiations had been pending for some time past between the representatives of the Indians in Kenya and the white settlers there and the Colonial Office. For our part we had the satisfaction that our case was being put by a deputation which was led by one of our most distinguished countrymen whose knowledge of the subject is only surpassed by his enthusiasm for the cause. I of course refer to the Right Hon'ble Srinivasa Sastri. When I reached London, I found that Mr. Sastri was deeply immersed in this question and it gladdened my heart to know that all that was humanly possible was being done by Mr. Sastri in an atmosphere which seemed to be charged with electricity. At last the White Paper was issued which led to the famous debate in Parliament, part of which I myself attended. Those decisions were received by our countrymen in England and here with feelings of indignation and dismay and I am afraid nothing that has happened during the last three or four years has tended more to weaken the faith of our countrymen in the justice of His Majesty's Government than these unfortunate decisions. While on the one hand, it is said that His Majesty's Government cannot interfere with the internal autonomy of self-governing Dominions and that no self-governing Dominion will for a moment tolerate any encroachment on the part of His Majesty's Government upon the complete freedom of the Dominions to pass their own laws relating to franchise—Parliamentary and municipal—on the other hand it is felt that the same argument, assuming it to be valid or politically sound, cannot in the slightest degree apply to a Crown Colony. Kenya was and is still a Crown Colony, but it came to me as a surprise when a die-hard politician with whom we in India are not unfamiliar, presuming perhaps upon my ignorance sought to enlighten me by saying that Kenya was not a Crown Colony and that though it had not a responsible Government it had an element of responsibility.

It was a dangerous suggestion to make, for similarly India might claim that though it has not responsible Government it has a measure of responsibility in the provinces at least.

Dangerous Suggestion It was quite apparent to my mind that arguments such as these were absolutely untenable and the real fact of the matter was that His Majesty's Government found the white settlers too strong for them. It was urged by some of the statesmen whom I saw in my private capacity, that the Kenya decisions had certainly improved the position of Indians in Kenya in certain respects. To put it at the lowest it seemed to me to be a debatable point. Those among my countrymen who knew better the position of Indians unhesitatingly maintained that

so far from their position having been improved, it had been seriously prejudiced in so far as the minority of white settlers was placed in a position of political predominance and definitely acquired the right of exclusive ownership in the Highlands. Indeed that was not the view of only the Indians. Even the Government of India did not at all feel happy over the decisions given by His Majesty's Government and His Excellency the Viceroy felt himself called upon to say in a speech which he delivered to the Legislative Assembly that the news of the decision regarding Kenya came to me and my Government no less than to you as a great and severe disappointment; for India had made the cause of Indians in Kenya her own. As His Majesty's Government has stated, this decision conflicts on material points with the strongly expressed views of my Government as laid before the Cabinet by the Secretary of State for India. This was the state of things in which I found myself placed in London towards the end of July last.

I am aware that it was felt in certain quarters and by certain of my
The Difficulty my esteemed friends also, that I should immediately sever
of the my connection with the Imperial Conference. I care-
Position fully considered the position but I was clear in my mind
 that so far from withdrawing from the Conference it was
 my duty to fight for the vindication of Indians' rights in the Dominions and
 the Crown Colonies and to try either to get the Kenya decisions reversed
 or at any rate to pave the way for their reconsideration. This is the
 task that I set to myself. I put myself immediately in touch with some
 of my political friends in India and I also communicated my views to
 His Excellency the Viceroy who had deputed me on that mission. The
 more I thought about it the more strongly I felt that I should not give up
 the Conference without at least making a struggle for the vindication of
 our rights. The friends whom I consulted were distinctly of the opinion
 that I must stay and fight for our rights and I also received much support
 and encouragement from His Excellency the Viceroy. The difficulty which
 then confronted me was that I found that India did not figure in the agen-
 da of the Conference excepting in regard to a small question relating to
 the mandated territories. I owe it to the support which I received from
 Lord Peel after I had explained to him my position, that His Majesty's
 Government agreed to give India a day in the Conference. I then interview-
 ed the Dominion Prime Ministers. I explained to them my scheme and I
 must say to the credit of all, excepting of course General Smuts, that they
 generally agreed to support me. Here I must state that from the begin-
 ning to the end, I took my stand on the resolutions of 1921, which, we owe
 in no small measure to the efforts of Mr. Sastri, and I cannot allow
 the criticism in certain papers to go unchallenged that I departed in any
 degree either from the letter or the spirit of those resolutions.

With General Smuts my experience was however different. As I
General have said more than once, he was adamant. General
Smuts' Smuts has claimed that he showed me every courtesy.
Attitude I have never denied it. On the contrary, I frankly ad-
 mitted it in the speech which I delivered at Lady
 Emily Lutyens' residence and I cannot imagine that General Smuts could
 have overlooked that portion of my speech. But if General Smuts at all
 expected that social courtesies on his part could in any measure or degree
 make amends for his attitude towards the Indian problem and that they
 could justify me in overlooking his attitude towards the political issue
 which was raised, he was sadly mistaken. I had not
 gone to ask for his sympathy with our aspirations towards self-govern-
 ment. I would much rather that we fought our battle for self-govern-
 ment singlehanded than that we should seek his support or the support of
 any outsider in regard to those aspirations. I put before him a definite

issue and he rejected it. Not only did he reject it, but he suggested though he did not move counter-proposals which to my mind, were wholly subversive of the principle of citizenship within the ambit of the same Empire and which, if accepted, must necessarily establish a higher and a lower grade of citizenship. Not only did he reject those proposals, but he also openly attacked the Indian Government in a manner in which, by his own standard, he should not have undertaken upon himself to criticise another Government, which is a part of the same Empire; for let me remind you of what he said: "I must say quite frankly," said General Smuts, "that I have been very much perturbed over the attitude adopted by the Indian Government in this matter. They pressed the case against Kenya in a way which seemed to me to exceed the limits of prudence and wisdom, and when the settlement was ultimately made, language was used in regard to it which I think would certainly not help the cause of loyalty either in India or anywhere else in the Empire. The whole incident, as I said has had a very bad effect in South Africa." Now, if after this language and his whole attitude and after saying that franchise for coloured races in South Africa was "a question of impossibility," he expected me to treat him as the best friend of India, then he indulged in a vain hope. Frankly gentlemen I do not care whether he charges me with a breach of international etiquette or anything similar to it. I feel that the South African Government, of which he is the head, has adopted towards our countrymen settled in that part of the Empire, an attitude which to use his own language cannot help the cause of loyalty either in India or anywhere else in the Empire.

I shall now briefly refer to my experience of the Colonial Office. With the Colonial Office I had no little difficulty, but it must be said to the credit of the Duke of Devonshire that while he saw no prospect of the Kenya decisions being modified, he at last agreed to extend the scope of my scheme to Kenya.

I shall now briefly explain to you, if I may, what my scheme was. That is contained in my speech and also in the speech delivered at the Conference by the Prime Minister and, lest it might be misunderstood, I would quote the formula as contained in the latter in extenso:

The
Scheme of
Committees

"The Secretary of State for the Colonies, on behalf of His Majesty's Government cordially accepted the proposal of Sir Tej Bahadur Sapru that there should be full consultation and discussion, between the Secretary of State for the Colonies and a committee appointed by the Government of India, upon all questions affecting British Indians domiciled in British Colonies, Protectorates and Mandated territories. At the same time the Duke was careful to explain that before decisions were taken as a result of discussion with the committee, consultations with the local Colonial Governments concerned, and in some cases local enquiry would be necessary.

Further while welcoming the proposal, the Duke of Devonshire reminded the Conference that His Majesty's Government had recently come to certain decisions as to Kenya, which represented in their considered view the very best that could be done in all the circumstances. While he saw no prospect of these decisions being modified, he would give careful attention to such representations as the committee appointed by the Government of India might desire to make to him.

Sir Tej Bahadur Sapru, while taking note of the above statement of the Duke, desired to make plain that the recent Kenya decisions could not be accepted as final by the people of India."

I shall now ask you to analyse and examine the provisions of the formula which I have just quoted. While no doubt it is true that the Kenya decisions have not been reversed—and frankly speaking I did not expect that a decision given by His Majesty's Government in July last could be reversed by the Imperial Conference in October—I personally think that our position is distinctly stronger to-day and the prospect is more hopeful. I do not wish to put the case higher than this, nor do I wish to overlook the fact that the real struggle will commence now. After the Kenya decisions it was generally understood that the principle of equality embodied in the resolutions of 1921 had been abandoned, if not directly, at least by implication, and in important quarters there was not a little nervousness as to what the Conference might do if any one was rash enough to raise the Indian question. The result however shows that at the Conference of 1923 we have secured a most valuable endorsement of the resolutions of 1921. Next we have reopened the Kenya door and there is reason now to hope that justice may in the end prevail. The Conference has now definitely provided a scheme for machinery which, if rightly employed, will go far in the future to secure the proper investigation and the due remedy of the grievances under which Indians labour whether in the Colonies or in the Dominions. Apart from our having gained an unequivocal expression of good-will towards our aspirations from the other members of the British Commonwealth—excluding South Africa—a very important constitutional advance has been secured, namely the right of the Government of India to negotiate with the Colonial Office through men appointed by itself, for this and no less is what is explicitly provided for in the formula. Lastly we have again succeeded in isolating South Africa. I shall with your permission here explain a little more fully the object of this scheme for the appointment of committees.

According to my scheme the committee or committees must be appointed by the Government of India, and not by the Secretary of State and will deal directly with the Colonial Office in regard to all questions affecting British Indians in British Colonies, Protectorates and Mandated territories. If necessary, the committee or committees

The Scheme Explained

to be appointed will have to go when concerned with questions relating to Indians in the Dominions, to Australia, New Zealand and Canada, the Prime Ministers of which countries expressed their willingness to abide by the resolutions of 1921, and to give effect to their provisions with the help and support of their Parliaments. Mr. Mackenzie King and Mr. Massey agreed to receive such committee and Mr. Bruce thought that he could give effect to the provisions of those resolutions without the help of such a committee. To use his own words, "Australian public opinion is ready to welcome, so far as the position of Indians domiciled in Australia is concerned, any measure which is conceived in the interests of the Empire as a whole". Further on Mr. Bruce summed up the position as follows:—

"In view of the position which exists in Australia and the consideration which has been given to the question, there is no necessity for a committee further to discuss the matter such as has been suggested by Sir Tej Bahadur Sapru. While I appreciate the spirit in which it is put forward, I do not think in the special circumstances of Australia there is any necessity for such action. On my return to Australia I will consult with my colleagues as to what action can be taken."

In reply to this I stated as follows:—

"We do not want to send a committee to create any agitation in his country (that is, Mr. Bruce's)—or for the matter of that, any agitation in any country, and I can absolutely feel sure that that is not what is at

the back of my mind; but if it is necessary for us to explain our position to you and to help you in the problem, for Heaven's sake do not refuse to accept a committee like that. We want simply to help you and if without receiving a committee from my Government and my country you can solve the problem, so much the better for you, so much the better for us, and so much the more creditable to you and to your Government."

Since I left England I have learnt that the Parliament of British Columbia has expressed its unwillingness to make any concession in favour of Indians in regard to franchise. Well I am neither surprised nor disappointed. At the time when the discussion took place I fully knew that it would not be without much difficulty that our committee would be able to create an impression on those in authority in British Columbia. But I have no doubt that if the committee goes to Canada at an early date it should be able to come to some settlement notwithstanding the fact that the attitude of British Columbia is at present, as it has been for some time past, one of obduracy. But in this connection I shall quote from Mr. Mackenzie King's speech:—

"It is probable that the Dominion Franchise Act will come up for revision at the approaching session of Parliament. I told Mr. Sastri it was hardly probable it would come up last session, but that I thought it would come up next session. If the course we anticipate is followed the Franchise Act will be referred to a committee of the House and that committee will be in a position to hear any representations that may be made to it."

Further on he stated:—"If it were their (i.e., The Indian delegates) desire to have the delegation given an opportunity of meeting the Parliamentary committee to which the matter will be referred for consideration, I should be glad to see, if the time of their visit so permitted, that they were given a chance to meet the members of that committee and to confer with them at Ottawa. In other words, we would be only too happy to give to any group which may come from India, any person she may send, the amplest opportunities to discuss with our public men all aspects of this particular question. I say this having regard to the method of approach Sir Tej has presented to us here. He has made it clear that the committee would come for the purpose of exploring avenues and ways and means to reach an ultimate result. He should recognise that we may have to take time in this matter, but I would like him to believe that we are sincere in hoping that we will be able to meet his wishes. In seeking so to do, we may have to proceed step by step but the Canadian people as a whole are, I am sure really desirous of meeting our fellow British citizens from India in every reasonable particular. I have not the slightest doubt about that."

It will thus be seen that so far as Mr. Mackenzie King is concerned he has pledged himself to give every facility to our committee and I think I may say that his attitude will be one of helpfulness. It is precisely because British Columbia is obdurate or obstinate that we have got to send a strong committee and strengthen its hands by our support.

I shall now pass on to the Crown Colonies and particularly to Kenya. For the administration of the Crown Colonies including Crown Colonies Kenya, His Majesty's Government is directly responsible and through its Colonial Office. During my negotiations it became quite clear that it was impossible for me to get Kenya the Duke of Devonshire or His Majesty's Government to go back at once on their decisions. It was equally clear that the Kenya decisions could not be allowed to go unchallenged and though they might

not be reversed or reconsidered in October 1923, the situation might change, political conditions might be more favourable at no distant time, and what seemed to be a hopeless position then might improve if we persisted in our attempt to secure justice and equality for our nationals there. It therefore seemed to me that the next best thing that could be done was to get an undertaking from the Colonial Secretary that he would extend the scope of the scheme to Kenya also. Accordingly the formula which I have quoted above was settled and it is "that while the Duke saw no prospect of those decisions being modified he promised that he would give careful attention to such representations as the committee appointed by the Government of India might desire to make to him." After the formula was read by the Prime Minister I stated in my last speech that to me as an Indian it was of course disappointing that the Duke saw no prospect of modifying the Kenya decisions, which could never be accepted in India. I further stated as follows.—"But his agreement with the principle of my scheme, and his consent to give careful attention to such representations as the committee may lay before him, inspire me with the hope that the door is not barred, and that the Colonial Office may be shown the way to an acceptable solution." Now, speaking candidly I do not think that there can be any room for doubt that the Kenya decisions have been robbed of that finality which was claimed for them in July last and that they must come up for reconsideration.

Meanwhile, since I arrived in India I have learned that the Kenya legislature has introduced an Immigration Ordinance which is extremely drastic in its character and which if allowed to become law, will practically stop Indian emigration to Kenya. I have not yet been able to read the terms of this Ordinance and my knowledge of it is confined to the summary which has appeared in certain newspapers. Of course we cannot accept an Ordinance of that character and we must plainly tell the Colonial Office that that Ordinance, if allowed by them to become law, will complicate the problem still further. In the situation that has arisen it seems to me that a committee regarding Kenya should go at once from India to England to make representations to and enter into discussions with the Colonial Office without any loss of time. I have strong hopes that the Government of India will not allow the grass to grow under their feet and that they will expedite the appointment and despatch of such a committee consisting of strong tactful and weighty persons at the earliest possible date. As I visualise to myself the situation it seems to me that the committee so appointed should first tackle the question of immigration and then raise the bigger questions arising out of the Kenya decisions. You will perhaps ask me what guarantee there is that this committee will succeed in gaining any solid or substantial results. My answer to such a question would be this. If the men you send are strong and reasonable they should be able to achieve something substantial, more particularly because the Government in England appreciate now the depth and strength of the feeling on this question. And for aught we know to the contrary we may have at no distant date a more favourable Government. As all experience shows decisions which were at one time considered to be final have had to be reconsidered and although it is true that the white settlers in Kenya have got the moral support and sympathy of South Africa, which to my mind is a factor not to be ignored, yet it does not seem to me beyond the scope of statesmanship to arrive at a settlement which would more effectively safeguard the economic interests of our countrymen in Kenya and remove the sting of racial inferiority. Indeed it seems to me that unless this is done the tension created by the Kenya decisions must continue to exist and India must refuse to accept a position of inferiority in the Empire.

I am aware of the objections that have been raised to this scheme which has been accepted by the Imperial Conference. It has been said that the Committees will be expensive. That they will cost some money I have no doubt, but political fights in these days necessarily involve expenditure. I do not know of any political organisation at present existing in India which can carry on its propaganda or achieve any substantial results without pecuniary sacrifices. At the same time I think that the expenditure involved should by no means be so heavy as to justify our rejection of the scheme. It has next been asked, if the committee fails to achieve any result what is to be done next. I should not like to anticipate events, but in all constitutional fights it seems to me the failure of one step is only an incentive to another. Frankly speaking, those who raise objections of this character should be prepared to suggest alternatives and if they have alternatives of their own, why have they not hitherto acted on those alternatives and what has been there to prevent them from taking independent action of their own? It is far better that we should work steadily and patiently but with a full determination to get the wrongs remedied than that we should indulge in threats which we do not mean to give effect to or which we know or ought to know cannot be given effect to.

I shall now pass on to South Africa. The problem is the biggest there. There are about 161,000 Indians there who, excepting a few thousands residing in Cape Colony, have no political franchise. In Natal their municipal franchise is threatened. In the Transvaal there is no franchise of any kind. In Natal they cannot acquire town lands in townships and in the Transvaal they are prohibited either as individuals or as companies from acquiring land. In the gold area they cannot occupy land. The manner in which traders' licenses are granted and the law relating to them is administered, makes their lot still more unbearable. Last of all, the Union Government has under contemplation legislation providing for the compulsory segregation of Indians in urban areas by imposing certain restrictions on the ownership and occupation of land. All these facts I brought forward in my speech at the Conference and nowhere throughout his speech did General Smuts challenge any one of them. Throughout his speech he treated the Indian question as if it was a question only relating to franchise, and yet he asserted that he did not think that his Indian fellow-subjects could complain of injustice and "that it was just the opposite." Consider for a moment the manner in which he spoke. "People who have come there as coolies," said General Smuts, "people who have come there as members of depressed classes in India have prospered. Their children have been to school; they have been educated, and their children and grand-children to-day are many of them men of great wealth." One should have thought that if these men had acquired wealth and received education they were good enough to exercise some sort of political and municipal franchise. But General Smuts' position is that he cannot make a distinction between these men and the original inhabitants, and he says:—"You have a majority of blacks in the Union, and if there is to be equal manhood suffrage over the Union, the whites would be swamped by the blacks; you cannot make a distinction between Indians and Africans, you would be impelled by the inevitable logic to go the whole hog, and the result would be that not only would the whites be swamped in Natal by the Indians, but the whites would be swamped by the blacks, and the whole position for which we have striven for two hundred years or more now would be given up. For white South Africa it is not a question of dignity but a question of existence and no Government could for a moment either tamper with this position or do anything to meet the Indian point of view."

Doctrine of White Supremacy This is the unqualified doctrine of white supremacy within the British Empire—a doctrine which to my mind cannot be accepted by those who owe allegiance to a common sovereign. In the first place General Smuts conveniently forgets that the whites in South Africa are as much foreigners

as the Indians. In the next place the Indians there who according to his own admission have been educated and have acquired wealth, cannot justly be grouped together with the blacks until the latter have reached the same stage of civilisation. In the third place, even assuming that the predominantly large number of Indians is a standing menace to the safety of the whites, that may be an argument for regulating the law of franchise, but it can never be an argument for the permanent and wholesale disenfranchisement of the Indians and in any case there can be no justification for those economic restraints which have been put upon Indians and which, apart from imposing indignity on them and on India, strike at the very root of their prosperity as well as freedom. What I was most anxious about was that General Smuts should join hands with the Government of India in exploring avenues for the solution of this difficult problem. I knew that he had dissented from the resolutions of 1921 and I had little or no hope that I could persuade him to agree to those resolutions now. But he would give nothing, consent to nothing and hold out no hopes. On the contrary, as I have shown above, he showed his concern not only in the whites of South Africa but also in those of Kenya and attacked the Government of India for their attitude towards the Kenya decisions. He also refused to agree to the appointment of a diplomatic agent to be sent by the Government of India to look after the Indian interests there and to act as an intermediary between it and the South African Government and to keep the Government of India well informed of the facts relating to Indians there. I am satisfied that from General Smuts and his Government we need not expect the smallest possible response to our demands and I believe that if he persists in the course which he has adopted the problem of Indians in South Africa will at no distant date become such a grave problem that it will be a source of the greatest weakness to the very idea of Imperial unity of which he professes to be an ardent exponent and apostle. It is bound to lead to a cleavage among the subjects of our common Sovereign on racial lines and however much we may regret it, it must be recognised that when that stage is reached it will be a most disturbing factor in Imperial unity, which will have to be reckoned with seriously by those who are unwilling at the present moment to recognise its evil potentialities. Here let me strongly repudiate one of the propositions urged by General Smuts, viz., "We must not derive from the one British citizenship rights of franchise, because that would be a profound mistake." I regret that even the Duke of Devonshire fell a prey to this confusion when he sought to make a distinction between Imperial nationality and "local citizenship."

If, however Imperial citizenship is not a mere shadow but consists of something substantial then I cannot see how it is possible to divide that citizenship into two grades, a higher and a lower. You may raise your franchise as high as you like, but I do maintain, and maintain very strongly, that notwithstanding any measure of internal autonomy that you may possess you cannot bar out any section of His Majesty's subjects merely on racial grounds. The question therefore, arises as to what is to be done with regard to South Africa. General Smuts will not have a diplomatic agent from the Government of India, he will not have a committee to investigate the facts and explore the avenues for a solution, he will not remove the economic restraints imposed on our countrymen, and I fear he will persist in his policy of segregation. If we had a fairly substantial population of white South Africans living or carrying on trade in India I should not despair of a solution. But as matters stand,

he can pursue his even course in the name and on behalf of the whites there and refuse to be dictated to by any outside authority on the ground that South Africa is an independent self-governing unit of the Empire. India on the other hand is not a self-governing unit and its Government is still in the leading strings of the India Office and His Majesty's Government. Meanwhile, in recent years Natal has been making money out of its coal trade with India.

I certainly think that the time has come when the Government of India should take courage in both its hands and failing to get any satisfaction out of General Smuts, as it is bound to fail, raise the tariff against South African coal, reduce railway freights for Indian coal, improve transport facilities, and give other encouragement to the local coal industry. Unless some such action is taken by the Government of India and unless it tells the authorities

Tariff Against South African Coal in England that out of respect for Indian feeling and also on considerations of self-respect it must be allowed to take this line, I think nothing that we may do will produce any impression on the South African Government. I think the safety and prosperity of our brethren in South Africa and our own national dignity demand that we should call upon the Government of India to take a strong line in dealing with South Africa, for I am convinced that if the Government of India feels that by representations or negotiations it can achieve any satisfactory results now or for a long time to come, such attempts are doomed to failure and their failure is bound to lead to a development of political feeling in this country which will be extremely embarrassing to it in regard to its internal administration.

To sum up, my view is that so far as the Dominions other than South Africa and the Crown Colonies including Kenya are concerned we must give a patient trial to the scheme which has been adopted by the Imperial Conference and do nothing in the meantime which may prejudice the course of negotiations with the Dominions or the Colonial Office in regard to Kenya. But so far as South Africa is concerned I am clear that there is need for strong action on the part of the Government. I say the Government, for unless the duly constituted Government asserts itself in an unequivocal manner in a controversy with another Government the result of any action on our part may be far from satisfactory or substantial.

The position of India in relation to the Imperial Conference is a peculiar one. To quote the words of Mr. Duncan Hall, "The recognition of the rights of India to a place in the Imperial Conference is a mark of her special position and circumstances. No other portion of the Empire... can yet be said to have advanced sufficiently towards self-government to have any just claim to recognition as a member of the Conference." India has a got a vote as every

India and Imperial Conference Dominion has and speaking for myself, I must gladly acknowledge that the Indian delegation was listened to with patience and courtesy. Indeed the one thing noticeable throughout the proceedings of the Conference was the atmosphere of good will in which we worked. But when I say this I think I owe it to you to say also that the thought was not absent from my mind that if India were a self-governing Dominion it could speak with greater authority and greater power. The Ministers of the Dominions speak with the consciousness that they have their Parliaments and their countries behind them. Not so in the case of the non-official Indian representatives. The Indian representatives have no mandates from their Parliament and the Indian Government is not yet an independent Government. Undoubtedly to my mind India's prestige in this Council of the Empire would be indefinitely greater if she could deal with the rest of

the Empire on terms of perfect equality, and it is for this reason that I feel that unless and until India first achieves self-government the position of her nationals overseas must always continue to be more or less unsatisfactory. We are reminded every now and then by our critics, friendly and otherwise, that we must wait and be in no hurry to press the claims of our countrymen in the Dominions and the Crown Colonies until a more favourable change takes place in the opinion of the white settlers. It seems to me that if India were a self-governing country the necessity for addressing these injunctions to the white settlers would be equally strongly felt. As matters stand at present the underlying basis for advice of this kind is that Indians can at best expect an indulgence. I do not think that if India were a self-governing country within the Empire the wishes of her Government or her people could be ignored or a decision which was resented even by the Government of India could be given, as it was in July last when on the main questions the opinion of the white settlers prevailed. It therefore, seems to me that while on the one hand it is our duty to emphasise our claim regarding proper, just and equal treatment outside India, our duty is even more imperative that we should lay still greater stress upon the achievement of responsible Government in India itself. This leads me on to the second part of my address."

Mr. B. S. Kamat then moved the third resolution regarding Indians Overseas as follows:—

(1) This meeting of the All-India Liberals places on record its indignation and resentment at the Kenya decision of July last, which besides, being grossly unjust and invidious, violates the most solemn pledges of the crown and other constituted authorities, and its firm determination, which is likewise the determination of the whole of India, never to accept any settlement which assigns to their countrymen in Crown Colonies, particularly Kenya, a status in any way inferior to that of any other class of His Majesty's subjects. This meeting trusts that the committee to be appointed by the Government of India in pursuance of the resolution of the last Imperial Conference will be able to secure for Indians in Kenya a position in keeping with her recognised status as an equal partner in the British Commonwealth besides safeguarding in an effective manner their economic interests.

(2) This meeting further views with alarm the tendency of the provisions of the Kenya Immigration Bill, and requests the Government of India notwithstanding the unfavourable attitude of the Secretary of State for the Colonies, to press upon him the necessity in ordinary good faith of delaying the progress of the Bill through the Kenya Legislature until the committee above mentioned should have had opportunities of examining the measure and discussing its provisions with the Colonial Office. This meeting is further of the opinion that the Government of India should without delay appoint a strong and representative committee and send it to England at the earliest possible date to raise the question with regard to the Kenya Immigration Bill with the Colonial Office.

(3) In view of the facts that the political, civic and economic interests of Indians in South Africa have been for generations without adequate protection, that at the present moment their economic status is further threatened by the imposition of restraints which are humiliating to this country as well as injurious to their interests and that the position of Indians within the Union of South Africa excepting Cape Colony has during many years been inconsistent with their status as subjects of a common Sovereign and with the national dignity of India, this meeting of the All-India Liberals strongly urges the Government of India and the Secretary of State to take effective

Retaliation
Against
S. Africa

retaliatory measures against the Government of that Dominion, whose representative refused even at the last Imperial Conference to explore any avenue for the redress of the grievances of Indians, great numbers of whom were born in that country and own it as theirs in particular, this meeting recommends the imposition on non-Indian South African Colonials of reciprocal restrictions and disabilities in respect of the franchise, both political and municipal, eligibility for the public service and the right to hold properties and trade, mining and navigation licences.

(4) This meeting strongly urges (i) amendment of the Racial Distinctions Removal Act so as to deprive non-Indian South African Colonials in India of the special privileges still accorded to them in criminal trials, and (ii) the imposition of a prohibitive import duty on South African coal, taking care at the same time by suitable measure to provide adequate facilities to Indian coal in the way of transport and otherwise.

Mr. Kamat said they had often heard from British historians and others that they in the East were full of cunning and diplomacy, but considering the various subterfuges which British statesmen had employed in tackling this Colonial problem it was they who deserved to be called cunning and diplomatic. He complimented Sir Tej Bahadur Sapru on the great tact and skill with which he handled the Indian case at the Imperial Conference, and urged that pending the decision of the committee which was to be sent to the Dominions to investigate the Indian question the people of India should create an atmosphere of good will and co-operation. But if hereafter they found that their committee was treated with neglect, it was open to them to revert to measures of retaliation. He blamed the Colonial Office for the hot haste with which it was reported to be pushing through the Immigration Bill, and submitted that its contention that it was necessary to restrict Indian immigration in the interest of the African artisans was quite baseless. He doubted whether any careful inquiry had been instituted before the Bill was introduced to ascertain whether there was really a competition between Indian and African mechanics. As to General Smuts' declaration that it was impossible to give franchise to Indians in South Africa, Mr. Kamat said they took up that challenge and would concentrate all their retaliatory measures on that country in all possible ways. In order to do that he averred it was not only necessary to carry the Government of India with them, but it was also necessary for the Liberals to carry with them all the political parties in India.

Mr. G. A. Natesan (Madras) seconded, and Mr. N. M. Joshi (Bombay) supported the resolution which was carried.

The fourth and last resolution on the day's agenda was as follows:—

As a protest against the Kenya decision given by His Majesty's Government in July last this meeting of the All-India Liberals urges the withdrawal by all Governments in India from participation in the British Empire Exhibition.

Before the resolution could be moved the Right Hon'ble V. S. Srinivasa Sastri rose to make a statement. He said certain differences had come into view over this question of the boycott of the Empire Exhibition, which if it were permitted to reach the final issue by a vote it might lead to consequences which they would all deplore. (Hear, hear). It was therefore considered desirable that this federation should not consider this question at all, and he asked their permission to leave the matter at this stage. The question was then dropped.

A member inquired what should be the attitude of the individual members so far as the boycott of the Empire Exhibition was concerned.

The President: The Liberal party as a party does not stand committed to a policy of boycott.

MR. SASTRI ON KENYA

The Literary Union of Bangalore held a largely attended public meeting to bid farewell to the Right Hon. V. S. Srinivasa on 24th December 1923.

After some remarks of personal character Mr. Sastri said "Having failed and not as some of you said succeeded in the mission entrusted to me I feel like a person who has fallen from high estate. You gave me a great commission. I went forth knowing that it was difficult knowing too that many another stronger and braver fighter for India's cause gladly avoided it. I knew that I should fail. But I undertook the task because I knew that my failure would not matter, that perhaps through my failure somebody after me would be enabled to build up success that you and your children of the future might really cherish as one of India's achievements within the Empire.

Don't expect me to go fully into the recent history of this Kenya affair. But you will forgive me if I make a few observations which I cannot keep back in this my first public speech after an enforced but temporary retirement. Well Kenya lost everything is lost. You have been reminded of that expression of mine more than once this evening. I really feel that in this case of Kenya a good deal is bound up of vital importance to the whole future history of this country. It is difficult for me to speak with moderation upon a subject touching so deeply not merely our interests but our pride as Indian citizens. I will however forbear to use language that might seem to abuse the hospitality of an Indian State, but some observations I must make on this occasion.

Some one said that the history of this Kenya betrayal might be read in a public document. Believe me friends, if you wish to know the real inwardness of this affair do not pay any attention to that faliginous document which they call The White Paper. It does not contain true history at all. The actual facts at the bottom of the case will not be found in the discussions that ensued in Parliament, they will not be found in respectable newspapers of Great Britain; they will not be found, no, not an allusion to them in the vast flood of oratory that marked the proceedings of the last Imperial Conference. No reference has been made in these solemn papers to the fact that the British Cabinet gave this decision because the white people in Kenya threatened rebellion. I do not say that the British Cabinet got intimidated. I do not say that the custodians of the Empire shrank from the trial of strength with such a petty little place as Mombassa or Nairobi. That is not my meaning, but those who are responsible for the conduct of the Empire to-day shrank from the struggle with their own countrymen, from the struggle where they knew that if they ventured to put forward a regiment the regiment would refuse to act. That was the secret of the whole thing.

The White Paper discusses the question on its merits, on its previous history. No reference however is to be made to this subject. When I caring only for truth and for India's honour mentioned it for the first time in a public audience they all seemed aghast. They seemed to think that I was giving utterance to something which ought to be hidden from public gaze. They were evidently not proud of the transaction. They certainly were very angry with me. Friends and critics, newspaper oracles, members of Parliament, those who were glad at any time to welcome me in the street and shake hands with me as a fellow citizen, all thought that I had been guilty of the sin of a most grievous description, much like

the sensitive daughter-in-law in a family who having received a beating from her husband smarted under it, no doubt, but smarted far more because the brother-in-law and sister-in-law had been looking on. The British Cabinet and the public of London were not so ashamed of their having yielded to fear and inflicted grievous wrong on India. They were far more angry because I had taken the world into my confidence.

And now what are our defenders doing? The Government of India, all honour to them, stood by us to the very end of the discussions. Perfectly, they gave us every moral support they could. But when the time for talk had gone and the time for something substantial had come, when we had to tell the British Cabinet that if one side threatened rebellion we should at least threaten a little trouble, when the time had come to say that, our Government necessarily shrank back. You could not expect the agents of British Cabinet to take up that attitude. Then let me tell you for the first time more vividly than ever, for the first time more stirringly than ever, I felt that if we were to win our way in the world we ought to have a different Government together. What is the state of things to-day?

Now that the matter is gone let us not weep over it because all is not lost. There is the Immigration Bill coming on. We will discuss it threadbare, attack all its provisions from A to Z. We will see what Kenya people will do and what the British Cabinet will do. We are going certainly to have thick books filled with discussion about Clause A and exception B and explanation C. But I assure you it is the case of the young boy who was told to hold a runaway bull but was foolish enough to let the nose rope go and then hung on for all he was worth by its tail. You know what will happen to that innocent young adventurer. Well the people of India and the Government of India are in no better case. When the British Cabinet allowed the Kenya Government to control our immigration on one pretext or another the case was gone. The horse had been stolen, you might shut the door, bang hundred times after, but you could not recover it by any discussion, however meticulous, however ably conducted, of the provisions of the Immigration Bill. I do not say that nobody should care about it. I do not say that the Indian Chamber of Commerce in Bombay for instance must not busy itself with the necessary representations to the authorities of Kenya. Let them by all means do so.

Proceeding to comment on the Trusteeship arguments Mr. Sastri said:—

When they said that it was necessary to administer Kenya in the interests of the African native and that for that purpose it might be necessary to control immigration as a theoretical proposition we had no alternative but to agree and we might willingly and gladly agree as a people long accustomed to the galling chains of subjection and anxious therefore to help anybody, even Kenya natives, to get back their rights from white aggressors. We could well agree to that and we did. But the point was this, that the unhappy African native had his only friends amongst Indians, that the white settler there is a land grabber, that he is a political tormentor whose one business is to oppress, to keep down, to make selfish laws, to exact labour from poor people there, to use their energies for his own benefit; in other words to use the language of one of their accredited spokesmen "having stolen the lands of the native, the next thing was to steel his limbs." If immigration was to be controlled, the immigration of the white men was to be controlled and not that of the Indian. That is an attitude that we ought to have taken and that is an attitude that we should yet take in the matter. I impressed it several times in London. I had nothing to conceal and I will say that again.

But there comes the trouble. Do you expect Lord Reading to say so for you? Do you expect Lord Reading and his Government to say, that if immigration has to be controlled, it has to be in the case of Whites and not of Indians? Everyone of them might feel so and I believe in my heart of hearts that everyone does believe it, but nobody dares to say it, and yet if we are to win in this case that is the thing, however unpleasant, to be said. There again comes a handicap of our having a Government which can only go a short way in championing our rights, which cannot speak the full truth, which cannot speak as you and I would, which cannot tell the British Cabinet "be impartial, be just, if you dare and tell your own people not to do wrong." There is another point that is being forced upon my attention. However unwilling I was to recognise it in such vivid colours in the past, I can no longer conceal from myself that without a Government that we could make and unmake as free peoples we are bound to lose in the struggle in the future. It is to that great object that all our energies have now to be bent. All talk of moderate and immoderate, of extreme and mean, in Indian politics has now no meaning for me. All must unite round this banner of Dominion Status and that promptly.

What do we hear from the representative of British power in India to-day? I do not envy Lord Reading his task. I certainly do not believe that fate has been exclusively kind to him in calling upon him, liberal as he is in politics, to go about the country on the eve of a general election and tell people "your struggles for immediate constitutional advance will meet with non-possumus. Elect therefore people who will be content to go on the present footing." Well, he might say so, but the country has decided otherwise—weak and disunited almost like a baby in her politics, India has it seems to me still spoken out boldly. I mean through general elections. India has not heeded the warning which, bidden or spontaneously, Lord Reading thought it fit continually to administer to our people.

Now what do the great people who have to guide us in all these matters say? I mean the great representatives of the No Hurry Arguments Anglo-Indian Press, the great representatives of the British Press or those, who occupying high and responsible posts in Indian Civil Service, continually admonish the Indian patriot on his duty, tell young and old alike without any bias or partiality that if we place the whole of the Indian Finance at their disposal and perhaps abolish the posts of the Accountant-General and Auditor-General, everything could go well with India. They tell us "What are you doing. You people of Modern India are not like your forefathers at all. Your forefathers talked of life everlasting, of the eternal round of Samsara, of the vanity of all worldly effort. Why hurry, there is all eternity before you. Did they not speak of life after death? You live for ever. Why want equality at once? Wait." Applying this argument to the immediate problem of Kenya the great friends of ours in whose good intentions I still have faith of a sort, mind you, told me "really you are unreasonable. It is true that there is not perfect equality between your people and mine in Kenya. Those fellows have got 11 seats on the Legislative Council and given you five. Well, I admit his is an inadequate number, Certainly it ought to be increased and I am perfectly willing when the time comes to give my vote for six." Who knows ten years hence or twenty years hence another enterprising man may come forward and tell us we will give you 8 and twenty years after that a

still more beneficent minded statesman may be willing to go ahead and venture to vote for nine so that in about two or three centuries we shall reach the figure eleven. Now that man was first sincere. He thought that it was good enough progress for the Indian. An Anglo-Indian civilian here told me "if you want increased Indianisation you are now say about 11 per cent. in the services, you get it raised to 12 or 13 if you please and be done with it. Don't disturb us for another generation." Well that is the way they have begun to talk to us. They do not deny the justice of our case. Only they are somewhat disquieted when we wish to rush along at this furious rate, threatening the peace of India and the safety of the Empire and are willing to agree to "more wholesome better ordered rate of progress."

Now I come to the most pathetic part of the whole thing. There are some amongst us who believe that for one reason or another "we must bide our time and obtain our due. It may be more slowly than we wish. If finally we are sure that we shall get the thing let us be content to march at even a slower rate than heretofore." Let me tell you frankly that I am one of those who sympathise with this line of argument. I also have always spoken for peaceful and constitutional progress and I believe examining my heart so minutely as I myself can, I am still on the side of peaceful and constitutional progress. I am quite willing that we should move slowly provided that we are sure that our forces were set in the right direction and that day by day, year by year, we left things behind that were in the front and got along to positions which seemed too far off, provided that we were sure we were moving and moving ahead. But 'are we sure' is the whole question? I thought we were. I do not think so any more, and therein lies my apprehension for the future. The Englishman having once been generous is now afraid of his own generosity. He thinks he has given too much and there is a disposition in England which I am thankful is not universal, but is undesirably prominent amongst Diehards and Tories who now wield the destinies of the Empire. There is a disposition on their part now to think that if they cannot actually take back, it is best to keep things stationary. You may plead justice, equality and the necessity of fidelity to promises and pledges and engagements. That does not touch the hardened Briton when he is bent on safeguarding his vested interests. I have seen it. Justice and Equality, very well, fine things these. All homage is due to them and the Englishman is ready with his homage as well, but if a conflict with his interests arises, if without open barefaced denial he could keep off the evil day, he will by every means in his power. That may be human nature and some of you may say we are no better perhaps. We are not anyhow, we have not been keeping an Empire, we do not wish to preserve the rights stolen from other people. We do not wish to aggress and therefore let us speak with our limited experience and not test ourselves in any imaginary scale. The trial has not come to us and we will therefore tell the people who boast so much about their "principles of justice and human brotherhood": keep your engagements like honest folk, fulfill your promises like just kings, that take their power from on High and must use their power so as to be approved from on High. That we have continually to tell them now.

Lord Reading, to whom we have to look for guidance, from whom words **Manifest Your** that come are certainly entitled to our respectful attention, **Strength** tion, counsels us in our future struggle to put faith in the sense of justice and righteousness of the British Nation. Well, allow me to speak with a little freedom on this part of the subject. "The sense of justice of the British Nation" is an expression with which I am fairly familiar. I have used it on countless occasions.

I know its full meaning, but I know also its limitations also. There is sense of justice I will admit and admit to the full but that sense of justice is not easily mobilised every day. You have got to stir up and nothing stirs it up as the prospect of excitement and turmoil and trouble as a prospect of something being in danger, of some vested interests being squashed in the struggle. Nothing stimulates a somewhat inactive sense of justice as the manifestation of your political strength.

Let us read the history of England. You remember some time ago in the old days of Ilbert Bill controversy when nothing more serious was at stake than the continued enjoyment of the invidious privilege, the Europeans of Calcutta and the neighbourhood on the occasion of this threatened loss of the privilege, banded themselves together and went so far as to arrange for the deportation of Lord Ripon. He was to have been summarily seized and put on board a boat that had come up the Hooghly. Remember however, no injury was to be done to him. Only he was to be deposed from his august position and taken away to be safely deposited somewhere on the more hospitable shores of Great Britain. That is how they teach us how to preserve the rights.

You have all read English history more or less... and how did these people in Kenya behave when their rights were threatened, **Delamere's Tactics** No, not their rights, let me say their unjust privileges. They did the same thing. They gave notice to their Governor that if he was going to give anything like equal treatment to Indians or carry out laws to that effect framed by the British Cabinet he also would be treated in the same gentle way in which the Viceroy of India was to have been treated on the Ilbert Bill occasion. They had everything ready for seizure, not only of the Governor, but of senior officials. Their places of detention were actually fixed. That is the way in the British Empire their own people, when they want things done, go about the business.

One of you (heroically inclined) may say, "if I should do such thing to-morrow what will be my fate? I cannot promise him the treatment that they gave for instance to Lord Delamare in London. Lord Delamare was received everywhere. His words were listened to as if they were gospel truths. He had a seat in the House of Lords. The Duke of Devonshire was smilingly sweet on him; so was the Colonial Office from top to bottom. There was nothing that Lord Delamare could not do and yet it was Lord Delamare who as Executive Councillor in Kenya, had taken the oath of allegiance to his Majesty, had promised to administer laws and to do nothing to disturb the peace of the public and so forth and the man whose duty it was to preserve the public peace that had presided at countless meetings where the White people threatened to rebel. He had himself presided and assisted at these peaceful proceedings. He was the man who, if ordinary law had prevailed should have been treated in a manner in which some thousands and thousands of our people are being treated to-day.

I cannot promise you a treatment of that kind from the Government of Lord Reading, but you know where you are exactly. "If only Skin were White" You could do things if only your skin were white which you cannot think of doing being what you are. But within your limitations, within the law, within the limits recognised as allowable to those who are struggling to regain lost liberties, who are struggling to obtain slow fulfilment of pledges of long standing and of solemn import there is plenty which we non-officials may do if it was the right sort of Government. There is plenty for us to be doing night and day and it will be my proud privilege when I have left your kind and hospitable neighbourhood to take my humble place amongst those who fight these peaceful and constitutional battles.

May be I have done wrong to pour into the contented and placid ears of citizens of the model State of India mournings and wailings of my anguished spirit, but I think that question of Indians overseas affects Native States as well as British India. Moreover I look forward to a time not far distant when the distinction between British India and Indian India will be one of form and not of substance. I look forward to a time not far distant when you will consider yourselves in daily life and not merely in theory, as citizens of a large, beautiful and lovable India and not merely as citizens of Mysore. If to me and to those of my age that India is but a vision there are about me young people who will raise glad and joyful eyes on that dream as the realised spectacle of daily life and I believe you will forgive me if for a moment I have asked you, in anticipation of some years yet, to share with me some of the troubled thoughts with which the British Indian citizen is now oppressed. I hope you will allow that I have not wasted your time as I believe honestly that I have bestowed one of my afternoons well when at the close of three months' stay amidst such generous surroundings I take leave of all who have helped to make my stay happy. I do so not leaving behind in their hearts a feeling that I have gone away as a sphinx having come as a sphinx but having told the trouble of my heart and some little plans that I may have formed for the future, having in that way tried to repay some of the hospitality and tenderness and personal attachment that citizens of Bangalore have always been extending to me during my stay.

KENYA IMMIGRATION BILL

A Bill Entitled an Ordinance to Consolidate and Regulate Immigration and Employment

Preamble.—WHEREAS it is desirable to provide for the peace, good order and development of the Colony and for the purposes of reducing and preventing unemployment.

And whereas it is the duty of the Government to safeguard the interests of the African natives of the Colony and to assure their progress and the continued improvement of their material welfare.

And whereas it is desired fully to implement the policy declared in the Memorandum presented by His Majesty's Government to Parliament relating to Indians in Kenya and dated the 23rd day of July in the Year of Our Lord, 1923.

Be it therefore enacted by the Governor of the Colony of Kenya with the advice and consent of the Legislative Council thereof:—

1. Short title.—This Ordinance may be cited as "The Immigrants Regulation and Employment Ordinance, 1923."

2. Interpretation of terms.—In this Ordinance the following terms shall have the respective meanings hereby assigned to them, unless the context otherwise requires:—

"Colony" shall mean the Colony and Protectorate of Kenya.

"Immigration and Employment Officer" shall mean a Principal or an Assistant Immigration and Employment Officer appointed for the purposes of this Ordinance.

"Principal Immigration and Employment Officer" shall mean the officer appointed for the administration and execution of this Ordinance.

3. Exempted persons.—This Ordinance shall not apply to:—

(a) The Officers and crews of His Majesty's Navy or of the fleet of any friendly power.

(b) Any member of His Majesty's Military Forces.

(c) Any person duly accredited to the Colony by or under the authority of the Imperial or any other Government.

(d) Any person, the subject of a Foreign Power having treaty rights within the dominions of the Sultan of Zanzibar, who is not a prohibited immigrant under Section 5 of this Ordinance and who is possessed of a guarantee in the form set out in Schedule A of this Ordinance signed by the Local Consular representative of such power.

(e) The wife, and any child appearing to an Immigration and Employment Officer to be under the age of sixteen, of a person not being a prohibited immigrant, provided they are not themselves prohibited immigrants under sub-clauses (b), (c), (d), (e), (f) or (g) of sub-section (1) of Section 5 of this Ordinance, and provided further that any idiot or insane person or any person who is otherwise physically afflicted may, in case he or any person accompanying him or some other person give security to the satisfaction of the Immigration and Employment Officer for his permanent support in the Colony or for his removal therefrom whenever required by the Governor-in-Council, be permitted to enter the Colony.

(f) Any person who shall satisfy an Immigration and Employment Officer that he has been formerly domiciled in the Colony or has been resident therein for a total period of not less than five years and that he does not come within the meaning of sub-clauses (b), (c), (d), (e), (f) or (g) of sub-section (1) of Section 5 of this Ordinance.

(g) Any native of the Uganda Protectorate or of the Tanganyika Territory, and who is not a prohibited immigrant within the meaning of sub-clauses (b), (c), (d), (e), (f) or (g) of sub-section (1) of Section 5 of this Ordinance.

4. *Examination of immigrants.*—Any person desiring to enter the Colony shall, before being allowed to do so, appear before an Immigration and Employment Officer who shall, after such examination as he may consider necessary, inform such person and the master of the vessel, if any, which has conveyed him to the Colony, whether he is a prohibited immigrant or not. Provided that if such person withholds or conceals from such officer any fact or information which would bring such person within any of the classes of prohibited immigrants defined in Section 5 of this Ordinance he shall be deemed to have contravened this Ordinance. *Provided further that when a person enters the Colony from adjoining territory or from Arabia, the Resident or District Commissioner or the Officer discharging the duties of a Resident or District Commissioner at the place of entry, shall have all the powers vested in an Immigration and Employment Officer under this Ordinance.*

When an immigrant is permitted to enter the Colony he shall be given a certificate by the Immigration and Employment Officer.

5. *Prohibited immigrants.*—(1) The immigration into the Colony by land or sea is prohibited of any person, hereinafter called a "prohibited immigrant", being or appearing to be of any of the classes defined in any of the following cases:—

(a) Any person without visible means of support or any person who is likely to become a pauper or a public charge.

(b) Any idiot or insane person.

(c) Any person suffering from a loathsome or a dangerous contagious disease or from trachoma.

(d) Any person who, not having a free pardon, has been convicted in any country other than the Colony of murder or any offence for which a sentence of imprisonment has been passed for any term, and who by reason of the circumstances connected therewith is deemed to be an undesirable immigrant; but this provision shall not apply to offences of a political character not involving moral turpitude.

(e) Any prostitute, and any person living or receiving or who may have lived on or received any part of the proceeds of the prostitution of others.

(f) Any person deemed by an Immigration and Employment Officer to be an undesirable immigrant in consequence of the information or advice received from any Secretary of State or Colonial Minister, or through official or diplomatic channels or any Minister of a Foreign Country, or from any other trusted source.

(g) Any person who has been ordered to leave the Colony.

(2) Any person aggrieved at the decision of an Immigration and Employment Officer to classify him as a prohibited immigrant under sub-section (1) of this Section may appeal from such decision to the Governor in-Council, provided that the determination of such appeal shall in no way limit or restrict the powers conferred by Sections 7, 18, and 19 of this Ordinance.

6. *Establishments of Immigration and Employment Department.*—There shall be established a Department of the Government to be known as "The Immigration and Employment Department."

7. *Persons convicted within 5 years to be deemed prohibited immigrants.*—Any person convicted by any Court within a period of five years from the date of entering the Colony of murder or an offence involving

moral turpitude for which the Court has power to impose imprisonment shall be liable to be dealt with as a prohibited immigrant, and the Governor may, if he thinks fit, make an order requiring such person to leave the Colony within a time fixed by the order, and thereafter to remain out of the Colony.

8. *Detention of immigrants.*—Any intending immigrant who has not been granted permission to enter the Colony may be detained in such place and under such terms and conditions as the Governor-in-Council may by rule prescribe.

9. *Establishment of Immigration and Employment Board.*—(1) There shall be established in Nairobi an Immigration and Employment Board which shall instruct the Immigration and Employment Officer with regard to the economic requirements of the Colony.

(2) Such Immigration and Employment Board shall be constituted of such persons as the Governor may appoint and shall include:—

(a) The Chief Commissioner or other officer of the Native Affairs Department representing the interests of the African natives of the Colony.

(b) A European who shall be a Member of the Executive Council or of the Legislative Council.

(c) A representative of the Indian Community.

10. *Department to collect information.*—The Immigration and Employment Department shall collect and record all information and reports as to labour requirements of the Colony.

11. *Employment certificate.*—Any person in the Colony desiring to bring into the Colony a person to work as clerk, salesman, artisan or other employee from outside the Colony shall first satisfy the Immigration and Employment Officer that he cannot obtain in the Colony an employee suitable for the work and the Immigration and Employment Officer if so satisfied that the requirements as laid down by the Board will be met shall issue a certificate and the production of such certificate shall exempt the immigrant named therein from the operation of clause (a) of Section 5 (1) of this Ordinance.

12. *Immigrant arriving without certificate.*—(1) An immigrant who arrives in the Colony without a certificate as provided for in the last preceding Section and who is unable to satisfy the Immigration and Employment Officer that he is entitled to enter the Colony under Section 3 or that he is not a prohibited immigrant under Section 5 of this Ordinance shall not be allowed to enter the Colony unless he can satisfy the Immigration and Employment Officer that he is a desirable immigrant or unless he can prove to the satisfaction of the Immigration and Employment Officer that he is assured of employment or that his services are necessary for the economic requirements of the colony.

(2) If the immigrant alleges that he is assured of employment the allegation must be corroborated by the prospective employer, who, if he has not already obtained a certificate prescribed by Section 11 must satisfy the Immigration and Employment Officer of the matters prescribed by that Section and take out a certificate as required by Section 11 and the immigrant shall not be allowed to enter the Colony in the absence of such corroboration and certificate.

13. *Trading and farming immigrants.*—(1) When an intending immigrant not otherwise entitled to enter the Colony informs the Immigration and Employment Officer that it is his intention to carry on any trade, business or occupation (other than the practice of a learned profession in which he is properly qualified, he shall give such information to the

officer as he may require and the officer shall satisfy himself that the requirements laid down by the Board will be met and that there is an opening for such trade, business or occupation, and that it is in the interest of the African natives of the Colony that such trade, business or occupation should be undertaken by the intending immigrant and only on the officer being so satisfied shall such immigrant be allowed to enter the Colony.

(2) If the officer is satisfied that there is no such opening or that the exercise of such trade, business or occupation would be injurious to the interests of the natives of the Colony such intending immigrant shall be regarded as a prohibited immigrant.

Provided that if the intending immigrant under this Section proves to the satisfaction of the officer by the production of the partnership deed or agreement that he is a partner in any existing trade, business or occupation and if the officer is satisfied that the particular partnership, trade, business or occupation is of good repute and if the intending immigrant is not otherwise a prohibited immigrant such immigrant may be allowed to enter the Colony.

14. Contracted employee may be treated as prohibited immigrant.—If any person who has entered the Colony to serve under a contract providing that the servant shall leave the Colony at its conclusion, fails to leave the Colony after quitting the said service, he may be treated as if he were a prohibited immigrant.

15. Penalty on employer.—(1) Any employer who has engaged servants under such a contract as is mentioned in the preceding Section and who shall refuse or neglect to carry out the provisions of such contract in regard to the passage of such servants shall be deemed to have committed an offence and shall be punishable on conviction with a fine not exceeding £500 or imprisonment of either description for a term not exceeding twelve months or to both such fine and imprisonment.

(2) Any person inducing another to enter the Colony under a contract of employment, shall be liable to all the expenses of deportation of the employee should he be or become a prohibited immigrant notwithstanding anything to the contrary in the contract between the parties to the said contract.

(3) Any person inducing another to enter the Colony under a contract of employment, shall, before the arrival of the employee, furnish a true copy of the contract or of the correspondence forming the contract to the Principal Immigration and Employment Officer.

16. Entry into Colony permitted under certain conditions.—Any person applying for admission into the Colony may, at the discretion of the Immigration and Employment Officer, be required to comply with the following provisions:—

(a) He shall before entering the Colony give security sufficient to indemnify the Government against the expenses likely to be incurred in sending him and his family (if any) back to the port from which he sailed and against the expenses likely to be incurred in detaining him or his family (if any) pending the determination of whether or not he may enter the Colony. Such security shall at the option of the intending immigrant be:—

(i) A cash deposit of a sum representing such expenses as aforesaid as may be determined by the Immigration and Employment Officer, or;

(ii) A bond which need not be under seal with such sureties as shall satisfy the Immigration and Employment Officer in such sum as may have been determined as aforesaid.

(b) He shall thereupon be permitted to enter the Colony, and shall if required by the Immigration and Employment Officer within one week thereafter satisfy such officer, by such proof as such officer may consider

necessary in the circumstances of each particular case, that he is not a prohibited immigrant.

(c) If he shall not satisfy such officer as aforesaid he shall be deported as soon as possible thereafter and returned to his port of embarkation. The costs of such deportation shall be defrayed out of the amount deposited by him or secured by bond as aforesaid. If a bond has been given the amount of the bond shall be forfeited to the Government and may be recovered by suit in the Court of a Magistrate of the First Class.

Any balance of money remaining over after such costs of repatriation and detention have been defrayed shall be paid to the person who made the cash deposit, or in the case of such costs being paid out of the proceeds of a forfeited bond the balance shall be paid into the Court in which the bond was forfeited and the Court shall distribute the said balance among the persons from whom the amount of the bond was recovered in proportion to the amount recovered from each of such persons.

(d) If he shall so satisfy such officer as aforesaid he shall be permitted to remain in the Colony.

(e) If he shall be so permitted to remain in the Colony as aforesaid such officer shall retain the amount deposited by him as aforesaid for a period not exceeding one year from the date of such deposit.

(f) Notwithstanding anything contained in sub-section (d) hereof, he may be deported in the manner prescribed in sub-section (c) hereof, if within a period of three years from the date of his entering the Colony he shall be shown to be prohibited immigrant as aforesaid. Such deportation shall be ordered by a Magistrate empowered to hold a subordinate Court of the First Class.

In case of any person entering the Colony under this Section no liability shall attach to the owners of the vessel in which he may have arrived at any port of the Colony.

17. *Power of police to prevent entry.*—Any Police Officer or Immigration and Employment Officer or, if the immigrant attempts to enter the Colony from any adjoining territory or from Arabia the District or Resident Commissioner within whose jurisdiction the place of entry is, shall subject to the provisions hereinafter contained prevent any prohibited immigrant from entering the Colony by land or sea.

18. *Unlawful entry of prohibited immigrants.*—Any prohibited immigrant making his way into or being found within the Colony shall be deemed to have contravened this Ordinance. Any person convicted under this Section may be deported and shall in addition be liable to suffer imprisonment of either description for a period not exceeding six months. Provided that such imprisonment shall cease if and when arrangements are made for the deportation of the offender from the Colony. Provided further that if such immigrant does not prove to the satisfaction of the Magistrate that he entered the Colony with the permission of any Immigration and Employment Officer he shall be deported.

19. *Prohibited immigrant not released by mere entry.*—(1) No person who comes within the definition of a prohibited immigrant shall be released from the operation of this Ordinance or allowed to be or remain in the Colony merely because he has not been notified not to land or because he may have been allowed to land through oversight or through want of knowledge that he was a prohibited immigrant.

(2) Proof adduced within three years to the satisfaction of the Governor-in-Council after any person has entered the Colony that he is one of any of the classes whose entry is prohibited shall be sufficient evidence that such person was a prohibited immigrant and such person shall be liable then to be dealt with as a prohibited immigrant.

20. *Summary arrest.*—If there shall be reasonable cause to suspect that any person has contravened this Ordinance, and if in order to prevent justice from being defeated it is necessary to arrest such person immediately, it shall be lawful for any Immigration and Employment Officer or Police Officer to arrest such person forthwith without having a warrant for that purpose, and he shall be required to bring such person before a Magistrate as soon as may be, or should the vessel from which such person has landed be on the point of departure, then, unless such person shall demand to be taken before a Magistrate, he may be handed over to the custody of the master of the vessel who shall be obliged to receive and keep him on board.

21. *Contract for return of prohibited immigrant.*—The Governor may authorise the Principal Immigration and Employment Officer to make a contract with the master, owners, or agent of any vessel for the conveyance of any prohibited immigrant found in the Colony to a port in or near to such immigrant's country of birth and any such immigrant with his personal effects may be placed by a Police Officer on board such vessel.

22. *Boarding vessels.*—Any Immigration and Employment Officer shall, for the purpose of this Ordinance, be empowered to board as often as may be necessary all vessels entering inward at any port of the Colony in the performance of his duties under this Ordinance.

23. *List of passengers when required.*—(1) The master of a vessel arriving in any port of the Colony shall, upon being thereto requested by an Immigration and Employment Officer at such port, furnish to him a list in duplicate signed by himself of all passengers and other persons on board such vessel at the time of his arrival in the Colony not forming a portion of the regular crew of such vessel.

(2) *The owner or agent of a vessel leaving any port in the Colony shall, upon being thereto requested by an Immigration and Employment Officer at such port, furnish to him a list in duplicate signed by himself of all passengers and other persons so leaving in and not forming a portion of the regular crew of such vessel.*

24. *Crew may be mustered before departure.*—The master of a vessel shall, if required thereto prior to his departure from port, produce his Articles and muster his crew, and if it be found that any person named in the Articles, who in the opinion of an Immigration and Employment Officer would be a prohibited immigrant, is not then present, such person shall be deemed to have entered the Colony contrary to this Ordinance, but the master and agents of such vessel, provided they have made proper provision to prevent desertion, shall not be responsible for any contravention of the provisions of this Section.

25. *Punishment by Magistrate of a member of crew. Order for return in custody to ship.*—Should the master of a vessel charge any member of his crew or stowaway or extra hand before a Court with a crime or offence committed at some time prior to the arrival of or during the stay of such vessel in port the Magistrate may, at the request of an Immigration and Employment Officer and on representation by such Officer that the accused is a prohibited immigrant, in awarding punishment, order that, on expiry of the sentence or on the sooner readiness of such vessel to proceed to sea, the prisoner be taken from gaol and conducted in custody aboard such vessel for conveyance away from the Colony. Any person contemplated by this Section brought before a Magistrate and discharged shall be ordered by the Magistrate to be immediately conveyed back to such vessel. An order shall not be made under this Section in any case in which the Magistrate deems the crime or offence proper for trial in His Majesty's Supreme Court of Kenya.

26. *Regulation for intercourse between shore and vessel.*—Whenever it shall be deemed necessary for the effective carrying out of this Ordinance

nance to regulate intercourse from the shore with any vessel in a port having on board any prohibited immigrant, the Principal Immigration and Employment Officer may take such steps, with the approval of the Governor as may appear proper in that behalf.

27. *Liability of master and owner.*—The master and owner of any vessel from which any prohibited immigrant may be landed or may land shall be liable jointly and severally to a penalty not exceeding £150 and not less than *£50 in respect of each such prohibited immigrant landed or who may land and such vessel may be refused a clearance outwards until any penalty incurred has been paid and until provision has been made by the master to the satisfaction of the Principal Immigration and Employment Officer for the conveyance out of the Colony of each prohibited immigrant who may have been so landed, and such vessel may be made attachable by a decree of His Majesty's Supreme Court of Kenya in satisfaction of any penalty imposed under this Section.

The word "clearance" as used in this Ordinance includes all the documents ordinarily issued by the Commissioner of Customs to a vessel about to leave port, including the document known as the Bill of Health.

28. *Visiting and Embarkation passes.* Any person being a prohibited immigrant within the meaning of this Ordinance may apply to an Immigration and Employment Officer for a pass to enter the Colony for a temporary visit, or for the purpose of embarking at a port in the Colony for some other country. Such passes shall be known as "visiting passes" and "embarkation passes" respectively and shall be in the form prescribed by the Rules made under this Ordinance.

29. *Enquiry and deposit before granting passes.*—The applicant shall attend before an Immigration and Employment Officer and shall answer all such questions as such Officer may put for the purpose of deciding whether a pass ought to be granted, and shall deposit with such officer:—

(a) For a visiting pass the sum of £15, with an additional sum of £15 where the pass includes the wife and children of the applicant.

(b) For an embarkation pass the sum of £15 for each adult and £10 † for each child.

The word "child" as used in this and the succeeding Sections, means a person appearing to such Officer to be under the age of sixteen years.

30. *Separate passes for adults other than husband and wife.*—Except in the case of a person accompanied by his wife and children a separate pass shall be required for each person seeking to enter the Colony for the purpose of a visit or for embarking.

31. *Passes not granted as of right.*—No person shall be entitled as of right to obtain a visiting pass or any embarkation pass, and an Immigration and Employment Officer appointed to issue such passes shall have the discretion to grant or refuse any such pass, subject, however, to any direction which may be given him by the Principal Immigration and Employment Officer or by the Governor.

32. *Period of pass and extension.*—A visiting pass shall be sufficient authority for the person or persons named therein to enter the Colony and to remain there during the period stated in such pass. Such period ordinarily shall not exceed twenty-one days, but any Immigration and Employment Officer appointed under the Ordinance may, for sufficient reason appearing, extend the period from time to time by an endorsement on such pass. No extension shall be made for more than fourteen days at a time, and

*N. B.—Increase from £37-10-0.

† Increase from £7-10-0.

no such pass shall be extended beyond six weeks from the date thereof except with the consent of the Governor.

33. *Return of deposit for a visiting pass.*—The money deposited for a visiting pass shall be returned to the depositor upon the pass-holder quitting the Colony within the time named in such pass or any extension thereof.

34. *Effect of embarkation pass.*—An embarkation pass shall be sufficient authority for the person or persons named therein to enter the Colony and to proceed with all reasonable speed to the port specified therein for the purpose of embarking by the first available opportunity for the destination stated in such pass.

35. *Extension.*—An embarkation pass shall not be extended save by the Principal Immigration and Employment Officer for sufficient cause to him appearing.

36. *Disposal of deposit for embarkation pass.*—The money deposited for an embarkation pass shall be at once applied on the application of the person to whom it was granted, and so far as the sum shall suffice for the purpose of obtaining a passage for the person or persons named in such pass to the specified place or destination. Any balance of the money deposited shall be returned to the depositor upon his embarkation or may in the discretion of the Immigration and Employment Officer be expended in any other necessary or proper manner as desired by the depositor.

37. *Penalty for outstaying time allowed by the pass. Other offences.*—Any person being a prohibited immigrant within the meaning of this Ordinance who shall enter the Colony in pursuance of a visiting pass or an embarkation pass, and who shall remain in the Colony beyond the time allowed by such pass or by a lawful endorsement thereon, or who may misuse such pass, or allow any fraudulent use to be made of it, shall be deemed to have contravened this Ordinance, and shall upon conviction suffer forfeiture of the amount deposited by him and may be sentenced to suffer imprisonment of either description for a period not exceeding six months. Provided that such imprisonment shall cease if and when arrangements are made for the deportation of such person from the Colony.

38. *Definition of "adult."*—Any person appearing to an Immigration and Employment Officer under this Ordinance to be over the age of sixteen years shall be regarded as an adult for the purpose of this Ordinance.

39. *Falsely obtaining documents.*—Any person who shall by false declaration obtain either for himself or for another person, either or both of whom, being not entitled thereto, any certificate or document intended to secure the entry into the Colony of any person in breach of the provisions of this Ordinance and any person who may fraudulently use any such certificate or other document, shall be guilty of a contravention of this Ordinance.

40. *Contraventions.*—The following shall be contraventions of this Ordinance:—

(a) Assisting any prohibited immigrant to enter the Colony, or knowingly being a party to the introduction of any person of the class (c) of Section 5 hereof.

(b) Aiding or abetting a prohibited immigrant or any other person in any contravention of this Ordinance or of any Rules for the time being published hereunder.

(c) Resisting or obstructing directly or indirectly any Immigration and Employment Officer in the execution of his duty.

(d) Wilfully disobeying or disregarding any obligation imposed by or any lawful order made under this Ordinance or the Rules for the time being published hereunder.

41. *Punishment.*—Every person guilty of a contravention of this Ordinance or of any Rule for the time being published hereunder shall, where no penalty is expressly imposed, be liable to a fine not exceeding £75 or, to imprisonment of either description for a period not exceeding six months or he may be sentenced to *both such fine and imprisonment.*

He may be further required to pay all cost of maintenance and charges for repatriation incurred by the Government on account of himself or of any person unlawfully brought into the Colony by him.

42. *Penalty incurred by a vessel's master.*—Any penalty incurred by the master of a vessel shall be paid before such vessel's clearance is granted. Notice in writing by the Immigration and Employment Officer to the Commissioner of Customs of any claim against the master, owners or agents of such vessel for a penalty shall be a sufficient authority to him to refuse such vessel's clearance until such order is withdrawn or is set aside by the order of a Court. Such a notice to the Port Captain or Port Officer shall be authority to him to refuse to take such vessel or allow it to go outside the port to any outer anchorage. When such notice is given such Immigration and Employment Officer shall with all speed inform the Principal Immigration and Employment Officer and take all such steps as may be necessary in order that proceedings in respect of the contravention may be instituted without loss of time.

43. *Enforcement of money penalty.*—The enforcement of any money penalty may be either by criminal prosecution or by civil action at the instance of an Immigration and Employment Officer. All contraventions of this Ordinance or of the Rules for the time being published hereunder for which no special punishment is awarded, or for which no greater punishment than a penalty of £150 or imprisonment of either description is imposed, shall be cognisable in any Subordinate Court of the first class which may in respect of any such contravention impose a penalty or punishment up to the said limits. Such imprisonment may in any criminal prosecution be awarded either absolutely or in default of the payment of a penalty. Notwithstanding the foregoing provision any Subordinate Court of the first class having jurisdiction at any port where a vessel is detained under authority of this Ordinance shall have jurisdiction in any civil suit wherein a penalty not exceeding £750 is claimed from the master or owners or agents of such vessel.

44. *Appeal.*—An appeal shall lie to the Governor-in-Council from any decision of the Immigration and Employment Officer, or person authorised to act as such.

45. *Offences cognisable to police.*—Contravention of Sections 16, 17, 19, 23, 24 and 42 shall be offences cognisable to the police.

46. *Repeal.*—The Ordinances mentioned in Schedule B of this ordinance are hereby repealed.

47. *Rules.*—The Governor may from time to time with the sanction of the Secretary of State make Rules for the better carrying out of the provisions of the Ordinance, and for fixing fees to be paid for any services rendered in respect of the provisions of this Ordinance.

48. *Saving.*—Until other provision is made in that behalf all Rules made under the Immigration Restriction Ordinance, 1906, or any Amendments thereof shall be deemed to be and shall have the effect of Regulations made under this Ordinance.

SCHEDULE A.

THE IMMIGRANTS REGULATION AND EMPLOYMENT

ORDINANCE, 1923.

I, (state rank, country, and where stationed), hereby certify that the bearer, (name), is a subject and that he (or she) is a fit and proper person to be received as an Immigrant into the Colony of Kenya.

DESCRIPTION:—

L.S.

Date

Signature.

Name

Age

Trade or Calling

Married or Single

Height ft. ins.

General description

Marks

Signature of holder.

SCHEDULE B.

The Immigration Restriction Ordinance 17 of 1906.

The Immigration Restriction Amendment Ordinance 27 of 1910.

The Immigration Restriction Amendment Ordinance 4 of 1913.

The Immigration Restriction Amendment Ordinance 5 of 1918.

The Immigration Restriction Amendment Ordinance 12 of 1919.

The Immigration Restriction Amendment Ordinance 6 of 1922.

CLASS AREAS BILL

SEGREGATION

Be it enacted by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

1. Whenever an urban local authority shall intimate to the Minister—

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

(b) that it is desirable that the provisions of this Act should be applied in respect of such area,

it shall be lawful for the Minister to appoint a Commission consisting of not more than three persons (hereinafter called the Commission) to investigate and report upon the desirability of applying to such area and to the urban area within which it is situated the provisions of this Act.

2. (1) It shall be the duty of the Commission to enquire and report upon the following matters:—

(a) The extent and nature of the area which was the subject of intimation under section one of this Act;

(b) the number, dimensions, situation and nature of sites occupied or available therein for residential or trading purposes or both such purposes as the case may be;

(c) whether there would be afforded by the area proper and adequate facilities for residences or trading sites or both as the case may be for the particular class of persons concerned;

(d) whether due and proper provision exists or is assured for water, lighting, sanitary and other necessary services within the area;

(e) whether it is desirable that the provisions of this Act should be applied in respect of the area; and

(f) any other matter which the Minister or the Commission may deem necessary or desirable.

(2) The commission shall have all such powers, jurisdiction and privileges as were conferred upon the commission referred to in Ordinance No. 30 of 1902 of the Transvaal, and all and several the provisions of that Ordinance shall *mutatis mutandis* apply in respect of the commission and its proceedings.

3. (1) At any time within six months after the receipt of the report of the commission, the Governor-General may by proclamation in the Gazette to declare that, on and after a date to be mentioned in the proclamation, the area defined therein shall be class residential area, or class trading area, or a class residential and trading area within the urban area.

(2) More than one area within the urban area may, by any such proclamation, be defined as class residential areas, or as class trading areas, or as class residential and trading areas as the case may be.

(3) Notwithstanding anything to the contrary contained in the Precious and Base Minerals Act of the Transvaal (Act No. 35 of 1908) or any amendment thereof, or in any other law, a class trading area

may be established under this Act on land within an urban area which, in terms of the said Act No. 35 of 1908 or any amendment thereof is proclaimed land or land held under mining title.

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

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

Provided that nothing in this Act contained shall apply to the renewal of a lease of immovable property where a right to such renewal is held under a lease existing at the date aforesaid.

5. (1) From and after the date mentioned in any proclamation issued under this Act establishing a class trading area or a class residential and trading area within any urban area, it shall not be lawful for any licensing court, board or authority, or for any person authorised to grant or issue licences or permits to carry on any trade or business within the urban area—

- (a) to grant or issue to any person other than a person of the class concerned any licence, permit or other authority to carry on any trade or business within the class trading area or class residential and trading area as the case may be; or
- (b) to grant or issue to any person of the class concerned any licence or permit to carry on any trade or business within the urban area elsewhere than in the class trading area or class residential and trading area as the case may be—

Provided, however, that if the Governor-General is satisfied that it is in the general interest of the public that it should be permitted to persons of the class concerned or any restricted number of such persons to carry on any particular trade or business within the urban area elsewhere than in the class trading area or class residential and trading area, as the case may be, he may, by proclamation in the Gazette for such period as he may therein fix, exempt, persons of the class concerned or: restricted number of such persons from the operation of paragraph (b) of this sub-section in respect of that particular trade or business.

(2) Nothing in this section contained shall be deemed to prohibit the grant to any person holding, at the date mentioned in any proclamation issued under this Act, any licence, permit or other authority to carry on any trade or business, or a renewal of such licence, permit or other authority.

6. (1) Whenever, in the opinion of the urban local authority concerned, any area established under the Act as a class residential area or a class trading area or a class residential and trading area, proves inadequate for, or unsuitable to, the requirements of the population of that class in the urban area, and the urban local authority deems it desirable to extend any such area or to create a new class residential area or class trading area or Asiatic residential and trading area, the urban local authority may communicate its opinion to the Minister, who thereupon may take all such steps as he may take upon receipt of an intimation under section one of this Act.

(2) All and several of the powers exercisable under this Act in respect of the establishment of a class residential area or a class

trading area or a class residential and trading area shall be exercisable in respect of the establishing of a new area or the extension of any existing area of like character.

7. (1) If at any time the Governor-General is satisfied that a class residential area or a class trading area or a class residential and trading area established under this Act is inadequate for or unsuitable to, the requirements of the population of that class in the urban area concerned, and that, by reason of the delay which would necessarily take place in removing the causes of the inadequacy or unsuitability, serious prejudice would be suffered by that population unless the provisions of this Act in respect of such inadequate or unsuitable area be suspended, he may, by proclamation in the *Gazette* to declare that, from and after a date to be therein mentioned, the provisions of this Act shall be suspended in respect of the class residential area or class trading area or class residential and trading area concerned.

(2) From and after such date the provisions of this Act shall in all respects cease to apply to the area deemed to be inadequate or unsuitable, and, in respect of such inadequate or unsuitable area, to the other parts of the urban area within which it is situated.

(3) The Governor-General may, whenever he may deem fit, re-proclaim as a class residential area or a class trading area or a class residential and trading area, as the case may be, any area which has been the subject of a suspending proclamation under sub-section (1) of this section, or to proclaim as a class residential area or a class trading area or a class residential and trading area under this Act any area which wholly or partly includes any area which has been the subject of a suspending proclamation under sub-section (1) of this section.

8. Any class residential area, or class trading area, or class residential and trading area established under this Act for any Asiatic race shall, for the purposes of section two (b) of Law No. 3 of 1885 of the Transvaal be deemed to be an area within which, in terms of that law, fixed property may be owned by Asiatics.

9. (1) For every class residential area, or class trading area, or class residential and trading area established under this Act there shall be an advisory board consisting of not less than three persons of the class concerned resident within the urban area, in addition to a chairman who in the case of a non-European class area, may be a European. The mode of election or selection of members of any such board, the period and conditions of office of members, and the procedure of the board shall be defined by regulations made by the urban local authority and approved by the Minister.

(2). It shall be the function of an advisory board established under this section to advise the urban local authority in respect of any matter referred to it by such authority for advice, and no by-laws or regulations particularly affecting the interests of the class or persons concerned shall be made or withdrawn by an urban local authority unless the advice of such advisory board shall first have been obtained in respect of the making or withdrawal, as the case may be, of such by-law or regulation.

10. (1) Subject to the provisions of sub-section (3) of section three and of section eight of this, nothing in this Act contained shall be deemed—

- (a) to affect the operation of Law No. 3 of 1885 of the Transvaal or any amendment thereof; of section two of Act No. 18 of 1913; of Act No. 37 of 1919; of Chapter No. CXIII of the Orange Free State Law Book or any amendment thereof; or of any other law prohibiting, restricting, regulating, or in any way affecting, the ownership or occupation of immovable property or trading by Asiatics or by coloured persons; or

- (b) to prohibit the acquisition by the Government or any urban local authority for educational, municipal or any other public purpose of the ownership or occupation of any immovable property; or
 - (c) to prohibit the acquisition at any time of land or interests in land or the lease or occupation of immovable property by devolution or succession on death whether under a will or on intestacy; or
 - (d) to prohibit any executor of a deceased estate or any trustee in insolvency from holding any immovable property or trading under any licence where power to do any such thing is conferred upon him by any law; or
 - (e) to invalidate or affect in any manner whatever any agreement or other transaction for the sale or purchase of land lawfully entered into prior to the date mentioned in any proclamation under this Act establishing a class residential area or a class trading area or a class residential and trading area.
- (2) Nothing in this Act contained shall be deemed to affect any officer of the Consular service or any person to whom the Governor-General may grant letters of exemption from the operation of all or any of the provisions of this Act.
11. In this Act, unless inconsistent with the context—“class of persons” includes any European persons or any other persons having, in the opinion of the Minister, common racial characteristics, but does not include any natives as that term is defined in section twenty-nine of the Natives (Urban Areas) Act, 1923 (Act No. 21 of 1923).
- “Minister” means the Minister of the Interior or any other Minister to whom the Governor-General assign the administration of this Act.
- “urban area” means an area under the jurisdiction of an urban local authority.
- “urban local authority” means any municipal council, borough council, town council or village council, or any board, village management board, local board or health board.
12. The Act may be cited as the Class Areas Act, 1924.
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MR. GANDHI ON CLASS AREAS BILL

WHAT THE FUTURE MAY HOLD

Mr. Gandhi has issued the following statement of his views regarding the anti-Asiatic movement in South Africa, and especially the Class Areas Bill:—

As one expected to understand the situation created in South Africa by the anti-Asiatic movement now going on there, and especially the Class Areas Bill now under consideration by the Union Parliament, I deem it my duty to place my opinion on the situation before the public.

Anti-Asiatic agitation on the part of Europeans in South Africa is no new thing. It is almost as old as the first settlement of unindentured Indians in South Africa, and is principally due to trade jealousy on the part of White retail traders. As in other parts of the world, so in South Africa interested men, if they sufficiently persist, find no difficulty in gathering the support round them of those who are not so interested but who do not think for themselves. The present agitation, I remember, was begun as early as 1921, and the Class Areas Bill is, no doubt, one result of that agitation.

Before dealing with the nature and effect of the Bill, it is necessary to point out that it is in breach of the compromise of 1914 arrived at between the Union Government and the Indian community of South Africa. But it was a compromise to which both the Indian Government and the Imperial Government were as much party as the Union Government and the Indian community, because the compromise was arrived at with the knowledge and concurrence of the Imperial and the Indian Governments. The latter had even sent Sir Benjamin Robertson as a representative, technically to watch the course of the Commission that was appointed by the Union Government to inquire into the Indian position, but in reality to negotiate a settlement. The main terms of the compromise were settled before Sir Benjamin Robertson, who represented the Indian Government, returned to India.

In accordance with that compromise no further anti-Asiatic legislation was to be passed by the Union Government. The understanding at the time was that the legal position of Indians would be gradually improved and that the then existing anti-Asiatic legislation would in time to come, be repealed. The contrary has, however, happened. The public may remember that the first attempt to break the spirit of the compromise was made when in the Transvaal an attempt was made to enforce the existing legislation adversely to the Indians and contrary to the practice that prevailed at the time of the compromise. The Class Areas Bill, however, goes much further in restricting Indian liberty.

Whatever may be the other implications of the compromise, this much cannot be disputed by any party, that the settlement of 1914 pledged the Union Government not to put further restrictions upon Indian liberty, and apart from the general powers of disallowance vested in His Majesty under the Letter of Instructions addressed to the Governor-General of South Africa, the Imperial Government, if they would be true to their trust, are bound, at any cost, to insist upon the observance of the terms of the compromise referred to by me.

We in India may not ignore the difficulties of the Union Government, which is dependent for its existence solely upon the will of the Europeans of South Africa, expressed through their elected representatives to the exclusion of Indians and the natives of the soil. This unwarranted exclusion is the original flaw in the South African constitution, as it is to be found in the constitution of most of the self-governing Colonies which have their native populations and Indian populations. As the Imperial Government permitted the flaw, it is in honour bound to prevent untoward results arising from it. South Africa and Kenya will presently show what moral worth there is in the Imperial system. Pressure of public opinion may, and probably will, bring about temporary relief in both the places, but it will be only temporary. It can merely postpone the final act in the tragedy unless some unforeseen radical change, either in England or in India, takes place.

And now for the Bill itself. Unlike the Natal Municipal Franchise Bill which happily the Union Governor-General has in effect vetoed and which applied only to Natal, the Class Areas Bill is designed to apply to all the poor provinces. It enables the Government to segregate all the domiciled Indians and other Asiatics alike for residence and trade. It is therefore an extension, in a modified manner, of the location system devised as early as 1885 by the late Transvaal Government.

Let me say in a few words what the segregation may mean. The Indian location in Pretoria, where, in spite of the law of 1885, not a single Indian has been as yet compelled to remove, is situated far away from the town itself and entirely outside the beat of the buyer whether English, Dutch or Native. The only trade possible in such locations is trade among themselves. Segregation therefore carried out to the full means nothing less than compulsory repatriation without any compensation. It is true that the Bill appears to preserve to a certain extent existing rights. But that reservation is of little consequence to the Indian settlers. I do not wish to burden this note by citing illustrations from South African experience to show how such reservations have, in practice, proved almost useless.

Finally, let it be remembered that when Indian emigration to South Africa was unrestricted, the fear of the Europeans was expressed to be that South Africa might be swamped by India's millions. All the South African statesmen then used to say that South Africa could easily digest a small Indian population and could even give it a liberal treatment, but that the European settlers could never rest content so long as the possibility of swamping remained. Now that the so-called fear of swamping has been removed, practically since 1897, the cry is raised for segregation; and, if that is accomplished, the next step will be compulsory repatriation. If the segregated Indians do not voluntarily retire, the fact is that the more accommodating the Europeans settlers of South Africa find the Imperial trustees to be, the more grasping they become in their anti-Asiatic demands.

INDIANS IN SOUTH AFRICA

When last we mentioned the Class Area Bill that the South African Government have prepared for dealing with their Indian problem, we complained that the Government of India had not taken the trouble to publish the text of the measure here, so that publicists in India should have something better than brief Reuter paragraphs to aid them in discussing it. The charge of not taking trouble was, we believe regarded as unjust. Then we withdrew. But our complaint that Government have not assisted in the leadership of public opinion in the matter remains and if the cause of their failure was not negligence of the public it must have been deliberate policy, which is worse. The Class Areas Bill, or Segregation Bill, as it is sometimes called, aims at the restriction of rights that Indians domiciled in South Africa have hitherto enjoyed as regards choice of locality for residence or business and in reference to the purchase or lease of house property or land. It is thus a breach of the agreement made by the Union Government with the Indians in 1914. The undertaking then given by the Union Minister in the name of his Government was that the laws of the land would be administered towards Indians "in a just manner and with due regard to vested rights." The Government of India, who have always felt a peculiar responsibility for the welfare of the Indians in South Africa, interpreted this undertaking as implying that no new law would be passed imposing fresh restrictions on Indians, as an undertaking justly to administer existing laws would be meaningless if the rights that Indians were entitled to exercise under those laws could be restricted at will by fresh legislation. No other interpretation could reasonably be applied. But an influential section of South African public opinion has never shown itself likely to observe the obligations of the Union towards the domiciled Indians with greater exactness than is forced upon it. The present South African Premier did not hesitate even to recommend the Imperial Conference of 1923 to "get out of" the famous resolution affirming Indian right that it passed in 1921. To argue that the development of circumstances during the past ten years makes a variation of the Union agreement with the Indians desirable is legitimate, but to say that any variation can be made without the assent of the Indians, acting in their own behalf and in that of their posterity, is not legitimate and there is no surety that the Union Government and their constituents will observe that condition unless they are kept up to it. The speech by the Union Minister of the Interior to an Indian deputation a day or two ago is fresh proof of this.

The text of the Class Areas Bill has now reached India and been published here and shows that it provides for such a large and serious restrictions of the rights hitherto enjoyed by Indians as gravely to affect the whole prospect of their future welfare. It gives any Municipal Council, Village Council, Local Board, Health Board or similar body the right to intimate to the Union Government its desire to have a certain area within its jurisdiction proclaimed a class area. Thereupon, the Union Government will have authority to appoint a commission of "not more than three persons"—one person will satisfy the legal requirement—to report upon the area, its extent, nature, suitability, sanitary condition and desirability for the purpose intended. After that, the Governor-General may proclaim the area to be "a class residential area, or a class trading area or a class residential and trading area. . . . It will thereafter not be lawful for anybody not belonging to the class concerned to acquire immovable property or a lease or renewal of lease of immovable property within that area," not for anybody belonging to the class concerned to acquire those rights except within the prescribed area. If, then, an existing Indian bazaar in a town or village is proclaimed an Indian area, Indians will have no right to buy or renew a lease of property

an **SEGR**... ce. If, on the other hand, an area—possibly a whole town—... ne for British or Dutch South Africans only, then Indians' property rights in it. The Bill similarly restricts the right of trading licenses, though it provides that the Governor-General may relax these conditions regarding them in favour of particular persons or trades. Power is given to utilise the procedure of the new law in order to extend an area or create a new one in the same town or village. This provision might be used either for the benefit of Indians or to their detriment. So, obviously, by one-sided application, might another provision, which authorises the Governor-General to suspend the operation of the new law in regard to an area already proclaimed. The Bill prescribes that for every proclaimed class area there shall be established an Advisory Board to advise the Local Authority and that no by-law or regulation affecting the class for whom the area is set apart shall be passed without that Board being consulted. But the Local Authority will, subject to ministerial sanction, lay down the method of forming the Board and its procedure, may insist upon the Board for a non-European area having a European chairman and will regulate the period and conditions of office of the members," while the Board will have no right to give advice except upon matters referred to it by the Local Authority. Among various other provisions of the measure is one empowering the Governor-General to grant letters of exemption from all or any of its provisions.

The more one studies the clauses of this Bill the worse do its implications appear. On the surface it provides for no compulsion in regard to segregation, except in compelling people to continue in a locality where they have already settled if it is proclaimed. In essence it introduces compulsion of a most repellent character and leaves only to the passage of time its application in the fullest degree. The South African Municipalities are notoriously not to be trusted. The municipal segregation areas for Indians in the Transvaal were lately shown by the Asiatic Inquiry Commission to be a disgrace to civilisation and an important section of opinion in South Africa openly aims at making segregation a means to break down the endurance of the Indians and compel them to flee the country. There is in the history of the Indian question in South Africa nothing to justify belief that the provisions in the Bill for protection against the Municipalities by references to a Government Commission and to Government itself are adequate safeguards. That a system of voluntary segregation might so be organised and conducted as to produce the maximum happiness in the communities living under it is conceivable; but there is not one iota of evidence that anything at present within the scope of the Union Government's politics will overturn the well-founded maxim that the segregation of a community which has no political power will always mean ghetto conditions. Upon the adoption of the principle of class areas, the Union Minister of the Interior, for all his fair assurances to the Indian deputation, insisted. What has to be faced is the proposed imposition of segregation for all time. The South African Government might by promises of the specially favourable administration of the Bill persuade the Indians to acquiesce in its provisions as regards themselves. But that is less than half the problem. The Indians dare not gain their own comfort regardless of the welfare of their posterity and for that posterity the Government of India, owing to the absence of Indian political rights in South Africa, are the official trustees. His Excellency the Viceroy assured his Legislature, in his inaugural address to it last month, that the Government of India were not satisfied with the position and were doing their best "to persuade the Union Government to incline to our view." We would impress upon the Government of India that the time has come when they should take the public further into their confidence. We know the general complaint overseas that Indian public discussion of the problem is not of a

kind that helps its solution, but Government can be better without their advice than with it. Lack of sound leadership induces such foolish performances at the South African Legislative Assembly when it recommended a heavy new Indian duty on South African coal. What the country now requires is had of exposition of the Government's policy and a clear indication by Government of the way in which the public can best help them in their difficult task of negotiation. The public mind would thus be assured and the situation improved rather than aggravated.—*The Times of India*.

AFRICA

SEGREGATION IN SOUTH AFRICA

Ghetto Conditions

Rev. C. F. Andrews writes to *The Bombay Times of India*:—

Your very able article on South Africa in Tuesday's issue is of great practical importance at the present juncture when a fatal step appears on the point of being taken in that country which will inevitably lead further and further into reaction. There can be no shadow of doubt that the Smuts-Gandhi settlement reached in 1914 was founded upon a pledge, solemnly undertaken on behalf of the whole South African Union, that the existing Indian rights, meagre and exiguous as they were, should be maintained. These Indian rights included, under certain conditions, those of residence in townships and the holding of trade licenses. Both these elementary rights are now in danger of being restricted in such a way that, under the new conditions, they would be practically valueless. For the Indian community will be segregated under the new Class Areas Bill at the primary decision of the municipalities. As you have rightly stated, the segregation of any community, which has not political power, will always in the end mean "ghetto" conditions; and no reservations under the Act can ever effectively prevent this.

Already the clear proof may be found on every hand in the Transvaal, wherever the segregation of Indians has been attempted under the Transvaal ordinance. The 'locations' at Pretoria, Germiston, and other places, are nothing else than ghettos to-day. I have visited them and lived in them and can speak from personal experience. The Report of the Asiatic Enquiry Commission acknowledges that these "locations" have been a blot on South Africa as a civilised country. Yet now it is proposed to extend the Transvaal system into Natal, where the number of Indians is far greater. All the safe-guarding clauses and advisory boards are quite useless when, as in this present Draft Bill (which has gained the consent of all political parties) the municipalities have both the initiative and the decision in almost every concern. If the Bill is passed into law, the words of Mahatma Gandhi, who has a more intimate experience of Indian conditions in South Africa than anyone in India to-day, are none too strong, when he stated in the public press: "Segregation in South Africa carried out to the full means nothing less than compulsory repatriation, without any compensation" It would not be too much to say that in twenty or thirty years' time the leading members of the Indian community in Natal, who are engaged in trade, would be ruined men and compelled to leave the country. The rest of the domiciled Indians, who belong to the labouring classes, would then inevitably sink in the scale. Ghetto conditions would prevail in Natal as they now do in the Transvaal. As you point out in your leading article "there is an important section of opinion in South Africa which openly aims at making segregation a means to break the endurance of the Indians and to compel them to flee the country." Persons holding such ideas are not likely to neglect this new weapon, if it is once placed securely in their hands; and all the present talk about the Act being administered "in a just manner and with a due regard to vested rights" will not prevent injustice being done, when once the final step is taken and the Act becomes the law of the land.

My own experience of South Africa in 1913-14, in the midst of a similar critical period when everything that Indians cared for was at stake, has

convinced me of the fact that there is a conscience Africa among the white community to which an effective appeal may be made. During a more recent visit in 1920, when I had exceptional opportunities of meeting leaders of political and social opinion, I felt the same thing. Indeed I have not lost hope even at the present moment when on all sides the outlook is extremely dark. On the earlier occasion, in 1913-14, the few outspoken words of Lord Hardinge, as Viceroy, at Madras, the reported speeches of the Bishops of Madras and Calcutta and other leading Englishmen in India, the sentiment of the British public in Great Britain itself, were of incalculable service in changing the psychology in South Africa and leading up to a settlement. History might repeat itself, if British opinion could be made equally vocal to-day. For that cause I place an exceptional value on an article so cogent and well-reasoned as that which I have just read in *The Times of India*.

The Cape Times which is easily the premier newspaper in South Africa and usually careful in its editorials, has recently made (if Reuter is to be credited) a truly amazing statement that, because the present B.I. refers only to new licenses and leases, it cannot be construed as a breach of the Smuts-Gandhi Agreement of 1914. But that historic settlement of Indian grievances was not concerned merely with individuals or with one generation only. It was a settlement reached with the whole Indian community in the principle of give and take. It was a settlement, by means of a precise formula, of a dispute which had gone on at least since 1908. The terms were as follows:—The Indian community, on its part, agreed to sacrifice the future right of entry of Indian immigrants in South Africa, only requiring that the prohibition should be made on economic rather than racial grounds and that it should be brought in by an administrative regulation rather than by a legislative Act. The South African Government, on its part, agreed to maintain all existing Indian rights in South Africa itself.

Since that Agreement was reached the Indian population, having abandoned the right of further entry, has not increased in anything like the same proportion as the British, whose immigration is fostered and encouraged. I have not at hand the exact figures, but I believe it would be true to say, that, while the Indian community has increased in Natal by less than five per cent. in the last decade the European population has increased by more than twenty-five per cent. There can, therefore, be henceforth no possible competition in population. The fear of what has been called an "Asiatic invasion" has been entirely removed.

But this sacrifice was made and these fears were removed on the express condition that the existing rights, not merely of Indian individuals, but of the entire Indian community should be maintained. There ought to be no possible misunderstanding on that point; for it is as clear as the day. Mahatma Gandhi on behalf of the Indian community in South Africa and Sir Benjamin Robertson, on behalf of the Government of India, were parties to the Agreement from the Indian side. General Botha and General Smuts were parties to the Agreement from the South African side. It was finally settled and signed just before the commencement of the Great War. Its settlement profoundly affected the attitude of India itself, making India's whole-hearted service in the great war possible. Thus the Agreement became doubly sacred and binding.

I was in South Africa when the preliminary settlement was reached and the preliminary Agreement was signed. At that time, I had many personal interviews with General Botha and General Smuts. I was also in close daily companionship with Mahatma Gandhi and in daily correspondence with Sir Benjamin Robertson. It is possible therefore for me to assert without any fear of contradiction, that the Agreement was on these lines, just as I have stated. Certainly Mahatma Gandhi would never have left South Africa, if there had been even a single syllable in the Agreement, which would have lent itself to any other interpellation.

we have therefore clearly to be faced: (I) The South African Government with the assistance of all other political parties, has its mind to commit a breach of faith towards the weak Indian community. Having obtained what it needed so badly namely the prohibition of Indian immigration, it is ready now to tear up the Agreement and refuse to fulfil any longer its own side of the settlement. (II) This new Segregation Bill is itself unjust and will lead to further acts of injustice. It will produce in Natal 'ghetto' conditions, which are repugnant to every humane person and humiliating to Indians as a race.

PRINTED AT "THE INDIAN DAILY MAIL" PRESS.
24-26, DALAL STREET, FORT, BOMBAY.
