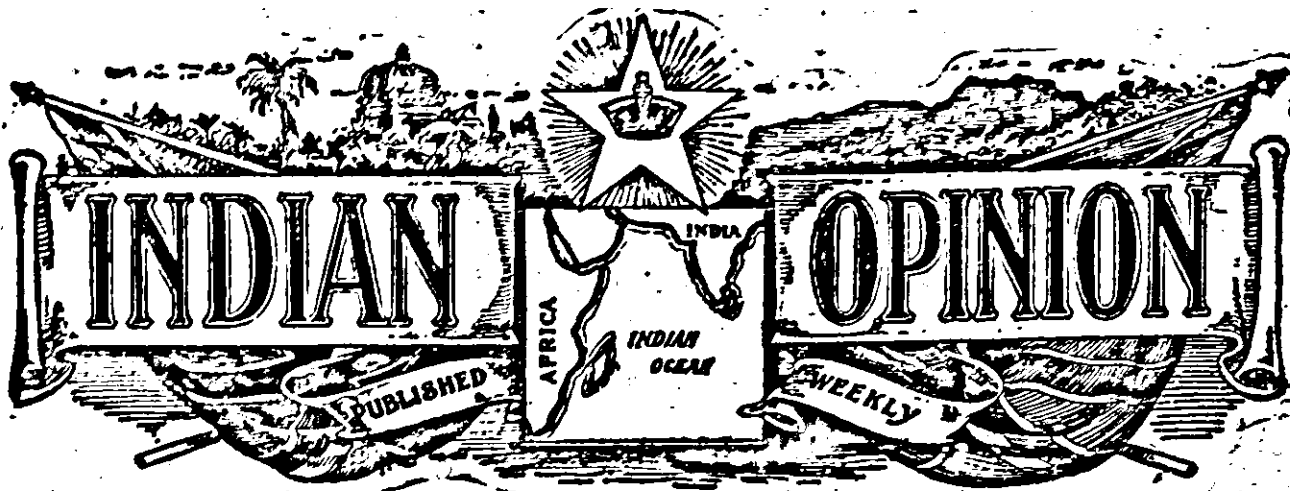




No. 15—VOL XI.

SATURDAY, APRIL 12TH, 1913.

Registered at the G. P. O. as a Newspaper.
PRICE TWENTY PENCE

THE NEW IMMIGRATION BILL

A UNION *Gazette Extraordinary*, dated the 3rd April, 1913, contains a Government Notice, No. 553, giving the text of a Bill "to Consolidate and Amend the Laws in force in the various Provinces of the Union relating to Prohibited Immigrants, to provide for the Establishment of a Union Immigration Department, to regulate Immigration into the Union or any Province thereof, and to provide for the removal therefrom of undesirable persons." The principal provisions of the Bill which is to be introduced by the Minister of Finance (General Smuts) are given below:—

1. (1) The Governor-General may establish, and, out of the moneys voted by Parliament for the purpose, maintain a department to be known as the Immigration Department, which shall be under the control of the Minister.

(2) The function of the department shall be the performance of all work, whether within or outside the Union, necessary for or incidental to the prevention of the entrance of prohibited immigrants into the Union or into any Province wherein their residence is, under this Act or any other law, unlawful, or necessary for or incidental to their removal from the Union or any such Province. The department shall further carry out any other powers and duties specially conferred or imposed upon it by this Act or by any other law.

2. (1) The Governor-General shall appoint so many boards as he may deem desirable for the summary determination of appeals by persons who, seeking to enter or being found within the Union or any Province have been detained, restricted, or arrested as prohibited immigrants. Each such board shall, subject to such directions as the Minister may lawfully issue under this Act, have jurisdiction in respect of such port or ports of entry and such areas in the Union as the Governor-General may determine. The Minister may issue to any board such directions and instructions as are not contrary to the provisions of this Act.

(2) Each board shall consist of three or more persons having magisterial, business, or administrative experience, and each member shall hold office for such period, not exceeding one year, as may be expressed in his appointment. Every such member shall be eligible for re-appointment. Remuneration at rates fixed by the Governor-General from time to time, shall be payable to such members of boards as are not officers of the public service.

(3) The chairman of a board shall be designated by the Governor-General and shall whenever possible be a magistrate. In the absence of the chairman the members of the board shall choose one of its members to act as chairman.

(4) A board shall, save as is otherwise specially provided in the next succeeding section in respect of questions of domicile, have exclusive jurisdiction at

the port or ports of entry and within the area assigned to it to hear and determine any appeal made by a person detained, restricted or arrested as a prohibited immigrant, and all other matters in relation to the carrying out of this Act which may be referred to the board by the Minister for its decision.

(5) Whenever leave to enter the Union or any particular Province is withheld by any immigration officer or police officer, or when any person is detained, restricted, or arrested as a prohibited immigrant, notice of that fact and the grounds of refusal, detention, restriction, or arrest shall be given by such officer in writing to the said person and, if such person has been restricted on arrival by sea, also to the master of the ship on which he has arrived.

(6) Every such person may appeal to the board having jurisdiction under this section.

(7) No appeal shall be heard by a board unless notice thereof in the prescribed form has been given to the immigration officer by or on behalf of the person concerned within seventy-two hours after the refusal, detention, restriction, or arrest aforesaid, or, in case the appellant arrived by sea and the ship whereon he arrived is about to depart, unless such notice is given forthwith. In every case a deposit shall be made of an amount sufficient, in the opinion of the Minister, to cover the detention expenses of the said person, the costs of bringing him before a board and of returning him to the place at which he was restricted if he desire to appear personally, and if he arrived by sea, the cost of his return passage by another ship to the place from which he came.

(8) The hearing of an appeal by a board shall take place as soon as possible after notice thereof is lodged. The hearing shall be in the presence of the appellant if he desire to appear. The appellant shall have the right to be represented at the appeal by counsel, an attorney, or an enrolled law agent.

(9) A board may, in manner prescribed by regulation, summon witnesses to give evidence or to produce documents and may, through the chairman or other person for the time being lawfully acting as such, administer an oath to any witness. Any person who, when summoned to give evidence or to produce documents, fails, without reasonable excuse, to comply with the terms of the summons or who, whether summoned or not, refuses, while under examination, to answer to the best of his knowledge or belief, all questions put to him by or with the concurrence of a board or who wilfully interrupts the proceedings thereof, shall be guilty of an offence and liable on conviction to a fine not exceeding five pounds or, in default of payment, to imprisonment with or without hard labour for a period not exceeding one month: Provided that any witness shall have the same privileges in respect of answering any question or producing any document as he would

have if such question were asked of him or such document was to be produced by him before a superior court.

(10) If any such witness to whom an oath has been administered as aforesaid, give false evidence material to the question under the consideration of a board, knowing such evidence to be false, he shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.

(11) All evidence adduced before a board shall be taken down in writing. The decision of a majority of a board upon an appeal shall be final and conclusive, except that the Minister may, in special cases, vary or modify any decision which would have the effect of causing the removal of the appellant from the Union or any Province.

(12) Save as in sub-section (11) is excepted, if a board decide that an appellant is a prohibited immigrant in respect of the Union or any Province, or if the appellant does not prosecute the appeal, such steps may forthwith be taken in respect of him by an immigration officer as would have been taken if the appeal had not been lodged.

3. No court of law in the Union shall, except upon a question of domicile in the Union or in any Province have any jurisdiction to review, quash, reverse, interdict or otherwise interfere with any proceeding, act, order, or warrant of the Minister, a board, an immigration officer or a master, if such proceeding, act, order, or warrant purports to be had, done, or issued under this Act and relates to the detention, or to the removal from the Union or any Province, of a person who is being dealt with as a prohibited immigrant.

4. (1) Any such person as is described in any paragraph of this sub-section who enters or is found within the Union, or who, though lawfully resident in one Province, enters or is found in another Province in which he is not lawfully resident, shall be a prohibited immigrant in respect of the Union or of that other Province (as the case may be), that is to say—

(a) any person or class of persons deemed by the Minister on economic grounds or on account of standard or habits of life to be unsuited to the requirements of the Union or any particular Province thereof;

(b) any person who is unable, by reason of deficient education, to read and write any European language to the satisfaction of an immigration officer; and for the purpose of this paragraph Yiddish shall be regarded as an European language;

(c) any person who is likely, if he entered the Union, to become a public charge, by reason of infirmity of mind or body, or because he is not in possession for his own use of sufficient means to support himself and his dependants;

(d) any person who, from information received from any Government (whether British or Foreign) through official or diplomatic channels, is deemed by the Minister to be an undesirable inhabitant of or visitor to the Union;

(e) any prostitute, or any person male or female, who lives or has lived on or knowingly receives or has received any part of the earnings of prostitution or who procures or has procured women for immoral purposes;

(f) any person who has been convicted in any country of any of the following offences (unless he has received a free pardon therefor), namely, murder, rape, arson, theft, receiving stolen goods knowing the same to have been stolen, fraud, forgery or uttering forged documents knowing the same to have been forged, counterfeiting coin or uttering coin knowing the same to be counterfeit, housebreaking with intent to commit an offence, burglary, robbery with violence, threats by letter or otherwise with intent to extort, or of any attempt to commit any such offence, and by reason of the circumstances connected with the offence, is deemed

by the Minister to be an undesirable inhabitant of or visitor to the Union;

(g) any idiot or epileptic, or any person who is insane or mentally deficient, or any person who is deaf and dumb, or deaf and blind, or dumb and blind or otherwise physically afflicted, unless in any such case he or a person accompanying him or some other person give security to the satisfaction of the Minister for his permanent support in the Union, or for his removal therefrom whenever required by the Minister;

(h) any person who is afflicted with leprosy or with any such infectious, contagious, or loathsome or other disease (other than tuberculosis), as is defined by regulation; and any person who is afflicted with tuberculosis in an infectious form, unless he is in possession of a permit to enter the Union, issued upon conditions prescribed by regulation.

Subject to the provisions of section two and three, an immigration officer shall cause a prohibited immigrant so entering or found within the Union or within any Province into which his entry, or in which his presence, is unlawful, to be removed therefrom.

(a) A list of all persons who have been declared under this Act to be prohibited immigrants in respect of the Union or any Province, and who have been removed therefrom or whose entry into the Union or any Province has been restricted, shall be laid by the Minister upon the tables of both Houses of Parliament within fourteen days after the commencement of each session thereof. Such list shall be framed in respect of a period ending one month before the session commences, and shall contain the name, sex, and nationality of each such person and the reason for his removal or restriction.

(3) The Minister may from time to time by notice in the *Gazette* declare that persons described in paragraph (a) of sub-section (1) of this section when permitted under this Act to enter or return to the Union or any Province, shall enter or return at a port or ports specified in the notice and not at any other port, and thereupon it shall be unlawful for any such person to enter or return at any other port.

5. The following persons or classes of persons shall not be prohibited immigrants for the purposes of this Act, namely—

(a) any member of His Majesty's Regular Naval or Military Forces;

(b) the officers and crew of a public ship of any foreign state while the ship is in port;

(c) any person who is duly accredited to the Union by or under the authority of His Majesty or the government of any foreign state, or the wife, family, staff or servants of any such person;

(d) any person who enters the Union, under such conditions as may be prescribed from time to time in accordance with any law or under any convention with the Government of a territory or state adjacent to the Union and who is not such a person as is described in sub-section (1) (c), (d), (e), (f), (g) or (h) of the last preceding section;

(e) any person born in any part of South Africa included in the Union;

(f) any person domiciled in any Province;

(g) any person who is proved to the satisfaction of an immigration officer to be the wife, or the child under the age of sixteen years, of any person described in paragraph (f) of this section, provided that the wife or the child (as the case may be) is not such a person as is described in sub-section (1) (d), (e), (f), (g) or (h) of the last preceding section;

(h) persons of European descent who are agricultural or domestic servants, skilled artisans, mechanics, workmen, or miners, and who have entered the Union under conditions which the Governor-General has approved on being satisfied that there is not sufficient supply available within the Union of such persons at adequate

wages: Provided that every such person shall produce, if required, a certificate of the person authorized in any country to issue such certificates, to the effect that the intending immigrant has been engaged to serve immediately on his arrival in the Union, an employer of repute at adequate wages and for a period of time to be fixed in the said conditions, not being less than one year:

Provided that nothing in this section contained shall be construed as entitling a person to whom the provisions of sub-section (1) (a) of the last preceding section apply, to enter and reside in a Province in which he has not previously been lawfully resident: Provided further that if any person, having been absent for a period of three years continuously from a Province in which he was previously lawfully resident, or for a longer period than the duration of a permit issued under the authority of any law hereby repealed, claims to enter, enters or is found in that Province, he shall not be deemed to fall within the exemptions contained in this section. (Cont. on col. 2)

From the Editor's Chair

THE NEW BILL

THE long-promised Immigration Bill has at last seen the light of day. We might say, at once, that it is disappointing, it is worse than its predecessor, and fails in material respects to give effect to the provisional settlement. Elsewhere will be found a detailed list of the points in which it falls short of the settlement. It is a pity that this is so. The Government have so often declared their intention of carrying out the terms of the settlement that the Bill will come as a rude shock to those who have at all cared to follow that settlement. The Bill confirms the suspicion that the Government only want to give us what they must, that they wish ill even to those who have established rights in the Union, and that, by hook or by crook, they desire to compass our ruin. In carrying out this ruthless policy, they have gone as far as they dare, in their precious Bill. If it becomes law in its present form, it will whittle away some of our cherished and existing rights and make our position, insecure as it already is, doubly so. The Bill plays with words regarding the Free State difficulty and is quite on a par with the Immigration Act of the Transvaal in unscrupulous subtlety. The Immigration Law of the Transvaal, as we have pointed out so often, has created a *legal* racial bar without any one, save those well versed in the Transvaal laws, knowing it. So, it seems to us, does this Bill create a *legal* racial bar without a superficial reader being able to detect it.

Unless the Government yield and amend the Bill materially, passive resistance must revive, and, with it, all the old miseries, sorrows and sufferings. Homes, just re-established, must be broken up. Those passive resisters who have resumed their ordinary vocation, must exchange them for that of becoming once more His Majesty's guests in his gaols in South Africa. We do still hope that the Government will see their way to grant relief. But, if they do not, we must learn the lesson again of finding pleasure in pain.

THE MARRIAGE IMBROGLIO

The letter on the marriage question from the master of the Supreme Court, Natal Provincial Division, and Counsel's opinion obtained thereon, both of which will be found in another column, show clearly what an important issue faces the Indian community. The Master himself realizes the full significance of his attitude and, therefore, suggests to the European Executor of the deceased that the Supreme Court should be moved in order to determine the position. This case shows, in a manner in which it could not be shown

otherwise equally vividly, how absolutely necessary it is for the Indian community to secure an amendment of the law as to non-Christian Indian marriages.

Mr. Cachalia has received an apparently soothing reply from the Government on the resolutions of the recently held Johannesburg mass meeting. The Government assure Mr. Cachalia and, through him, the community, that they do not intend to disturb the practice that has hitherto existed, in spite of the Searle judgment. We accept the assurance but it is not worth much. In vital matters, assurances which are in conflict with an actual legal position can afford little relief. For the question is not, in the present case, that of introducing a few Indian wives into the Union per year, but it is one of determining the theoretical status of Indian women. In plain language, the Searle judgment reduces their status from that of being honoured and honourable wives of their husbands to one of concubinage. In the eye of the law, now Mrs. Cachalia, Mrs. Naidoo, Mrs. Cama and Mrs. Gandhi are concubines, and, their offspring not honoured and beloved sons or daughters of their parents but illegitimate children. What comfort can it be to these husbands that, though the law may consider their dear ones as the lepers of society, the Government will condescend not to do so? So much for the sentiment of the matter, which, to us, is the reality. It often happens that what hurts the sentiment also hurts the matter. At any rate, such is the position in this marriage question. The Janubie case illustrates our point. The Government's condescension is of no avail to the poor widow. The Master of the Supreme Court has no discretion to do otherwise than carry out a law which he has to administer. So long as the Searle judgment stands, he must treat Janubie, not as the widow of her husband but as a kept woman, and as such, disentitled to remission of succession duty. With all the good will in the world, the Government can grant no relief, for they cannot direct the Master as they can an immigration officer. Hence it is absolutely necessary to amend the law as requested by the great meeting of Johannesburg. The Government have a golden opportunity of granting the necessary relief. They can do so by slightly amending the Immigration Bill they have just published, and it will be the best earnest of their good-will.

Immigration Bill (continued)

6. (1) If any person after having been restricted from entering, removed from, or ordered to leave the Union, or any Province in which he is a prohibited immigrant, (whether before or after the commencement of this Act) is found within the Union or that Province, he shall be guilty of an offence and liable on conviction—

(a) to imprisonment with or without hard labour for a period not exceeding three months without the option of a fine; and

(b) to be removed at any time from the Union or from such Province, as the case may be, by warrant issued under this Act.

(a) Every such sentence of imprisonment shall terminate as soon as the prohibited immigrant is removed from the Union or the said Province (as the case may be).

(3) Every officer in charge of a prison or gaol shall, if the warrant of removal be produced to him, deliver the prisoner named therein to any police officer or immigration officer, and the prisoner shall be deemed to be in lawful custody as long as he is in the custody of any such police officer or immigration officer or of any police officer or immigration officer for the time being in possession of the warrant.

7. Any such person as is described in Chapter XXXIII of the Orange Free State Law Book shall notwithstanding that he is lawfully resident in a particular Province or that he has been permitted to enter the Union, continue to be subject in all respects to

the provisions of sections *seven* and *eight* of the said Chapter XXXIII, and if he acts in contravention of those provisions, he may be dealt with under this Act as a prohibited immigrant in respect of the Orange Free State.

8. (1) No prohibited immigrant shall be entitled to obtain a licence to carry on any trade or calling in the Union or (as the case may be) in any Province wherein his residence is unlawful or to acquire therein any interest in land, whether leasehold or freehold, or in any other immovable property.

(2) Any such licence (if obtained by a prohibited immigrant) or any contract, deed or other document by which any such interest is acquired in contravention of this section, shall, as from the date that the holder of the licence or interest is dealt with as a prohibited immigrant under this Act, be null and void.

9. (1) Every person who is suspected on reasonable grounds of being a prohibited immigrant may be arrested without warrant by an immigration officer or police officer, and shall be dealt with in accordance with this Act.

(2) Any magistrate may, if information on oath be laid before him that there is upon any premises a person reasonably suspected of being a prohibited immigrant, issue a warrant empowering a police officer of or above the rank of sergeant to enter those premises and search for such person and arrest him.

10. No prohibited immigrant shall be exempt from the provisions of this Act or be allowed to remain in the Union, or in any Province wherein his residence is unlawful, or be deemed to have acquired a domicile therein, by reason only that he had not been informed that he could not enter or remain in the Union or (as the case may be) in that Province, or that he had been allowed to enter or remain through oversight, misrepresentation, or owing to the fact having been undiscovered that he was such a prohibited immigrant.

11. (1) Every person arriving at any port or whenever otherwise found within the Union shall, if required, appear before an immigration officer and satisfy such officer that he is not a prohibited immigrant either in respect of the Union or in respect of any particular Province. The immigration officer may require every such person—

(a) to make and sign a declaration in the prescribed form or such other declaration as the immigration officer may deem necessary; and

(b) to produce documentary or other evidence relative to his claim to enter or be in the Union or that Province; and

(c) to submit to any examination or test to which he may be lawfully subjected under this Act; and

(d) if he is suspected of being afflicted with any disease or physical infirmity which under this Act would render him a prohibited immigrant, to submit to examination by a medical practitioner designated by the Minister.

Every declaration made by a person under this sub-section shall be exempt from the stamp duty ordinarily imposed by law on affidavits and solemn or attested declarations, anything to the contrary notwithstanding in any law in force in the Union relating to stamp duty.

(2) The immigration officer shall permit every person who he is satisfied is not, or who obviously is not, a prohibited immigrant, forthwith to land or remain in the Union or the said Province, as the case may be, but if any person fail to comply with the requirements of sub-section (1) or, having complied with such requirements, fail to satisfy the immigration officer that he is not a prohibited immigrant, he shall be declared by the said officer to be a prohibited immigrant either in respect of the Union or in respect of any Province, and shall not be permitted to land or to remain in the Union or such Province as the case may be. The immigration officer shall thereupon inform the said person that he may appeal

to an immigration board in accordance with the provisions of section *two* and in case of the said person's arrival by a ship which is about to depart without calling at any other port of the Union, that such appeal must be noted forthwith; and that otherwise the appeal must be noted within seventy-two hours after the said person has been declared by the immigration officer to be a prohibited immigrant.

21. Any person (not being a person born in any part of South Africa which has been included within the Union) who—

(a) having been removed by any Government from the Union or any part of South Africa which has been included in the Union, or being the subject of an order issued under any law to leave the Union or any part of South Africa which has been included in the Union, returns thereto without lawful authority or has failed to comply with the terms of any such order;

(b) having been refused permission to enter the Union or any Province, whether before or after the commencement of the Act, has entered the Union or that Province or any other Province in respect of which he is a prohibited immigrant,

may, if not already under detention, be arrested without warrant and removed by warrant from the Union or (as the case may be) from the Province, and, pending removal, may be detained in such custody as may be prescribed by regulation.

23. (1) The burden of proving that a person has not entered or remained in the Union or any Province in contravention of this Act shall lie upon such person.

(2) Any order, warrant, permit, certificate or other document which under this Act may be issued shall be good and effectual if signed by any officer in the public service authorised by the Minister by notice in the *Gazette* to sign such an order, warrant, permit, certificate or other document, and when so signed shall be evidence in all courts of law and for other purposes that it was issued in accordance with the provisions of this Act.

(3) A certificate under the hand of an immigration officer or of the chairman of an immigration board shall in any proceedings under this Act be *prima facie* evidence of the facts stated therein and it shall not be necessary to tender oral evidence of such facts, unless the court or board before which such proceedings are had, specially direct, in which case a postponement shall be allowed to enable the officer or chairman whose presence is required to attend.

25. (1) Anything to the contrary notwithstanding in this Act contained, the Minister may in his discretion exempt any person from the provisions of section *four* or, subject to the provisions of section *seven*, may authorize the issue of a temporary permit to any prohibited immigrant to enter and reside in the Union or any particular Province upon such conditions as to the period of residence or the calling or occupation which he may follow therein or otherwise, as may in the permit be specified.

(2) The Minister may also in his discretion authorize the issue of a certificate of identity to any person who is lawfully resident in the Union or in any Province and who, desiring to proceed thereout with the intention of returning thereto, is for any reason apprehensive that he will be unable to prove on his return, that he is not a prohibited immigrant.

28. Anything to the contrary notwithstanding in Act No. 36 of 1908 of the Transvaal, a person who, has been exempted from the provisions of section *four* of this Act or, on the authority of a temporary permit issued under sub-section (1) of section *twenty-five* of this Act, has been permitted to enter and reside in any part of the Union, shall not be deemed to be subject to registration under the provisions of the said Act of the Transvaal.

31. This Act may be cited for all purposes as the Immigrants Restriction Act, 1913, and shall commence and come into operation on the first day of July, 1913.

Its Effect

The above Bill fails to carry out the provisional settlement because it takes away, contrary to the settlement, existing rights, *i.e.*,

(1) section 3 takes away the Court's jurisdiction, hitherto exercised in terms of existing statutes now to be repealed.

(2) Clause (a) sub-section 1 of section 4 seems to take away rights acquired by educated Indians who may have entered the Cape or Natal by passing the education test.

(3) Sub-section 3, section 4 restricts rights possessed by the Natal and the Cape Indians to re-enter at any port.

(4) Sub-section (f) section 5 deprives Natal Indians, not strictly domiciled, but of long residence therein of domiciliary rights hitherto possessed. (This may turn thousands of Indians now resident in Natal into prohibited immigrants.)

(5) Proviso section 5 very largely nullifies the legal effect of Transvaal Registration certificates. (These, in spite of treble registration, in most cases, cease, under the Bill, to constitute, in Lord Milner's words, "an indefeasible title to residence in the Transvaal;" for three years' absence from the Transvaal would, under the Bill, destroy the title to residence created by the certificates.)

(6) The same proviso invalidates the Natal domicile certificates, after three years' absence by the holders.

(7) The same proviso restricts the right of Cape or Transvaal Indians to enter Natal by passing the present education test of Natal, and of the Natal and the Transvaal Indians to enter the Cape by passing its education test.

(8) The same proviso takes away the right of South Africa-born Indians to enter the Cape under its existing statute.

Further examined from the passive resistance standpoint only, the Bill is also defective in that

(1) Sub-clause (a) sub-section 1 of section 4 seems to contemplate the prohibition of the entry into the Free State of new immigrants who may pass the education test.

(2) Even if it does not prohibit such entry, the Bill seems to require a declaration from an educated immigrant which would not be required from any other immigrant as an immigrant.

(3) Sub-clause (g) of section 5 does not recognise the right of the wives and minor children of new immigrants to enter the Union with their husbands.

(4) And the Bill does not correct the defect, discovered by the Searle judgment, in the existing South African laws as to Indian marriages and minor children born of such marriages

The New Bill and the Old

There are many points of difference and of similarity between the above Bill and the abortive draft of 1912. The structure of the new Bill is very dissimilar to that of the 1912 measure. Section 1 corresponds with sub-sections 1 and 2 of section 3 of the 1912 Bill, but sub-section 3 of section 3 is elaborated and extended, both as to scope and methods of administration, in the twelve sub-sections of section 2 of the new Bill, providing the machinery for appeals to Immigration Boards, which are to have, subject to instructions to be given them by the Minister pursuant to the general terms of the Bill, final jurisdiction except on questions of domicile, and section 3, excluding the jurisdiction

of the courts of law, except in matters of domicile, is entirely new.

Section 4 corresponds generally with section 4 of the 1912 Bill, but it also includes the Provincial restrictions of section 7 of the old Bill. There are, however, two provisions which radically distinguish it from that measure. First, there is the clause providing for exclusion, at the will of the Minister, upon economic grounds, and secondly, the education test is to be that of the existing Provincial statutes. Sub-section 2 and 3 are new.

Section 5 of the two Bills correspond, except that sub-section (f) confines the exemption to persons domiciled in any Province, persons otherwise resident not being protected. No provision is made for the recognition of non-Christian Indian marriages or for the protection of the children of these marriages. South Africa-born Indians, who have to-day the right to proceed to the Cape Province unmolested, are deprived of that right by the first proviso of this section, whilst the second proviso enables the authorities to prevent the return to South Africa of any Indian who has been absent from the country for more than three years. This proviso is new. Sections 6 of each Bill, though differing considerably in language, have substantially the same effect in each. Section 7 corresponds substantially with sub-section 2 of section 28 of the 1912 Bill. Sections 8, 9, and 10 of each substantially correspond. Chapter III of the new Bill corresponds in the main with Chapter II of the 1912 measure, and deals with the special powers for preventing the entry of and dealing with prohibited immigrants at the ports of entry. Section 19 appears to be intended to cover the provisions of sections 18 and 19 of the old Bill, but the new Bill provides that any person found within the Union is liable to an inquiry by the immigration officer, and may be, unless he satisfies the immigration officer that he is not a prohibited immigrant, be dealt with as such, subject to his right of appeal to a Board. Sub-section 2 provides a new procedure not contemplated in the obsolete measure. Section 20 of each Bill is the same. Sections 21 and 22 of the new Bill, whilst including the same general provisions as those of the corresponding sections of the 1912 Bill, exempt from their operation persons born in South Africa. Sub-sections 1 and 2 of section 23 of the new Bill correspond with the similar sub-sections of the old measure. Sub-section 3 is new. Section 24 is the same. The first part of sub-section 1 of section 25, giving the Minister the power to exempt any person from the provisions of section 4, is new. Sub-section 2 speaks of a "certificate of identity," and not of a "permit," as does the corresponding sub-section of the 1912 Bill, and the period of its validity is not limited. But this advantage is nullified by the second proviso of section 5. Section 26 corresponds, generally, with section 26 of the old Bill, and provides for the issue of regulations by the Governor-General. Section 27, providing for penalties, is the same. Section 28 corresponds generally with sub-section 1 of section 28 of the old measure, save that any Asiatic not exempted from the provisions of section 4, all of whose tests he may have passed, is required to register under Act 36 of 1908. Section 29 corresponds with section 1 of the 1912 Bill, and sets forth the measures to be repealed. Section 30 is generally identical with section 2 of the old measure. Section 31 brings the Bill, if enacted, into force on July 1st next.

The *Natal Advertiser* reports that a special train was requisitioned in the middle of Monday night by Mr. J. F. Finney, of Hill Crest, to bring to Durban two natives who had been injured in a trolley accident. The galloping ambulance met the train and conveyed the men to the Addington Hospital. Such consideration being so rare, where coloured servants are concerned, we cannot refrain from mentioning the matter and congratulating Mr. Finney on his humanity.

The Januble Case

We have already referred, in a previous issue, to this case. We are now in a position to print most important documents in connection with the matter. The Master of the Supreme Court wrote to Mr. Jackson, the Executor of Janubie's late husband, telling him he could not recognise the marriage without proof, for reasons given in the letter. On this letter, the parties obtained counsel's opinion. Both these we print below.

The Master's Letter

"With reference to the recent interview with you, in view of Law No. 19 of 1881, I am not prepared to accept the affidavit of Hoosen Mahomed, which is countersigned by Ismail Bayet and was lodged by you on the 3rd November last, as sufficient proof of the deceased's marriage, and must look to you, as Executor, to establish the fact of his having been legally married. Otherwise the wife and children referred to in his will cannot be recognised as such for the purpose of assessment of succession duty.

"It would appear to be advisable for you to obtain legal assistance, and, as the question at issue is of vast importance to the Indian community, you may consider it expedient to bring the present case to the notice of the latter's representatives for joint action if necessary."

Counsel's Opinion

"Korimoola, No 7.860, a Free Indian immigrant, died at Pietermaritzburg on the 22nd October, 1911. By his will, dated 19th October, 1911, he devised a portion of his Estate to "my wife Janubie" for life.

"The Testator and Janubie had lived together as husband and wife for some years prior to his death, and it is said that they had gone through a ceremony of marriage in accordance with the rites of the Mahomedan religion and that the ceremony was performed by a duly recognised religious Officer of that body.

"The Master of the Supreme Court, for the purpose of Succession Duty, requires to be satisfied that the marriage was a valid marriage.

"I am asked to advise: (1) whether the Master of the Supreme Court is entitled to call for proof of the marriage; and (2) whether the marriage was, in point of fact, valid in law.

"1. It has been settled that, where parties are living together under circumstances which indicate the married state, it is *prima facie* proof that they were duly married. In the circumstances, I am of opinion that where, as here, the parties had lived together for years as man and wife, and the will describes Janubie as the Testator's wife, the onus is thrown upon the Crown to establish that the parties were not in point of fact legally married and there is, therefore, no obligation upon the Executor to do more than supply the *prima facie* evidence of the marriage.

"2. Passing, however, to the second and more important question, I am of opinion that the union which existed between Korimoola and Janubie did not constitute a valid marriage according to the law of this Province:

"The marriage was never registered under Chapter 21 of the Indian Immigration Law of 1891. It did not take place under a Licence or after the publication of banns, and there is no evidence that it was solemnized by a person authorised under Law 19 of 1881 to solemnize marriages between persons professing the Mahomedan faith.

"The question has been determined by the decisions in the cases of *Bronn v. Bronn's Executors* 3 Searle, 313; *Nato v. Malgass*, 5 Juta 108; *Malgas v. Gakavu* 5 E.D.C., 225; and *Ngqobela v. Sihela* 10 C.S.C., 346.

"This view of the case need not cause great anxiety to the Mahomedan community. It is quite competent for a Mahomedan to contract a valid marriage in Natal if he complies with the provisions

of the Marriage Ordinance as amended by the Law No. 19 of 1881, but no bigamous marriage would be recognized, and any Mahomedan who, having contracted a valid marriage with one woman, afterwards married another woman (as distinguished from merely living with her, either as a wife or as a concubine, according to the teaching of the Koran) would be liable to prosecution for bigamy."

Johannesburg Mass Meeting

The following is a brief summary of some of the other speeches delivered at the meeting of the British Indian Association, reported last week.

Mr. C. K. Thambi Naidoo, in supporting the passive resistance resolution, said that he could not understand why the Government still wished to challenge the community by insulting its religion, its honour and its womanhood. They (the Indians) owed a duty to India before everything else and that was to keep her name untarnished. Speaking for himself, he could never submit to the law as interpreted by Justice Searle, and he hoped that his fellow passive resisters would do likewise.

Mr. P. K. Naidoo said that he was prepared to suffer any hardship, even pass a life time in gaol, for the sake of his religion and his country. He could not accept the decision about Indian marriages. He was not anxious for a revival of passive resistance, but if it came to them unsought, he had no doubt that the community would be found ready.

Mr. Kallenbach considered it a privilege to be present at that meeting. He thought that their resolutions were timely and moderate. When he first heard about the decision, he could hardly realise it. He knew what answer his people would return to any suggestion that their marriages, performed according to their religious rites, were invalid. He would watch to see what answer the Indians would return. He would watch, also, what India said and did in the matter. He had no doubt that they would have the sympathy of the whole of the Empire to which they (the Indians) belonged. He was sorry that he could only encourage them by words and that he could not share their sufferings, if such was to be their lot. He hoped, however, that the Government, by conceding their just demands, would avert a crisis, but, if, unfortunately, passive resistance was revived, he wished to assure them that Tolstoy Farm was always at their disposal.

In the House of Assembly last Thursday afternoon the Minister of the Interior gave notice that on Monday he would move for leave to introduce the Immigrants Restriction Bill.

The *Mercury* prints an exhaustive report of an interview with Mr. Polak on the Immigration Bill, and writes strongly on the subject in its editorial columns. We hope to print these in our next issue.

Mr. Cachalia has received a letter in reply to the resolutions passed at the recently-held mass meeting at Johannesburg on the marriage question. The letter states that the Government is at a loss to understand why the Cape decision has called forth such resolutions. The community must know the legal position and the attitude of the Immigration Department in such cases has been made perfectly clear on numerous occasions notwithstanding the legal position. The Government never has intended, nor does it now intend, to apply the law harshly. Officers have discretion to admit any wife married according to Mahomedan or other tenets if clear proof is given that she is the wife and no other in Africa. Immigration Officers have been informed that the judgment should in no way interfere with the practice hitherto followed.