

Indian Opinion

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(CAPE IMMIGRATION CASE

THE important case of Khana Gopal v. Immigration Officer, (Cape Province) has recently been decided in the Cape Provincial Division of the Supreme Court:—

It appeared that the appellant, an Indian, who according to the finding of the Appeal Board had resided in the Cape Province from 1902 until December, 1913, had in the latter month obtained a certificate of identity, and had thereafter gone on a visit to India. On his return the Immigration Officer refused to allow him the protection afforded by this certificate for the following reasons:

1. Appellant was unable to produce the certificate.
2. Appellant did not return within the period of one year, which formed one of the conditions subject to which the certificate had been granted.
3. The certificate was invalidated by the fact that appellant had made a false declaration on a material point when applying for the certificate, namely, as to the particulars relating to his entry into and previous residence within the Cape Province.

Against this decision of the Immigration Officer, appellant appealed to the Board of Appeal, constituted at Cape Town under the provisions of section 3 of Act 22 of 1913. The Board found that the appellant being a person falling under sub-section 1 (a) of section 4 of the Act, had obtained a certificate of identity in terms of section 25 of the Act on December 19th, 1913. That owing to the war and the irregularities consequent thereon in shipping matters, the appellant had not returned to Cape Town until December 29th, 1914. In the circumstances the Board was prepared to condone this irregularity, and also the fact that he had apparently lost the certificate. The Board also found that appellant had resided in the Cape Province since 1902, and had not come to Cape Town for the first time in 1907, as alleged by the Immigration authorities. The Board therefore allowed the appeal.

The Principal Immigration Officer then asked the Board to reserve the following questions of law for the decision of this honourable Court:

1. Whether it was competent for the Board to condone appellant's non-compliance with the conditions set out on the certificate of identity issued on the 18th December, 1913, in terms of sub-section (2) of section 25 of the Act and of the regulations framed thereunder.
2. In the event of question 1 being answered in the negative, whether the Board of Appeal, having found the appellant to be a person described in sub-section 1 (a) of section 4 of the said Act, and not having found him to be exempted in terms of section 5 thereof, was entitled to uphold the appeal.

Mr. Buchanan (for the Crown) wished to put in a copy of the regulations framed under the Act.

Mr. Alexander (for the Appellant) said that the Court ought to have the whole record in the proceedings before it.

Mr. Buchanan said the question to be decided was whether appellant's domicile was here. This point the Board had not decided. The Board was satisfied that appellant had obtained a certificate of identity and that he had lost it. The Board was prepared to condone the delay in appellant's return to South Africa, but was the Board competent to make such condonation? No copy of the certificate had been kept, but only a counterfoil. See Immigration Regulations, section 21, *et seq.* The certificate implied residence not domicile, though a person domiciled here might obtain such certificate if he wished. The Board had not decided the question of domicile. The certificate did not give appellant the right of ingress. The Minister might grant him exemption, but this certificate did not amount to exemption. In any case it would only be an exemption if appellant complied with certain conditions. The Board had not the power to dispense with these conditions.

Mr. Alexander said that the statement of case was inaccurate. It would have been better to have had the whole record before the Court. The Appeal Board came to a definite decision, and were then *functus officio*. Thereupon the Chief Immigration Officer asked to have those points reserved. The Board actually found that appellant had resided here since 1902, and so must have decided the question of domicile. The fact that appellant's wife was in India did not preclude his obtaining a new domicile here. Counsel referred to the Indian Relief Act and Dicey's Conflict of Laws. There had been a great change of legislation on this subject. See Act 47 of 1902, Act 30 of 1906, *ex parte Mahdoo* (16th September, 1910, not reported), *Pakirisamy and Another v. Union Government* (1912, C.P.D., p. 349), *Hari Khaki v. Union Government* (1912, C.P.D., p. 895). The certificate was merely a certificate of identity.

The Court ordered the record of the Immigration Board to be put in.

Mr. Buchanan stated that the question of domicile had not been settled by the Board.

Mr. Alexander, continuing his argument, said that the only point was with regard to the alleged condonation. Counsel then referred to section 25, sub-section (2) of Act 22 of 1913, and said that under the old Act the document was not a certificate of identity but a permit to return; under the new Act the regulations as regards permits would be *ultra vires*. The department was striving to obtain the same force and effect for these certificates of identity as the permits issued under the Act of 1907. He submitted that this was clearly wrong.

Mr. Buchanan said that the certificate was not a permit, and that therefore it was idle to discuss the question of late arrival. Under section 2 of the Act of 1913 an appeal lay to the Immigration Board, and regulation 19 had been promulgated under section 26,

sub-section 1 (a). He referred to section 4 of the Act as regards prohibited immigrants. The Act of 1913 went further than previous Acts, and allowed people who were found here under certain circumstances to be treated as prohibited immigrants. The question of domicile should have been taken first. The matter should be sent back to the Board to decide the question of domicile under section 5 (f). Then if the Immigration Office be dissatisfied with the Board's decision it could reserve the question of domicile for decision by the Court. The term "prohibited immigrant" had a wider meaning under the Immigration Acts than ordinarily understood, if a person, not born here, had been domiciled here, had then left the country, and, while away, had committed a crime, he might be treated as a prohibited "immigrant." The onus was upon an immigrant to prove that he was not a prohibited immigrant (section 22 of the Act). The Board had gone wrong in thinking that it could treat the certificate of identity as a permit, and in consequence it had not gone into the question of domicile.

Mr. Alexander suggested that the Court should use its powers under section 3, sub-section (2), and ask for further information on the question of domicile.

The Court reserved judgment.

In delivering judgment on May 26th, Mr. Justice Kotze said: In regard to the questions submitted to it by the Board of Appeal under section 3 of the Immigration Act No. 22 of 1913, the Court is of opinion: (1) That the Immigration Board was right in not dismissing the appeal to it by the Indian, Khana Gopal, on the ground that he did not return to South Africa within the time specified in the certificate of identity: and (2) that the Board, having found that Khana Gopal arrived here in the year 1902 and has a right to be within the Union, as is evident from the record of its proceedings, appears to have decided that he is domiciled in the Province of the Cape of Good Hope, and should, therefore, rule that he is entitled to the exemption under section 5 (f) of the Act.

The Court further directed that the costs of the proceedings in this Court be paid by the Immigration Department.

Mr. Justice Searle and Mr. Gardiner concurred.)

Municipal Franchise

A few months ago a meeting of Maritzburg Indians, convened by Mr. R. N. Moodley, was held, at which a body called the Maritzburg Indian Voters' Association was formed. The officials of this body are Messrs. R. N. Moodley (Chairman) V. C. Naidoo, Parbhoo Makaanjee, G. R. Singh Senior; and S. R. Naidoo and Joe Soobiah Pillay, Hon. Secretaries.

Applications by Indians qualified to vote have been sent to the Town Clerk, who has notified the Association that in the event of their names not appearing in the Burgess Roll they should appear before the Board. The Board meeting takes place on the 14th, 15th and 16th instant. It is requested by the Secretaries that those Indians who are qualified to vote should immediately see them so that steps can be taken to represent them at the meeting. (The qualifications of a voter as given in Law 19 of 1872 are:—

- (1) He should be of the age of 21
- (2) He should possess immovable property of the value of £50 or
- (3) He should rent any such property of the yearly value of £10.

It must be understood that no owner or renter of a property in respect of which rates have not been paid on or before the 31st May, 1915, is entitled to vote.)

The Secretaries' address is 530, Church Street, Maritzburg.

Reciprocity with the Colonies

Dr. Satish Chandra Banerji, M.A., LL.D., writes as follows in the *Indian Review*:—

Reciprocity with the Colonies is a topic of paramount importance to which very rightly at the last Session of the Indian National Congress considerable attention was devoted. The United Provinces Congress Committee has submitted a representation on the subject to the Government of India. It behoves every Indian citizen to give careful thought to this question.

My own feeling about the matter now is of a mixed character. I do not for a moment doubt what the ideal we should strive for should be. The great European war most people now understand to be a conflict between two opposing ideals of citizenship. The Prussian statesman believes, in the words of Prince Von Bulow, that "members of different nationalities, with different language and customs, and with an intellectual life of a different kind, cannot live side by side in one state without succumbing to the temptation of each trying to force his own nationality on the other." The British statesman, on the other hand, is coming to hold, says Professor Sadler, "that it is possible for members of different nationalities, varying even in language and still more in temperament and in social tradition, to live side by side under one flag, proud of their common citizenship, eager in its defence, mutually respectful each of the other's convictions, and working out by discussion and experiment a fuller and freer conception of national or Imperial well-being." We all hope that the war will end in the triumph of the liberalising forces of civilization over the cult of Might and Power and that the narrow and unjust Prussian ideal will be killed for ever. May we not then hope that the problem will be solved in future very much as Indians wish and aspire?

I do not blink for one moment the practical difficulties. They are immense and H. E. the Viceroy has suggested a compromise. Nobody will deny the truism that something is better than nothing. But compromise in a matter like this always reminds me of Bishop Blougram's Apology:—

"The common problem, yours, mine, every one's,
Is not to fancy what were fair in life
Provided it could be,—but, finding first
What may be, then find how to make it fair
Up to our means—a very different thing."

Theoretically I do not care for the second best. But practical politics mean concessions and I quite realise that, if the self-governing colonies do not admit freely men from the mother-country, they are not likely to concede to the Indian an unrestricted right of emigration. It is also easy to understand that, if we agree to send only a limited number of our men under prescribed conditions to these colonies, they may admit them. But will that secure to us all that we are fairly entitled to? What has embittered feeling very much in the past is the differential treatment accorded to the Indian. Other Orientals are treated better. Being a member of the British Empire is apparently a disqualification. I do not wish to speak of retaliation, but, in my humble opinion, no so-called reciprocity will be worth anything if the colonist be not taught to respect the golden rule and to realise that the Indian's country is not for him to exploit at his sweet will. I have every hope that since out of evil cometh good, one beneficial result of this war will be that racial antagonism will to a large extent die out, and the white man will recognise that the brown or black man who has fought side by side with him and shed his blood without stint does not deserve to be and cannot be despised. The time is coming for the adjustment of our differences in a true statesmanlike spirit, which will not divorce morality from politics and which will steer clear not only of all petty selfish prejudices, but also of all narrow shortsighted and degrading considerations.

A fair settlement is all that we ask for. I do not wish to cry for the moon. The way, however, in which quite recently the House of Lords dealt with the Proclamation for the establishment of an Executive Council in the United Provinces has been an eye-opener to many of us who were disposed to think optimistically and take professions at their face value.

From the Editor's Chair

Mr. COUSINS AGAIN

We publish elsewhere in this issue the report of an extraordinary case referred in review, to the Cape Provincial Division of the Supreme Court by that egregious official, Mr. Cousins. One would think that anyone—even Mr. Cousins, the one and only Principal Immigration Officer of the Cape—would have recognised that the Immigration Board had impliedly recognised the claims to domicile of the Indian respondent, Khana Gopal. We are glad that the Court ordered the Immigration Department to pay the costs of the case, but we wonder whether the Government will have the courage to compel Mr. Cousins to pay them out of his own pocket! It would be a scandal for these costs to come out of the public purse owing to the obstinacy and narrow-mindedness of an officer imbued with the spirit of persecution. Mr. Cousins is by way of being an expensive luxury to this country. This is not the first time that the public has had to pay for his extraordinary excursions into the realm of law. When administrative officers go to the Courts in the reckless manner that Mr. Cousins ordinarily does, it is the general community that suffers, for that official is far too thick-skinned to be troubled by the comments of the Bench upon his methods of administration—naturally, the inconvenience to the unfortunate persons who are victimised by those methods will not be overburdensome to his nimble conscience. But one of these days Mr. Cousins will make one mistake too many, and then a long-suffering Government will realise that Immigration affairs can be managed without the assistance of even so able an officer as he.

Lincoln's Son and His Porters

"It was a humiliating position in which the son of Abraham Lincoln found himself when he admitted to the Industrial Commission that the great Pullman Company was the real recipient of the tips to its coloured porters," says the *New York Nation*.

"This concern, whose stock is so closely held and so highly valued as to be almost never sold, has paid on an average 8 per cent. ever since its foundation. At the same time, it gives to its coloured employees less than a living wage, and expects them to make up the difference between that and what they need to live on out of the gratuities of travellers.

"Mr. Lincoln thought that on the whole the company was entitled to great credit for keeping this field of employment open to negroes, who are so often discriminated against. But it may well be doubted whether the philanthropic motive would be noticed in

the Pullman Company if it were compelled to pay the wages it should. The labourer is worthy of his hire; and when Mr. Lincoln so complacently patted himself on the back for employing coloured labour at all, he ought to remember that failure to obtain sufficient tips by reason of interference with traffic, slackness of travel, or hard times, has brought many a porter's family face to face with genuine suffering—even when he wore four and five service stripes on his coat-sleeve. That under these circumstances porters have yielded so little to temptation, that their record for fidelity and honesty, and for heroic service in accidents is admirable, is plainly no fault of Lincoln's son.

"The descendants of the men the father freed have long been exploited, overworked—often without sleep enough for long stretches to keep a man well—and underpaid besides, by the company of which the Emancipator's son has been the head."

Indian Education

"The Late Lala Baijpath, Rai Bahadur, discusses, in a recent number of the *Modern Review*, "the problem of Indian Education."

What are the evils (he asks) which beset modern Indian society? These are (1) physical deterioration, (2) lack of capacity for organization and sustained effort, (3) absence of high ideals and deep spirit of religion and self-sacrifice.

It must be remembered that India was never an illiterate country. Before the British occupation, we possessed a system of education which excited the highest admiration of foreigners. Even now with certain modifications it seems to be the only possible system.

Every village had its school for training boys. The indigenous system of education was well adapted to the condition of the country. It did not cripple the students but made them practical men and equipped them with adequate weapons for fighting their way in the world. It was inexpensive, the fee being paid mostly in kind and not so much in cash as at present. It exercised a great influence on the morals of its recipients and provided them with qualifications for the duties of householders. It did not tell upon their health, nor sap their vitality, nor make them dyspeptics or diabetics. No doubt it had its limitations and drawbacks. Culture was one-sided, but it produced thorough scholars and specialists, in every branch of study, and practical workers in every walk of life. In the controversy between orientalisks and occidentalists in the twenties and thirties of the last century, men like Wilson and Prinsep laid great stress on oriental education because they found that indigenous Education made its votaries gentlemen and thorough scholars.

The well-to-do, the wealthy, aye every one who was in a position to do so, contributed his mite towards the maintenance of teachers and scholars, connected with the system. It received encouragement at the hands of every one because they found that it did not create artificial wants, nor foster any spirit of individualism or selfishness and was well suited to the needs of Indian society.

Even now in all our towns like Delhi, Agra, Cawnpore, Benares, Amritsar, boys who are educated under the old system become expert accountants and men of business at the age of sixteen or seventeen. They are placed as apprentices in their own firms or in those of other men in the city, no bonds or fees being taken, and after a year or two's training they are made to enter the firm as subordinate clerks with small allowances of about fifty rupees a year. Thence they gradually rise till they are able to control enormous businesses involving transactions of lakhs of rupees and end by becoming big merchants or wholesale dealers. The contrast between the children of a man of modern

education employed in government service or in the learned professions and of those of an ordinary trader or business man is very marked. Whilst the former become mostly helpless after their father's death and find the struggle for life to be too much for them, the latter take up their father's position immediately and do not at all feel their loss. This is seen every day in all large trade centres and points out the direction in which the solution of the present problem lies.

Indian Industries

What unfair and unjust methods were employed by England to destroy the flourishing industries of India, says the *Amrita Bazar Patrika*, has thus been described by the historian, H. H. Wilson. "The British manufacturer," says he, "employed the arm of political injustice to keep down and ultimately strangle a competitor with whom he could not have contended on equal terms." It was by destroying the means of livelihood of millions of Indian artisans, who, along with themselves, fed and clothed millions of their countrymen, that British manufacturers grew and prospered. It is a most inglorious episode in the history of British rule in India. Even in later years the same selfish policy was pursued to check the growth of the industrial development of India. The invention of the power-loom in Europe necessarily helped the further decay of Indian industries. But when some enterprising Indian merchants started some cotton mills in the Bombay Presidency, everything possible was done by the British merchants to nip the enterprise in the bud. First of all heavy duties were imposed upon machineries imported to India from England. Then an excise duty was imposed on the production of cotton fabrics in India, which still continues, disabling the Indian manufacturer from competing with the manufacturer of England, Japan and China. And while this excise duty was intended to stifle the new steam mills of India, the import duties were remitted so that Manchester merchants might sell its goods so cheaply as to make it impossible for the weavers of India to compete with the products of their handlooms.

Madras Mahomedans and Mr. Gandhi

During the stay of Mr. and Mrs. Gandhi at Madras, the members of the Madras Presidency Muslim League were 'At Home' to Mr. and Mrs. Gandhi at the Lawley Hall which was tastefully decorated for the occasion. There was a good gathering of influential Mussalmans and others. Mr. and Mrs. Gandhi were, on arrival, received by the Vice-Presidents and the Honorary Secretary of the League and conducted to the hall, where, after formal introduction, refreshments were served to those assembled, Messrs. Harrison and Co. being the caterers. Mr. and Mrs. Gandhi were then garlanded, and Mr. Yakub Hassan Sait, speaking on behalf of the League, said:—

It is not usual in an 'At Home' party like this to make speeches as the function has more the nature of a conversation than of a public gathering. But I feel that this is not an occasion when we should follow convention too closely. I, for one, feel that we should not let this occasion pass without some one giving utterance on behalf of the assembly to what is uppermost in our hearts at this time. In the first place allow me to assure Mrs. Gandhi that Mussalmans are not behind others in grateful appreciation of the great services you have rendered to the country which is as much the motherland of Mussalmans as it is of Hindus and we are as proud of you as those who share your creed. We are also proud that in the hard struggle that was

maintained in South Africa for the very existence of the Indian community there, the Mussalmans participated with as much zeal and fervour as the Hindus. The co-operation and harmony among the passive resisters of all castes and creeds has been of such ennobling character that we cannot do better than to make that the ideal to strive at in the cause of the motherland if we ever hope to raise India high in the comity of nations. India has greater expectations from the career you have eventually chosen, and we are fortunate that this part of the country will not be left out of the sphere of your activities. I, on behalf of the Mussalmans, can unhesitatingly promise you our share of co-operation in any work that you may undertake for the good of the country.

Mr. Gandhi briefly replied thanking them for the honour done to him and to Mrs. Gandhi. He reminded them that they had made a promise to help him in any work that he might undertake for the good of the country and he told them to be beware that he might at any time call upon them to fulfil their promise. He warned them that he was a very exacting man and held people responsible for the fulfilment of their promises. If among the Mussalmans in South India there were men of the character of some of the Mussalmans in South Africa who had ungrudgingly made sacrifices for the honour of the country, he had no doubt that they would be able to give a good account of the work which they might be called upon to do. In conclusion, he again thanked them for the honour done him.—*Madras Times*.

Theosophy and South Africa

From time to time during past years, says Mrs. Besant in the May issue of the *Adyar Bulletin*, I have drawn the attention of Theosophists in South Africa to the duty they owed to the ill-used Indians there. Some took heed and others not, for in some the prejudice against colour overbore their sense of Brotherhood. On some matters, questions on the application of Theosophy to social conditions may rise, but it is difficult to understand how any possible view of Brotherhood could be so narrowed and eviscerated as to leave no room, no strength, for resistance against the wrongs inflicted there on our Indian Brothers. However, some of our members there did admirable service, and took part in the hard work of inspiring the Indians, and also helped in the Settlement.

There was a great open-air meeting to welcome Mr. Gandhi under the auspices of the South African League, Madras, which stood so gallantly by him throughout the struggle. Our old and faithful member, Sir S. Subramania Aiyar, took the chair, as he has taken it at the last three great meetings in Madras; the vigour of the veteran leader is remarkable, and he speaks with admirable force and incisiveness. Mr. Gandhi's brief speech was very fine; he praised his dead, and deprecated praise offered to his wife and himself. His voice was clear, and the spiritual force behind his words made them sink into every heart. The various brief speeches he has made have been singularly good and beautiful, ringing with absolute sincerity, and shining with love. He comes to Adyar on the 28th a welcome guest, for there are some people whose presence is a benediction, and he is one of them.

The visit of Mr. and Mrs. Gandhi to Adyar was a very enjoyable one. They visited one of our Panchama schools—the one at Urar, the village adjoining the Headquarters' ground, and Mr. Gandhi inspected our Vasanta Press with extreme interest; he has had printing experiences of his own in South Africa, so went over the composing, printing, and binding department with a trained eye.