

# Indian Opinion

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## NOTES AND NEWS

**A** *GAZETTE EXTRAORDINARY* published on the 12th instant contains the text of a Draft Ordinance to Consolidate and amend the Laws relating to education (Natal). The Draft Ordinance, among other things, deals with training College, secondary, intermediate, primary, Government-aided, and Government-aided farm Schools, and contains important provisions on non-European education. The subject of free primary education is also dealt with in the Ordinance. The object of the Ordinance is to consolidate all laws now in force relating to education, and to place extended powers in the hands of the Provincial Administration relating to the general control, supervision and direction of public education in Natal, other than higher education.

The Natal Indian Congress, it is expected, will make strong representations on the subject of Indian education.

Mr. H. S. L. Polak Secretary Indian Overseas Association writes as follows to the *London Times*: Your Durban Correspondent alleges that the majority of South African-born Indians "would not resent a measure of segregation based on social, economic, religious, and cultural differences, if there were not undue insistence and European traditions and customs." Indian Opinion in South Africa is as unanimous on this subject as the Viceroy acknowledges it to be in India. Your Durban Correspondent's statement implies a suggestion that the majority of South African-born Indians would not resent statutory, and, therefore, compulsory, segregations. I know the South African-born Indians, having lived among, and worked with, them as a colleague for years, and such a statement would, I know, be bitterly resented by them.

A correspondent from Carolina (Transvaal) writes: Carolina Indians are to be congratulated for having an Indian School opened by the Government. The school has been opened on April 6 and is in full swing. Indians in the surrounding districts will now have every opportunity of educating their children under a capable teacher. Particulars as to the arrangements for accommodation etc. could be had from Mr. Tarmahomed Ally, Secretary, Indian School Board, P.O. Box 68, Carolina, whom the local community wish to thank for the trouble he personally took in the matter.

Master Ernest L. Godfrey, the only son of Dr. W. Godfrey, well known in South Africa, is distinguishing himself in his medical studies in Edinburgh University, writes our London correspondent. He entered the University last year and passed his first professional with distinction, gaining over 75 per cent. in each of the four subjects: Chemistry, Botany, Physics, Zoology. Later he got 1st Class Honours Certificates in all his classes and was awarded the Medal in Botany. Further he got the Medal in Anatomy standing first in the Systematic class and gaining over 75 per cent. in every practical

examination in Anatomy. And he has carried off the Carlyle Aitken Bursary in Anatomy and Physiology (Seniors). The examination was held last week. In Anatomy there were 600 marks, he came out top with 84 per cent. In physiology there were 300 marks, he came out 3rd with 73 per cent. and on the whole he was 5 per cent. above everybody.

### GOVERNMENT OF INDIA DEPUTATION,

**T**HE Government of India Deputation consisting of Mr. Paddison as the official member and president of the Deputation and Sir Devaprashad Sarvadhikari and the Hon. Said Raza Ali as non-official members with Mr. Bajpai as Secretary has left the Union, and after visiting the Victoria Falls will embark on the 30th instant from Beira for India on the s.s. *Karapara*.

We have had Sir Benjamin Robertson twice as representative of the Government of India, and while his task was by no means an easy one, the task of the present Deputation, it must be admitted, was a very difficult one. They had to do a great deal of spade work and their presence in this country for four months has not been fruitless. Although there was, unfortunately, a certain amount of dissatisfaction expressed in India over the personnel of the Deputation and a certain amount, no doubt, existed among the Indians in this country too, we must confess that, on the whole, the Deputation have given the satisfaction that could be expected of them. One of the most important work they have done is to obtain a first hand knowledge of the whole Asiatic question in the Union and after four months labour they are doubtless fully conversant with both sides of the question and their experience will be of very great value to Lord Irvin, the new Viceroy of India, in dealing with the question.

With regard to the Asiatic Bill thanks are due to the Deputation for bringing about a Select Committee to discuss the principles of the Bill. One fact that has been proved to the hilt to the Select Committee, whatever its report may turn out to be, was the strength of the Indian case and the weakness of the case of those that advocate the passing of such an obnoxious Bill. That too is in our favour. It remains now for the Government to decide. What decision it will come to is not known but if it takes public opinion into account we do feel that the European Press is practically unanimous in expressing the opinion that the Bill should be dropped and that the question should

be discussed in a Round Table Conference. We sincerely hope and pray that the Union Government will come to this decision and refrain from taking any hasty step which would cause a great deal of dissatisfaction to a large section of the community and consequent unrest in the country.

On behalf of the Indians of the Union we thank the Government of India Deputation for the work they have done in their interests and wish them God-speed.

## Draft Townships Ordinance

### Statement By Natal Indian Congress

The following statements were submitted by the Natal Indian Congress to the Chairman and members of the Select Committee objecting to the Draft Townships Ordinance and Motor Cars and Traffic on Public Roads Ordinance :—

Gentlemen,—We the undersigned deputed by the Natal Indian Congress, which represents the Indians in Natal, desire to object to the Draft Ordinance entitled "The Townships Ordinance of 1926," which is now before you,

As is well known, Law 11 of 1881, which is intended to be repealed by this Draft Ordinance, conferred, among other things, the rights of franchise upon those who possessed the qualification, namely that of renter or owner of immovable property, irrespective of colour or nationality, and since then Indians resident in the different Townships, in common with other burgesses, possessed and enjoyed the rights and benefits of franchise, which is purely of a domestic character.

No single allegation of any misuse or abuse of the rights of franchise has ever been made against Indians, who made use of their vote in the interest and welfare of their respective Townships.

Since the year 1921 and yearly thereafter repeated attempts were made to deprive the Indians of their Township vote. Against these attempts the Natal Indian Congress, besides submitting petitions of protest to the Natal Provincial Council and giving evidence before the respective Select Committees, successfully appealed, upon the Provincial Council passing the Ordinance, to the Union Government, which vetoed or otherwise withheld assent to the different Townships Franchise Ordinances, which intended to deprive the Indians of their Township Franchise.

In reply to the representations made by a Deputation from the Natal Indian Congress, which waited upon the Minister of the Interior, upon the subject of Township franchise and other matters, the Minister by a letter dated the 19th July, 1922, made the following definite intimation :

"In regard to No. 2 (that is the Townships Franchise Ordinance) the Government in recommending the reservation of the Ordinance did so as they propose to appoint an officer to enquire into the conditions existing in the Townships in Natal so that they may satisfy themselves as to what steps, if any, should be taken in regard to restrictions of franchise specially affecting Asiatics."

The promise made in this letter by the Union Government has not been carried out, as far as the Congress is aware. And yet we have before us an Ordinance, which disqualifies all Indians, who are already not on the Roll, from ever acquiring township franchise, notwithstanding the possession by them of the requisite qualification.

We beg leave to deal with the different sections

appearing in the Draft Ordinance, to which strong objections are taken.

CHAPTER III. SECTION 10. This section, which lays down the qualification of a voter, is designed to exclude all Indians from acquiring franchise rights in Townships. It imposes the necessity of acquiring not only a Township franchise, but also a Parliamentary franchise, the qualifications in each case being one and the same, before a person is entitled to be enrolled on the voters' list. This means in effect that before a person seeks to qualify himself for the township franchise, he or she should be a registered Parliamentary voter. In other words the registration as a voter on the Parliamentary Roll is a passport to be placed *ipso facto* on the Townships Roll. Ridiculous as the reading of the section may seem, the intention and purport of it cannot be lost sight of by the Indian community. Indians recognise that in so far as the Parliamentary vote is concerned, they have been disfranchised by Act 8 of 1896 (Natal). This Act denies civic rights to Indians. And yet it is intended to bring within the scope of the Townships Ordinance the operation of Act 8 of 1896, so that not content with the deprivation of civic rights enjoyed by Indians prior to 1896, a further inroad upon the right of Indians is attempted to be made.

It will be recollected, and the speeches of the late Mr. Harry Escombe amply prove, that political motive was at the back of Act 8 of 1896, when it was passed by the then Natal Legislature. There was then in the minds of the whites the fear that the unrestricted entry of Indians into Natal would not only swamp the white population but would place in the hands of Indians the power of vote. But the door has since been closed against Asiatic immigration and even India has stopped the further immigration of Indians into Natal under the indenture system. The fear, which was said to have existed as far back as 1896, cannot by any stretch of imagination, having regard to the stringent restrictions contained in the Immigration Laws, be said to exist now. We, therefore, cannot help feeling that the objective of the different Ordinances including the one under consideration is, apart from the protection given to Indian voters, who are already on the Roll, and for which the Deputation is thankful, to refuse to admit any more Indians to the benefits of the franchise, no matter what their interest or stake in the Township might be.

The Indians have all along contended and will contend that rates and votes must go together. It is needless to point out that in the different Townships established throughout Natal and in Townships which may in future be established, there are hundreds of Indians who own landed properties to a considerable value. They are required to pay rates levied in respect of their immovable properties, and to conform as inhabitants of Townships to all the duties and obligations imposed upon them by Law. And yet, if the present Ordinance is passed, they will be debarred from acquiring the ordinary and elementary franchise in Townships, to voice their feeling and to protect their interests. The principle of excluding Indians, who are otherwise qualified, cannot, we submit, be justified nor can it be defended on grounds of justice, much less on constitutional ground. No case has been made out against Indians as to why they should be excluded from acquiring Township vote.

On a further ground, we object to any amendment to the existing law relating to the franchise. The amendment proposed, we submit, is an attempt to alter the existing Constitution of Townships, and this we contend, besides being illegal is not within the power of legislation vested by the South Africa Act in a Provincial Council.

Finally we beg to submit upon this question of

franchise that we as British Indians protest very strongly against the deprivation of the ordinary and elementary rights of property owners and tax-payers. We request that you may be pleased to report against it, and that our existing rights in this regard may be preserved and protected.

We would suggest, following upon the promise made by the Union Government to appoint an officer to go into the conditions existing in the Townships in Natal, that the consideration of the Draft Ordinance be postponed.

SECTION 91. We very strongly object to this Section. It places extraordinary powers in the hands of Townships. We also object to the principle of racial discrimination contained in the section. When in 1922 the Congress opposed the Durban Land Alienation Ordinance, which contains a similar clause, we objected in emphatic terms to the powers given under the section, and then expressed the fear that the powers might be used adversely against the interests of Indians. Our fears have been fully justified by the method of discrimination employed especially by the Boroughs of Durban and Maritzburg. In both these Boroughs the power of prohibition contained in the section has been scrupulously employed against Indians. In Durban the interests of an Indian, well known and highly respected, who has been the lessee of a Corporation property in Field Street for about forty years have been ignored, and, notwithstanding protests and appeal to the Town Council, the anti-Asiatic clause was inserted in the lease, thus prohibiting Indians from acquiring the site. Again in Maritzburg a similar thing happened. The Corporation of Maritzburg in connection with the sale by it of sites in Commercial Road, which were for about thirty-five years occupied by Indian storekeepers, inserted as a condition of sale in its lease, the following: "No portion of the premises may however at any time be let to or occupied or used by any persons other than a European" with the result that they were not only prevented from bidding up and buying the sites, but they were after the sale evicted from the premises. Even their application for the transfer of their licences to premises in the upper part of Church Street were turned down.

Then again the principle and practice of public competition is entirely excluded, and a section of the people is precluded from paying the highest price for properties owned by a Corporate body, such as Townships and Boroughs.

We have instanced these facts to show how an innocent-looking clause can be applied to the detriment and damage of one section.

We respectfully ask that our objections be given due consideration and relief asked for granted. We thank the members of the Select Committee for the opportunity they have afforded us in permitting to give evidence before them.

### Motor-Car Ordinance

Gentlemen,—We, the undersigned, deputed by the Natal Indian Congress to make certain representations on the Bill entitled "To consolidate and amend the Laws relating to Motor-Cars and Traffic on Public Roads," take this opportunity to object to certain provisions of that Bill relating to compulsory insurance for not less than £10,000 against third party risks.

The Congress respectfully ventures to state that, having regard to great racial feeling prevailing at the present time in this country, the aforesaid provisions are apt to be used in a manner that may prove detrimental to the interests of the members of the community which the Natal Indian Congress has the honour to represent.

In the event of the Select Committee deciding to retain the provision for providing for third-party

insurance risks, the Congress begs leave to suggest that the insurance companies shall be enjoined by Law to accept all applications for insurance as a matter of course without giving them an opportunity either to accept or reject such applications.

As a large sum of money has been invested by members of the Indian community on motor transport, the community feels that without proper safeguard in regard to providing facilities for insurance, the effect of the Ordinance in its present form would be a virtual prohibition of the ownership of motor cars, should the insurance companies decline to entertain applications for insurance on racial grounds, and, therefore, we take this opportunity to suggest that either Section 51 of the Ordinance be deleted or a fresh clause be incorporated making it obligatory on the part of the insurance companies to accept all applications for insurance irrespective of the nationality or colour of any applicant.

We respectfully ask that our objections be given due consideration and relief asked for granted. We thank the members of the Select Committee for the opportunity they have afforded us in permitting to give evidence before them.

## Indians in Natal

### Archives Tell The Tale

#### Mr. Andrews' Address at Maritzburg

(Continued from page 111)

During the past twenty years it has been my painful task to track down the mischief wrought in the villages of India by this recruiting of indentured labour, which has won the evil name of coolie-catching." For the system had been extended to almost every part of the world, with the same object. I have been twice out to Fiji, examining the whole system, once to Natal and many times to Assam, Malaya and Ceylon, where the same system was once in operation. Let me take some Government statistics about Assam, which were published in the official gazettes:—

"The mortality," so the Assam Gazette writes, "was at first appalling. In the four years, 1864-1867, the annual mortality, in the largest depot, ranged from 36 to 115 per cent. of the average daily strength, the latter enormous rate having been calculated on a daily average of no less than 458 souls. Between 1863 and 1868, 54,352 labourers were imported into Assam for the plantations, of whom 1,712 died on the way up. Even when the tea gardens were reached the mortality was quite appalling. In 1866-1868 there was a death-rate of 180 per thousand."

### An Inhuman Proportion

It will be noticed that this was the very decennial period when recruiting for the same indentured labour was being originally encouraged for Natal. It is true, as I have said, that the mortality statistics for Natal never reached these awful figures. But the crimes of violence, which were due to the utterly inhuman proportion of three men to one woman on the plantations in Natal, pointed to inherent evils in the whole indenture system that were no less disgraceful than the death rates in Assam.

The suicides and murders in Natal were several hundred per cent. higher than any figures known in India. In Fiji these crimes of violence were even higher than Natal. The suicides came to 20 times the Indian rate, and the murders to 80 times. These are official statistics collected over a long series of years.

Such are the hard facts of history still preserved in the active records of India, Fiji and Natal. They cannot be glozed over. Right up to the year 1911 the sugar planters of Natal went on pressing the Indian Government to send out more indentured labour. Shipload after shipload used to be landed at Durban every year. Five out of six of the Indians in Natal belong to this indenture system.

### A Bad System

After a very full and careful study of the whole Indian indenture system I came to the only conclusion possible, namely, that it was a bad system—rotten through and through. It brought untold misery to the village homes in India, from which even married women were recruited by guile to go out to an unknown foreign land to live a life of shame. It brought untold moral misery to Natal.

For while the sugar planters grew rich upon it, the poor people suffered. There were indeed noble sugar planters, like Sir Marshall Campbell, under whom the Indian labourers were happy; but there were others, under whom the Indian's life was a "hell on earth." I am quoting language which was used to me by Dr. Booth, who was for 20 years Medical Officer on the Natal Estates, and afterwards became a clergyman of the English Church. I wish to extenuate nothing and set down naught in malice—to quote Shakespeare's famous words.

Natal, through all these years, from 1860 to 1916, when the last indentured labourer was set free, made a big fortune out of this Indian labour, at 10s. a month, with a ration thrown in; but she has now to pay the price. "Though the mills of God grind slowly, yet they grind exceedingly small."

Natal cannot repudiate the past so lightly as she appears to think. There is a God of Justice who rules over the world. Natal cannot grow rich out of the sweated labour of the poor, and then take away from the descendants of these poor labourers whatever rights they formerly possessed. Natal cannot throw aside the Indian to-day, just as a man sucks all the juice out of an orange and then throws away the skin. Natal cannot spurn the ladder on which she herself climbed up to fortune. We are living in the twentieth century of the Christian era, not in the dynasties of the slave driving Pharaohs of Egypt, or the Assyrian despots, who could root up the whole population at a single nod.

### One Request

To-day, India has asked for only one thing—that before the South African Parliament decides to employ legislative pressure to drive Indians out of Natal and "to reduce the Indian population to its irreducible minimum," she will agree to come to a conference, in order to see first if her difficulties on the Indian question cannot be met by goodwill and friendship instead of by violent repressive measures.

South Africa is a young country with a good future opening out before her. She cannot afford to set out on her historic career with a blot on her scutcheon at the very start. My one earnest wish, all through the months I have been in this country—so beautiful in its sky and land and sea—has been this, that South Africa, which I have learnt to love, should rise to a great moral occasion and generously acknowledge the wrong which has been done in the past; that she should with equal generosity of spirit seek to redeem that wrong to-day; that in doing so she should seek the full co-operation of India, which partly shared in the wrong done by permitting the Indian labour to be exported, under such inhuman conditions; lastly that, at a conference, she should seek, with the full goodwill of India, to clear off this bad debt out of the way and make a new start, so that when that new start is made, India and South Africa, facing one another across the seas, might be friends instead of foes.

## Mr. Andrews' Farewell Speech

In the course of his farewell speech at Rawat's Bio Hall, Durban, on Sunday, April 11, Mr. C. F. Andrews stated that at Maritzburg he had made a further research into the archives of Natal and found that in 1856 the Natal Government offered the Directors of the East India Company the sum of 5s. per month for each Indian adult male labourer and 2s. for board and lodging and medical attendance. This was the usual Kaffir wage in Natal at the time. But the Kaffir labour was so scarce that planters were competing with one another to obtain the labour and the wages were rapidly rising. The Colonials were divided into two parties. The former urgently pressed the Natal Government to force the Kaffir to work at a fixed wage. The other party wished to import Indian labour, just as Mauritius had done, and in this way to keep down the price of labour. The Indian Government were reluctant to allow Indian labour to go at all to Natal. The Natal Government were determined not to allow the planters to use forced labour.

At the first election to the Legislative Council in Natal, these two issues were hotly debated. But when by 1859 the Government had finally refused to allow forced labour for private enterprise, the Indian Government was at last induced to allow the indentured labourers to come over on the miserable pittance of 10s. a month, with 2s. in addition for board, lodging and medical attendance. The Indian indentured system, said Mr. Andrews, was the cause of, by far, the greatest immigration of Indians into Natal. The Government of India stipulated in the first that if the labourers were allowed to come, Indian traders should be allowed to come with them.

### An Evil System

The Indian indentured labour system was an evil system through and through. It was very nearly akin to slavery in certain directions. The immorality that was inevitable under it, owing to the disproportion of three men to one woman in barracks like so many animals, could hardly be imagined. This misery and immorality led to suicides and murders owing to sexual jealousy; these were found in entirely abnormal figures wherever the Indian indentured system of labour was employed.

In Fiji Islands, where Mr. Andrews had made a thorough investigation, the suicide rate was 20 times that of India over a long series of years, and the murder rate was 80 times that of India. The person murdered was invariably the woman. The man committed suicide or else was imprisoned and hanged. The recruiting system was equally vicious. Professional recruiters were paid so much per head for those that they brought to the depot. The price per head was more for a woman than for a man.

### The Effect in Natal

Mr. Andrews stated that for many years of his life he had been obliged to make a thorough and searching investigation of the whole indentured system, for this Indian labour was not confined to Natal; it was world-wide. It was such an evil thing that it had to be abolished from God's earth. Thank God, it was now entirely abolished everywhere, not only in Natal but in other places also. The evils which had been brought to Natal by this system could not be remedied in a single day.

Natal had reaped the fruits of it in gaining enormous profits and immense areas of land brought under cultivation. Natal could not possibly now throw the descendants of those labourers away like a man who, after sucking an orange, throws away the skin. Natal had again and again agreed to allow these labourers to remain in the country as settlers when their indentures were over. She could not now repudiate that debt. But the Indian Govern-

ment was also cruelly to blame for having allowed this "coolie catching" (as it was popularly called) to go on under such utterly inhuman conditions. The Indian Government could not repudiate her debt also.

**What is Needed**

What was therefore needed, said Mr. Andrews, was for the Natal Government to come to a conference and seek together to remedy the evil effects of the past by mutual agreement. It was neither right nor just to harass the descendants of these pitifully sweated labourers and to drive them about from pillar to post as this Bill determined to do. If any wished to return to India, by all means let them return, but on a purely voluntary basis. For those who remained, educational facilities should be given so that they might throw off the bad environment of the past and become worthy residents of Natal.

**Settlement by Consent**

Mr. Andrews strongly urged, in conclusion, that both India and South Africa should settle the present very urgent problem by mutual consent and by a determination to be reasonably generous and just. South Africa would find these qualities present among Indian statesmen to-day if she was willing to settle this problem herself; if possible let there be no necessity to bring in Great Britain at all. Then, afterwards, when a mutual agreement had been reached on these smaller issues, let there be a big settlement of all the greater things. Durban, above all other centres in South Africa, was concerned in this greater settlement. For Durban was on the East coast of Africa facing India as a next-door neighbour on the East, and trade must inevitably flow eastward as well as westward. Mr. Andrews said he could safely prophesy that for one steamer that went eastward ho from Durban to-day, at least ten would go eastward very soon, if only friendly relations with the East were maintained—commerce, trade, strategic defence, security—it was absolutely vital to Natal to keep friendship with India. There was no sense in throwing away all the possibility of such friendly relations by passing a hostile Bill when a conference at which some mutual agreement might be arrived at was still open.

**Balfour Licensing Case**

**Supreme Court Judgment**

The following is the full text of the judgment delivered in the Supreme Court (Transvaal Provincial Division) by Justice Stratford in the case of Ahmed Mahomed and Company versus The Balfour Village Council:—

The Plaintiff firm were applicants for the grant by the Defendant Council of a Certificate under the provisions of Section 3 of the General Dealers (Control) Ordinance 1925 (Transvaal). The Local Authority held its sitting for the hearing of these applications on the 30th December 1925, on which day the applicants and four other Indian firms made applications for a Certificate authorising renewals of licences as General Dealers which they had held for some years prior to the coming into operation of this Ordinance. The Defendant Council reserved its decision on all applications until the 15th January, when it notified the Plaintiffs and the other four Indian applicants I have mentioned, that their applications were refused.

The Plaintiffs, as well as the other applicants, now bring these decisions on review before this Court. For the present we are only concerned with the case of the Plaintiffs, but it was agreed by Counsel appearing on either side in all five cases that the decision of the Court in the Plaintiff's case should be made to apply to the other four cases. The docu-

ments before us show that the facts of each case are not identical, but on the view we entertain on issues common to the five cases we see no reason why this agreement should not be given effect.

Prior to 1925 the granting of General Dealer's Licences in the Transvaal was uncontrolled. They were granted as a matter of right to all who were willing to pay the fees prescribed by regulation under the Local Government Ordinance of 1912. The Ordinance of last year introduced an entirely new procedure and made the issue of a certificate by a local authority or board (see Sections 2 & 3) the necessary prelude to the grant of a licence, and the grant of a certificate was hedged round with formalities (Sec. 5) and could be refused at the discretion of the local authority or board on any of the grounds stated in Sec. 6. Section 7 deals with objections to the grant of a licence and the persons who may object.

For the present we have no concern with the somewhat sweeping provisions of Section 9, nor with their validity, but Section 8 and the first part of Section 10 are important in this enquiry and provide:

SEC. 1. "Every Local Authority or Board hearing any application for a certificate authorising the renewal of a general dealer's licence shall record the evidence given for or against the application, and where the application is refused, the reasons for the refusal."

SEC. 10. "It shall be competent for the Applicant for the renewal of a licence to appeal to the Provincial Division of the Supreme Court or a Local Division thereof against any decision of a local authority or board, as the case may be, and the Court may order that the renewal applied for be granted, or may in any case remit the matter to the Magistrate or to the Board of appeal for rehearing and reconsideration . . . ."

It will be seen that Section 6 is a rehash of the provisions of Section 9 (b), (c) and (d) of the Local Government Ordinance 1912, but there seems little excuse for the confusion introduced when apparently the intention was merely to adopt (or adapt) similar provisions in the Provincial Ordinance, nor for the use of the words "magistrate" and "board of appeal" appearing in Section 10.

The notices of the refusal of the certificate to the Plaintiff couched in the following terms:—

Balfour Village Council,  
Balfour,

January 16th, 1926.

Messrs. Ahmed Mahomed & Co.,  
Balfour,  
Transvaal.

"Dear Sirs,—I have to notify you that my Council has not granted your application dated 30th November 1925, for a Certificate under the General Dealers (Control) Ordinance 1925, stating, Certificate refused because of Section 6 (3) (a) of the General Dealers (Control) Ordinance.—Yours faithfully, (Signed) E. LEVIN, Town Clerk."

I can only make sense of the last portion of Sec. 6 by making a fourth sub-section commencing with the words "and in the case of a business where articles of food or drink are produced," thus making sub-sections (a) and (b) belong to this fourth sub-section. The portion of Sec. 6 referred to in the notice would then read:—

"Every local authority . . . . . on any of the following grounds:

1. . . . .
2. . . . .
3. . . . .
4. . . . .

In the case of a business where articles of food or drink are produced, prepared, used, or sold for human consumption," also on any of the following grounds:—

(a) That the applicant is by reason of the un-

cleanliness of his person or habits or methods unfit to be entrusted with the handling, preparation, or sale of such articles of food or drink, or is otherwise not a desirable person to hold such a licence."

Ingenuity may suggest other readings, but the one I adopt seems to me to give full and fair meaning to this section and it does not make the provisions of (a) and (b) subservient to the words "in the opinion of the local authority or board" of subsection (3). Thus in the present case the Defendant Council cannot base its refusal upon the mere existence of an opinion however genuinely entertained it may be.

The Ordinance is silent on the subject of the evidence being given under oath, but Mr. Taylor argued that as a right of appeal was given (Section 10) and as a proper record had to be kept and the reasons for the refusal stated, the Ordinance contemplated that the usual procedure in a Court of Law should be followed. He emphasised the importance of the issues to the applicants at the hearing, an importance recognised by the right of appeal, and contended that the ordinary safeguards against a miscarriage of justice were clearly implied. For the Defendants Mr. Murray relied upon the decision in *Ermelo Municipality v. Ismail Ebrahim* (1913 T.P.D. 353) to show that the word appeal is not used in its ordinary sense in this section. This subject is also dealt with by the Chief Justice in *Municipality of Vereeniging v. Mahomed Essop* (1916 A.D. 550). But in my opinion the reasons leading the Chief Justice to the conclusion he arrived at have no application to the present section. The last portion of Section 90 of the Local Government Ordinance 1912 was then in question, and its wording is totally different from that of Section 10. From an examination of the terms of the Section 90 the learned Chief Justice decided that the so-called "appeal" to the Magistrate meant a reference to him in his administrative capacity. He emphasised that the reference was to the Magistrate—not to the Magistrate's Court. But I cannot think that the right of "appeal" to the Provincial Division thereof can possibly mean that this Court was intended to exercise administrative functions. It would be highly inconvenient, to say the least, for this Court to re-hear applications from every Municipal or Village Council centre. The appeal mentioned is, in my judgment, an appeal in the ordinary sense as understood in our Courts of Law. This I think is clear from the language of the section itself and because of the provisions as to the keeping of a record and the furnishing of reasons for refusal (Sec. 8) both very necessary provisions for an appeal proper. But though I am of this opinion I do not think it follows that the evidence must be given under oath. If it was the intention of the Legislature that it should be so given it would have said so, and would further have given the right to certain officials to administer the oath. Examples of such provisions are to be found in numerous statutes. Nor does the fact that evidence is not sworn stultify the right of appeal given, as it was argued. The evidence given should of course be earmarked as such; witnesses called or offering their testimony should be informed that they are being treated as such; the right of examination and cross examination of them should be allowed, and their testimony should be recorded accurately, and not be confused with remarks made, or opinions given by members of the Council or others. There is in my opinion no right to call for an interpreter if the proceedings are conducted in either of the official languages, but common justice demands that if applicants are taken by surprise time should be given then to obtain an interpreter, and on the same ground they should be given adequate notice of the nature of any objections that are to be made to enable them to meet them. These remarks are called for by the laxity of the proceedings now under re-

view, and the complaints made by the Plaintiffs. The Ordinance contemplated the framing of regulations dealing with procedure (see Secs. 7 and 16) but in the absence of them it is right that the Court should indicate at least a method by which alone evidence can be properly taken and recorded. In my judgment the evidence was not properly taken, nor was that which was given properly recorded. The evidence of which the Ordinance speaks is clearly the evidence of both sides, and it cannot be said to be properly taken when the applicants are taken entirely by surprise, not informed of the points they have to meet, and are consequently totally unprepared to tender any evidence whatever. That was the case in the proceedings before us. As to the record, apart from the conflicting statements made in the affidavits, a comparison of the two documents produced by the Town Clerk is destructive of the claims of either to be called a record. They differ in material respects and they are not clear. The way in which the Medical Officer of Health's report is distorted in the typed document is most misleading and improper. Moreover as Mr. Boyd says it was not used in evidence it should not have been recorded as such. Nor should a record be at the mercy of the memory of the Town Clerk; amplifying a written statement of evidence from memory is indefensible.

The view I have expressed sufficiently deals with the complaints (a), (b), (c) and (d) and justifies the conclusion that the proceedings were grossly irregular. As to complaint (e) the Chairman informed us that it was not relied upon. If that was so it is difficult to understand why passages from it were read out at the hearing and very badly recorded. One would suppose that the Medical Officer of Health was a very proper witness to call in an enquiry of this nature if application was objected to on the grounds falling within his sphere. With regard to the complaint (f), that Councillors were not present throughout the proceedings, it is necessary to state that the Councillors who attended for the purpose of constituting the 'council' to hear the applications should attend and function throughout from the beginning of the hearing until the decision is given. Of course the number must be a legal quorum. It is quite improper for one of the Council who has heard the application not to take part in the decision, as it is still more improper for one who has not heard the application to do so.

The complaint that two of the members of the Council were interested parties was, in my opinion quite rightly, not relied upon by Counsel. Lastly it is said that the application was refused because of the objections of the Council to Indians as a class. On the evidence before us I cannot say that this claim is established. But I am bound to say that regarding the proceedings as a whole, considerable colour is given to the charge. The *only* applications refused were those of Indians, and four out of five were refused, the one granted being in respect of a vacant stand. Moreover the context in which Mostert's objections were made (as reflected in the *typed notes*) shows that this person was objecting to Indians as a class, for I agree with Mr. Taylor that this evidence—if it can be called evidence—was given when a petition to the Government against Indians holding licences was mentioned.

The refusal, therefore, in this case as well as the refusals in the cases of Gani Omar & Company, Gani Adams, Vasthane Hira & Company, Abdool Carim, must be set aside on the ground of gross irregularity in the proceedings. The application for the grant of a certificate is in each case referred back to the Defendant Council for re-hearing.



The Defendant Council must pay the costs of these proceedings in each case.

(Sgd.) J. STRATFORD,  
Judge of the Supreme Court.

Pretoria,

26th March 1926.

Krause and Greenberg J. J. concurred.

## Natal Motor Ordinance

### Question of Compulsory Insurance

[ FROM OUR MARITZBURG CORRESPONDENT ]

On the 14th instant the Natal Indian Congress, which was represented by Messrs. V. S. C. Pather, Amod Bayat, P. S. Aiyar, and S. R. Naidoo, lodged objections before the Select Committee to the Motor Cars and Traffic on Public Roads Draft Ordinance. Mr. P. S. Aiyar led the Deputation, and said that the community objected to the provisions of the Bill relating to compulsory insurance for not less than £10,000 against third party risks. It was pointed out that owing to great racial feeling prevailing at the present time in this country, the provisions requiring compulsory third party insurance might be used to the detriment of Indian bus owners, and asked that they should be protected in law so that insurance companies should be enjoined by law to accept all applications for insurance as a matter of course.

Mr. Aiyar, proceeding, stated that a large sum of money had been invested by the members of the Indian community on motor transport. If no proper safeguard in regard to providing facilities for insurance is provided, the effect of the Ordinance in its present form would be a virtual prohibition of the ownership of Motor Cars by Indians. The Deputation asked that clause 51 of the Bill be deleted, or a fresh clause giving relief be inserted.

Questions were asked by members of the Select Committee, and replies were given, after which the Deputation withdrew.

## "INDIAN OPINION"

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રવિ	૨૫	" ૧૩	૧૨	૧૯	૬-૨૩	૫-૨૫
સોમ	૨૬	" ૧૪	૧૩	૨૦	૬-૨૩	૫-૨૪
મંગળ	૨૭	" ૧૫	૧૪	૨૧	૬-૨૪	૫-૨૩
બુધ	૨૮	વદિ ૧	૧૫	૨૨	૬-૨૪	૫-૨૨
શુક્ર	૨૯	" ૨	૧૬	૨૩	૬-૨૫	૫-૨૧

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### Our Experience in India

A Lecture on the above will be delivered by Messrs. J. W. Godfrey and V. S. C. Pather (members of the South African Indian Congress deputation, who recently returned from India) at the Parsée Rustomjee Hall, 140 Queen Street, Durban, on Wednesday the 28th April 1926, at 7-30 p.m. Mr. Pather will speak in Tamil if necessary. All are cordially invited to attend.

O. H. A. JHAVERI,

Chairman,

B. M. PATEL,

Hon. Secretary.

## એમ. કે. ગાંધી લાયબ્રેરી અને પારસી રસ્તમજી

### હાલ કમીટી

"અમારો દેશનો અનુભવ"

૧૪૦ ક્વીન સ્ટ્રીટ પર આવેલા પારસી રસ્તમજી હાલમાં બુધવાર તા. ૨૮ એપ્રિલ ૧૯૨૬ ના રોજ શરૂ સાડા સાત વાગે હીંદુસ્તાનથી ડુક સુદત થયા પછા ફરેલા સાઉથ આફ્રિકન ઇન્ડિયન કોંગ્રેસના ડેપુટી દેશનના મેમ્બરો મેસર્સ જે. વી. ગોડફ્રે અને વી. એસ. પાથર ઉપલા વિષય ઉપર લાષણ આપશે જે પ્રસંગે સર્વ લાષણોને હાજરી આપવા આમંત્રણ કરવામાં આવે છે.

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