

# Indian Opinion

No. 4—Vol. XXXI.

Friday, January 27th, 1933

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

## MY VISIT TO INDIA

(BY MANILAL GANDHI)

READERS of INDIAN OPINION will naturally be interested to know how things in India are moving. One can know the real state of affairs if one is present on the spot in India. No sooner you set your foot out of India you are confused by the scrappy news supplied by Reuter's agency which will never let us know the real facts. This has been my experience since I left India. Here is an instance of such news supplied by Reuter's agency. The message is dated Poona, Dec. 4:

"Gandhi started a new fast yesterday as a result of a dispute with the authorities regarding the treatment of another prisoner at Yeravda gaol. He broke his fast this morning because he has been very weak in the last few days and has lost six pounds. Failing an agreement with the authorities Gandhi will resume his fast on Wednesday.—Reuter."

Now the above is entirely a false message. Mahatma Gandhi's fast referred to was in connection with a civil disobedience prisoner in Ratnagiri gaol who was refused permission by the gaol authorities to do scavenging work. This work was not restricted to those prisoners who did that work outside by occupation. But lower caste men who had never done such work outside were compelled to do it in gaol. The prisoner above referred to who was working for the emancipation of the depressed classes protested against this system and demanded that he too should be allowed to do that work. Gaol officials were adamant and representations to the Government failed. It was for this reason that Mahatma Gandhi fasted and he broke his fast after an interview the Inspector-General of Prisons had with him and promised to move in the matter and get the necessary redress.

In India my first business, of course, was to fall at the feet of my father—Mahatma Gandhi. I was able to see him a fortnight after his great fast and all the excitement it had caused from one end of India to the other. I found him in the prison yard with his companions Sirdar Vallabhbhai Patel, ex-president of the Indian National Congress and Mr. Mahadev Desai, Mahatma Gandhi's secretary and my mother who was allowed to be with Mahatma Gandhi during the day time for some time after the fast was over. Mahatma Gandhi was hail and hearty as ever and as fit as could be expected in the circumstances.

I related to him the situation that had arisen as a result of the passing of the Transvaal Asiatic Land Tenure Act and told him also about other legislation affecting Asiatics, namely, the Immigration Amend-

ment Act of 1927 and 1931 and the Transvaal Licences (Control) Ordinance. He was naturally grieved to learn that the settlement arrived at between the Indian community and the Union Government in 1914 was completely violated. Being a prisoner, he was not free to advise me but the essence of the conversation I was able to have with him was that in circumstances such as these the only weapon that could be used was that of Passive Resistance. But we should know the use of it and that we should know that there should be no flinching from it once it was put into operation. If we were not sure of that then it would be unwise to embark upon it.

I had several interviews with Mahatma Gandhi since then and his life was once again full of activity as it was when he was out of prison. Since the fast Mahatma Gandhi was permitted to carry on negotiations with leaders in connection with the abolition of untouchability. He had, therefore, many visitors visiting him practically all day long and he had to do a great deal of correspondence work as well. Owing to this increase of work Mahatma Gandhi has been allowed another companion to be with him and a shorthand typist.

Though the first fast had gained victory for Mahatma Gandhi in that the British Government had to withdraw that portion of the communal award which aimed at dividing Hindus by giving a separate electorate to the depressed classes, and though it had brought about a miraculous change in the Hindu social life, a change which in other circumstances would have taken fifty years to be effected, namely, a closer union between the touchables and the untouchables, there was a dark cloud still hanging over the country. Mahatma Gandhi was bound by a promise given to a co-worker who had taken to fasting in order to get a temple in the Madras Presidency opened to the untouchables. Mahatma Gandhi had persuaded this co-worker—one Mr. Kelappan—to postpone his fast for three months and he had promised to join him if the said temple was not thrown open to the untouchables by the end of that period.

The country knew that this was a very difficult thing to achieve in view of the fact that the observance of untouchability was the strongest in the Madras Presidency. The choice before the country was either to kill untouchability or to lose Mahatma Gandhi. There were some between the devil and the deep sea; a few who would be prepared to lose Mahatma Gandhi but not to give up what they mis-called their religion. The majority, however,

were for the abolition of this curse in the Hindu social life and to have Mahatma Gandhi living. There was a stir throughout the whole country and men and women alike carried on a huge propaganda against the evil of untouchability. A referendum was taken throughout the country and it was in favour of throwing open the temples to the untouchables. Steps were taken to move the legislature in this connection. The three months were about to expire and it was on the 28th of December that Mr. Kelappan and other leaders conferred with Mahatma Gandhi, and in view of the fact that the country's response to the call for the abolition of untouchability was very favourable it was decided by Mr. Kelappan and Mahatma Gandhi to indefinitely postpone their proposed fast. Thus the country was saved from a crisis that was about to come on January 2.

### Hindu-Muslim Unity

The second great achievement was the unity between the Hindus and Moslems in regard to the question of electorate. There were, of course, Moslem die-hards favoured by the Government to frustrate every effort at uniting the two communities but the question was about to be settled when I left India and there is every reason to hope that the question has been finally settled. If, God willing, it has, then these two achievements in the great struggle for independence are the two corner nails in the coffin of the British bureaucracy in India.

These are mere side issues in the civil disobedience struggle. Coming to the struggle I found that most of the Congress leaders were still doing long terms in the various prisons. In most of the prisons the treatment meted out to political prisoners is worse than criminals. And this is merely to break the spirit of the people.

"British are a chivalrous people" it is always said. Yes, there was a time when they were but now they may perhaps be in so far as their own women are concerned? but one utterly fails to see their chivalry in India. Women are treated no better than men. In the districts women are belaboured for the faults of men. If the men fail to pay the fines imposed on them they are extracted from their wives, mothers, sisters or whoever it may be. The authorities are scared at the very name of the Congress. Officers of the criminal investigation department are haunting them wherever they go. For a national cry, for the hoisting of a national flag, for the selling of national leaders' photos one is liable for punishment. Government have attempted by every possible means to crush the civil disobedience movement, but they have miserably failed. They have succeeded somewhat in suppressing the movement by their atrocities and by gagging the press, but that has only increased the disaffection of the people against British rule and given birth to it where it did not exist. Had the movement been crushed and there was reign of peace, as it is claimed by British authorities, the numerous ordinances promulgated by the Viceroy need not to have been perpetuated by legislative enactment embodying them as it has been done. Under this legislation the police have been given extraordinary powers to do anything they think fit to any person whom they may doubt of being associated in any possible way with the Congress activities.

With this scene in India and when all the leaders who count are kept behind prison bars, one would naturally have no interest in the marble playing done at the Round Table Conference. Those who went to the Conference posing themselves as leaders of the people were mostly puppets of the Government. A few who were sincere had not the courage to fight and to suffer and therefore submitted with a little resentment.

There is no possible hope of the question being

settled when public opinion is flouted and there is reign of terrorism throughout the country.

I have given the bright side of the picture in so far as the movement is concerned. But there is unfortunately the dark side also which should not be ignored. Though the boycott movement is not so visible in so far as picketing is concerned, a considerably large number of people are now seen inspired without requiring any coaxing to support their national industries. But there are a great number of ignorant men and women who fall in the clutches of the merchant to whom money is his only God and will not hesitate to strive for it even by the most heartless and unscrupulous means. There are these black sheep to be seen here and there and there are other merchants just as unscrupulous and heartless who will, notwithstanding their brothers and sisters and children are undergoing untold sufferings, go to the extent of even exploiting the movement to fatten their purses by selling foreign articles marked as national. This is the dark side of the picture.

I must now conclude this account by coming back to our comparatively small question in South Africa. I had several interviews with leading men in India and made statements in the press in connection with our question and was glad to find their unanimous support and sympathy in our cause.

But it remains for us to do and die. They can in the present conditions in India only give us their moral backing.

## Reuter's Messages On India

### Indian Government And The Depressed Classes

The following messages in connection with India are culled from the local papers as they are:—

New Delhi,

It is officially announced that the Viceroy has refused to sanction the introduction of two Bills into the Madras Council designed to remove the religious disabilities of the depressed classes and dealing with the question of temple entry. The decision was based on the grounds that the Bills were essentially of an all-India character, affecting generally the religious beliefs and practices of the Hind community.

The Viceroy decided to permit the introduction into the Assembly of the Bill seeking the abolition of untouchability on the understanding that the Government was in no way committed to acceptance or support of the principles of the Bill.—Reuter.

### Trouble In Bombay Cotton Market

Bombay, Jan. 24.

The boycott of European brokers has started again and threatens another dead-lock in the cotton trade, as the agreement reached last October between the British and Indian brokers, whereby the boycott of British cotton firms and the picketing of the cotton market were abandoned, has not been honoured by the rank and file of the Indian brokers.

The terms of the settlement reached in October included an expression of sympathy on the part of British brokers for Indian nationalist aspirations.

The European members of the Brokers Associations this morning appeared in a body at the trading ring and demanded acceptance of their contracts under the rules of membership. A small amount of business was transacted, whereupon the bulk of the Indian members walked out.

The Managing Committee of the Association, which is chiefly composed of Indians, has threatened to resign.—(Reuter.)

[Note—Although the cotton dispute was supposed to have been settled in October trouble was brewing

since the beginning of December as a result of one member from the Europeans having violated the terms of the settlement by supporting a Bill aiming at taking severe action against the boycott movement and openly stating in the Legislative Council that Europeans were forced to accept the terms under coercion. The European members evidently failed to bring to book this member and the consequence is another disruption.—Ed. I.O.]

## Notes and News

THE recent decision of the Transvaal Provincial Division of the Supreme Court, affecting the *locus standi* of the Roodepoort-Maraisburg Town Council in regard to an action to eject Asiatics from certain stands, is regarded as of such importance to many other Transvaal municipalities, that they are to contribute towards the costs of sending the matter to the Appeal Court. This decision was reached at a meeting of the executive of the Municipal Association of the Transvaal, held in Johannesburg on Saturday. The Roodepoort Municipality submitted documents setting out the results of the action instituted by the Council against the Eastern Properties (Proprietary) Limited, for the ejection and removal of Asiatics and coloured persons from certain stands in Roodepoort. It was explained that the Court had held that the Council had no *locus standi* in the matter.

We publish elsewhere in this issue the full text of the judgment in question.

AN appeal was heard by the Greytown Town Council to alter the Borough Licensing Officer's decision not to allow the transfer of the general dealer's licence from Thomas Legget to K. Essak. After hearing legal arguments from both sides the Appeal Board upheld the decision of the Licensing Officer that there was insufficient scope for further trading licences of this nature in the town.

UNFORTUNATELY we have not the full details of the above case. But one could see clearly that the application was not of a new licence but a transfer of an existing licence. But the transfer was from a European to an Indian and this obviously was the real reason of its being refused. We would urge upon all Indians whose applications for trading licences are thus refused, whether they may be in Natal, Cape or Transvaal, to send us full details of their cases for publication. In the interests of the community this is essential. Will the reader therefore please take note of it?

THE s.s. *Guyarat* which sailed last Friday afternoon for Madras via Colombo, carried among other passengers Mr. and Mrs. Jalbhoy Rustomjee and their children and Mrs. Sorabjee Rustomjee with her little daughter and son and the remaining teacher of the Sastri College Mr. Sinha with Mrs. Sinha and family. We wish them all a safe and a happy voyage.

THE view that European women have become "too civilised" was expressed, says Reuter, at a meeting of the Congress of Women of the Orient at Teheran, which was attended by representatives of Egypt, Iraq, Syria and Persia. It was contended that because European women have become too civilised they have lost most of the tenderness and sentimentalism which Nature gave them. Oriental women, not so civilised, continue to enjoy such gifts of Nature as tenderness and pity more fully. Women of the West were stated to think that material things are more important and therefore

to disdain to pay attention to their human sentiments. It was maintained that morally the Oriental women had an incontestable supremacy over the women of the West.

THE Union Parliament opened on Friday Jan. 20. General Smuts spoke lengthily on his motion asking the Government to tender its resignation forthwith in redemption of its oft-repeated promise to do so than go off the gold standard, and thus afford an opportunity for the formation of a National Government. He gave the House and the country the assurance that if he was called upon to form a Cabinet he would consider it his solemn duty to seek the co-operation of all Parties in an endeavour to form a coalition. The Prime Minister, General Hertzog argued that he was not morally bound to resign, because going off the gold standard and being forced off it was not the same thing. While we go to Press the debate is still going on.

THE Agent of the Government of India Kunwar Sir Maharaj Singh leaves Johannesburg for Capetown on Monday, January, 30.

"We must make it a point of honour to buy nothing but *swadeshi*. He who knowingly uses *bideshi* in preference to *swadeshi* is guilty of treason against his Motherland," said Sir P. C. Ray speaking on *Swadeshi* in the Lajpatral Hall at a meeting held recently under the auspices of the Lahore Swadeshi League.

## THE AGENT'S UTTERANCES

KUNWAR Sir Maharaj Singh, Agent of the Government of India, during his recent visit to the Transvaal, has been outspoken in his public utterances on the Indian question. We are glad to note that he has not minced words in either his Rotary Club speech or his speech at the Theosophical Society or in his sermon at the St. Mary's Cathedral in bringing home to the European public the utter unfairness of the treatment meted out to Indians especially in the Transvaal. Asiatics in that Province, the Agent pointed out, formed about 1½ per cent. of the total population and pleaded that the handful of 18,000 Indians should be given an opportunity of making an adequate livelihood, of educating their children, of living in better houses and under better conditions with a larger security of tenure. He appealed for the 1927 Capetown Agreement to be implemented. From the Agent's utterances we come to the one conclusion that our view about the Indian question is not different to his. There should, therefore, be no difficulty in working with the Agent in harmony. There has been a difference of opinion as to the way in which steps to combat the situation in the Transvaal which has arisen as a result of the new legislation should be taken and the relations between the Agent and the leaders of the community have, unfortunately, been somewhat strained.

We have the highest admiration for Kunwar Sir Maharaj Singh and appreciate fully the great sacrifice he has made in coming out to this country. In his individual capacity, we do not think a single Indian will be lacking in holding the highest esteem for him and the Kunwarani. But what we wish from him is a lead in the right direction. He is on the spot and is able to see and experience things for

himself and is therefore in a better position to judge than the Government he represents. If the Agent is able to guide us in coming to a settlement which could be acceptable to the community honourably and without loss of self respect, we feel sure the Agent will find the community ready to follow his guidance. But if he thinks that this is not possible, then we would certainly not expect him to advise the community to meekly submit to any dishonourable compromise for the sake of a mess of pottage. We would wish the Agent in such circumstances to rise supreme to the occasion and even go to the length of resigning his Governmental post rather than submit or lead the community to submit to anything amounting to losing one's manhood. We are of the firm opinion that it is a sin to work in the interests of a community which is prepared to sink to that depth. Such a community should be left severely alone to reap the fruits of its own deeds. We expect from the Agent that leadership which will raise the community to its real manhood and will prove that it belongs to a country reputed for its great culture, not which will help it to be further demoralised. In expecting this we do not at all think we are expecting too much from Kunwar Sir Maharaj Singh.

## The Agent's Utterances

### At The Theosophical Society

In the course of an address at the Theosophical Society, Johannesburg, last week on "Some Problems in South Africa, as they affect Indians" Kunwar Sir Maharaj Singh contended that there was no Indian problem in the Transvaal.

At the last census the Indians numbered 14,000. There had not been a census in the last 10 years, and with no further immigration the Indian population in the Transvaal could not in all probability exceed 18,000. Even if there were 20,000 Indians, what would be their proportion to the total population? he asked. Compared with the 1931 figures of the European population, the Indians were less than 3 per cent. If the native number of 900,000 was added, the percentage of Indians was just over 1 per cent.

"Do you believe that 1 per cent. can cause an acute problem?" he asked. "Give me any country in the world where 1 per cent. is causing an acute problem. Remember there is no possibility of further Indian immigration into the Transvaal, and the only increase will be in the course of natural process. The death rate among Indians is also higher than Europeans. To the European population there will be a constant addition. It is safe to say that in the future the percentage of Indians will sink still further in the scale."

Referring to Indian trade in the Transvaal, Sir Maharaj said that he had not been able to get official figures, but he had learnt from inquiries made of European merchants that comparatively the volume of Indian trade was extremely small. Some told him that the percentage was 2, some 3, some 4 or 5, but the 96 per cent. of the general trade was in the hands of Europeans of all classes.

"And yet," he said, "how much do we hear—the Government and people of India—of anti-Asiatic legislation due to trade jealousy? It would seem, from all this agitation, that over 40 per cent. of the trade was in the hands of the Indians in the Transvaal."

Proceeding, the Agent said that there were

other disabilities, for instance, that which prevented Indians from owning land.

He declared that the position of Indians in the Transvaal had deteriorated since the time of President Kruger. In other parts of the world, both British and French, there were equal rights for Indians.

The Transvaal and the Orange Free State, he said, were the only exception to the universal rule prevailing in every part of the world.

Indians in South Africa had no municipal vote, nor the political franchise. They paid the same rates and taxes as the Europeans, yet they had no representation. Could they tell him what other people, possessing the same cultural background were treated as were Indians of this country? Even in Kenya, where there were anti-Asiatic laws, Indians, nevertheless, had the right to representation.

### Educational Aspects

Take their educational facilities. There were no separate schools for girls. In the Indian school at Newtown there was no playground for the children. There were no facilities for higher education.

The Government and people of India, he said, viewed this state with alarm and at times showed keen resentment, which roused India. When Mahatma Gandhi was here there was a great outcry in India at the treatment of Indians. Such, unfortunately, was to some extent true to-day. Every week there appeared in the Indian Press some article criticising the position of Indians in this country.

### The Agreement Of 1927

"What we want is the Government to carry out the agreement of 1927 both in letter and spirit," said the speaker. "I must say that the South African Government has been more liberal in its subsidy paid to education, but there is room for considerable advancement. In regard to other matters, for instance, the licensing laws, they operate harshly against Indians. In India I know of no similar restrictions. There is economic rivalry in India; in fact, there is a great number of European traders, say, in a place like Calcutta, but no action is taken by the Corporation of Calcutta against Europeans.

If it was true that a large number of Indians were engaged in trade, it was because other avenues were closed to them. Could Indians enter Government or municipal services? They were thus driven to trade because there was nothing else to do.

### Co-operation Welcomed

Continuing, Sir Maharaj said he appreciated the co-operation and goodwill of many Europeans who were sympathetic to the Indian cause. They—his wife and himself—had met with nothing but courtesy and help. He felt that the general atmosphere was clearing, and there was room and ground for hope.

His countrymen, he submitted, had their faults. Both his wife and he had occasion to criticise them. "Who knows," he said, "that for the sins of our forefathers we who have treated our depressed classes so badly are not suffering to-day."

The speaker's subsequent remarks were an appeal to the Theosophists to protest against unjust anti-Asiatic measures both individually and as a society. The founders of the movement sought inspiration not among the Mahatmas of London or Manchester, but went to the East in Tibet and the Himalayas and among the religions of India for the truths which formed the basic principles of the Theosophical Society. In India they were fairly and truly carrying out their precepts; but were they doing so in this country? They could not be content with taking no interest in the problems around them, for there was also a growing world opinion to consider.

In conclusion, Sir Maharaj declared that he commended the Indian case for their consideration and good will.

Mr. Ritch, the president of the Theosophical Society, presided.

## From The Pulpit

Gowned and wearing the hood of a Master of Arts of the University of Oxford, the Agent, Kunwar Sir Maharaj Singh, appealed from the pulpit of St. Mary's Cathedral, Johannesburg, for fair treatment for Indians in South Africa.

After referring to the disabilities under which the Indian in South Africa was forced to labour, Kunwar Sir Maharaj Singh reminded his hearers of the Indians' kinship with the people of Asia who had given the founders of all the great religious systems, including Christianity.

"The Old and the New Testament," he said, "are an Asiatic book. Nobody who has not lived in Asia can visualise the scenes of the Bible. I have been in Palestine, and from what I have seen of the people there I am not at all sure if the founder of Christianity was not what many might call a man of colour. His 12 disciples were simple fishermen. If you had seen what I have seen, many of you might be tempted to say that the Lord took the human form as an Asiatic."

There were three policies, went on Kunwar Sir Maharaj Singh, which they could adopt in the treatment of the racial problem. They were a policy of repression, a policy of indifference, or a policy of service. Solution lay in the adoption of the policy of service.

Referring to the small proportion of Indians in South Africa, Kunwar Sir Maharaj Singh appealed for a changed outlook towards them.

"Bear with me if I have been outspoken," he said in conclusion. "I have said to you sitting in this Christian church what I could not have said to the world outside. Pardon me if I have been wrong or injudicious. But of one thing I am sure, and that is that there can be no civilisation without justice, and there can be no religion without service."

## Indian Unemployment

### Relief Work Opened By Durban Corporation

### State Agrees To Subsidy

One hundred of Durban's 4,000 unemployed Indians will be given work on Corporation relief schemes in the near future. This will be the first step in a larger scheme which aims at the absorption of 300 Indians. It has been rendered possible by the Government's decision to contribute a wage subsidy

These developments are the outcome of protracted negotiations which have taken place between the Corporation and the Government since the Agent-General for India and the Sir Kurma Reddi Unemployment Committee pressed the urgency of the need for providing some measure of relief for local unemployed Indians. The Council in Committee decided that as a commencement work should be offered to approximately 100 Indians at a daily wage of 3s. on the basis of a five-day week. The Government will contribute a subsidy of 1s. 6d. per man per day and would undertake to employ an equal number of Europeans on the Bay railway scheme or other relief works.

The subsidy will be paid up to the end of March when, presumably, the question of its renewal will be considered.

The Sir Kurma Reddi Unemployment Committee urged some time ago that Indians found employment be allocated to the new services in the incorporated areas, in districts mainly populated by property owners of their own race. Subsequently Mr. Ivan Walker Secretary for Labour, fully discussed the position with Town Council spokesmen; following which the Corporation was advised that the Minister was prepared to co-operate with the Town Council in financing relief work for Indians, providing this work was done in Indian areas.

### Mayor's Comments

Interviewed on this matter, the Mayor (Councillor Oliver Lea) expressed satisfaction at the understanding reached with the Government. One hundred Indians would be found employment in the immediate future. Openings could not be found for 300 at once, but it was hoped that the number employed would be brought up to this figure very soon. The men would, of course, be taken on in batches. Some of them would be employed in cleaning up the outer areas and as grass and bush cutters.

It must be remembered, Mr. Lea added, that the cost of employing these Indians could not be charged to capital account, as the work would be classed as maintenance, and must consequently be financed through borough fund.

## French Colonial Policy And Coloured Races

By DR. LANKA SUNDARAM, M.A., P.H.D. (Lond.)

We in India are familiar with the treatment meted out to coloured races by the Anglo-Saxon community. The colour complex is real and effective whenever the traditional Englishman encounters a member of the so-called coloured races. If in England, you are up against the "colour bar" and subdued hissing is indulged in by the average native of that country. Even in such a cosmopolitan city as London, we have had experience of some hotels and dance-halls refusing admission to members of the coloured community. If Indians are subject to such treatment, one need not wonder at the probable plight of the Africans—the negroes. Even Paul Robeson, that African singer and actor of international fame, had to coolly receive this snub while he was in London. The cultured and the real nobility of the land may not indulge in this manifestation of the superiority complex. But the average middle-class family, and the newly-made rich, are the worst offenders against the ordinary code of human equality so precious as one of the rights of man. Protests are numerous from influential quarters all over England, but the Anglo-Saxon complex is too strong to be tampered with. Scotland is the most confirmed sinner in this regard.

In India proper, despite recent changes, the British community form themselves into a patriotic bloc. Social intercourse between the Indian and the English people in our country is at best meagre, cautious and certainly based upon an idea of differential honour. It had been said with justice that the English *did not* in India look himself as

something above ordinary humanity. The present Viceroy is stated to have declared in London prior to his departure to India, that one of the most needed things to-day in our country is a sense of equality: racial, political and cultural among the British and Indians living side by side. He pointed out that the Willingdon Club, Bombay, munificently endowed by Indian princes and gentlemen, does not admit Indians on a basis of equality. This, he claimed, is a scandal which ought to be removed immediately and fundamentally.

One of the most indelible impressions which an Indian traveller in Europe brings back would be the absence of any racial ill-feeling in France. The Latin mind does not indulge in any of the manifestations of the superiority complex. Not only on the boulevards of Paris, but everywhere in France the coloured visitor is welcomed with the same warmth and geniality as are the Englishman or American. In society, as in the mass of the population, the coloured people are made so comfortable that they do not for one moment believe that their skin is tanned and is different from that of his hosts, a feeling which is constantly forced down upon him while he is in England. Everywhere he is welcome on a basis of equality. Certainly, the inhibition which troubles him while in Great Britain, is totally absent in France.

( To be continued )

## A Social Centre for Indians

### A Laudable Move

We have pleasure in publishing the following letter received by us from the Rev. W. H. Satchell:—

Dear Sir,—I attach a notice of a Public Meeting held this evening (Friday Jan. 20). Twenty men and one lady attended. The scheme to convert St. Aidan's Mission Hall into a Social Centre for the community was fully discussed. It is intended to turn the main Hall into a games room where ping-pong and table games may be played. When equipment is available it is hoped to have a gymnasium on the verandah. It is proposed to have the Centre open from 8 p.m. to 10 p.m. daily. A small charge will be made for admission or tickets of membership can be taken out for short or long periods. Refreshments will be on sale in the Hall.

One of the speakers described the Y.M.C.A. at Madras and it was felt by all that this Social Centre might in a small way fill the need and do the work such an institution is doing on a larger scale.

The scheme is only in its infancy as yet. Another public meeting for men of all creeds and denominations is to be held on Tuesday, Feb. 21st at 7 p.m. in the Hall.

I shall deem it a great favour if you, Sir, will exert your influence in making this scheme known. I feel sure we shall have the full weight of your support in this movement for the upliftment of the Social life of our young men.

I am, yours faithfully,

W. H. SACHELL

Priest-in-charge,

St. Aidan's Indian Mission, Durban.

13, Bowsley Grove,  
Durban.

P.S.—Funds will be needed to convert this old building into a bright and attractive Centre. No appeal is being made at present but any donations will be most gratefully accepted.

## The Roodepoort Judgment

### Eastern Properties Ltd. vs. Town Council Of Roodepoort-Maraisburg

The following is the text of the judgment delivered by the Supreme Court (Transvaal Provincial Division) last September in the case of Eastern Properties Ltd. versus Town Council of Roodepoort-Maraisburg:—

Mr. Justice Charles Barry said:—The respondent applies in the local division for an order (1) directing the appellants, as owners, to eject from certain stands in Roodepoort certain Asiatics and Cape coloured persons residing in the stands as lessees, and not as *bona fide* servants of the appellant. (2) Interdicting the appellants from leasing the said stands to Asiatics or Cape coloured persons.

The occupation by coloured persons was admitted by the appellant, but it opposed the application on the ground that the respondent had no *locus standi* to apply and on a number of other grounds.

The respondent in addition to owning a number of stands in the township, is the municipality vested with the control of the Roodepoort and Maraisburg Townships. The township of Roodepoort is situated in the mining district of Johannesburg on a portion of the farm Roodepoort which was proclaimed a public digging in the year 1896. The Township was established under an agreement between the owners of the farm and the Government of the South Africa Republic in 1897. The stands in question are all included in the township and none of the title deeds made in favour of the appellant contains any restriction relating to occupation by coloured persons.

The learned judge in the court below came to the conclusion that on the question of the *locus standi* of the municipality he was bound by the decision of the Transvaal Provincial Division in the case of the Krugersdorp Municipal Council vs. Dadoo Ltd. and others (4th Dec. 1919) and reported in the case on appeal (Dadoo Ltd. and others vs. Krugersdorp Municipal Council 1920 A.D.580) and that the applicant had a *locus standi*. The other grounds of opposition were that (1) two of the stands 254 and 308 were protected under section 77 of Act 85 of 1908. (2) that the respondent was not entitled to the relief claimed because of waiver and of laches, and because of such a change in the character of the locality that no benefit would result by enforcing the stipulation. Those grounds were decided in favour of the respondent.

On appeal, counsel confined their argument to the question of *locus standi*, and whether the two stands 254 and 308 were protected under section 77 of Act 85 of 1908.

The respondent claimed to have a *locus standi* on the grounds that it is an owner of stands in the Township, that as owner of stands it has suffered damage, and that as a local authority it supervises health and sanitation, and is the representative and guardian of the interests of the inhabitants of the Township. The question whether the respondent has suffered damage could not be decided on affidavit because the facts were in dispute, and the respondent relied on the case of the Krugersdorp Town Council vs. Dadoo Ltd. as establishing its claim to *locus standi in judicio*.

That case was decided by a court of two judges who came to the conclusion that the Council had a *locus standi*. The Council applied for an order setting aside the transfer of stands in Krugersdorp to a company, Dadoo Ltd., as being in fraud of section 2 of Law 8 of 1885 and section 180 of Act 85 of 1908. On appeal a majority of the Appellate Division held, assuming that

the Municipal Council had a *locus standi*, that the transfers were not in *fraudem legis*.

Before the Appellate Division the contentions advanced by the appellant were (1) that the Council had no *locus standi* and (2) that there had been no legal evasion of the law. It was there contended that the statutory provisions were introduced for sanitary reasons: that the prohibitions relating to coloured persons contained in the titles of lands owned by the Council, and that the Council as owner of these lands and as guardian of the inhabitants and of the health conditions of the town, was entitled to take action. The trial court upheld the question of *locus standi* on the authority of two decisions that of *Alexander vs. Johns* (1918 A.D. 481) and *Madrasa vs. Johannesburg Municipality*, 1917 A.D. 718. In the latter case a statute transferred certain lands to the Council and provided that stand holders concerned would obtain freehold title subject to the conditions prohibiting acquisition or occupation by Asiatics. The Chief Justice after pointing out that there was no statute in corresponding terms and referring to the principle laid down in the case of *Patz vs. Greene* 1907 T.S. 427 said on page 541 "here there was no allegation of material damage; the ground relied upon was not prejudice but illegality. In the view which I take in this appeal, it is not necessary to decide the preliminary objection of *locus standi*." Solomon J.A. on page 554 said "The Court below held that it had a *locus standi*, and I am prepared to assume this is correct, though I express no opinion upon the point." De Villiers J.A. in a dissenting judgment said at page 574, "There remains the question of the respondents *locus standi*. This matter seems to me to be concluded by the reasoning of Solomon J.A. in the *Madrasa Anjuman Islamia vs. Johannesburg Municipality* 1917 A.D. at page 726. It appears to me beyond doubt that the prohibition in Law No. 8, 1885 as amended, and in Act 85, 1908, was embodied partly in the public interest, but also in the interest of other owners of land, who on sanitary and economic grounds might object to the presence of Asiatics on the stands. A fortiori would thus give the Municipality, the health authority, as well as large owners of stands, a *locus standi*."

So that in the result, while the Appeal Court reversed the trial court on the question whether the transfers were in *fraudem legis*, the decision of the lower court on the question of *locus standi* remains a binding decision.

For the reasons given by the learned judge in the Court below, I agree that the decision of the Transvaal Provincial Division on the question of *locus standi* is directly in issue and covers the present case. The learned judge held that he was bound by that decision but this court on appeal was asked to depart from the decision that the Council had a *locus standi*, on the ground that the decision was wrong.

It is competent for this court to reconsider its decision and to overrule its previous decision if it is satisfied that it is wrong. The circumstances under which a court will overrule its previous decision have been dealt with in a number of cases in this court.

The earliest case is that of *Habib Motan vs. Transvaal Government* 1904 R.S. 404 where Innes C.J. says on page 418 "I venture to think that it is stating the doctrine somewhat too widely to say that it is illegal or impossible for a court to reverse its own findings on questions of law. *Stare decisis* is a good maxim, and one to be generally followed, but it is conceivable that circumstances may arise which would render it a lesser evil for a court to override its own legal opinion, clearly shown to be wrong than indefinitely to perpetuate its error. And the mere fact that one judgment reverses an earlier one upon a point of law will not render the second judgment invalid. Save under the most exceptional circumstances, however, a court of law would be bound by its own decisions unless and until they are

overruled by a higher tribunal on appeal. To adopt any other rule would impair the dignity of the court and would introduce a fatal uncertainty into business transactions and legal proceedings."

It was pointed out, however, that this Court was not strictly speaking the successor to the High Court of the South African Republic, and that the decisions of the latter did not stand on the same footing as those of this Court. It was further pointed out that if this Court was compelled to differ from the High Court, it would be slow to do so if vested rights had grown up, or if a course of legal practice had followed its consequence of what was considered to be a wrong decision.

Solomon J. in the case of *Rex vs. Faithful and Gray* 1907 T.S. at page 1080 said that "in ordinary circumstances the Court will abide by its decision; *stare decisis* is a good rule to follow. But where a court is satisfied that its previous decision is wrong, and more particularly where the point was not argued, then I think it is the duty in such a case not to abide by its previous decision but to overrule it."

The principle so stated was approved of by Stratford J. in *Pretorius v. Glas* 1928 T.P.D. 156, who says, "While there was always a reluctance to overrule a judgment by a court of similar jurisdiction, because of the principle of *stare decisis*, and because the judgment had, no doubt, since been acted upon, yet if a court was clearly of opinion that the judgment was wrong, it would be right and proper for the court to overrule the judgment especially in a matter of substantive law where a three-judge court comes to the conclusion that the previous judgment of a court of similar jurisdiction was wrong." After setting out the above principle the learned judge declined to overrule the previous judgment because it was merely a question of practice and presumably practitioners had considered it to be a good law and since the date of the judgment in 1918. Tindall J. assumed that the Court (presumably as constituted of two judges) had power to overrule the decision of three judges and agreed that it was not desirable to do so, because the decision was given on a point of practice as long ago as 1918.

Presumably Greenberg J. sitting as a single judge in the present case and in *Hughes vs. Savvas and Hira*, 1931, W.L.D. 287, considered that he was bound to follow the decision of the full court consisting of two judges in the case of the *Krugersdorp Town Council vs. Dadoo Ltd.* (supra). I agree with the learned judge in his view that he was not bound by the decision of the dissenting judge of the Appellate Division who upheld the *locus standi* of the Municipality, because it was only a minority judgment.

The present matter is one of substantive law and if this Court is satisfied that the decision in the Transvaal Provincial Division was wrong then applying the principle in *Pretorius vs. Glas* it is right and proper to overrule that judgment.

When an act is prohibited the right of a person to relief is laid down in the well-known case of *Patz vs. Greene* 1907 T.S. 427. Solomon J. on page 438 lays down the law as follows—"Every one has the right to protect himself by appeal to a Court of law against loss caused to him by the doing of an act by another, which is expressly prohibited by law. Where the act is expressly prohibited in the interests of a particular person, the Court will presume that he is damaged, but where the prohibition is in the public interest then any member of the public who can prove that he has sustained damage is entitled to his remedy."

In the case of *Madrasa vs. Johannesburg Municipality* 1917 A.D. 718, the court after referring to the case of *Patz vs. Greene* came to the conclusion that the municipality was entitled to claim an interdict without any proof of damage whether as owner or as the representative and guardian of the inhabitants of the township. It seems to be clear that it was because of

the provisions of the Vrededorp Stands Act of 1907 that the Court in the language of Patz vs. Greene presumed that the Municipality was damnified.

Under the provisions of that Act (No. 27 of 1907) certain stands were transferred from the Government to the Municipality and by it transferred to registered holders on certain conditions. The registered holders could obtain freehold from the Municipality but subject to certain conditions as to transferring or subletting to Asiatics or coloured persons. If any such persons was found residing in a stand the Council had power to summon the owner to eject such person. The Court came to the conclusion that the Act did not exclude the remedy by way of interdict and that the Council was the proper person to enforce it. It was because of the provisions of the Act of 1907 that the Council was regarded by the Court as the guardian and representative of the inhabitants of the township. As such the Council fell under the principle laid down in Patz vs. Greene where the Court presumed special damage. It was clear as Solomon J. says "from the whole tenor of the Act, that the legislature intended that the Council should have the right of insisting upon and securing the observance of the statutory conditions"

In Dadoo's case the title deed of Stand 171 contained a condition prohibiting the owner from transferring or subletting to any coloured person, but the title deed of Stand 840 contained no restrictive condition. After dealing with Stand 171, and ordering that the transfer of that stand should be set aside, the court made a similar order in respect of Stand 840. The restriction in the title deed of stand 171 was as already pointed out not essential to the decision.

There was no legislation as in the Madrassa case indicating the Council as having the right to insist upon the observance of the statutory conditions. The Court a quo in Dadoo's case, after referring to the passage in the judgment of Solomon J.A. in which he says "The Council was directly interested in obtaining an interdict to prevent the commission of an act which is expressly prohibited by the Statute in the interest of owners of property" and again "Now in the present case I do not think that there can be any question that the prohibition in the Act against the occupation of stands by Asiatics and coloured persons was enacted partly for the protection of owners of land in the township. If therefore the Council is such an owner it would be entitled to claim an interdict without any proof of actual damage" came to the conclusion that the Krugersdorp Municipality as an owner of stands was therefore an interested party and had a *locus standi*. In the Madrassa case it is clear that the Council had a *locus standi* on two grounds:—Firstly, because it was an owner of stands in the township and secondly, as the representative and guardian of the inhabitants of the township of Vrededorp, it had a *locus standi* because of the conditions embodied in the title of the stands. In addition the learned judge indicated that the legislature clearly intended that the Council should have the right of insisting upon the observance of the conditions contained in the Act. It seems to me that in the absence of such statutory provisions, a local authority as owner of stands would be in no better position than any other owner and applying the principle laid down in Patz vs. Greene in the absence of proof of damage would not have a *locus standi*.

Similarly I do not think that, in the absence of such statutory provisions, a local authority can be regarded as the representative and guardian of the inhabitants. In the Madrassa case, it was because of the provisions of the Vrededorp Stands Act that the Council was regarded as the representative and guardian of the inhabitants of the township. It was argued that a local authority under its general powers of health and sanitation, had a *locus standi* to apply. While the legislature has given

the local authorities very wide powers, being the creations of statute, their authority is limited by the powers conferred upon them. Their position is aptly illustrated by such cases as Moses vs. Bokaburg Municipality 1912 T.P.D. 659, William and Adendorf vs. Johannesburg Municipality 1915 T.P.D. 106 and Swarts vs. Pretoria Municipality 1920 T.P.D. 187. In those cases it was laid down as a general principle that while it might be desirable on general grounds for local authorities to have the power to discriminate between classes, in the absence of express power to discriminate, it would not be implied.

Indeed if a local authority under its general powers as regards sanitation, had a *locus standi* in a case like the present, such a power might conflict with the powers of the Mining Commissioner under section 8 of Act 35 of 1908 which reads that "where no special provision is made by law or municipal by-law, the Mining Commissioner shall regulate matters in relation to the sanitary condition of any proclaimed field in this district." and Section 131 of Act 35 of 1908 under which the local authority claimed an order against the Appellants, empowers the Mining Commissioner to permit residence of coloured persons in certain places and further gives the Mining Commissioner power to remove structures after the conviction of a coloured person.

Nor do I think that the case of Dalrymple and Others vs. Colonial Treasurer (1910 T.S. 372) can be invoked to establish a *locus standi* for the Municipality. There it was pointed out that, in a very strong case, where plaintiff was not only a taxpayer and a member of the public but the Secretary of the Merchants Association, he had no *locus standi* to sue the Treasurer, who had admitted certain goods duty free, contrary to the terms of the Customs Act. In the case referred to Bagnall vs. Colonial Government (24 S.C. 470) it was held that the declaration must allege special damage. The Court recognised the same principle that was laid down in this Court in Patz vs. Greene (1902 T.S. 427).

In the absence of proof of special damage (a matter in dispute and admittedly not capable of determination on application) I have come to the conclusion that the respondent municipality had no *locus standi*. As a result of this view it becomes unnecessary to consider the second ground of appeal. The appeal succeeds with costs, and the judgment of the lower Court must be altered to one dismissing the application with costs.

Mr. Justice Solomon and Mr. Grindly-Ferris concurred.

## Notice

### INDIAN UNEMPLOYMENT

Will employers of Indian labour kindly notify the undersigned of any vacancies in their establishment.

WRITE: Hon. Secretary, Sir Kurma Reddi Unemployment Relief Committee, 175 Grey Street, Durban, or Phone Central 3506.

### Indian Child Welfare Society Centre

150, BROOK STREET, DURBAN

Open daily, Monday to Saturday, 8-30 a.m. to 11 a.m. Infants, young children, nursing and expectant mothers.

Lady doctors give free attendance.

Tuesday morning 8-30 o'clock. Friday afternoon 3 o'clock.