

S. 2640.

325.154

968

V63-45 (Y73P15)

G2

16840

CONCLUSIONS OF THE SECOND ROUND TABLE CONFERENCE  
OF 1932 BETWEEN THE GOVERNMENTS OF INDIA AND THE  
UNION OF SOUTH AFRICA AND THE COLONIZATION ENQUIRY

Sir,

We are writing to you with a view to ascertaining your views on the subject of the Colonization Enquiry which formed the most important part of the conclusions of the 1932 Round Table Conference. On this important question there is a cleavage of opinion amongst the Congress workers. The Newspaper "Indian Opinion" which represents the views of those who have taken a stand against the Enquiry. Although it will be noticed, the Editor of the "Indian Opinion" was signatory to the statement agreeing to the principle of enquiry which was handed by the Congress delegates at Capetown to the Govt of India Delegation to the Round Table Conference "Indian Opinion" has, during the last four weeks incessantly pressed its view of the case. And as that paper enjoys in India, the reputation, of representing Indian opinion in South Africa, we have felt it our duty to place the whole facts before you so that as an impartial observer of our events in this country and as one who has always taken a keen and sympathetic interest in our welfare you will be good enough to advise us the course that the Congress and its affiliated bodies, should take in these circumstances.

During the Round Table Conference held at Capetown in January and February 1932, between the Governments of India and Union, the officials of the South African Indian Congress and the representatives from the Natal, Transvaal

V63:45(Y73P15).N3  
G2 and/

16840



and Cape Indian Congresses were present to render assistance and advice to the Government of India Delegation on all questions.

When the question of the Colonization Enquiry came up for discussion the Congress representatives as a whole were wholly opposed to any attempt to reduce the Indian population or that the Indian was undesirable in the country and for days the matter was discussed in all its aspects. It was pointed out by the Government of India Delegation to the Congress delegates that there could not be any wrong in participating in an enquiry, so that countries could be explored on patriotic grounds for India's increasing population and also for those South African Indians who would like to settle in countries where climatical, political and economic conditions would be suitable to them. The result of the discussions was that a statement was drawn up on the 23rd January 1932, signed by all the Congress representative and handed to the Government of India Delegation. The Statement is as follows :

- "1. The Congress agrees to co-operate with the Governments of India and the Union of South Africa in the former's mission to explore outlets for colonization in regard to her increasing population, provided that such co-operation on the part of the Congress is taken as inspired by patriotic motives and to ascertain whether there exist any good opportunities for South African Indians in the countries explored, and not on the score of Indians being deemed undesirable in the Union or that the Indian population is to be reduced; provided also that the Assisted Emigration Scheme which formed part of the last Agreement is eliminated and that the Congress will be free to oppose it as its policy.
2. The Congress also reserves the right to reject the Agreement and to withdraw its co-operation in the above Scheme should any points in the Agreement or other subjects dealt with by the Round Table Conference not meet with the approval of the Congress."

and was signed by the following :

Messrs./

"Messrs. Jossab Ebrahim Gardee, Bernard L.E. Sigazoney, Pragji K. Desai, S.B. Mehd, S.R. Naidoo, M.M. Gandhi, Shaikh Ahumed, C.F. Andrews, Sorabjee Rustonjee, P.R. Pather, A.I. Kajee, Hajee Cassim Adam, A. Christopher, V.S.C. Pather, ~~A. Ismail~~, A.D. Motala."

The Clause referring to the proposed Enquiry in the conclusions arrived at by the Governments of India and Union is as follows :

"It is now recognised that the possibilities of the Union's scheme of assisted emigration to India are now practically exhausted owing to the economic and climatic conditions of India as well as to the fact that 80 per cent of the Indian population of the Union are new South African born. As a consequence the possibilities of land settlement outside India, as already contemplated in paragraph 3 of the Agreement, have been further considered. The Government of India will co-operate with the Government of the Union in exploring the possibilities of a colonisation scheme for settling Indians, both from India and from South Africa in other countries. In this investigation, which should take place during the course of the present year, a representative of the Indian community in South Africa will, if they so desire be associated. As soon as the investigation has been completed the two Governments will consider the results of the enquiry."

In April 1932 the Union Government through the Secretary for Interior wrote to the Congress with a request to appoint a representative in terms of the said Clause.

In view of developments that had arisen subsequent to the Round Table Conference, particularly the passage of the Transvaal Asiatic Land Tenure Act, Congress Executive deferred the appointment of the Representative until a Conference had been convened.

The Congress assembled in Conference at Johannesburg towards the end of August 1932 at which practically all the persons who signed the statement referred to above, were

present/

present. The Provinces were, moreover, fully represented.

At this Conference the Colonization Enquiry was again fully discussed and the following resolution was unanimously passed :

"The South African Indian Congress in answer to the letter of the Secretary for the Interior dated 18th April 1932 and in accordance with the Statement submitted to the Government of India Delegation at the last Round Table Conference, agrees to co-operate with the Governments of India and the Union of South Africa in the former's mission to explore outlets for colonization in regard to her increasing population, provided that such co-operation on the part of the Congress is taken as inspired by patriotic motives, and to ascertain whether there exist any good opportunities for South African Indians in the countries explored and not on the score of Indians being deemed as undesirables or that the Indian population is to be reduced."

As the Minister of the Interior was awaiting the decision of the Congress, the above resolution was conveyed to him by telegram on the 1st September 1932.

On the 15th June 1933 the Minister of the Interior made a statement to the House of Assembly, copy of which is attached hereto.

In forwarding a copy of the Statement to the Congress, the Secretary for the Interior desired the name and address of the Congress Representative on the Committee of Enquiry.

The Congress convened an Executive meeting at Durban on the 9th July 1933 at which all the Provinces were represented.

The question was very fully discussed, one school of thought holding that the present enquiry was a distinct departure from the agreement in that under the original enquiry the initiative was to be taken by

India/

India for finding outlets for her increasing population and that the South African Indian Congress was incidentally to join her in the enquiry. Moreover they hold that the terms of reference states that the enquiry is to ascertain how far the Indian community would participate in such an enquiry. The other school of thought which represented all those present at the Executive meeting excepting the minority of two, feel that co-operation is highly desirable with the Committee on the following among other grounds :

- (a) The Congress delegates gave an honourable undertaking at Capetown by virtue of the signed statement handed to the Govt of India Delegation in January 1932 to co-operate with the enquiry and with this assurance before the two delegations, the conclusions of the Round table Conference were arrived at by the two Governments, this being the case, it is not just, nor it is right, to recede from that undertaking at this stage.
- (b) The enquiry is a preliminary one, and to refuse to appoint a nominee, and boycott the enquiry committee, will tantamount to allowing the community's case to go by default.
- (c) The enquiry is an opportunity to prove our right case, and our just cause, and that we are an asset in South Africa, and we are not undesirables, nor our numbers need reduction.
- (d) Make it abundantly clear to the Committee of enquiry that as far as the South African Indian is concerned,

that/

that there exists no country that can offer an improvement or even equal the conditions that exist in South Africa climatically and economically.

- (e) Impress upon the Enquiry Committee the necessity of removing the provincial barriers that debar the Indian from movement and allowing him to spread himself in the Union of South Africa, and substantiate the fact that South Africa has millions of acres of undeveloped land which could be conveniently opened up for the Indian. In this connection we may point out that once the congestion in Natal where 160,000 Indians reside is eased the question would solve itself.
- (f) The question of allowing the Indian to enter and reside in the same manner as Europeans are allowed in the Native Territories adjoining the Union, could be put forward before the Committee.

We enclose herewith copy of an article written by Mr. A.H. West who was connected with Mahatma Gandhi in his work in this country and who with his family was one of the original settlers of the Phoenix Settlement from 1904 to 1918. Mr. West was solely in charge and edited "Indian Opinion" from 1915 to 1918. This article of Mr. West throws an illuminating light on the question from an impartial observer.

We have, we think, presented you both sides of the case and we shall be thankful for your considered advice.

We/

We beg to remain,

Yours very truly,

O.H.A. Jhaveri President

A.I. Kajee ) Joint Hon.  
S.R. Naidoo ) General Secretaries,

E.M. Aly ) Joint Hon.,  
B.M. Patel ) Treasurers,

SOUTH AFRICAN INDIAN CONGRESS.

Joint Hon.  
General Secretaries,  
South African Indian Congress,  
175, Grey Street,  
Durban, Natal, S.A.

INDIAN COLONIZATION SCHEME  
.....

STATEMENT MADE BY THE HONOURABLE THE MINISTER  
OF THE INTERIOR IN THE HOUSE OF ASSEMBLY ON THE  
15TH JUNE, 1933.

.....

I desire to make a statement to the House in connection with the proposed Indian colonization scheme, which I promised a few days ago.

Honourable Members will recall that the summary of conclusions reached by the Round Table Conference held in Cape Town in 1932 on the Indian question in South Africa contained the following paragraph -

It was recognised that the possibilities of the Union's scheme of assisted emigration to India are now practically exhausted owing to the economic and climatic conditions of India as well as to the fact that 80 percent of the Indian population of the Union are now South African born. As a consequence the possibilities of land-settlement outside India, as already contemplated in paragraph 3 of the Agreement, have been further considered. The Government of India will co-operate with the Government of the Union in exploring the possibilities of a colonisation scheme for settling Indians, both from India and from South Africa, in other countries. In this investigation, which should take place during the course of the present year, a representative of the Indian community in South Africa will, if the so desire, be associated. As soon as the investigation has been completed the two Governments will consider the results of the inquiry.

It was the feeling of the Conference that in the circumstances mentioned in the paragraph quoted, the time had arrived for the exploration of the possibilities of a scheme of colonisation in which Indians both from India and from South Africa might participate, and it was hoped that the opportunities which would thus be created for the establishment, in some other country than India or South Africa, of an Indian community free to develop along the lines of its natural aspirations, would appeal to a large section of the Indian population of the Union.

I wish to state that it is the desire of this Government to take effective action along the lines agreed upon by the Conference and it will apply its best efforts in that direction.

The Government has considered carefully how best the proposed investigation should be initiated. It has come to the conclusion that- the investigation, in which the Government of India and this Government are to co-operate, may be considerably facilitated and expedited by preliminary investigation of the ground to be covered, and it feels that such a preliminary enquiry could, as far as the Union is concerned, best be undertaken by a small departmental committee, which should however not be restricted in its composition to departmental officials.

In the paragraph which I have quoted from the summary of conclusions it was stated that with the investigation therein contemplated, a representative of the Indian community in South Africa would, if they should so desire, be associated. I am glad to say that the South African Indian Congress has indicated that it is the desire of the Indian community to be so associated. The Government is anxious that that community should also be associated with the preliminary enquiry which is now proposed, since it considers that such participation would be of material assistance to the committee in its work, and the South African Indian Congress will therefore be asked to nominate a member of that body.

It is further proposed that when the committee has completed its work the conclusions arrived at by it should be transmitted to the Government of India with a view to their collation with such proposals as that Government may decide to make, as a basis of the work of the commission

to/



to be appointed jointly to conduct the final investigation in terms of the Report of the 1932 Round Table Conference.

These proposals have been discussed with the Government of India, and I am glad to say that it has expressed its concurrence therewith. The Government of India has also stated - and for this I wish specially to express the gratitude of this Government - that its Agent in South Africa is being requested to place himself and his staff entirely at the disposal of Ministers here and of the committee for giving such informal help as might be in his power.

It has been decided that the committee should be constituted as follows :-

Mr. James Young, ex-Chief Magistrate, Johannesburg.  
Mr. G. Heaton Nicholls, M.P.,  
A representative of the South African Indian community,  
and  
Mr. P.F. Kincaid, Commissioner for Immigration and  
Asiatic Affairs.

Its terms of reference will be :-

To undertake a preliminary investigation in South Africa in connection with the proposals set forth in paragraph 3 of the Agreement arrived at by the 1932 Round Table Conference for the exploration of the possibilities of a colonization scheme for settling Indians, both from India and from South Africa, in other countries;

and to report as to the country or countries in which further investigation as to the successful operation of such a scheme might advantageously be made, having regard to the political, climatic and economic conditions in such country or countries, and to the extent to which Indians in the Union would participate therein.

I am hopeful that the work of this committee will be such as to make a substantial contribution towards the goal adumbrated by the Round Table Conference in this regard, which as I have indicated, it is the sincere desire of the Government to further to the best of its ability.

-----

## SHOULD INDIANS CO-OPERATE ?

(By A.H. Frost)

---

The question as to whether the Indian community, represented by the South African Indian Congress should co-operate with the Union Government in its enquiry into the possibility of a scheme of colonization, by nominating, at the request of the Government, a representative to sit as a member of the Committee is one upon which there is divided opinion. The view held by the officials of the Natal Indian Congress is that they are bound by the decision of the South African Indian Congress who have agreed to co-operate in the enquiry. They hold that there is nothing to lose and every possibility of gaining by having a representative on the Committee who will be in a position to look after the interests of the Indian community. The objectors, on the other hand, strongly oppose the nomination and make it a matter of principle. They say that it is absurd and wrong to have anything whatever to do with even an enquiry into the possibilities of any scheme to attract South African Indians to any other country; and they declare that it is dishonest to send a representative to take part in an enquiry into any scheme when all are agreed that the object of the enquiry is to reduce the number of Indians in South Africa.

There is practically no difference of opinion among the Indians regarding the motives underlying the appointment of the Committee of Enquiry. For the time being, the Government of India is out of the picture. It will wait and see what this Committee will recommend before it decides whether or not it is worth while going any further into the question of finding an outlet for the surplus population of India. Opinion differs only on the question as to whether the Indian community should allow itself to seem to approve of the idea of colonization

the/

the presence of an Indian on the Committee.

Having considered the views expressed by both parties in the dispute, I feel that, whilst taking the strongest objection to what is clearly the object of the Government, namely, the reduction of the Indian population, it would be a mistake to refuse the offer of a seat on the Committee. The presence of an Indian member does not bind the community in any way whatsoever. To accede to the Government's request that the Congress should appoint its representative is but a matter of common courtesy. To refuse would be foolish and would give an entirely wrong impression. It would indicate that Indians were afraid of an enquiry.

Let it be clearly understood that this Committee is appointed by the Government and will investigate and report the result of its labours whether there is an Indian member or not. The question of principle does not arise. The Government may be well aware that Mr. S.R. Jaidoo, who has been appointed, is not in favour of colonization. Probably, most of the members of the Committee have no definite views one way or the other. It is not possible for any of them to have fixed opinions on a matter which has not yet been investigated. Even the most rabid anti-Asiatic, if there is one such on the Committee, cannot say that there is a country ready to welcome Indians as full citizens if in fact it is proved there is no such country. Should the Committee, however, report that an ideal place has been found for colonization, it will still remain for Indians individually to accept or reject it, irrespective of whether the Government of India approves or not, or whether, for that matter, the South African Indian Congress gives or withholds its blessing.

One of the points the Committee will have to report on is "the extent to which Indians in the Union would participate

in/

in an scheme of colonization. This will provide an opportunity for demonstrating the feeling which appears to be so keen against any scheme. Under this head it will be within the terms of reference to show why Indians prefer to remain here; and what, in their opinion, could be done to make it quite unnecessary for a single Indian to leave the Union. One good reason why most Indians would fight shy of emigration would be the unfortunate state of many of the 13,000 who participated in the assisted emigration scheme and who find themselves stranded in India, suffering untold hardship. There are those on the side of the co-operator who would consider it a matter of principle not to let such a fine opportunity of calling attention to what they believe to be nothing short of a scandal. They rightly consider that it would be cowardice on their part to stand aloof and let such a matter go by default.

There are those who would go a step further and ask why these thousands of poor people, who found India disappointing, should not be assisted to re-emigrate elsewhere. This alone is a big question and should be a matter for deep concern by every South African Indian. A colonization scheme in which these emigrants from the Union would find a means of livelihood could hardly be described as evil by a non-co-operator who claims to stand for principle. The terms of reference do not, apparently, admit of exploring the possibility of a scheme of this sort for India or some part of the Union. Nevertheless it is possible that the Committee would be willing to receive such a suggestion and give it consideration, should these preliminary investigations fail in ascertaining a suitable country for colonization by Indians. The question of lowering the barriers would

naturally/

naturally arise and would have to be considered. Such an opportunity ought not to be missed as there is now a strong body of European press and public opinion in Natal in favour of making the Union in this respect one country instead of a collection of water-tight compartments.

Taking into consideration these various ideas, it is not possible for me to support a policy of non-co-operation. Such an enquiry as contemplated can do no possible harm to a Union. It can do an immense amount of good if only Indians will unite in making the best use of the opportunity to state their case before this Committee.

Finally I would appeal to both parties to the dispute in the Congress to put aside their personal feelings and forget about wrong methods of procedure. Stop holding public meetings of protest and get down to business. Otherwise it may indeed be a matter of "fiddling whilst Rome is burning".

---

CONFIDENTIAL. -

---

**History of the Indian problem in  
South Africa.**

---

*(For the use of the Indian Delegation to South Africa in 1931-32.)*

**CONFIDENTIAL.**

**History of the Indian Problem in South Africa.**

**I.—Up to 1914.**

**(1) Natal up to 1911.**

Emigration from India to Natal actually started in 1860, though the first application for Indian labour was made in 1855. It originated in the demand for people to work on the sugar plantations. Resort to India for the supply of unskilled labourers became necessary because the African native was either unwilling to work, or, if employed, did not prove steady or reliable. The majority of planters were doubtless glad to be saved from the "sickening despair" which seemed to be the alternative to an adequate supply of labour. The correctness of this inference is borne out by what happened when emigration from India was temporarily stopped between 1866 and 1874. In 1873, the Lieutenant Governor of Natal, wrote to the Secretary of State for the Colonies that "in some instances positive ruin is threatened, and everywhere improvement is at a standstill, in consequence of the impossibility of procuring at any price, the labour requisite.....". To quote another authority: "From 1866 to 1874, when immigration recommenced, the native labour of the Colony proved more and more unreliable. In 1874 crops were rotting on the ground, and although planters and others competed in endeavouring to obtain assistance from the Chiefs, they could secure no labour at any price. . . . This was the culminating point to a long series of protests and complaints, and, in deference to the popular cry for the re-establishment of imported labour, the door was again opened to Indian immigration"

2. When emigration from India was renewed in 1874, a Protector of Indian Immigrants was appointed in Natal and an Emigration Agent was appointed in India. A law\* was passed to facilitate the grant of land to Indian immigrants in lieu of a free passage to India, if they wished to settle in the Colony after completing their terms of indenture. The settlement of the Indian as a free man, however, was not welcome to certain sections of the white population. At first, perhaps, the objection was not so much to the emancipated "coolie" as to the Indian trader, erroneously described as "Arab", who had come in the wake of the labourer from Bombay. As the numbers of permanent Indian settlers increased, the opposition to both classes grew. In 1887 a Commission appointed by the Government of Natal reported that "the majority of white colonists were strongly opposed to the presence of the free Indian as a rival and competitor, either in agricultural or commercial pursuits". Some demanded that Indian immigration should cease altogether. Others favoured expedients which, while keeping open this supply of labour, would prevent the permanent settlement of Indians in the Colony. The latter prevailed. In 1891 the Legislative Council of Natal recommended—

- (a) that for the future Indians should continue in service during the whole of their residence in the Colony;
- (b) that on the completion of their term of service, they should return to India; and

---

\*Repealed in 1891.

(c) that if such changes in the law were found impracticable, the annual subsidy of £10,000 which the Natal Government had been paying since 1874 towards the cost of introducing Indian labour should cease.

3. At that date there were 30,393 free Indians in Natal. The concrete proposal made by the Governor to ensure that the Indian in Natal should remain a labourer was that in future recruits should be compelled to sign on for another five years—the original term being five years. The implication was that if a labourer failed to return to India at the end of the second term of indenture, he would be liable to prosecution. The Government of India informed the Government of Natal that they “found it impossible to approve this proposal”. The Government of Natal then decided to send two representatives to India to discuss with the Government of India—

- (i) the terms of indenture of Indian labourers as provided by the law; and
- (ii) the return to India of all indentured immigrants on the completion of their terms of service.

These representatives urged that unless “some plan could be arranged to prevent the settlement of emigrants, the growing hostility of the white population to Indian settlers was likely to result in the closure of Indian emigration altogether”.

4. The Government of India were, at that time, anxious to keep open, and, if possible to extend, the available outlets for the Indian population. They felt that by this means congested areas in India would get relief. They accordingly informed the Secretary of State that they would favour a condition in the emigrant's contract that he would return to India at the end of his period of indenture, unless he re-engaged on a new indenture on a similar condition, but that if this was done, the Colony should undertake to provide a free passage at the end of the first and every other term of indenture at the end of which the emigrant might wish to return. But they were opposed to any proposal which would involve compulsion to return under penal laws.

5. The result of the delegation's visit was the passing by the Natal Legislature of Act 17 of 1895, which provided—

- (1) that each new Indian immigrant who came under indenture should agree either to return to India on completion of the term of indenture, or to re-enter into a covenant to work for hire;
- (2) that such immigrant should, on the expiry of the first or subsequent contract of indenture, be provided with a free passage to India; and
- (3) that, if such immigrant failed or refused to return to India and decided to stay in the Colony as a free man, he should take out each year a license on payment of £3.

6. The passage of this Act constituted the first important attempt to prevent the settlement of Indians in Natal. The repeal in 1891 of the Act of 1874, which provided for grants to *ex-indentured* Indian labourers of land in exchange for the passage to India was not so serious, as, in practice, not many such grants had been made. Other indirect attempts followed. In 1896 the Indian was excluded from the parliamentary franchise on the ground that he was the native of a country which did not



enjoy representative institutions. Feeling against the Indian continued to grow. The Indian law did not regulate the emigration from India of persons who paid their own passage to an outside port. Therefore, the entry into Natal of Indians of this class was subject to no legal restrictions. Agitation in the Colony was next directed towards closing this avenue of admission. On 18th December 1896, 611 free passengers from Bombay reached Durban in the S. S. "Naderi" and "Courland". They were in quarantine till the 11th January as they had come from a plague-infected port. Large and unanimous European demonstrations were organised to prevent landing. The owners of the ships hesitated to bring them into harbour, but they were eventually brought in on January 13th. About noon, about 5,000 people had gathered at the landing place to protest against the landing of the Indians. Through the efforts of the Attorney General the crowd was induced to disperse. But Ministers requested the Governor to inform the Government of India that "in the interests of order it was desirable that the emigration from India of free Indians should be arrested" By Act 1 of 1897 the immigration into Natal of any one who could not pass a prescribed dictation test in a European language and who was not in possession of a specified sum of money was prohibited.

7. Another law (Act 18 of 1897) was passed the same year to restrict Asiatic trading by giving licensing officers appointed by Town Councils or Town Boards full discretion to grant or refuse wholesale or retail licenses and by making their decisions appealable only to the Town Council or Town Boards instead of a Court of Law. The discretionary power of the licensing officer soon began to be utilised to the disadvantage of the Indian. New licenses were refused merely because the applicant happened to be an Indian. Applications for renewals also met with the same fate. In 1899 certain Indian traders complained to the Secretary of State for the Colonies that the Act was being administered in an oppressive manner, and asked for a right of appeal to a court of law. The Secretary of State for the Colonies recognised that in regard to certain towns the complaint was just and favoured the request for a right of appeal.

8. The Boer War, however, put a stop both to Indian claims for redress of existing grievances and to anti-Indian pressure for the imposition of fresh disabilities. When the end of the war was in sight, the Indian problem again became prominent. In 1900 the Government of India urged that while the recollection of the loyalty and valuable exertions of the Indian population of Natal and of the valuable services rendered to Natal by India in the war was still fresh in the minds of the colonists, a just settlement of outstanding differences should be attempted. Natal, independently, asked to be placed on the same footing as Ceylon for purposes of emigration. This request was promptly refused, mainly on the ground that in Natal the settlement of labourers whose term of indenture had expired was discouraged and subjected to penalties, and that all free immigrants were being subjected to treatment which was degrading and injurious to their self-respect.

9. Meanwhile, owing to the scarcity of native labour, applications for Indians for various purposes had increased from 2,000 to 15,000. In May 1902 intimation was received that the Natal Parliament had asked the ministers to depute two Commissioners to India to discuss matters affecting Indian emigration. The Government of India readily acceded to the request. One of the points which the Commissioners were required to discuss was that the terms of indenture should be so modified for future

recruits as to secure termination of the engagement in India. The Government of India informed the Governor of Natal that they were not indisposed to meet the wishes of the Natal Government in the matter so long as the Indian labourer was not compelled to be indefinitely in a state of indenture, and the agreement to return to India was enforced without any undue harshness. In return they wanted the free Indian to be better treated. They asked that the £3 tax may be removed after 10 years from the introduction of the new arrangement in regard to repatriation, and that the law relating to the issue of trade licenses should be amended so as to provide for an appeal to a court of law against the decision of Town Councils or Town Boards. Failing favourable consideration of these requests, the Government of India warned the Natal Government that they reserved the fullest liberty to take at any time such measures in regard to emigration to Natal as they might think necessary in order to secure to their subjects proper treatment in that colony.

10. The Government of Natal declined to accept these conditions. In fact, in 1903, the £3 tax was extended to the adult children of Indians who were liable to pay a similar tax under the law of 1895. Complaints of the maladministration of the Traders and General Dealer's Licensing Act also became more prominent in 1907. It was discovered that in the smaller towns, applications for renewals of licenses were being refused.

In May 1908 the Governor foreshadowed legislation—

- (a) to stop the introduction of indentured labour from India after 30th June, 1911;
- (b) to prohibit, after 31st December 1908, the issue of new licenses to an Indian; and
- (c) to stop renewal or transfer of licenses to Asiatics after 31st December 1918.

The Secretary of State for the Colonies at once warned the Governor that His Majesty's Government will not be able to advise assent to (b) and (c).

The bill to stop the flow of indentured labour from India was not proceeded with, owing to the opposition of those who depended upon Indian Labour to work the sugar plantations. The demands of the gold mines for native labour damped the ardour of those who had seen in this source an adequate substitute for labour from India. The two trade bills were passed by the Colonial Parliament, but disallowed by the Crown.

11. A Commission appointed by the Natal Government in 1908 recommended that the supply of Indian labour was still necessary. In the hope that the Government of India would grant special facilities to secure recruits, the Colonial Government amended the Licensing Law of 1897 so as to allow appeals to Courts against decisions refusing applications from Indians for renewals of licenses. But this concession failed to achieve its object. Resentment in India against the recruitment of Indian labour, indenture in general, and against the treatment of Indians in South Africa in particular has become acute.

Early in 1910 Mr Gokhale moved that recruitment of indentured labour in India for Natal should be stopped. The Government of India gave an assurance that they intended to take power to prohibit the emigration of

such labour to colonies like Natal. The power was taken under Act XIV\* of 1910, and on 1st April 1911, prohibition of emigration to Natal from 1st July 1911, was notified in the *Gazette of India*.

(II).—*Transvaal up to 1908.*

12. According to the evidence available, there were hardly any Indians in the Transvaal at the time of the retrocession of the country to the Boers in 1881. Indian traders must have started coming in soon after; presumably in considerable numbers. For, in 1884, memorials were presented to the Volksraad (the local Parliament) strongly urging that this influx should be restricted by law. A Pretoria petition stated that "the population of Arabs and coolies is much increasing in this town and this State", emphasised the dangers of such increase owing to their "neglect of sanitary measures and loathsome mode of living", and pressed that they should be "isolated within their own locations quite separated from the white population". This agitation was probably due to the traditional prejudice of the Boers against all non-Europeans on account of their colour, and to trade jealousy.

In 1885 the Transvaal Parliament passed the following law (No 3 of 1885) to deal with the Asiatic problem—

"Persons belonging to any of the aboriginal races of Asia, including thereunder the so-called Coolies, Arabs, Malays and Mohammedan subjects of the Turkish Empire—

"(a) shall not acquire the rights of citizenship in the South African Republic;

"(b) shall not be owners of landed property in the Republic" (this provision has no retrospective effect);

"(c) shall as far as those who settle in the Republic with the object of trading, etc., are concerned, have to be inscribed in a register to be specially kept for that purpose.

After prescribing a registration fee of £25 for each person, it enacted in paragraph (d) that—

"The Government shall have the right to assign to them special streets, wards and locations for habitation. This provision shall not apply to those who reside with the masters in whose service they are"

Her Majesty's Government in the United Kingdom understood that the provisions of the law in so far as they related to residence, would not apply to the Indian of the better class. They were also under the impression that Indians would be allowed to trade anywhere in the republic.

13 No objection was, therefore, raised to it. The Republican Government, however, subsequently claimed to apply the law to all Asiatics indiscriminately. The Indian community complained, and Her Majesty's Government made representations to the Government of the Republic on their behalf. The result was that the law was amended by Proclamation.

\* Section 5 of the Indian Emigration Act, 1908 as substituted by Act XIV of 1910.

"Where the Governor General in Council has reason to believe that sufficient grounds exist for prohibiting emigration to any country to which emigration is lawful, he may, by notification in the *Gazette of India*, declare that emigration to that country shall cease to be lawful from a day specified in the notification; and from that day emigration to that country shall accordingly cease to be lawful."

dated 26th January 1887, the words "for sanitary purposes" being inserted after "habitation" in clause (d). A clause was also added, empowering Asiatics to hold fixed property in such streets, wards and locations as might be pointed out to them for sanitary purposes. And the license fee was reduced from £25 to £3. Even this amendment was understood by Her Majesty's Government as not applying to traders and other persons of a superior mode of life. They felt that the relegation of such persons to certain districts would not be necessary on sanitary grounds. They accordingly accepted the amended law.

14. The Republican Government, however, maintained that the law applied to all Asiatics and further interpreted the phrase "for residence"—"ter bewoning" in Dutch—to include business premises as well as private residences. Their claim was that they could confine *all* Asiatics to the districts assigned to them for residence as well as trade. Her Majesty's Government adhered to their view in principle, though the practical demand was reduced to requiring that "the interests of British Indian traders who had acquired a vested right prior to the legislation of 1885 to trade outside locations" should be respected. No agreement was reached, and ultimately, in 1895, the matter was referred to Mr Melius De Villiers, Chief Justice of the Orange Free State for arbitration. In the case as presented to the arbitrator, Her Majesty's Government claimed—

- “(a) that the Indian and other Asiatic traders, being British subjects, be allowed to reside in the towns of the South African Republic in some quarter ('wards and streets') which for sanitary reasons may be assigned to them; and
- (b) that they be allowed to carry on their trade or business in shops or stores in any part of the town.”

The Government of the South African Republic claimed—

- (a) that the South African Republic has full liberty to make such regulations in respect of Coolies, Arabs, Malays and Mahomedan subjects of the Turkish Empire, as it may think fit, and
- “(b) that Her Majesty's Government have no ground of objection should the Government of the South African Republic prohibit Coolies, Arabs, Malays and Mahomedan subjects of the Turkish Empire from having business premises upon any places in towns or villages other than those assigned to them by Government.”

Mr. De Villiers announced his award on the 2nd April, 1895. He disallowed both claims and decided that the Government of the South African Republic was entitled to give full force and effect to Law No. 3 of 1885 and to the Volksraad resolution of 1886 "subject to sole and exclusive interpretation in the ordinary course by the tribunals of the country". The award, by implication, set aside a subsequent resolution of the Volksraad—this was passed on the 5th July 1888—which affirmed that it was against the letter and the spirit of Law No. 3 of 1885 as amended by the resolution of 1886, that Indians should be allowed to live in business premises. The award did not, however, decide whether the Dutch or British interpretation of the words "ter bewoning" was correct. Such decision was given by the Transvaal High Court in the case of Tayob Hadji Mahomed Khan in 1898. By a majority of 2 to

If the judges decided that the words in question could be said to cover a merchant's place of business.

15. On the 15th November 1898, the Executive Council of the Republic passed a resolution calling upon British Indian traders to remove themselves from towns and villages and to live and trade in specified locations. The Landdrosts and the Mining Commissioner were instructed to prepare lists of traders who for a considerable time had been carrying on business outside the specified locations. These were to be given from three to six months to remove into the location or a special Asiatic Bazaar which, to alleviate the blow, the Council were prepared to construct if the persons concerned wanted it. Negotiations were initiated by Her Majesty's Agent in Pretoria, with the consent of the High Commissioner, to secure the vested rights of those Asiatics who were already resident in the Transvaal. The High Commissioner offered, provided existing traders were not disturbed, to agree to future immigrants being obliged to reside and trade in locations. He was also willing that the registration fee should be raised. But the Republican Government declined to consider these proposals. The outbreak of the Boer War put an end to further negotiations.

16. It will be observed that in spite of laws and judgments, Indians had been allowed to trade where they liked. They had also acquired fixed property through the agency of nominal trustees who generally executed a mortgage bond to the full amount of the purchase price in favour of the real purchaser, and gave him an unrestricted power of attorney to deal with the property. This was done with the consent of Government. In some cases the trustee was the Mining Commissioner, a Government officer.

*Crown Colony Government.*

17. When the Transvaal was annexed, some of the local officials adopted a policy of strict enforcement of the segregation law. On the 3rd April 1902, the High Commissioner telegraphed the following proposals for the approval of the British Government.—

- "1. That all Asiatics, whether then resident in the Transvaal or subsequently entering it, unless specially exempted, should take out a certificate of registration to be annually renewed at a charge of £3. The South African Republic Law No. 3 of 1885 had fixed this charge for registration at £25. It was reduced to £3 by the subsequent Volksraad Resolution of 1886.
- "2. That registered Asiatics, unless living with a European employer, should be obliged to reside and carry on their business in special quarters of the towns set apart for them, the sites for these locations to be selected by the Governor, and their control for sanitary purposes to be exercised by the municipal authorities.
- "3. That certificates of registration should be refused to undesirable persons.
- "4. That exemption from registration should be granted to educated and civilised Asiatics.
- "5. That the prohibition against holding real property should be repealed, but that the right of Asiatics to acquire such property should be restricted to town areas for five years "

Mr. Joseph Chamberlain, then Secretary of State for the Colonies, replied that it would be impossible to defend what would practically be a continuance of the system of the South African Republic, against which Her Majesty's Government had so strongly and repeatedly protested.

18. The Government of India were also alive to the danger that "the Indian may suffer from the unwillingness of the authorities to offend colonial prejudice". They were anxious that "the question should be settled according to recognised British principles, while the Transvaal was still a Crown Colony". Mr. Gandhi was already urging that "there should be no acceptance of the principle of locations". On 14th May, 1903, the Government of India addressed a despatch to the Secretary of State for India in which they urged—

- (i) that no restrictions should be imposed on the entry of Indians into the Transvaal. If any were considered necessary, they should take the form of a literary test which should recognise non-European languages equally with European;
- (ii) that the policy of confining Indians to locations for residence should preferably be abandoned, but, if its application was found necessary for sanitary reasons, such application should be confined only to the lower classes; and
- (iii) that Indians should be free to trade anywhere they liked.

Chance threw in their way what seemed to be a useful weapon to get the concessions that they wanted. Lord Milner wanted labour to construct railways in the Transvaal and Orange River Colonies, and the Government of India offered to help him if their requests for the better treatment of Indians in these colonies were favourably considered. But Lord Milner was unwilling to admit Indian languages into the literary test for admission, which he proposed should be made the basis of the immigration restrictions, and the violent prejudice which was said to exist in every town of the Transvaal stood in the way of the other points being satisfactorily met. The need of the Transvaal for Indian labour thus proved abortive to secure a satisfactory settlement of the question.

19. Events in fact were moving in the opposite direction. There were complaints that Indians who had not been resident in the Transvaal before the war had taken unfair advantage of the terms of the ordinances regulating entry into the colony. In May 1904 the Supreme Court, in Habib Motan's case, reversed the decision of the Transvaal High Court in Tayob Hadji's case by holding that the law of 1885, does not apply to the business places, but only to the residences of Asiatics. This added a strong element of alarm to the prejudice which already existed among European traders. The outbreak of bubonic plague in the "coloured" location at Johannesburg also contributed to the general panic. The Governor, Sir Alfred Lawley, with the approval of Lord Milner, therefore recommended drastic legislation of which the main provisions are summarised below:—

- "(1) That those Asiatics who satisfy the Colonial Secretary of the Colony that their mode of living is in accordance with European ideas should be allowed to live, with their servants, outside locations, but not to trade outside locations unless they fall under (2).
- "(2) That those Asiatics who had established businesses outside locations before the war should not be disturbed.

"(3) That with the two exceptions mentioned above all Asiatics should be required to live and trade in locations and should be prohibited from holding land outside. This provision was not to apply to land now set aside and used for religious purposes."

His Majesty's Government agreed to the introduction of an immigration ordinance to restrict the entry of Indians in future, by requiring each applicant for admission to pass a dictation test in a European language but, as regards Indians already resident in the colony, they were unwilling to sanction legislation which would take away rights for which they had contended in republican days, and which the decision of the Supreme Court in Habib Motan's case had secured to the Indian. They were not willing that trade jealousy should be made the excuse for curtailing existing rights. As the proposed immigration ordinance was expected to limit the entry of new Indians they declined to countenance the suggestion that new-comers should be allowed to trade only in Asiatic bazaars. In regard to ownership of landed property, they ruled that Indians who were entitled to reside outside locations must at least have the right to acquire property in the premises which they occupy for business purposes.

20 These decisions were not favourably received by European opinion in the Transvaal. A national convention, which met in Pretoria in November 1904, reaffirmed the proposals which the Colonial Government had made. But except in the matter of immigration, all further attempts to settle the Indian question in conformity with European opinion were for the time being abandoned. The ordinance which was passed by the Legislative Council in 1906 to "stem the tide of Asiatic immigration" provided for the compulsory registration of all Asiatics and their identification by means of finger prints. It was stated in support of the measure that if the people of the Transvaal were "assured that there would be no further immigration of Asiatics, it would be possible gradually to settle the status of those who were residing in the country on satisfactory lines". But the Indian community, who sent a deputation consisting of Messrs. Gandhi and Ali to England to represent their case to the Secretary of State for the Colonies, were strongly opposed to the proposed legislation. They regarded it as humiliating and devoid of any provision which might remove their existing grievances. Eventually, it was disallowed on the ground that it did nothing "to ameliorate the position of Asiatics lawfully resident in the Transvaal".

21. But the respite was brief. One of the first acts of the responsible Government established in the Colony was to pass the ordinance disallowed in 1906 as the Asiatic Law Amendment Act (Act 2 of 1907) substantially in the same form. His Majesty's Government did not feel "justified in offering resistance to the general will of the colony clearly expressed by its first elected representatives", though "they did not consider the position of Asiatics lawfully resident in the Transvaal as settled by this Act to be satisfactory". The next step was to restrict immigration. For this purpose a Bill, framed on the lines of the Natal and Cape Acts but more stringent in some respects was passed the same year (Act, No. 15 of 1907). The Government of India still pleaded for "less severe treatment generally of Asiatics and in particular of the better class of Asiatics resident in the Colony", but in vain. Fresh severities followed. In 1908 two measures which materially affected Asiatic trading

rights were passed by the Transvaal Legislature. They were the Township Act No. 34 of 1908, and the Precious and Base Metals Act No. 35 of 1908, generally known as the Gold Law. Section 60 of the Townships Act provided for the conversion of a leasehold in a Government township on land proclaimed as a public digging into freehold. Section 62 of the same Act authorised the Governor to make regulations fixing the terms and conditions to which such freehold stand or lot shall be subject. One of the conditions was that "the land, having been formerly held as a right acquired under Law 15 of 1898 (Transvaal) or a prior law, the owner shall not transfer or permit to be transferred or sublet any portion of the land to any coloured person, nor permit any coloured person other than his *bona fide* servant to reside thereon or occupy the same". This had the practical effect of excluding Asiatic traders from stands inside townships held under a title converted into freehold under the Townships Act No. 34 of 1908, for, except hawkers, every trader required premises to carry on business. To this extent the decision of the Supreme Court in Khota's case, which held that section 92 of the Gold Law of 1898 did not prevent coloured persons from acquiring and exercising leasehold rights anywhere, was restricted in its scope. Section 131 of the Gold Law of 1898 further provided that "in the mining district of the Witwatersrand, no coloured person shall be permitted to reside on proclaimed land except in bazaars, locations, mining compounds, and such other places as the Mining Commissioner may permit". The effect of this provision, read with section 130 of the same Act, which forbids a white person, who alone may acquire a leasehold right in a stand, from transferring or sub-letting the right to a coloured person or permitting such person to reside on or occupy ground held under such right, was to make illegal the leasing or occupation by Asiatics in future of stands in the mining district of the Witwatersrand, even for purposes of trade except in specified locations or bazaars.

(III).—*Passive Resistance: 1st stage.*

22. Subsequent developments can most conveniently be discussed in connection with the Passive Resistance movement. When Mr. Gandhi waited in November 1906 on Lord Elgin, then Secretary of the Colonies, to protest *inter alia* against the Transvaal Asiatic Law Amendment Ordinance, which was disallowed in 1906 he informed his lordship that "rather than submit to the great degradation involved in it" Indians "would go to gaol". This warning was based on a resolution which a mass meeting of Indians at Johannesburg passed earlier in the year. When the ordinance was resuscitated in 1907 and became law, and the Immigration Restriction Act of that year was passed, the Indian community of the Transvaal, under Mr. Gandhi's leadership, proceeded to carry out the threat. The main grounds of opposition to these measures appear to have been—

- (1) that compulsory registration was repugnant to Indians as it placed them on the same footing as criminals,
- (2) that the requirement that registered Indians should give their finger impressions as marks of identification was galling to their self-respect; and



- (3) that the provision in section 2 (4) of the Transvaal Immigration Restrictions Act, which had practically the effect of classing as a prohibited immigrant every Indian seeking to enter the Colony for the first time, imposed a disability on him to which the European was not subject and thus cast a racial stigma on him. The effect of this provision was that even educated Indians who could satisfy the literary test could not enter the colony unless they were eligible for registration under Act 2 of 1907.

23. Passive resistance began on May 9th, 1907, and took the form of failure to take out registration certificates, of attempts to enter the Transvaal, and of hawking without license, which could not be secured by any one who was not duly registered. Persons guilty of these acts were imprisoned. The movement was temporarily suspended at the end of January 1908, when negotiations started between General Smuts and Mr. Gandhi to reach a compromise. Government offered—

- (i) to repeal Act 2 of 1907; and
- (ii) to bring in a validating act if Indians registered themselves voluntarily.

The negotiations failed, mainly because Government was unwilling to accept Mr. Gandhi's proposal that educated Indians should be admitted, if they satisfied the dictation test, whether or no they had been previously domiciled in the Transvaal. There was a mass meeting at Johannesburg on August 7th, 1908, and according to the "Transvaal Leader", 1,300 registration certificates were publicly burned. The Act to validate voluntary registrations (Act 36 of 1908) which General Smuts had introduced in the Transvaal Parliament, and which passed through all its stages in one sitting, failed to satisfy the Indians, who felt that the complete stoppage of fresh immigration would eventually result in communal deterioration, corruption and final effacement. Many Indians—a contemporary estimate puts the figure at 120—, including Mr. Gandhi, courted imprisonment and went to jail. Feeling in India was roused and many protests against the treatment of their fellow-countrymen in South Africa were received from responsible Indian public bodies. Opinion in England also was much exercised, and the Imperial Government tried their best to get a settlement which would be acceptable both to the Transvaal Government and the moderate section of the local Indian population. The proposals made by them in this behalf were—

- (i) that Indians who possessed pre-war rights, but were not continuously in the Transvaal for three years before the war should be considerately treated, if they wished to return to the colony;
- (ii) that a number of educated Indians should be admitted, and
- (iii) that Act 2 of 1907 and the validating Act No 36 of 1908 should be repealed.

The Transvaal Government agreed to (ii). Admission was to be by means of temporary permits which, in proper cases, could be indefinitely extended. As regards (i), they maintained that considerate treatment had always been meted out to such persons, but promised to do everything possible to spare such persons all undue hardship. They declined to accede to

(iii) for they feared that repeal would very seriously damage the Government in the opinion of the white community, and would lead to a still more dangerous agitation from that quarter.

24. For the moment, therefore, nothing came of the intercession of His Majesty's Government. The local authorities naturally tried to enforce the law, and complaints were received from the Indian community of harsh treatment of Indian prisoners in jail. But both parties were probably at heart anxious for an honourable settlement. The Indians seemed willing to moderate their demand in respect of the entry of educated Indians so as to limit the number. General Smuts agreed to repeal Act 2 of 1907, and to admit six educated Asiatics each year on certificates of permanent right of residence. Mr. Gandhi admitted that the concessions proposed were real, but was unwilling that the agitation should cease unless the claim for legal equality with the European in respect of entry into the colony was conceded, at least in theory. Finally, a provisional settlement was arrived at in April 1911, which is set forth below:

A. Government agreed—

- (1) to introduce legislation repealing Act 2 of 1907, subject to the reservation of the rights of minor children, and giving legal equality for all immigrants, with, however, differential treatment of an administrative as distinct from a statutory character.
- (2) to allow all passive resisters who, but for their resistance, would have been entitled to register to do so.
- (3) to grant to the educated passive resisters who were not registrable under the then existing Asiatic Acts, certificates entitling the holders to remain in the Transvaal in anticipation of the forthcoming legislation.
- (4) to consider favourably the question of releasing passive resistance prisoners then undergoing sentence for contravening the Asiatic legislation.

B The Indian community agreed to give up the passive resistance movement. Thus closed its first stage.

(IV)—*Passive Resistance: 2nd Stage.*

25. In 1910 the Secretary of State informed the Government of India that legislation for the general control of immigration into the Union with due regard to the agreement already reached with Indian leaders in the Transvaal was contemplated. The draft Bill sought to repeal the Transvaal Act No 2 of 1907, and followed the Australian precedent in prescribing a dictation test as a condition of entry into the Union of S. Africa. In practice, however, the dictation test was to be applied differentially so as effectually to check the entry of coloured persons. The position of Indians already lawfully resident in any province was, however, to be safeguarded. The Secretary of State for India agreed not to object to the Bill being proceeded with, as he hoped, that once it was placed on the statute book, the Union Government would be in a position to carry out their intention of removing the grievances of the resident Indian population. The Bill was introduced in the Union Assembly on 2nd March 1911 but had to be dropped owing to opposition

in the Union Parliament on the ground that it left a loophole for Asiatics to enter the Orange Free State.

26. Before the introduction of the next Bill, the Indian community, through its representative organizations like the Natal Indian Congress, the Cape British Indian Union, and the Transvaal British Indian Association, communicated to the Secretary of State for the Colonies their apprehensions in regard to the impending legislation. Natal Indians feared that omission to define the term "domicile" may adversely affect Indians who were lawfully resident in the Colony but who might leave it temporarily to visit India. They were uneasy as to the entry of wives and minor children. They were also alive to the risk that a uniform restrictive law might operate to whittle down existing rights in respect of the admission of Indians into Natal. They were dissatisfied as over with the administration of the licensing laws, while a draft ordinance to "amend the laws relating to Local Townships", which had passed the provincial Council, threatened to deprive them of the Municipal vote. The Cape section were equally uneasy about the effects of an omission to define the term "domicile". In the Transvaal attention was focussed on issues not directly connected with immigration the Gold laws and their effect on trading rights oppressed their minds. A draft Local Government Ordinance for the Transvaal, which empowered Municipal Councils "to set apart, maintain, and carry on bazaars or other areas exclusively for occupation by Asiatics", intensified their alarm for the future. They saw in it signs of a more rigorous policy of segregation. A sense of grievance regarding the past and of uncertainty as to the future had made many among them desperate. They were ready to resist any fresh encroachment, real or fancied, on their rights.

27. The Immigration Bill that was reintroduced early in 1912 was considered by the Government of India to be an improvement on its predecessor, except in so far as it made no attempt to maintain such facilities as Indians at the time enjoyed in respect of entry into Natal and the Cape. The further defect in the draft was that it did not exempt new educated Indian immigrants from the existing restrictions on Asiatics in vogue in the Orange Free State. The Secretary of State for India also raised the question whether wives of those Indians who could lawfully contract polygamous marriages would be admitted. On this point the reply of the Union ministers was in the negative. Owing to the pressure of other legislative business, it was not found possible to take the second reading of the Bill until June. The discussion at that stage showed that the measure was not popular with any section of the house. The opposition feared that it would keep out white immigrants the nationalists wanted Asiatic immigrants to be explicitly excluded. This Bill also was, therefore, dropped.

28. In March 1913 intimation was received by the Secretary of State for the Colonies that the Immigration Bill would shortly be introduced. The new draft made economic unfitness a ground for exclusion. This provision was intended to keep out Asiatics. Owing to opposition which had manifested itself in Parliament when previous drafts were under consideration, the liability of new educated Indian entrants to make a declaration that they would not trade, etc., in the Orange Free State before they could enter the province was made clear. Three years' absence from the Union was to involve the loss of domicile and, consequentially

the right to re-enter. The objections of Indian leaders in South Africa to the proposed legislation are summarised below:

- (1) Domicile which was not defined would be difficult to prove. Moreover, the loss of such domicile after 3 years' absence was a serious diminution of existing Natal and Transvaal rights,
- (2) The declaration required for entry into the Orange Free State constituted a "subtle but very real" racial bar.
- (3) A judgment of the Supreme Court delivered in March 1913, which practically declared that non-Christian marriages, whether solemnized in India or in the Union, which were not performed by a civil marriage officer were invalid in the eyes of the law, jeopardised the right of entry of the wives of the majority of domiciled Indians.

A telegram from the Natal Indian Congress dated the 22nd April 1913 to the Governor General of South Africa urged similar objections against the Bill. As finally passed in July 1913, the Bill was not acceptable to the Indian community, and the passive resistance movement entered its second and most serious stage.

29. The four points arising out of the Bill to which objection was taken were—

- (1) That the definition of the term "domicile" appeared to place Indians who were introduced into Natal under indenture after 1895, in the class of prohibited immigrants;
- (2) That the requirement that educated Indians should make a declaration in terms of section 8 of chapter 33 of the Orange Free State Law Book was derogatory;
- (3) That the right of Indians born in South Africa to enter the Cape Province which they had hitherto enjoyed was being taken away;
- (4) That the admission and status of Indian women married in accordance with the rites of their respective religions were left in a state of uncertainty, which Indians, especially Mahomedans, regarded both as an injury and an insult.

(1) and (2) were settled to the satisfaction of Mr. Gandhi before the movement started. As regards (1) General Smuts gave Mr. Gandhi an assurance that such immigrants, if they had resided in Natal for 3 years after completing their indenture, would be treated as "lawfully domiciled." Mr. Gandhi's objection to (2) was met by an agreement to print at the back of the permit the declaration required under Section 14 of the Immigrants Regulation Act, the disabilities set forth in Section 7 of Chapter 33 of the Orange Free State Law Book. No agreement could be reached on the other two points. In a letter dated 28th September which closed the correspondence between the minister and himself, Mr. Gandhi informed the former that the step which he proposed to take would consist "in actively, persistently and continually asking those who are liable to pay the £3 tax to decline to do so, and to suffer the penalties for non-payment, and, what is more important, in asking those who are now serving under indenture, and who will, therefore, be liable to pay the £3 tax on completion of the indentures, to strike work until the tax is withdrawn." There was already an impression abroad among Indians that the abolition

of the tax had been promised by Government to Mr. Gokhale who visited South Africa in 1912, and Government's failure to carry out the alleged promise created discontent. Strikes started on the coal mines in Natal and thence extended to the sugar plantations. On 1st November Mr. Gandhi, accompanied by strikers and their families, began a march into the Transvaal with the deliberate object of contravening the Immigrants Regulation Act of 1913. Mr. Gandhi was arrested at Volksrust on the 6th November, but released on bail; re-arrested at Standerton and again released on bail; arrested a third time at Greylingstad and sentenced to 9 months' imprisonment. On the 16th, 2,000 Indians were arrested near Balfour and taken back by rail to their respective spheres of work in Natal. By the middle of November the strike had spread to the sugar and other industries. By Natal law the strikers were guilty of criminal offences and liable to be arrested and punished. At various places arrests were made which led to conflicts between the strikers and the police. The two more serious occurred near Mount Edgecombe and Esperanza. On each of these occasions firearms were used by the police, and in all 9 Indians were killed and 25 wounded. Owing to the large number of strikers involved, the residential compounds on the mines had been used as prison camps, and it was also alleged that the mine officials had flogged the strikers and treated them brutally otherwise.

30. News of these happenings roused widespread resentment in India which His Excellency the Viceroy, Lord Hardinge, voiced in the following terms:—

"Recently your compatriots in South Africa have taken matters into their own hands by organising what is called passive resistance to laws which they consider invidious and unjust—an opinion which we who watch their struggles from a far cannot but share. They have violated, as they intended to violate, those laws, with full knowledge of the penalties involved, and ready with all courage and patience to endure those penalties. In all this they have the sympathy of India—deep and burning—and not only of India, but of all those who like myself, without being Indians themselves, have feelings of sympathy for the people of this country. But the most recent developments have taken a very serious turn, and we have seen the widest publicity given to allegations that this movement of passive resistance has been dealt with by measures which would not for a moment be tolerated in any country that claims to call itself civilised. These allegations have been met by a categorical denial from the responsible Government of South Africa, though even their denial contains admissions which do not seem to me to indicate that the Union Government have exercised a very wise discretion in some of the steps which they have adopted. That is the position at this moment, and I do feel that if the South African Government desire to justify themselves in the eyes of India and the world, only one course is open to them, and that is to appoint a strong and impartial committee, upon which Indian interests shall be fully represented, to conduct a thorough and searching enquiry into the truth of these allegations."

31. In December the Union Government appointed a Commission, with Sir William Solomon, a Judge of the Supreme Court, as Chairman—

- (1) to hold forthwith a public judicial enquiry and to report as soon as possible as to the disturbances in connection with the recent strike of Indians in Natal, the causes and circumstances which led to that strike and to those disturbances, the amount of force used for suppression of disturbances, and the necessity for the use of such force, and as to any acts of violence alleged to have been committed upon persons sentenced to imprisonment in connection with the strike; and
- (2) to make recommendations in respect of any of the above matters".

Practically no Indians gave evidence before the Commission. The Government of India had, however, deputed Sir Benjamin Robertson to South Africa to watch the proceedings. Their request for the representation of Indian interests was not granted as the inquiry of the Commission was to be Judicial.

32. The Commission's main recommendations were—

- (1) abolition of the £3 tax in Natal;
- (2) provision for the admission into the Union, along with her minor children, of one wife in the case of any Indian who was married, according to the tenets of his religion, outside the Union provided that she was the only wife in the country; and
- (3) appointment of marriage officers to solemnize marriages according to the rites of an Indian religion.

The Union Government introduced and passed the Indian Relief Act (No. 22 of 1914) to give effect to these recommendations.

33. Agreement on other points, which had played an important part in the passive resistance movement is set forth in two letters reproduced below which passed between Mr. Gandhi and Mr. Gorges, Secretary of the Interior.

(1) LETTER FROM MR. GORGES, TO MR. GANDHI, DATED THE 30TH JUNE 1914.

"Adverting to the discussions you have lately had with General Smuts on the subject of the position of the Indian community in the Union, at the first of which you expressed yourself as satisfied with the provisions of the Indians Relief Bill and accepted it as a definite settlement of the points, which require legislative action, at issue between that community and the Government; and at the second of which you submitted for the consideration of the Government a list of other matters requiring administrative action, over and above those specially dealt with in that Bill; I am desired by General Smuts to state with reference to those matters that:—

- (1) He sees no difficulty in arranging that the Protector of Indian Immigrants in Natal will in future issue to every Indian, who is subject to the provisions of Natal Act No. 17 of 1895, on completion of his period of indenture or reindenture, a certificate of discharge, free of charge similar in form to that issued under the provisions of Section 106 of Natal Law No. 25 of 1891.

- (2) On the question of allowing existing plural wives and children of such wives to join their husbands (or fathers) in South Africa no difficulty will be raised by the Government if on enquiry it is found as you stated that the number is a very limited one.
- (3) In administering the provisions of Section 4 (1) (a) of the Union Immigrants Regulation Act No. 22 of 1913, the practice hitherto existing at the Cape will be continued in respect of South African born Indians who seek to enter the Cape Province, so long as the movement of such persons to that Province assumes no greater dimensions than has been the case in the past; the Government, however, reserve the right as soon as the number of such entrants sensibly increases, to apply the provisions of the Immigration Act.
- (4) In the case of the "specially exempted educated entrants into the Union" (i.e., the limited number who will be allowed by the Government to enter the Union each year for some purpose connected with the general welfare of the Indian community), the declaration to be made by such persons will not be required at provincial borders, as the general declarations which are made in terms of Section 19 of the Immigrants Regulation Act at the port of entry are sufficient.
- (5) Those Indians who have been admitted within the last three years either to the Cape Province or Natal after passing the education tests imposed by the Immigration laws which were in force therein prior to the coming into effect of Act 22 of 1913, but who, by reason of the wording of Section 30 thereof, are not yet regarded as being "domiciled" in the sense in which that term is defined in the section in question, shall in the event of their absenting themselves temporarily from the Province in which they are lawfully resident be treated on their return as if the term "domicile" as so defined did apply to them.
- (6) He will submit to the Minister of Justice the cases of those persons who have in the past been convicted of "*bona fide* passive resistance offences" (a term which is mutually understood) and that he anticipates no objection on Mr de Wet's part to the suggestion that convictions for such offences will not be used by the Government against such persons in the future.
- (7) A document will be issued to every "specially exempted educated entrant," who is passed by the Immigration Officers under the instructions of the Minister issued under section 25 of Act 22 of 1913.
- (8) All the recommendations of Indian Grievances Commission enumerated at the conclusions of their report, which remain over and above the points dealt with in the Indians Relief Bill will be adopted by the Government;

and subject to the stipulation contained in the last paragraph of this letter the necessary further action in regard to these matters will be issued without delay

With regard to the administration of existing laws, the Minister desires me to say that it always has been and will continue to be the desire of the Government to see that they are administered in a just manner and with due regard to vested rights.

In conclusion, General Smuts desires me to say that it is, of course, understood and he wishes no doubt on the subject to remain, that the placing of the Indian Relief Bill on the Statute Book of the Union, coupled with the fulfilment of the assurances he is giving in this letter in regard to the other matters referred to herein touched upon at the recent interview, will constitute a complete and final settlement of the controversy, which has unfortunately existed for so long, and will be unreservedly accepted as such by the Indian community".

---

(2) LETTER FROM MR. GANDHI, TO MR. GORGES, DATED THE 30TH JUNE 1914.

"I beg to acknowledge receipt of your letter of even date herewith setting forth the substance of the interview that General Smuts was pleased, notwithstanding many other pressing calls upon his time, to grant me on Saturday last. I feel deeply grateful for the patience and courtesy which the Minister shewed during the discussion of the several points submitted by me.

The passing of the Indians Relief Bill and this correspondence finally closes the passive resistance struggle which commenced in the September of 1906 and which, to the Indian community, caused much physical suffering and pecuniary loss, and to the Government much anxious thought and consideration.

As the Minister is aware, some of my countrymen have wished me to go further. They are dissatisfied that the trade licenses laws of the different provinces, the Transvaal Gold Law, the Transvaal Townships Act, the Transvaal Law 3 of 1885 have not been altered so as to give them full rights of residence, trade and ownership of land. Some of them are dissatisfied that full inter-provincial migration is not permitted, and some are dissatisfied that on the marriage question the Relief Bill goes no further than it does. They have asked me that all the above matters might be included in the passive resistance struggle. I have been unable to comply with their wishes. Whilst, therefore, they have not been included in the programme of passive resistance, it will not be denied that some day or other these matters will require further and sympathetic consideration by the Government. Complete satisfaction cannot be expected until full civic rights have been conceded to the resident Indian population.

I have told my countrymen that they will have to exercise patience, and by all honourable means at their disposal educate public opinion so as to enable the Government of the day to go further than the present correspondence does. I shall hope that when the Europeans of South Africa fully appreciate the fact that now, as the importation of indentured labour from India is prohibited, and as the Immigration Regulation Act of last



year has in practice all but stopped further free Indian immigration, and that my countrymen do not aspire to any political ambition, they the Europeans, will see the justice and, indeed, the necessity of my countrymen being granted the rights I have just referred to.

Meanwhile, if the generous spirit that the Government have applied to the treatment of the problem during the past few months continues to be applied as promised in your letter in the administration of the existing laws, I am quite certain that the Indian community throughout the Union will be able to enjoy some measure of peace and never be a source of trouble to the Government."

The passive resistance movement thus came to an end.

## II.—AFTER 1914.

34. Between 1914 and 1918 little was heard of the Indian problem in South Africa, except in connection with the general question of the disabilities of Indians resident in the various self-governing dominions, which the representatives of India raised in the Imperial War Conference in 1917 and 1918. In 1918 the representatives of the dominions and India accepted on the motion of Lord Sinha, the Reciprocity Resolution, which conceded to each community of the Empire the right to regulate the composition of its own population. The Govt of India, who had consistently declined to admit the right of the dominions to keep out Indians, took this step in order to rid the dominions of the fear of an Indian influx and thus prepare the way for a removal of the disabilities of the resident Indian communities. On this occasion Lord Sinha also presented to the Conference a memorandum which, among other matters, dealt at length with Indian disabilities in respect of trading and ownership of property in South Africa. The resolution itself referred these points to the sympathetic consideration of the Govts. concerned. Mr. Burton, speaking on behalf of South Africa, undertook to give the memorandum "the most sympathetic consideration". The undertaking was in conformity with what General Smuts had said at the previous Conference in 1917, *vis.*, that "once the white community in South Africa were rid of the fear that they were going to be flooded by unlimited immigration from India, all the other questions would be considered subsidiary and would become easily and perfectly soluble". But public opinion in South Africa evidently proved too strong for the Ministers to give effect to these assurances. The situation appears to have been aggravated by the post-war industrial and economic depression, which probably hit the white community hardest owing to their comparatively higher standard of living. In the mining areas municipalities challenged the right of Indians to lease premises for purposes of trade. A motion was made in the Union Assembly for a Select Committee of the House to go into this question, and its terms of reference were enlarged to include the question of the acquisition of immovable property by companies in which Indians had the controlling interest. The result was Act XXXVII of 1919, which, while safeguarding existing interests, sought to prevent acquisition by Indians of new leases on proclaimed areas, or of property outside locations, either through nominal trustees or companies. The Govt. of India protested vigorously against the measure. They went so far as to ask the Secy. of State for India for permission to consider retaliatory action against South Africans in India and suggested that "as a provisional

measure, local Govts. should be instructed not to issue mining leases or prospecting licences to persons connected with South Africa". The Secy. of State dissuaded them from taking such action in view of the undertaking given by the acting Prime Minister of South Africa that the question of Asiatic rights in respect of trade would be investigated by a strong commission. The Govt. of India tried to have the whole question of Indian disabilities in South Africa included in the terms of reference of this commission, but the commission, as finally appointed, only dealt with trading and property rights. The Govt. of India again sent a representative, Sir Benjamin Robertson, to place the Indian case before the Asiatic Enquiry Commission as it was called. The Commission which reported in 1920, recommended voluntary segregation of the Indian community, consolidation of the trading laws, reservation for agricultural purposes of the coast belt in Natal for Indians and retention of the restrictions embodied in Act XXXVII of 1919.

35. In the Imperial Conference held in 1921 the Govt. of India through their representatives claimed full political rights for the resident Indian communities in the various self-governing dominions. The Conference passed a resolution recommending "that in the interests of the solidarity of the British Commonwealth, it is desirable that the rights of such Indians to citizenship should be recognised", from which the representatives of South Africa dissented. The representatives of India "while expressing their appreciation of the acceptance of the resolution recorded above, felt bound to place on record their profound concern at the position of Indians in South Africa, and their hope that by negotiation between the Govts. of India and of South Africa, some way could be found, as soon as may be, to reach a more satisfactory position". These negotiations produced little result. Feeling towards the Asiatic did not improve; on the contrary, indirect pressure to exclude him from the Union continued to be steadily applied. Thus in 1922 and 1923 respectively the Durban Land Alienation Ordinance and the Borough and Township Land Ordinance were passed, empowering the local bodies concerned to lease or sell land belonging to them to members of a particular community. In January 1924 the Class Areas Bill was introduced, which aimed at the compulsory segregation of Indians in urban areas, and the measure lapsed only owing to the dissolution of the Union Parliament. In December 1924, the Governor-General gave his assent to the Natal Boroughs Ordinance (No 19 of 1924) which, while safeguarding the electoral privileges of Indians already on the rolls, deprived the community of the right to acquire the franchise of a borough in future. This measure incidentally removed the one channel through which Indians could exert some pressure on local bodies, which possess wide powers in regard to the issue of trading licences, to ensure that their interests were not sacrificed to the jealousy or prejudice of their rivals. In April 1925 the Governor General of South Africa also gave his assent to the Natal Township Ordinance, 1925, which has the same effect as the Natal Boroughs Ordinance in respect of Indian electoral rights in townships.

36. In the summer of 1925 the Government of General Hertzog came into office, and one of its first acts was to introduce the Areas Reservation Immigration and Registration (further provision) Bill which purported to introduce segregation in Natal, besides stiffening up the immigration law as regards Asiatics. In the course of his speech introducing the Bill, Dr. Malan, the Minister of the Interior, stated that the measure frankly started from the general supposition that the Indian was an alien element in the

South African population and that no solution of the question would be acceptable to the country unless it resulted in a very considerable reduction of the Indian population. The Bill roused consternation among Indians in South Africa and widespread resentment in India. The importance, however, of avoiding any action in regard to it that might be harmful to Indian interests in South Africa was recognised both by the Government of India and responsible non-official Indian opinion. The Government of India accordingly sought to have the Indian problem in South Africa brought under examination by a conference on which they might be represented. The Union Government were unwilling to hold a conference on the Indian question whose scope was not limited to the discussion of some concrete questions, and urged that a more effective repatriation scheme would facilitate enormously a generally acceptable solution of this problem. For evolving such a scheme they seemed inclined to agree to a conference definitely restricted to the consideration of this method, and possibly others aiming at a mitigation of competition between Indians and Europeans in South Africa. The Government of India replied to the Union Government that before entering into a discussion of the repatriation question, or the general question of alleviating direct competition, they would like to send a deputation to South Africa to collect information regarding the economic condition and general position of Indians residing in the dominion. To this the Government of South Africa acceded and a deputation sailed from Bombay in November '25.

37. The deputation referred to in the preceding paragraph consisted of Sir George Paddison, Syed Raza Ali, Sir Deva Prasad Sarvadikari, and Mr. G. S. Bappai. It spent nearly 5 months in South Africa. The first few weeks were devoted to collecting information regarding the economic condition of the resident Indians and their attitude towards the Areas Reservation Bill. The deputation then gave evidence before the Select Committee of the Union House of Assembly, to which the Bill was referred before second reading, as a result of representations made to the Union Government. It was also authorised to carry on negotiations with the Union Government for securing an amicable and calm consideration of the Indian problem in South Africa jointly by representatives of the two Governments at a conference. Its efforts in this direction resulted in the agreement of the Union Government to hold a conference for this purpose, and to postpone consideration of the Areas Reservation Bill until after the conference. This was in May 1926. In September of that year a deputation consisting of the Hon. Mr. Beyers, Minister for Mines and Industries, Mr. Patrick Duncan and 3 other members of the Union House of Assembly visited India at the invitation of the Government. The object of the visit was to enable them to get some idea of the real cultural and economic importance of India. The deputation spent about four weeks in the country and the warmth of the reception extended to it by all sections of the community regardless of the strength of Indian feeling on the position of Indians in South Africa had a profound effect upon the visitors.

38. In December 1926 the Round Table Conference on the Indian problem in South Africa, as it has been popularly called, assembled in Cape Town. The Government of India were represented by the Hon. Sir Muhammad Habibullah, K.C.S.I., K.C.I.E. (Leader), Sir Geoffrey Corbett, K.B.E., C.I.E., the Rt. Hon. V. S. Srinivasa Sastri, P.C., C.H., Sir Dary Lindsav, Kt., C.B.E., Sir George Paddison, K.B.E., G.S.I., and Sir Phiroze Sethna, Kt., O.B.E. The Union representatives were

the Hon. J. B. M. Hertzog, Prime Minister, the Hon. Dr. D. F. Malan, Minister of the Interior, the Hon. F. W. Beyers, K. C., Minister of Mines and Industries, the Hon. Col. F. H. P. Creswell, D.S.O., Minister of Defence, and the Hon. T. Boydell, Minister of Labour. The Conference sat for nearly 4 weeks and arrived at an understanding, known as the Cape-town Agreement, set out in App. I, which the Government of India and the Government of the Union of South Africa ratified in February 1927. Mr Gandhi described the agreement as an honourable compromise and, on the whole, it was well received in India. In South Africa also the general popular reaction to it was friendly, although certain sections of European opinion, particularly in Natal, thought that the Union Government had conceded too much to Indians.

39. The main features of the agreement were—(a) the Scheme of Assisted Emigration, (b) the Upliftment Clause, and (c) the Appointment by the Government of India of an Agent in South Africa. The history of (a) and (b), since the agreement came into force, has been reviewed in separate memoranda dealing with these two subjects. As regards (c), Mr. Srinivasa Sastri was appointed the first Agent of the Government of India in May 1927, and held that office until January 1929, when he was succeeded by the present Agent, Sir Kurma Reddi. The object of the appointment, as stated in the Agreement, was to secure continuous and effective co-operation between the two Governments. To a large extent, the expectations with which the appointment was created, have been realised. It has undoubtedly helped to educate European opinion in South Africa to a friendlier and fairer appreciation of the Indian problem. Even though these feelings are not as widespread or effective in influencing the Indian policy of the Union Government as might be wished, that they are both wider and deeper to-day than was the case before the appointment of the Agent was created, cannot be disputed. The presence of a representative of the Government of India in South Africa has also been of the utmost use to the Government of India for getting timely information about measures that concern or are likely to affect the resident Indian community and for making representations to the Union Government on matters of interest to the Indian community.

40. The most important event which is technically outside the Agreement was the appointment in February 1930 of a Select Committee of the Union House of Assembly to inquire and report on certain matters relating to the rights of Indians to own and occupy immovable property in the Transvaal and, incidentally, to trade. The origin of the Committee and its recommendations have also been dealt with in the separate memorandum on the Transvaal Asiatic Tenure (Amendment) Bill, which the Committee drafted. The policy of the measure will be one of the items to be discussed in the forthcoming conference, which the Union Government are convening to review the working of the 1927 Agreement, in accordance with their original intention which was that the Agreement should be in force for 5 years.

41. An attempt may be made, in conclusion, to assess generally the result of the Cape Town Agreement. Under the stress of feeling, such as that engendered by the Transvaal Asiatic Tenure (Amendment) Bill, it is perhaps natural to describe the Agreement as a failure. Non official Indian organisations in South Africa have, for some time, been of this opinion.

Opinion in India is, on the whole, similar. These views, however, more results such as the improvement in the educational position in Natal, prevention of legislation such as that originally contemplated, in certain provisions of the Liquor Bill, and, most important of all, the readiness of the Union Government to discuss with the Government of India their Indian policy. These may appear to be small results, but it is correct to say that they would have been impossible except for the Agreement, and the understanding which it undoubtedly helped to create.

**CONFIDENTIAL.**

GOVERNMENT OF INDIA.  
DEPARTMENT OF EDUCATION, HEALTH AND LANDS.

---

**BRIEF OF INSTRUCTIONS.**

Issued to the delegates of the Government of India to the Conference with the representatives of the Government of the Union of South Africa on the Indian Problem in the Union.

---

I.—Scheme of Assisted Emigration.



NEW DELHI  
GOVERNMENT OF INDIA PRESS  
1931

### Note on Assisted Emigration.

The limitation of the Indian population in South Africa has long been the objective of South African statesmen. Two main expedients have been adopted for this purpose:—

(a) Measures to prevent Indians from (i) settling down in the Union or (ii) entering it for permanent settlement.

(b) Encouragement of those legally domiciled in South Africa to return to India.

(a) (i). The Natal Act No. 17 of 1895 is an example of a measure intended to prevent the settlement of Indians of the labouring class in Natal. It provided that every indentured Indian introduced into Natal after the passing of the Act, who failed, neglected or refused to return to India or to become re-indentured in Natal, should take out year by year a pass or license to remain in the Colony on payment of a yearly sum of three pounds sterling. Subsequently in 1903 a similar liability was extended to the children of Indian immigrants to whom the Act of 1895 applied, but this £3 tax, as it was called, was abolished in 1914.

(a) (ii). The various Immigration Acts of the South African Colonies, which were subsequently consolidated in the Immigrants Regulation Act, No. 22 of 1913, sought to achieve the same objective of limiting the Indian population by restricting Indian immigration.

(b). In 1914 the Union Government first took the step of providing free passages from any port in the Union to any port in India, for Indians even other than those who were entitled to a free passage under the terms of their indenture, on condition that the person asking for a free passage would abandon on behalf of himself and his wife, and all minor children, all rights possessed by him or them to enter or reside in any part of the Union, together with all rights incidental to his or their domicile therein.

2. The Government of India acquiesced in these steps in the hope that this would help to improve the position of those Indians who stayed behind. In 1920, giving evidence before the Asiatic Inquiry Commission which the Union Government had appointed to inquire into and report on

certain matters affecting Asiatics in South Africa, Sir Benjamin Robertson suggested on behalf of the Government of India that the number of Indians in the Union should, as far as possible, be reduced by a well-organised scheme of voluntary repatriation. In the course of his evidence, Sir Benjamin said "It has been seen that for many years the Government of India have been compelled to recognise that it was necessary to restrict the number of Indians in South Africa in order to secure fair treatment for those who are permanently settled there. It must be obvious to any one visiting Natal that the conditions of many of the Indians there is far from satisfactory; and it is believed that it is in the interests of every one to encourage and facilitate the repatriation of those who are willing to return to India. It will be better for those who go, it will be better for those who remain." Sir Benjamin went on to suggest that "there are other parts of the Empire which welcome the Indian immigrant, and that it would be well to enter into communication with the Governments of those countries, which might offer the Indian accustomed to colonial life a wider and more attractive field for self-development." Even before Sir Benjamin made his statement, the Commission had recommended in an interim report, that steps should immediately be taken to facilitate the return to India of a considerable number of Indians who, they understood, were willing to do so if opportunities were afforded them. The result was the offer of a cash bonus of £5 to each adult, subject to a maximum of £25 to any one family, as an inducement to Indians to return to India. In 1924, the bonus and the maximum amount that might be paid to a family were doubled so as to increase the inducement.

3. Soon after the assumption of his office in 1925, the present Minister of the Interior in South Africa, the Honourable Dr. D. F. Malan, made the following statement:—"I must say . . . that the Indian as a race in this country is an alien element in the population and that no solution of this (the Indian) question will be acceptable to this country unless it results in a very considerable reduction of the Indian population in this country." This statement was made in connection with the Areas Reservation Bill, which sought to segregate Indians in Natal, both for purposes of residence and of trade. In



this juxtaposition, it was interpreted as a concession to that section of anti-Asiatics who want the Indian to be driven out of South Africa by the pressure of economic disabilities. It was for this reason that the Government of India declined in 1925 to confer with the Union Government merely to consider ways and means of reducing the Indian population, and the conference which eventually assembled at Cape Town in December 1926 was convened to consider how the Government of India could help the South African Government to maintain in South Africa western standards of life. But, that the Union representatives would still put the encouragement of 'repatriation' in the forefront was never in doubt, and in his opening speech, the Chairman of the Conference, Dr. Malan, made this perfectly clear :

"If our scheme of voluntary repatriation", stated Dr. Malan, "could be made more effective than it is, that would go very far in solving the Indian problem in South Africa, and if we could effect a better working of the repatriation scheme, it would, as far as we are concerned, obviate to a large extent the necessity for the legislation which we have proposed." The legislation referred to was the Areas Reservation Bill.

4. The attitude of the Indian delegation towards Dr. Malan's statement in the Conference was stated by Sir Muhammiad Habibullah as follows:—

"We have come here to find, if we can, a solution of this problem, which will safeguard the maintenance of western standards of life in South Africa. We realise that there are many Indians in South Africa who may be unable or unwilling to conform to western standards. And we are prepared to advise the Government of India that they should co-operate with the Government of the Union, frankly and helpfully, in any scheme to assist the emigration of such Indians to India or to some other country where western standards are not required."

5. As a result of the discussions which followed, the attached scheme (Annexure I) was agreed upon by the Conference,

and subsequently ratified by the two Governments concerned. It is in force to-day, and its main new features which distinguish it from previous schemes may be briefly stated :—

- (1) It received the more accurate and less offensive name of a "Scheme of Assisted Emigration." Repatriation described even the earlier arrangement incorrectly, since a great many of those who took advantage of it were South African born.
- (2) The condition that any one who took advantage of the scheme should renounce his own domicile, and that of his wife and minor children, was abrogated in deference to the view urged by the Indian delegates that it was repugnant to Indian pride, and was one of the main reasons of Indian opposition to voluntary repatriation.
- (3) The amount of bonus was raised to £20 for each adult, and no maximum was fixed for a family.
- (4) The Government of India undertook (i) to advise and, as far as possible, protect returning emigrant against squandering their cash or losing it to adventurers, and (ii) to help them, as far as possible, to settle in occupations for which they may be best suited by their aptitude or their resources. This represented a very important change, because previously the Government of India had taken no part in the policy of voluntary repatriation initiated by the Government of the Union in 1914, and its operation was entirely a matter between the Union Government and the Indian community in South Africa.

6. The scheme came into operation from July 1927. By the end of that year, 1,589 Indians had taken advantage of it. In 1928 the number of assisted emigrants rose to 3,492. In 1929 it had fallen to 1,349, the total for the first six months of 1929 being only 822 as compared with 1,841 during the corresponding period of 1928. Attention to this decrease in the number of persons availing themselves of the scheme was drawn from time to time by the Agent of the Government of India in South Africa.

In December 1929 the Union Government described the situation created by the diminution in numbers as "difficult and serious", and repeated that the Cape Town Agreement was itself largely dependent for public support in South Africa upon the success of the scheme. It is significant that this was done in a telegram which announced their intention to appoint a Select Committee of the Union House of Assembly to inquire into the serious situation created in the Transvaal by the alleged violation by Indians of the law regulating their rights to occupy and own immovable property in the Transvaal—a Committee whose suggestions led to the introduction of the Transvaal Asiatic Tenure (Amendment) Bill. Subsequently, in April 1930, the Minister impressed upon the Agent of the Government of India the difficulty in which the Union Government would be placed by any failure of assisted emigration. That the Union Government still look upon the reduction of the Indian population as their main objective may be inferred from the fact that one of the two subjects to which they desire the forthcoming conference to confine its attention is the Cape Town Agreement, of which the scheme of assisted Emigration is an important integral part.

7. It is of the utmost importance, in view of what has been said in the preceding paragraphs, (a) to review the working of the scheme; and (b) to define the attitude of the Indian delegation towards requests for suggestions to revive its effectiveness which the representatives of the Union Government are sure to advance.

(a) Review  
of the work-  
ing of the  
scheme.—

8. The attached statement (Annexure II) gives the number of Indians who have returned to India with the assistance of the Union Government from 1914 when the principle of voluntary repatriation was first given effect to. The table is useful for studying the variations in the fortunes of the earlier schemes. Excluding the war years, which were abnormal, the years of greatest success of the earlier scheme were 1921 to 1923. This was due to the economic depression which followed the post-war boom. In 1924, there was a drop of nearly 1,700 as compared with the previous year owing to the hostility aroused among Indians by the Class Areas Bill—a measure introduced in the Union Parliament early that year which sought to

segregate Asiatics for purposes of residence and trade in Natal. That this deterrent was more powerful than any cash inducements seems borne out by the failure of doubling the bonus, which was decided upon in September 1923, to raise the number of repatriates in 1925 above 1,400. On the other hand, because the Union Government agreed early in 1926 to hold a conference at the end of the year to discuss the Indian problem in South Africa, the figure rose to 2,076. Indian sentiment, therefore, appears to have exercised a decisive influence over the fortunes of schemes of assisted emigration in the past. Sentiment also appears to have influenced the fortunes of the present scheme which was recommended by the Cape Town Conference. Active propaganda was carried on against it from the outset by a body of local Colonial-born Indians outside the South African Indian Congress and, latterly, accounts of the distressed condition in India of those who have returned have served to swell the tide of opposition to the scheme.

9. The latest important event in connection with this scheme was the publication, last summer, of a report on the subject by a South African born Indian, Bhawani Dayal Sannyasi, who came to this country from South Africa in 1929. To this report Pandit Benarsi Das Chaturvedi, a publicist who writes frequently on the subject of Indians overseas, wrote a foreword. Both the report and the foreword condemn the scheme of assisted emigration. The conclusions of the Swami, which are typical of the views of those who oppose the scheme, deserve quotation—

- (1) "The scheme of repatriation has failed because it has brought untold miseries on the repatriates—specially on those who are Colonial-born, and they number more than 33 per cent. of the total. They are accustomed to a different standard of living and find it most difficult to adopt the old methods of the land of their father or grandfather. They cannot be happy except in the colonies."
- (2) "With the exception of those who belong to very low castes, others cannot be assimilated by their respective communities. The caste system still holds its sway in India and the question

of marriage of the colonial children, who are often born of inter-caste marriage, raises insoluble difficulties.

- (3) "The Government of India has been able to help only a very small number of the returned emigrants in South India, while they have done practically nothing to those who have returned to North India.
- (4) "Foodstuffs in India cost much more to-day than what they used to do 30 or 40 years ago, and colonial Indians are financially much better off there than their compatriots here at home.
- (5) "It has been most difficult for returned emigrants, specially for skilled workers, to settle happily in India. A good many offers have been refused by them, some on account of bad climate, others on account of the lower wages that are offered. I have not met a single repatriated emigrant who will not like to return to South Africa if he had only the means to do so.
- (6) "Assisted emigration scheme will grow more and more unpopular as the true facts about the condition of returned emigrants are known to the South African Indians.
- (7) "It is morally quite indefensible to try to reduce the Indian population (in South Africa) in this artificial manner. To encourage unsuspecting and ignorant Indians from the colonies to return to India to lead a miserable life in the hope that others, more fortunate, who are left behind, will be uplifted is at once selfish and immoral—selfish on the part of the leaders of the remaining colonial Indians and immoral on our part, when we have not got the moral courage to take these returned emigrants back into our society and into our castes."

10. This indictment is formidable and needs to be examined. Conclusion (3), which levels a charge of failure against the Government of India, may be dealt with first. It is substantially true

that only a small number of assisted emigrants have found employment with Government help. But this has been due, not to the inadequacy of the arrangements made by the Government of India to carry out the obligations which they assumed under the Cape Town Agreement, but to the small proportion of emigrants who made use of them for the purpose. Soon after the return of the delegation from South Africa in February 1927 steps were taken to set up machinery for the reception and care of returning emigrants. For the Madras Presidency, to which the great majority of the Indians resident in South Africa trace their origin, a special officer was appointed with effect from August 1927. The Commissioner of Police, Bombay, and the Protector of Emigrants at Calcutta, were designated for the purpose of receiving emigrants belonging to Bombay and Northern India respectively. The Governments of the United Provinces and Bihar and Orissa, where the majority of emigrants other than those belonging to Madras and Bombay were expected to return, also designated officers for the purpose of discharging towards emigrants settling within their jurisdiction the functions which in Madras were entrusted to a whole-time officer. The Madras arrangement was not repeated in these provinces because of the comparatively small proportion of non-Madrasis who were likely to take advantage of the new scheme. In April 1930 the working of the special arrangements made in Madras was reviewed on behalf of the Government of India by the Honourable Mr. G. A. Natesan and the Labour Commissioner in Madras. They reported that out of 5,326 emigrants who had arrived in Madras between August 1927 and the end of March 1930, only 203 had sought the special officer's assistance in securing employment. Their conclusion was "that every possible step was being taken by the special officer to find suitable employment for assisted emigrants who wanted his help". The Protector of Emigrants in Calcutta, who is in charge of this work for Bengal, reported that no one had sought his help in this direction. The officers entrusted by the Governments of the United Provinces and Bihar and Orissa with similar duties received no applications. It is possible that this was due to the unfortunate omission of

the Protector in Calcutta to apprise them of the return of emigrants belonging to these provinces, but the experience of Madras makes it extremely doubtful whether, in Northern India, greater use would have been made of Government agency for securing employment.

11. The other counts in the indictment except No. 4 (see paragraph 9), which is at any rate no longer true, are more or less correct. Wages in India are lower for every class of work than in South Africa; social prejudice in India, especially against those who have crossed the 'black water' is strong; the climate is less congenial. That life for these men is not as pleasant in India as in the colonies is admitted, although the misery of their lot is, perhaps, exaggerated. Mr. Bhawani Dayal's report is certainly full of exaggerated generalisations, based on what he professes to have seen at Matiabruz, where some 600 returned emigrants, the bulk of whom never were in South Africa, persist in blaming the Government of India for sufferings which, besides being magnified, are at least partly self-imposed owing to the unwillingness of these men to do work which the authorities have repeatedly offered to help them to find. Be that as it may, it has to be admitted that Non-official Indian sentiment, both in India and South Africa, is much against the scheme. By way of illustration, certain expressions of opinion may be cited.

(1) The general sense of the present members of the Standing Emigration Committee of the Indian legislature attached to the Department of Education, Health and Lands is said to be that, in view of the experience gained during the last 4 years, it is hardly fair to offer inducements to Indians in South Africa to return to India, as on their arrival in this country they find their condition uncongenial and remain unhappy.

(2) "Indian Opinion", a weekly founded by Mr. Gandhi and published in Natal, shares Swami Bhawani Dayal's moral objections to the very principle of assisted emigration.

(3) Mr. Gandhi himself commented on the Swami's report as follows :

"The Labours of the framers of the report will not have been in vain, if at the time of the revision of the Cape

Town Agreement the rights of the poor Indian population are not bartered away for doubtful concessions to other Indian settlers. The position taken up by the latter is unassailable and should depend upon its merits. The settlers themselves should, therefore, refuse to be party to any bargain which would compromise the right of the less favourably situated brethren. South Africa can easily absorb and accommodate the existing Indian population”.

(4) Even a newspaper like *The Times of India*, whose political views scarcely conform to those in fashion in ‘advanced’ Indian quarters, has urged “that what the Government of India have to stand for is that, as the Indians from the outset went to South Africa in response to urgent invitation backed by honeyed promises, South Africa shall now act in the true spirit of both invitation and promise”.

(5) “The Servant of India” an advanced but thoughtful commentator on questions relating to Indians overseas, invites the Union Government to cease to look to ‘assisted emigration’ for a solution of the Indian problem.

(b) Suggestions,

12. The weight of this concert of opinion against the scheme cannot be ignored, even though the accuracy of the data on which it is based may, in some respects, be open to challenge. Nor can the validity of the conclusion that the majority of Indians returning to India from the colonies are unhappy be honestly impugned. The question, therefore, arises should the Indian Delegates to the new Cape Town Conference be instructed to urge that the scheme be abandoned? The practical answer will depend mainly upon the attitude of the Union representatives. If on reaching South Africa it is found that either the Union Government or their representatives at the Conference will not misunderstand it, an attempt should be made to persuade them that ‘assisted emigration’ does not offer a real solution of the Indian problem. This thesis can be forcefully argued. Statistics show that all efforts so far made to reduce the Indian population of South Africa have really failed. Unfortunately, the census taken in South Africa in 1931 was confined to Europeans. The last Indian census was taken in 1926 and the relevant figures



are available only up to that year. On the 30th June of that year the Indian population of the Union was about 174,000 or 13,000 more than in 1921 when the next preceding census was taken, and 24,000 more than in 1911. This, in spite of the fact that, between 1911 and 1926, 27,464 Indians took advantage of the facilities offered for 'repatriation' and left the country. Between the same years, the total number of births exceeded losses by death and emigration by 12,620. Every year that passes increases the proportion of Indians born in South Africa to those born in India. In 1911 the former were only 42.6 per cent. of the total Indian population; in 1921, this percentage had risen to 63.4; for 1926 the proportion cannot be worked out, but is sure to have been higher than it was in 1921, as the circumstances during 1921—26 were not substantially different from those of the decennium 1911—21. Every reduction in the numbers of Indians born outside the Union reduces the prospect of the success of any scheme of assisted emigration to India. The saturation point as regards Indians willing to return to India must soon be reached. Assisted emigration, it may, therefore, be argued, will soon exhaust itself.

13. The difficulty however about advising that the Indian Delegation should take this line is that all political parties in South Africa still seem to attach the greatest importance to the old objective; although, both the total European population in South Africa, and its rate of increase are greater than those of the Indian (*cf.*, Annexure III), and the proportion of Indians to Europeans has continued to decrease. Political leaders, even if they are satisfied that the traditional goal can never be reached, will be unwilling to confess this publicly at any rate while there is a substantial number in Natal of the original indentured Indians. It may be noted in parenthesis that there are still about 30,000 of these. The education of public opinion will take time. And, while the conversion of European opinion in South Africa to this view will be a slow and difficult process, it will be dangerous to lay too much emphasis on the economic and social disadvantages to returned emigrants of life in India, for such emphasis will only evoke the retort that, if the South African Indian is subjected to social

disabilities by men of his own race in India, he would regard residential segregation from Europeans in South Africa as a comparatively minor hardship, especially as he will continue to earn more money in South Africa than he will ever do in this country. Therefore, if the Union Ministers show that they are determined to give the experiment a longer trial, the Indian representatives should offer no opposition to this, so long as it is recognised by the other side that the strictly voluntary character of the scheme must be retained, and should endeavour to persuade the local Indian leaders to take the same view. They should also agree to consider suggestions for improving the machinery already set up in India for looking after returned emigrants. Otherwise the conference will break down, and anti-Indian legislation such as that contemplated by the Asiatic Tenure (Amendment) Bill will be proceeded with.

14. In return for further co-operation in any agreed scheme of assisted emigration the Indian delegation should press not only for the withdrawal of objectionable legislation such as the Transvaal Bill, but also for a more energetic policy of uplifting the permanent Indian population of South Africa. The Indian delegates should urge that lack of energy in this direction will only stiffen Indian opposition to any scheme of voluntary emigration, however generous the cash inducements offered, and make it impossible for the Government of India to continue to co-operate with the Union Government.

15. Coming to details, the only directions in which improvement of the scheme of assisted emigration may be sought appear to be—

- (i) Enhancement of the cash bonus;
- (ii) Improvement of the machinery in India for securing employment for returned emigrants;
- (iii) Exploration of outlets for emigrants in other parts of the British Empire, *e.g.*, British Guiana.

(i) is primarily a matter for the Government of the Union. As regards (ii), the delegation might offer to consider the setting up of special machinery, similar to that now in existence in Madras, for the purpose of facilitating

the smooth absorption of returned emigrants in the economic life of India. As regards (iii) it is suggested that the delegation may offer to advise the Government of India to assist the Union Government in exploring such possibilities on condition that initiative in this matter is taken by South Africa. The Government of India have sent special missions in the past to investigate possibilities of further Indian colonisation in Fiji and British Guiana. They should be willing to co-operate with the Union Government in exploring the possibilities of settling Indians from South Africa in these colonies, where economic conditions are undoubtedly better than they are in India and social obstacles to the absorption of emigrants from overseas practically non-existent. It is true that the Union Government can undertake such investigation independently of the Government of India, but the latter's co-operation should prove valuable (a) in ensuring that, if emigration to other colonies from South Africa is encouraged, it will take place on conditions that will really be satisfactory to the emigrants, and (b) in securing a friendly reception for these emigrants on the part of the local Indian settlers.

15. To sum up : the conclusions are :—

- (1) That, although it is unlikely that a solution of the Indian problem in South Africa will be found along the lines of encouraging assisted emigration, it will take time to educate South African (European) opinion to a realisation of this.
- (2) That, therefore, while the limitations of this method may be tactfully explained, the Indian delegation should agree to advise the Government of India to continue to co-operate with the Union Government in giving the scheme, with such modifications as may be agreed upon, a further trial, provided that—
  - (i) its strictly voluntary character is maintained; and
  - (ii) the Union Government agree to pursue energetically a policy of social and economic upliftment of their Indian subjects, and to

withdraw the Transvaal Asiatic Tenure (Amendment) Bill.

- (3) That the offer of co-operation should include not only investigation of possibilities of improving arrangements in India for the smooth absorption of returned emigrants in the economic life of India, but also exploration of other outlets for Indian settlers, *e.g.*, British Guiana and Fiji.
-

## ANNEXURE I.

*Annexure containing Summary of the conclusions reached by the Round Table Conference on the Indian question in South Africa.*

I. *Scheme of assisted emigration.*—(1) Any Indian of 16 years or over may avail himself of the scheme. In case of a family, the decision of the father will bind the wife and minor children under 16 years.

(2) Each person of 16 years of age or over will receive a bonus of £20 and each child under that age a sum of £10. No maximum shall be fixed for a family. A decrepit adult who is unable to earn his living by reason of a physical disability may, at the discretion of the Union authorities, receive a pension in lieu of or in addition to the bonus. The pension will be paid through some convenient official agency in India out of a fund provided by the Union Government to such amount as they may determine. It is expected that the amount required will not exceed £500 per annum in all.

In every case the bonus will be payable in India on arrival at destination or afterwards, through some banking institution of repute.

(3) Free passage, including railway fare to port of embarkation in South Africa and from port of landing in India to destination inland, will also be provided.

(4) Emigrants will travel to India *via* Bombay as well as *via* Madras. Emigrants landing at Bombay will be sent direct from the ship to their destination at the expense of the Union Government.

Survey and certification of ships shall be strictly supervised and conditions on the voyage, especially in respect of sanitary arrangements, feeding and medical attendance, improved.

(5) Before a batch of emigrants leaves the Union, information will be sent to some designated authority in India at least one month in advance giving (a) a list of intending emigrants and their families, (b) their occupation in South Africa and the occupation or employment which they would require in India, and (c) the amount of cash and other resources which each possesses. On arrival in India emigrants will be (i) advised, and so far as possible, protected against squandering their cash or losing it to adventurers, and (ii) helped, as far as possible, to settle in occupations for which they are best suited by their aptitude or their resources. Any emigrant wishing to participate in emigration schemes authorised by the Government of India will be given the same facilities in India as Indian nationals.

(6) An assisted emigrant wishing to return to the Union will be allowed to do so within three years from the date of departure from South Africa. As condition precedent to re-entry, an emigrant shall refund in full to some recognised authority in India the bonus and cost of passage including railway fares received on his own behalf and if he has a family, on behalf of his family. A *pro rata* reduction will, however, be made (i) in respect of a member of the family who dies in the interim or a daughter who marries in India and does not return, and (ii) in other cases of unforeseen hardship, at the discretion of the Minister.

(7) After expiry of three years Union domicile will be lost in agreement with the proposed revision or the law relating to domicile which will be of general application. The period of three years will run from the date of departure from a port in the Union and expire on the last day of the third year. But to prevent the abuse of the bonus and free passage by persons who wish to pay temporary visits to India or elsewhere no person availing himself of the benefits of the scheme will be allowed to come back to the Union within less than one year from the date of his departure. For purposes of re-entry within the time limit of three years, the unity of the family group shall be recognised though in cases of unforeseen hardship the Minister of the Interior may allow one or more members of the family to stay behind. A son who goes with the family as a minor, attains majority outside the Union, marries there and has issue will be allowed to return to South Africa, but only if he comes with the rest of his father's family. In such cases he will be allowed to bring his wife and child or children with him. But a daughter who marries outside the Union will acquire the domicile of her husband and will not be admitted into the Union unless her husband is himself domiciled in the Union.

## ANNEXURE II.

Statement showing the number of Indians who have returned to India under the Indians Relief Act, 1914, and the scheme of Assisted Emigration of 1927 during the years 1914--31.

| Year.                         | Number of Indians<br>who have<br>returned.                                  |
|-------------------------------|---|
| 1914                          | 290   |
| 1915                          | 993   |
| 1916                          | 1,865   |
| 1917                          | 1,364   |
| 1918                          | 1,532   |
| 1919                          | 1,319   |
| 1920                          | 1,816   |
| 1921                          | 2,927   |
| 1922                          | 2,324   |
| 1923                          | 2,716   |
| 1924                          | 1,063   |
| 1925                          | 1,400   |
| 1926                          | 2,100   |
| 1927                          | 2,975 (1,320 under the old<br>scheme and 1,655<br>under the new<br>scheme.) |
| 1928                          | 3,477   |
| 1929                          | 1,328   |
| 1930                          | 1,012   |
| 1931 (up to end of June 1931) | 525   |
| Total                         | 31,026  |

## ANNEXURE III.

## European population in the Union.

| Year. | European<br>population. | Increase per centage. |
|-------|-------------------------|-----------------------|
| 1904  | 1,116,806               | 14.28 % (1904-11).    |
| 1911  | 1,276,242               |                       |
| 1921  | 1,519,488               |                       |
| 1926  | 1,676,660               | 8.9 % (1926-31).      |
| 1931  | 1,827,166               |                       |

## Indian population in the Union.

| Year. | Indian<br>population. | Increase percentage. |
|-------|-----------------------|----------------------|
| 1911  | 149,791               | 7.71 % (1911-21)..   |
| 1921  | 161,339               |                      |
| 1926  | 173,959               | 7.82 % (1921-26).    |

**CONFIDENTIAL.**

GOVERNMENT OF INDIA.  
DEPARTMENT OF EDUCATION, HEALTH AND LANDS.

---

**BRIEF OF INSTRUCTIONS.**

Issued to the delegates of the Government of India to the Conference with the representatives of the Government of the Union of South Africa on the Indian Problem in the Union.

---

II.—Certain aspects of upliftment of Indians in the Union:—

- (a) Education;
- (b) Housing and Sanitation; and
- (c) Working of the Industrial Laws.



NEW DELHI  
GOVERNMENT OF INDIA PRESS  
1931

**Note on certain aspects of Upliftment:**

(a) Education; (b) Sanitation and Housing; (c) Working of the Industrial Laws.

Part III of the summary of conclusions reached by the Round Table Conference on the Indian question in South Africa deals with the upliftment of the Indian community. Clause (†) of that part relating to Trade Licencing Laws has been treated of in a separate memorandum. This note will deal with the other points specifically mentioned in part III of the agreement, viz. :—

- (1) Indian education in Natal;
- (2) Sanitary and housing conditions in and around Durban;
- (3) Administration of the Wage Laws.

The Agent of the Government of India in South Africa has prepared memoranda (Annexures I, II and III) on these three subjects, and they are attached to this note. It will be convenient, however, to state briefly the main facts in regard to each of them in order to define the future action suggested.

*Indian education in Natal.*

2. The Cape Town Agreement was ratified in February, 1927. The first Agent of the Government of India in South Africa, the Right Hon'ble V. S. Srinivasa Sastri, P.C., C.H., did not reach Pretoria until the 28th June of that year. No action was taken regarding the upliftment portion of the agreement by the Union Government during this period. There was a widespread feeling among the politically minded white population of Natal in particular that the agreement had been generous to the Indians at the expense of Europeans. There was also general ignorance as to the terms of the agreement. In this state of feeling, the Union Government had thought it prudent to refrain from approaching the Natal Administration regarding any of the matters, including that of education, which were within the purview of the Provincial Council. Mr. Sastri's first act, on reaching Durban, was to take up the proposal for setting up a Commission on Indian education, and the appointment



of the Commission was gazetted on the 17th November, 1927. The Government of India deputed two Indian educationists, Mr. K. P. Kichlu formerly Deputy Director of Education in the United Provinces, and Miss C. Gordon of the Madras Educational Service, Lecturer in Kindergarten methods at the Government Training College at Saidapet to assist the Commission. The personnel of the Commission was not altogether satisfactory, as it was selected exclusively from the Provincial Council, which, as admitted by the Commission itself, had pursued a restrictive policy in regard to Indian education. It started work in April and presented its report on the 15th May, 1928. "After fully reviewing all the evidence tendered and taking into consideration the factors of the problem as affecting the general community in this Province" the Commission found:—

- (a) That the existing facilities as a whole in town and country areas were inadequate for the reasonable needs of the Indian population;
- (b) That in the Grant-Aided schools the general conditions of the buildings and the status, salaries and method of payment of Indian teachers were unsatisfactory; and
- (c) That the grants-in-aid were inadequate on the present basis and that certain changes were desirable.

The Commission also drew attention to the fact that the Provincial Administration had not been spending upon Indian education the whole amount of the subsidies which it had received from the Union Government under the Provincial Subsidies Act, 1925.

4. The Commission recommended:—

- (1) Extension of the Grant-Aided schools throughout the province together with a provision of Government schools in large centres of Indian population;
- (2) Modification of the system of grants-in-aid;
- (3) Establishment of an Indian Training College in order to supply the necessary qualified teachers; and

(4) Expenditure of the whole of the subsidies received from the Union Government upon Indian education.

3. According to the information contained in the Agent's memorandum,—

- (i) the whole of the subsidy received from the Union Government for Indian education is now being spent on Indian education. Expenditure has, thus, risen from £28,430 in 1926-27 to nearly £60,000 in 1930-31, and the estimated expenditure for the year 1931-32 is £65,000 round;
- (ii) the number of Indian schools has risen from 52 in 1928 to 78 in 1931;
- (iii) a Training College named after the Government of India's first agent, Mr. Sastri, whose inspiring enthusiasm was primarily responsible for its establishment by the voluntary effort of the Indian community was opened in October 1929, and Government have undertaken the cost of its maintenance;
- (iv) the grant-in-aid system has been improved, and the rates of pay of teachers in aided schools enhanced.

5. The conclusion drawn by the Agent is that, so far as the funds at its disposal have allowed, the Natal Education Department has made genuine efforts to improve Indian education. His view, however, is that further action on the lines indicated below is required:—

- (1) Provincial funds should also be spent on Indian education, which at present is financed exclusively from the subsidy received from the Union Government. On European education the province spent £2,46,330 in 1930-31, in addition to the subsidy received from the Union Government, besides a sum of nearly £5,000 on the training of European teachers in addition to the subsidy received for that purpose;
- (2) The Union Government should increase both the amount of

the subsidy, which is now 5 guineas per pupil, and reduce the age of eligibility below 7 years;

- (3) That more Government schools should be opened and aided schools converted into Government schools, so that the proportion of Indian pupils to the number of children of school-going age may be increased.

The Agent would also like the conditions of service of teachers in Indian schools improved as regards pension and provident fund.

6. It would, perhaps, be out of place to discuss a matter of detail, like the last, in the Conference, but the Indian Delegation should, it is suggested, while expressing gratification at the improvement effected in Indian education in Natal, ask for a further extension of facilities by more generous expenditure both by the Union Government and the Provincial Administration.

*Sanitation and housing conditions in and around Durban.*

7. The Durban Municipal Council took the initiative in the matter by asking the Union Government to set up, early, machinery for an investigation under the Public Health Act into housing conditions in and around Durban. In April, 1928, the Minister of the Interior communicated to the Agent of the Government of India details of the proposals to appoint, for the purpose of this enquiry, a Commission composed of members of the Union Government Central Housing Board, together with the Natal Health Officer and representatives of the Department of the Interior, the Natal Provincial Administration and the Durban Borough Council. Indians were to be represented by two assessors chosen by themselves, and the terms of reference were to be as proposed in the Cape Town Agreement. Unfortunately, owing to the reluctance of the local bodies to let their representatives sit with the nominees of the Central Government on a Commission which was to investigate a 'provincial' subject, and which might involve them in expenditure which they were not willing to undertake, the proposal in its original form was abandoned. In October, 1928, however, the Minister appointed

the Executive Committee of the Central Housing Board alone to visit Durban and to hold the enquiry. The Commission gave the Indians a full and sympathetic hearing and advocated in their report :—

- (a) The sale of municipal land in certain areas free from the anti-Asiatic restrictions;
- (b) The extension of the Borough boundaries of Durban as the main solution of the problem of Indians in the predominantly Indian suburbs which lie outside the borough in what is called the "peri-Durban area"; and
- (c) Recourse to the provisions of the Housing Act by Municipal bodies to obtain from the Central Housing Board money for lending to small freeholders for erecting houses of approved plan, on the security of their freehold. A sum of £50,000 was earmarked, in pursuance of this recommendation, by the Union Government, and the Board advised that £25,000 of this sum should be utilised for the erection by the Durban Corporation of cottages for Indians in the Eastern Vlei quarter of Durban, the remainder being set aside for use on loans to Indian freeholders through other local bodies.
- (d) The Board also supported the Indian demand for the statutory recognition of Indian Advisory Bodies attached to Health Boards outside the boundary of Durban.

8. Unfortunately the Durban Town Council was not at first inclined to carry out the most important part of these recommendations, *viz.*, extension of the Boroughs on the boundary. It also wished to spend the £50,000 earmarked by the Union Government for housing, on the building of an 'Indian village' at a place called Cato Manor, several miles outside the present boundary of the town, which Indians opposed as they feared that this was in reality a scheme for segregating them. Matters remained for a long time at a dead-lock but have progressed of late. As a result of the recommendations of a special

Commission set up to consider the question of extending the boundaries of the Durban Municipality:—

- (a) An Ordinance has been passed which will have the effect of bringing with effect from the 1st of August, 1932, the more populous of the suburbs of Durban within the latter's municipal jurisdiction. Indians are reported to be on the whole favourable to extension, provided that,—
- (1) the full rate of municipal taxation in the extended area does not fall on the poor working class Indians;
  - (2) the licencing policy of the Durban Town Council, which towards Indians is extremely unsympathetic, is not extended to the peri-Durban area;
  - (3) Indians are given the municipal vote, even though on a restricted basis, so as to be able to influence effectively elections to the Municipal Council of the enlarged areas which would contain more than 60,000 Indians as against the 17,000 now living within the present Borough limits.

10. As regards housing, the Durban Town Council is reported to have approved by a narrow majority, expenditure of £25,000 in making loans to Indian free-holders in areas that will be included in the Borough next year under this scheme of extension. The remaining £25,000 it still proposes to spend on loans to Indians who may build houses at Cato Manor, though the original idea of making an Indian village there appears to have been abandoned.

11. The Agent's statistics show that neither in regard to freehold nor leasehold sales of its immoveable property has the Durban Town Council pursued a sympathetic policy towards Indians. Since the Durban Land Alienation Ordinance was passed, only one freehold and three leaseholds have been sold without an anti-Asiatic clause out of a total of 19 and 26 respectively.

12. There is little that the Union Government can do in regard to the subject matter of the last paragraph, and it is not suggested that the Delegation should

do more than draw attention to the failure of the Durban Town Council to act in conformity with the spirit of the Cape Town Agreement in this matter. As regards the extension of the boundaries of the borough of Durban, however, the following suggestions should be made :—

- (1) That in view of the large Indian interests involved, Indians should be given an effective voice in the selection of members of the enlarged Town Council;
- (2) That if (1) be not possible, effective provision should be made for--
  - (i) the just administration of the licencing law; and
  - (ii) consultation of Indians in all matters of interest to them in the municipal Government of the enlarged borough.

The suggestion for a general amendment of the licencing laws of the Union, which has been made in a separate memorandum, would, if adopted, ensure (i). It is difficult to see how, if the suggestion is not accepted, this object can be satisfactorily achieved. As regards (ii), the appointment of statutory Advisory Committees with defined functions should be helpful. The Agent has reported that the existing Advisory Committees attached to Health Boards are not popular with Indians, but this is probably due to the fact that they have no statutory basis.

*Administration of the Wage Laws, i.e.,  
Laws affecting industry.*

13. Two important laws of general application, *viz.*, the Industrial Conciliation Act (No. 11 of 1924) and the Wages Act (No. 17 of 1925) have been passed during the last few years to regulate the conditions of employment, especially in respect of wages. Their purpose is understood to be to secure a "White" wage for the industries in which their provisions might be applied. The Indian Delegation to the last Cape Town Conference were given to understand that Indian workers in South Africa were unable to take advantage of these Acts, partly because they were insufficiently organised, and partly because they could not get the support of White labour. The Delegation accordingly expressed the view

that this was a matter in which co-operation between Indian and White labour seemed desirable and suggested that, while there was no such co-operation, Government might, in the application of these two Laws to a particular industry, give facilities to Indians—

- (a) to organise themselves into Trade Unions of their own if they are not admitted to other Unions; and
- (b) to put forward their views regarding conditions of employment in any industry in which regulation of those conditions may be contemplated.

14. The close of November, 1928, was marked by an interesting development in Indian labour organisation in Natal. The Industrial Conciliation Act envisages the formation in each industry of an "Industrial Council", representative of that industry and composed of employers and employees in equal numbers. The employees' representatives are elected by the Trade Unions. An agreement reached between the two sets of representatives in an "Industrial Council" may be ratified by the Minister and applied by him with all the force of law to the whole industry in question. In such a case even those employers and employees who are not represented on the Industrial Council and are not parties to the agreement are bound by its terms and criminally liable for its infractions. As the policy of the Department of Labour had previously been not to recognise more than one Trade Union for each occupation, Indian workers had gone practically unrecognised, as they found themselves unable to secure admission to the existing Trade Unions. Before the Congress of November, 1928, the Union Department of Labour found its hands forced by the fact that registration of a separate union had to be refused to the Europeans employed in the Catering and Liquor trades in Durban, because there already existed there a registered union formed by Indians but open to Europeans; faced with this difficulty the Registrar of Trade Unions suggested that, while the formation in each industry of single unions, embracing all races affected remained the ideal at which the Department aimed, it might be advisable, where this was not at present possible, to encourage the formation and allow the registration of separate and parallel, but mutually ex-

clusive, unions. As the Indian Catering and Liquor Trade Union in Durban was open to Europeans, the Registrar tried to persuade the Indians to introduce a colour bar into its constitution. At this stage the Natal Indian Congress called together the Conference referred to in order to discuss the whole position and to form an Indian Trade Union Congress. The South African Indian Trade Union Congress was formed as a result. Steps have since then been taken to organise the Indian workers in several trades into Unions. On the question whether an Indian Union shall be separate and mutually exclusive of a corresponding European Union, the Conference deferred a decision, and set up a Committee to meet the Departmental officials and, if possible, the representatives of the South African Trade Union Congress (the existing European body) with a view to securing, preferably, full membership for Indians in the existing unions on equal terms with European members, or, failing that, the recognition of Indian organisations as separate branches of the existing unions meeting at first separately as branches but sending representatives to a common Executive.

15. Although it was not found possible to arrange a Conference between the Committee of the Indian Trade Union Congress and the full Executive of the European Trade Union Congress, the former was enabled in 1929 to meet a depleted Executive consisting chiefly of the paid secretaries, of the leading "White" trade unions in Johannesburg and to discuss with them the future of Indian trade unions. The proposal of the Indian Committee that Indians should be admitted as full members of the existing Unions, preferably in the existing organisation, but, if necessary, at the outset as members of separate branches with a single common executive, was accepted by most of the trade union officials present at the meeting, although they were careful not to commit their Unions. The alternative policy of the Registrar of Co-operative Societies to set up in each trade and industry mutually exclusive "parallel unions" differentiated on race lines found no support from either party.

16. According to paragraph 7 of the Memorandum by the Agent on "Unemployment among Indians", nine



Natal Trade Unions have Indian members. The Furniture Union has an Indian majority, though there is a considerable European membership as well. Until a few months ago, this Union had an Indian Secretary. In the Liquor and Catering trade the arrangement of two parallel unions of European barmen representing the liquor side of the trade and Indian waiters representing the catering side having broken down, the European branch has ceased to exist and there is now a joint union which has an Indian Secretary. In January, 1929, Indians were also admitted to full membership of the Durban Branch of the Typographical Union.

17. In a review of the working of the Wage Act, 1925, and the Industrial Conciliation Act, 1924, and the Apprenticeship Act, 1922, the Agent has arrived at the following main conclusions :—

- (1) That the establishment of Industrial Councils under the Industrial Conciliation Act, 1924, is more popular with Indians than the settlement of wages by Wage Board determinations. The difference between the two is that while wages fixed by Wage Board awards are not continuously under the review of the parties affected by them, the Industrial Council set up under the Industrial Conciliation Act continues to sit while the determination it has made is in force. A Council can thus help the smooth working of its own award.
- (2) That in the Liquor and Catering trade and the Furniture trade, the Indian workmen are taking their proper share in the carrying out of the Industrial Conciliation Act, 1924, and the Apprenticeship Act, 1922.
- (3) That while the working of these industrial laws has led to a considerable rise in wages, the causes of unemployment among Indians would seem to be not the operation of these laws, but—
  - (a) replacement of Indians by Europeans in Government and Municipal services;

- (b) the general trade depression;  
and
- (c) substitution of machinery for  
unskilled human labour

18. Developments since 1927, when the Cape Town Agreement was ratified, would not seem to justify the criticism that, as regards the administration of the Wage Laws, the Union Government has not observed the spirit of the suggestions made by the Indian Delegation. On the contrary, the Departmental Officers appear to have rendered substantial assistance in bringing European and Indian labour together, or, where the complete amalgamation of the two was not possible, in helping Indian labour to organise itself. This fact might be acknowledged by the Indian Delegation to the next Conference and a wish expressed that the active goodwill of the Government of South Africa would also be forthcoming in future to make co-operation between Indian and European labour more intimate and more effective.

19. The Agent has drawn attention to the policy of the Government and of Municipalities to replace Indian by European labour. The increase in the number of "poor Whites" makes such a policy inevitable in the present political situation in South Africa, where the electorate is predominantly European. This does not, however, either justify the replacement of Indians by Europeans or alleviate the hardships which replacement entails upon those thrown out of employment. It is, therefore, suggested that the Indian Delegation should make an appeal to the Union Government to look upon their Indian employees as deserving of as much solicitude on their part as any other class.

## Annexure I.

### MEMORANDUM BY THE AGENT OF THE GOVERNMENT OF INDIA IN SOUTH AFRICA ON INDIAN EDUCATION IN NATAL.

*Introduction.*—In 1926 the position in regard to Indian education was highly unsatisfactory. The majority of the schools were Aided Schools, controlled by the Missions that have been the pioneers of Natal Indian education. The Natal Administration received a subsidy from the Union Government based on the preceding year's attendance, but by no means the whole of this subsidy was spent on Indian education. The Government of India Delegation to the Cape Town Conference found that the expenditure under this head had remained stationary at about £27,000 since 1924. Thus the expenditure in 1924-25 was £26,677 and in 1925-26 £27,918. This certainly showed an improvement on the figure for 1920-21 which was £21,455. On the other hand the attitude of the Natal Government was unsatisfactory. The members of the Government of India Deputation led by Sir George Paddison in 1925-26, remarked in paragraph 23 of their confidential memorandum that education was 'the foremost need of the Indian community in South Africa', but that in Natal 'the Provincial Council has of late years shown marked hostility to the continuance of even such meagre facilities for Indian education as exist at present'. In 1924 the Provincial Council passed a resolution (fortunately never put into practice) that the expenditure on Indian education should in future not exceed £27,000.

2. The Cape Town Conference of 1926-27 produced a good effect on the Union Government and the 'upliftment' clause was the result. This result however was not at first welcomed in Natal. When it became known, the Natal Provincial Council passed a resolution on May 10th 1927, condemning the Cape Town Agreement and deploring the fact that the Council had not been consulted in regard to those points of the Agreement which contemplated changes in the licensing laws and 'the provision of increased educational facilities for the Indian community' since 'these two matters involve not only questions of definite Provincial policy, but in the latter instance considerable financial obligations.' However in accordance with the Conference's decisions an Enquiry Committee to investigate Indian education was formed and this Committee had the benefit of a detailed Memorandum on the subject of Natal Indian Education drawn up by Mr. Kichlu who had been sent specially from India to investigate the position. Unfortunately the recommendations contained in the report of this Committee (Appendix) were somewhat general. It considered that the best method of alleviating the existing conditions was an extension of the Aided Schools throughout the province. It recommended the alteration in the system of grants-in-aid that will be described in paragraph 19, the drawing up of a proper and more liberal scheme of teachers' salaries and conditions of service especially in the Aided Schools, and the establishment of an Indian Training College, with teachers to be imported at first from overseas. It was also 'entirely opposed' to any increase in the general taxation of the Province for the purpose of providing for any contemplated expansion, though it admitted that the Union Government's subsidy of £5-5-0d. per head, did not 'err on the side of generosity'.

3. The action that has been taken since the report of this Committee and Mr. Kichlu's enquiries will now be considered. The first matter to be mentioned is the amount spent on Indian education.

4. *Expenditure.*—The first question in regard to expenditure is undoubtedly that of whether the full subsidy received from the Union Government for Indian education at the rate of £5-5-0d. per unit of average attendance of pupils of 7 years and over, is being spent on Indian education. For this purpose a comparison may be made between the figures for the years 1926-27 given in paragraph 53 of Mr. Kichlu's Memorandum on Indian education in Natal dated April 17th 1928, and the figures for the last

three years available, as supplied by the Education Department. The figures (to the nearest pound) are as follows:—

|                   | Subsidy.         | Expenditure.       |
|-------------------|------------------|--------------------|
|                   | £                | £                  |
| 1926-27 . . . . . | 38,986 . . . . . | 28,430             |
| 1928-29 . . . . . | 43,958 . . . . . | 40,961             |
| 1929-30 . . . . . | 51,623 . . . . . | 56,262 (?) £52,800 |
| 1930-31 . . . . . | 61,143 . . . . . | 60,143 (?) 56,500  |

The estimated expenditure on Indian education for the year 1931-32 is £65,838; this is apart from expenditure to be defrayed from Capital. It will be seen then that the Natal Administration is now spending on Indian education nearly the whole of the subsidy received, though it is still not spending quite the whole amount. On the other hand the Province is not making any contribution to Indian education over and above the subsidy.

5. These figures may be compared with the figures for European education, those for 1926-27 being taken from paragraph 53 of Mr. Kichlu's Memorandum.

|                   | Subsidy.          | Expenditure.   |
|-------------------|-------------------|--|
|                   | £                 | £  |
| 1926-27 . . . . . | 350,573 . . . . . | 420,701  |
| 1929-30 . . . . . | 342,484 . . . . . | 587,369  |
| 1930-31 . . . . . | 349,243 . . . . . | 595,572 Ordinary expenditure<br>£543,371,<br>Administration<br>(approx.)<br>£5,450 interest<br>on redemption<br>£46,751. . . |

The subsidy is granted at the rate of £16-7-6d., per pupil for Government Schools and £5-5-0d., for Government Aided Schools. The figures given include money provided for secondary education and continuation classes. In addition the following is provided (1930-31) for European teachers' training.

| Subsidy.        | Expenditure. |
|-----------------|--------------|
| £               | £            |
| 4,432 . . . . . | 9,373        |

It will therefore be seen that during the year 1930-31, the province spent £246,330 on European education in addition to the subsidy received from the Union Government and £4,941, on the training of European teachers in addition to the subsidy received for that purpose. This shows a great rise in the expenditure on European education incurred by the Province, since the figure for 1930-31, shown above is far greater than those for 1925-26 and 1926-27. Thus, though nearly the full subsidy is for all practical purposes being spent on Indian education, yet the amount spent is still very far behind that spent on European education. Whereas the province is willing to spend from its own revenues on European education, it will not do so on Indian education and whereas it receives a special subsidy for the training of European teachers and also undertakes additional expenditure under this head the cost of training Indian teachers has to come out of the ordinary subsidy. In regard to the education of coloured children the estimate for 1931-32 is £25,648 as compared with an expenditure of £20,069 in 1926-27.

6. It may be useful here to examine what proportion of the expenditure incurred on Indian education goes towards the cost of Sastri College and towards the Aided Schools. The pupils in Sastri College naturally cost

considerably more than those in other schools. The following figures show the cost per pupil in the various kinds of schools, the figures for 1923-27 coming from paragraph 63 of Mr. Kichlu's Memorandum and those for the later years having been supplied by the Education Department.

|                              | Net cost in |          |          |
|------------------------------|-------------|----------|----------|
|                              | 1926-27.    | 1928-29. | 1930-31. |
|                              | £ s. d.     | £ s. d.  | £ s. d.  |
| Sastri College . . . . .     | ..          | ..       | 18 15 5  |
| Government Schools . . . . . | 7 5 8       | 7 15 4   | 6 18 4   |
| Aided Schools . . . . .      | 2 16 5      | 2 16 10  | 2 16 1   |

For the year 1930-31 the cost of Sastri College, excluding charges for administration was £4,563. The estimate for 1931-32 is £4,950. In regard to Aided Schools the new system of giving a grant equal to the salaries of the teachers employed in accordance with the staff ration, in place of a grant on a capitation basis has led to an increase of expenditure by the Government. The last year under the old system was 1928-29. The following are the available comparative figures of expenditure on Grants-in-Aid under the two systems.

|                   | £      |
|-------------------|--------|
| 1928-29 . . . . . | 21,744 |
| 1930-31 . . . . . | 31,652 |

The estimate for Grants-in-Aid in 1931-32 is £34,200. The question of expenditure to be defrayed from capital will be discussed in the next paragraph in connection with the development of Indian schools.

7. *Number of schools and pupils.*—The estimated population of Indian children of school going age is about 35,000. Dr. Kichlu's figure for 1928 was 30,000. The number of schools and the number of pupils enrolled in these schools are as follows; the figures for 1928 coming from paragraph 1 of Mr. Kichlu's Memorandum and those for the other years having been supplied by the Education Department.

|  | 1928. | 1931. |                           | 1928. | 1931.  |
|--|-------|-------|---------------------------|-------|--------|
| Number of Government schools . . . . . | 9     | 13    | Number of pupils in same. | 2,113 | 3,470  |
| Number of Aided Schools . . . . .      | 43    | 65    | Number of pupils in same. | 7,800 | 12,344 |
|  | 52    | 78    |                           | 9,913 | 15,814 |

8. In paragraph 70 of his Memorandum Mr. Kichlu described those places where new schools or the replacement of private schools by aided ones or of Aided Schools by Government ones were most needed and in paragraph 27 he described schools where additions are badly needed. Further in paragraph 32 of his report he recommended an increase in the number of Government Schools as compared with Aided Schools suggesting that the existing proportion of pupils reading in Government and in Aided Schools, namely 1/5 to 4/5 should during the following three years be raised to 1/3 to 2/3. This creation of new Government Schools to replace Aided Schools is also recommended in the statement put in by the Natal Indian Teachers' Society before the Education Enquiry Committee of 1928 and appears at page 183 of the report of the evidence of that Committee. (Not available in the E. H. and L. Deptt.) It will be seen from the figures given above that it has not been possible to give effect to this recommendation.

Thus on page 16 of the Report of the Superintendent for Education in Natal for the year 1929, Mr. Lawlor, who has been on special duty in connection with Indian education, specially stressed the fact that 'in the European system there are between four and five Government schools for every Aided School. In the Indian system there are more than six Aided Schools for every Government School'. In this connection a reference may be made to the figures given in paragraph 6 of this memorandum showing the comparative cost to the Government of pupils in the various classes of schools. The progress that it has been possible to make in the conversion of Aided Schools into Government schools is:—

1927 Nil,  
 1928 Port Shepstone.  
 1929 Greytown (and Pinetown from a private into a Govt. School.)  
 1930 Nil.

9. In regard to the building of new schools and the improving of existing Government Schools the Department has certainly done all that was possible with the subsidy at its disposal. The expenditure that has been incurred under this head is as follows:—

|  | From Capital. |          | Estimates. |          |
|--|---------------|----------|------------|----------|
|  | 1928-29.      | 1929-30. | 1930-31.   | 1931-32. |
|  | £             | £        | £          | £        |
| Depot Road (additions) . . . . .           | ..            | 411      | 350        | ..       |
| Ladysmith .. . . .                         | ..            | 491      | 44         | 550      |
| York Road .. . . .                         | ..            | 319      | 1,159      | ..       |
| Umgeni .. . . .                            | ..            | ..       | 2,096      | ..       |
| Stanger .. . . .                           | ..            | ..       | 1,821      | ..       |
| Dundee New . . . . .                       | ..            | ..       | 345        | 3,655    |
| Pinetown New . . . . .                     | ..            | ..       | 562        | 4,438    |
| Estcourt New . . . . .                     | ..            | ..       | ..         | 4,075    |
| Sastri College Additions £5,000) . . . . . | ..            | ..       | ..         | 250      |
|  |               | ..       | 6,376      | 12,968   |

10. In each case (apart from the Sastri College additions) where the work is still uncompleted the figure given as the estimate for 1931-32 will, if spent, bring the total of expenditure up to what is shown as the 'revised estimate of cost' in the provincial estimates of expenditure to be defrayed from capital for the years 1931-32. Therefore in each instance the work should be completed during the course of the current year. It will thus be seen that whereas in 1928-29 there was no expenditure from capital for the benefit of Indian education, the Government has now budgeted to spend £12,968 from capital for this purpose, more than double what was spent during 1930-31.

11. There is still however urgent need for new schools. This particularly applies to building a school at Dannhauser and erecting new buildings in some places and converting the existing schools at Clairwood, Fairbreeze, Tongaat and Verulam into Government schools. It may be mentioned here that the Indians of Fairbreeze are prepared to erect a school building at their own cost and to make over the site to the Government if the latter would start a Government School. The urgency of the need is shown by the fact that, as reported on page 186 of the evidence given before the Education Enquiry Committee (Natal) of 1928 the representatives of the Natal Indian Teachers' Society told that Committee, that 300 applications had had to be refused at Clairwood and 200 at Fairbreeze. Since then the Clairwood School has received a building grant of £279 from the Administration, but the schools at Fairbreeze and Mount Edgecombe have received no such grant. Further Mr. Metcalfe who is in charge of the 12 Wesleyan

Mission Schools informed us that new schools were also needed at Mount Edgecombe (where 100 applications for admission were refused in 1928) and at Redhill. The people at Tugela are building a school house at their own expense and will hand it over to the Government.

12. Before passing on to the working of the new system in regard to Aided Schools the conditions of teachers' service will be discussed.

13. *Conditions of Teachers' service.*—The first question is that of teachers' salaries. Under the present system both post scales and grade scales are laid down for teachers. There are three classes of posts, but the third class contains a strictly limited and rapidly disappearing number of posts. The post scales for teachers in Government schools are as follows:—

First class posts—from £150 to £186 per annum.

Second class posts—from £138 to £174 per annum.

Third class posts—from £84 to £132 per annum.

Salaries in all three classes of posts rise by annual increments of £12. Male certificated teachers who have attained the age of twenty-three years are paid a marriage allowance of £24 a year. A Head Teacher besides being the holder of a First Class post paid at the rate mentioned above receives an additional salary determined by the size of the school. Schools are graded as follows:—

| Grade.       | Average attendance of subsidy earning (over 7 years) Pupils. |
|--------------|--|
| I. . . . .   | Over 425   |
| II. . . . .  | 266—425  |
| III. . . . . | 106—265  |
| IV. . . . .  | 71—105   |
| V. . . . .   | 36—70  |

This additional salary rises according to the grade scale in fifteen steps from a minimum of £18 to a maximum of £126 per annum for men teachers and from £12 to £114 for women teachers.

14. The system of additional pay being granted to Head Teachers, according to grade scales makes the calculating of the average salary of a Head Teacher difficult. But the average salary (marriage allowance not included) of an Indian Assistant Teacher in a Government School is calculated by the Administration as follows, if 30 years is estimated as the teaching life and if the service is in second and third class posts.

$$\begin{aligned} & \frac{£186 \times 26 + 138 + 150 + 162 + 174.}{30} \\ & = \frac{£4,836 + 624.}{30} \\ & = \frac{£5,460.}{30} \\ & = £182 \end{aligned}$$

This figure compares favourably with the average of £167 for Assistants with Senior Certificates which is obtained by a similar calculation from the scale suggested by Mr. Kichlu in paragraph 10 of his Memorandum and with that of £148 obtained in the same way from the existing senior certificated Assistants' scale described in paragraph 9 of his Memorandum and that of £140 per annum for teachers as a whole in Government Schools given by Bryan at page 10 of the report of the evidence before the Education Enquiry Commission. The following figures show the maximum salary (marriage allowance included) which a Head Teacher could earn now and would have been able to earn had the scale prepared in paragraph 10 of Mr. Kichlu's Memorandum been adopted.

|                   | 1928 | 1931. | Kichlu's suggested scale. |
|-------------------|------|-------|---------------------------|
| Maximum . . . . . | £324 | £336  | £374.                     |

A fair rise therefore has taken place in the salaries of teachers in Government Schools.

15. In regard to Aided Schools the Administration has followed the suggestion made in paragraph 11 of Mr. Kichlu's Memorandum and has

laid down a scale of salaries regulating the lowest wage that may be paid to teachers. These regulations provide for First Class Posts for Assistant Teachers scaled from £120 to £156 per annum; Second Class Posts from £78 to £114 and Third Class Posts fixed at £60 per annum. The salaries of First and Second Class posts both rise by annual increments of £12 to their respective maximum. Certified male teachers who are not less than 23 years of age receive a marriage allowance of £18 a year. Besides pay at the above rates a Head Teacher receives an additional salary graded according to the size of the school, in seventeen steps from a minimum of £60 a year to a maximum of £100 a year for men teachers and in the case of women teachers to a maximum of £88. The grading of the schools is as follows:—

| Grade.        | Annual Average Attendance<br>(7 and over). |
|---------------|--|
| I . . . . .   | Over 425                                   |
| II . . . . .  | 266—425                                    |
| III . . . . . | 106—265                                    |
| IV . . . . .  | 71—105                                     |
| V . . . . .   | 36—70                                      |
| VI . . . . .  | 25—35                                      |

A Head Teacher cannot be paid concurrent post and grade scales at first but must remain at the minimum of the grade scale until he attains the maximum of the post scale. A Manager, if he so wished, could supplement the salaries here laid down from his other resources such as school fees, contributions, etc. This is occasionally done to a small extent, for instance one of the teachers in the St. Aidan's Sydenham School has his salary augmented by 32/ a month.

16. This shows a great improvement on the pay of teachers in Aided Schools in 1928. Paragraph 14 of Mr. Kichlu's Memorandum shows that then there were 71 Assistant Teachers drawing under £60 a year of whom some drew only £12 a year. There are now none drawing under £60 a year. Under the present scales a Head Teacher can rise to a combined emolument of £274 a year (£156 Post scale + £100 Grade Scale + £18 marriage allowance). From a statement made by Mr. Lawlor (Inspector of schools) at page 11 of the report of the evidence given before the 1928 Indian Education Enquiry Committee it would appear that in 1928 the highest salary being paid by grantees was £216 a year. The present average salary is calculated by the Department as follows:—

|                          |                   |                           |
|--------------------------|-------------------|---------------------------|
| 1st class post . . . . . | £153 per annum.   | } For Assistant Teachers. |
| 2nd " " . . . . .        | £107 " "          |                           |
| 3rd " " . . . . .        | £60 fixed salary. |                           |

This may be compared with the figures of £57 given by Mr. Bryan the then Superintendent at page 10 of the evidence of the 1928 Enquiry Committee as the average salary at that time. The average for a first class post is the same as that mentioned for a Head Teacher of a school with under 100 pupils in average attendance, in the scale suggested by Mr. Kichlu in paragraph 11 of his Memorandum. Therefore though the improvement has been great yet here, as in the case of Government Schools, it has not been possible to bring salaries up to the level proposed by Mr. Kichlu.

17. It is of interest to note that of the 12 schools under the Wesleyan Mission 8 are in the third grade (106—265) and one in each of the other grades. Mr. Metcalfe who is in control of these schools considers the grading to be reasonable. It is in fact the same, except for the addition of Grade VI, as the Government Schools' grading. He also regards the salaries as reasonable considering the funds at the Department's disposal, except possibly in the case of a married man holding a third class post.

18. *Grants-in-Aid*.—The question of salaries opens up the general one of the method of giving grants-in-aid. The representatives of the Natal Indian Teachers' Society suggested to the Enquiry Committee of 1928 (paragraph 192 of the report of evidence) that there should be one central authority for



all the Aided Schools and this opinion is still strongly held by the President of this Society. It has however not been possible to take any action in this direction. Nor has it been possible to give effect to Mr. Kichlu's suggestion (paragraph 25 of his report) that one grantee should not have more than one school in his charge. Further in spite of Mr. Kichlu's recommendations on these points a grantee can still pool the credits and debits of the schools under his control and can make the present or prospective fee income of the schools in his charge liable for debts incurred. But in this connection Mr. Metcalfe of the Wesleyan Mission is of opinion that, as things are at present, it is only thus that new work can be undertaken, for instance it was only by this method that his Mission was able to erect the Cato Manor School near Durban at a cost of £140. This is also the opinion of Mr. Choonoo the President of the Teachers' Society who considers that had this procedure been checked it would have been impossible to have built the schools at Cantenary Road (Durban) and Chaka's Kraal and to have started the girls' school at Tongaat. Therefore it appears that there is much to be said for the view that until the Union Government or the Provincial Administration is willing to spend more money on Indian education than it is at present, to put Mr. Kichlu's recommendations on these two points into force would have the result of checking development among the Aided Schools.

19. On the other hand the Administration has put into force Mr. Kichlu's suggestion (paragraphs 14 and 16 of his Memorandum) that in the future the attendance should be the basis of staffing a school and the staff required should be the basis of the grant. Therefore the amount of the grant would be the amount required to engage a fully qualified staff. This means that expenses in regard to buildings, etc., are met by the profits in revenue, that is the surplus left over from school fees after current expenses have been paid. Mr. Metcalfe is of opinion that under the new system with the Government paying the full salaries there is more income that can be devoted to this purpose than there was under the old system of the grant of a flat rate of £2-10-0d, per pupil in average attendance. Further the new system has certainly led to a better system of staffing. It has also made possible the payment of the improved salaries mentioned in paragraph 15. The present basis of staffing is as follows:—

| Average attendance of pupils of 7 and over. | Maximum Number of Posts. | Classification of Posts. |      |      |
|---|--------------------------|--------------------------|------|------|
|   |                          | 1st.                     | 2nd. | 3rd. |
| 586—625 . . . . .                           | 16                       | 4                        | 6    | 6    |
| 546—585 . . . . .                           | 15                       | 3                        | 6    | 6    |
| 506—545 . . . . .                           | 14                       | 3                        | 6    | 5    |
| 466—505 . . . . .                           | 13                       | 3                        | 5    | 5    |
| 426—462 . . . . .                           | 12                       | 3                        | 5    | 4    |
| 386—425 . . . . .                           | 11                       | 2                        | 5    | 4    |
| 346—385 . . . . .                           | 10                       | 2                        | 4    | 4    |
| 306—345 . . . . .                           | 9                        | 2                        | 3    | 4    |
| 266—305 . . . . .                           | 8                        | 2                        | 3    | 3    |
| 226—265 . . . . .                           | 7                        | 1                        | 3    | 3    |
| 186—225 . . . . .                           | 6                        | 1                        | 2    | 3    |
| 146—185 . . . . .                           | 5                        | 1                        | 2    | 2    |
| 106—145 . . . . .                           | 4                        | 1                        | 1    | 2    |
| 71—105 . . . . .                            | 3                        | ..                       | 1    | 2    |
| 36—70 . . . . .                             | 2                        | ..                       | 1    | 1    |
| 25—35 . . . . .                             | 1                        | ..                       | 1    | ..   |

This compares by no means unfavourably with the basis suggested in paragraph 12 of Mr. Kichlu's Memorandum. There are however still teachers taking more than two standards. Mr. Metcalfe is of opinion that the present staff ration is 'illiberal'. Since it is based on average attendance and not on the full roll he considers that it works out at an average of 40 pupils per teacher. He says that this makes the lower classes in a big school very large and is of opinion that the average should be 30 pupils per teacher. This is also the opinion of the authorities of St. Aidan's Mission where the average is said to be between 40 and 45 pupils per teacher. In the Wesleyan Mission Schools Mr. Metcalfe says that the new rules have led to a reduction of teachers, in one school (admittedly overstaffed) the number has dropped from 12 to 7. But in this connection account should be taken of the remarks in paragraph 23 of Mr. Kichlu's Memorandum as to the lowness of the salaries paid in the schools controlled by this Mission.

20. Another improvement has been made in regard to unqualified teachers. About 37 per cent. of the teachers in Aided Schools (the exact number is 123, as compared with 5 in Government Schools) are unqualified. But under the new rules no School Manager will in the future be able to appoint to a teaching post a teacher who has not passed Standard V or an examination that is deemed to be its equivalent.

21. *Building and Equipment.*—As regards the buildings and equipment of Aided Schools, it has already been noted in paragraph 19 that the head of the Wesleyan Mission Schools considers that under the new system he has more money for this purpose than he had under the old. This is also the opinion of the authorities of St. Aidan's Mission, controlling the Sydenham School. The Administration has also made some attempt to help in the improvement of the buildings and equipment of Aided Schools. It has given the following building grants:—

|                                  | 1927-28. | 1928-29. | 1929-30. | 1930-31. |
|----------------------------------|----------|----------|----------|----------|
|                                  | £        | £        | £ s      | £        |
| Cross St. Aided School . . . . . | 2,052    | ..       | ..       | ..       |
| Stella Hill „ „ . . . . .        | ..       | 125      | ..       | ..       |
| Clair wood „ „ . . . . .         | ..       | ..       | 279      | ..       |
| Darnall „ „ . . . . .            | ..       | ..       | 99       | ..       |
| Greytown „ „ . . . . .           | ..       | ..       | 59       | ..       |
| St. Aidan's „ „ . . . . .        | ..       | ..       | 150      | ..       |
| St. Thomas „ „ . . . . .         | ..       | ..       | 30       | ..       |
| Richmond „ „ . . . . .           | ..       | ..       | ..       | 38       |

Thus the two schools in the greatest need mentioned in paragraph 27 of Mr. Kichlu's report, namely Clairwood and Darnall have received some help from the Government. Of these grants the £99 for the Darnall School represents  $\frac{1}{3}$  of the cost of the work undertaken and the grant of £150 for the St. Aidan's (Sydenham) School represents a little more than half of the cost. However some requests for building grants have had to be refused, for instance one by the Wesleyan Mission for the Springfield School.

22. In the matter of equipment the Province has made the following grants to Aided Schools.

|  | 1927-28. | 1928-29. | 1929-30. | 1930-31. |
|--|----------|----------|----------|----------|
|  | N.L.     | N.L.     | £        | £        |
|  |          |          | 6,517    | 89       |

Mr. Metcalfe says that some of his schools have by this means been completely refurnished and that the grant has proved 'a very great help'. The Administration's policy in regard to the equipment of Indian schools has been by no means ungenerous, for apart from the equipment of Aided Schools it provided £200 worth of furniture for Sastri College when that institution was first opened, in spite of the understanding that the College was to be handed over fully equipped. For the year 1931-32 the estimates show £500 for building grants and £200 for furniture grants in Aided Schools.

23. In regard to Aided Schools then the changes that have been effected may be regarded as satisfactory and so far as it is possible to make progress without altering the whole system, progress has been made. The teachers are now better paid on a fixed system, there is a proper if possibly not wholly satisfactory basis of staffing, the engagement of unqualified teachers has been checked and something has been done towards improving buildings and equipment.

24. *Pensions.*—If the position in regard to salaries has improved considerably the same cannot be said of that in regard to pensions. In fact their pension policy is one of the chief grounds for criticising the Natal Administration. In the statement that they put in before the Education Enquiry Committee of 1928 (page 184 of the report of evidence) the representatives of the Natal Indian Teachers' Society asked for pension benefits for teachers in Aided Schools. Mr. Kichlu in paragraph 43 of his Memorandum recommended the institution of a Provident Fund for these teachers. Some such measure is particularly necessary now that the teachers in Aided Schools will have to be properly qualified, which means that it will be doubly necessary to attract good men. Unfortunately the Administration, for financial reasons, has found it impossible to do anything in this direction.

25. Teachers of all races in Government Schools used as far as pensions were concerned, to come under the provisions of Ordinance No. 7 of 1913 provided their salaries exceeded £80 a year. This Ordinance contained no race distinction. According to its provisions a teacher contributed 4 per cent. of his pensionable emoluments a month (marriage allowance is not pensionable), the Government contributed an equal amount and in return the teacher obtained on retirement a pension calculated on his average salary over his last 25 years of service. However in 1930 the possibility of the Fund established under this Ordinance going insolvent caused the Natal Administration to introduce new legislation. Two Ordinances were accordingly drafted one to provide for the pensions of European teachers and the other to deal for those of non-European teachers.

26. For several reasons the Indian teachers consider that the changes made in the old system are objectionable. The first is that a racial discrimination has now been introduced. The European teachers under their Ordinance are, if they are already in service, to have the choice of remaining on the old 1913 fund though with contribution raised to 4½ per cent. without any extra benefit, or of coming on a new fund to which they will contribute 5½ per cent. a month or more if they enter at a late age, and will in return get a pension calculated over the last 7 years of service and also other benefits including the continuation to their dependents of the pension up to 5 years after retirement should they die soon after retiring. It will thus be seen that in spite of the increased contribution they will be in a better position than they were under the 1913 Ordinance. The Indian teachers already in service can either continue on the old fund with the same increase in their contribution of ½ per cent. as Europeans in a similar situation must pay—an increase made necessary by the signs of this fund being likely to go insolvent—or can come on to a new Provident Fund. This fund on which all future teachers must come may be entered by a non-European teacher drawing a salary of £25 a year; it has a lower contribution and a smaller benefit than the old fund and its terms have apparently been drawn up for the benefit of Native teachers of whom there were only 26 on the old

fund as compared with 72 Indians (that is very nearly all the Indian teachers), and 1,100 Europeans. The result is that in the future there will be one purely European Fund with a high contribution and large benefits and one separate and purely non-European Fund, in which Indians will be grouped with Natives and will receive smaller benefits in return for a lower contribution.

27. The second reason for holding that the new Ordinance is objectionable is that apart from the general question of racial discrimination the new conditions of service are going to be financially unfavourable to the Indian teachers as compared with those already in existence. Under the new Ordinance the Indian teacher is to get no pension but a lump sum as gratuity. This gratuity will be equal to his total contribution together with interest at 4 per cent. per annum compounding yearly. To obtain this the teacher contributes at a rate of 2 per cent. a month; he can make an extra contribution, but this cannot rise above 2/6d. and though it will earn interest no Government contribution will be made in return for it. The first point that may be noted in regard to this scheme is that the substitution of a gratuity for a pension seems to be wrong in principle. The teacher receiving a gratuity will always be in danger of losing it by a foolish investment; further the chance of getting a lump sum will be a temptation to a teacher to retire in the middle of his service so as to clear himself or his relatives of some financial embarrassment. The realisation of these dangers is liable to impair the sense of security which for most Indian recruits here is the main attraction of Government service, the result being that fewer recruits of a good type will be attracted to the Education Service. The second consideration is that the gratuity, as calculated upon a scale drawn up by the Administration, when used to buy a life annuity would obtain for the teacher an annual income far lower than the pension given under the old scheme. An example that was taken showed that a retiring head master, entitled in this case to nearly maximum benefit, who under the old scheme would get a pension of £190 per annum would under the new scheme receive a lump sum of £1,140. It was estimated that if the retiring teacher was in average health when he retired at the age of 60 he would not receive from a life annuity more per annum than 1/10th of the principal sum. In this case therefore he could not be regarded as being likely to receive more £114 per annum. He would therefore be the loser by £76 a year.

28. The Agent submitted a memorandum on this subject to the Natal Executive Committee. In this memorandum he detailed the arguments against the new Ordinance for a non-European Teachers' Provident Fund. He stressed the point that the new Ordinance was hardly a 'liberal' measure and that the Natal Indian Education Enquiry Committee of 1928 in paragraph 8 (b) of their report (Appendix) had recommended that a 'proper scheme of salary scales and conditions of service should be introduced on a more liberal basis than is at present in existence'. He asked that Indian teachers should be included on the same terms with Europeans in the New Fund, new teachers going into the New Fund and old teachers having the right of choosing between the new and the old Funds, but having to pay an extra contribution of  $\frac{1}{2}$  per cent should they stay in the old one. In regard to those who under this scheme would come into the New Fund he said that the additional benefits would recompense them for the rise in contribution and that they would, when in this fund, have no complaint on the ground of racial discrimination. If this scheme was held to be impossible he made the alternative suggestion that new Indian teachers should be allowed to remain on the old Pension Fund, which he said, they would prefer to being placed on a Provident Fund.

29. The Agent subsequently interviewed the Natal Executive Committee on this subject. On this occasion several members questioned the statement that the Indian teachers would be the losers financially under the new Ordinance. Representatives of the Indian Teachers' Society and of the Natal Indian Congress also interviewed the Executive Committee and put forward the same views as had been expressed by the Agent. Unfortunately

none of these arguments produced the desired result, the Ordinance remains on the Statute Book as 'The Natal non-European Teachers' Provident Ordinance' No. 10 of 1930 and there are now 6 Indian teachers in Government service who will come under its provisions.

30. In the matter of this Ordinance the conclusion cannot be avoided that the Provincial Government has passed a measure which is very unpopular with Indian teachers and the Indian community as a whole and which, especially in its weakening of the sense of the life-long security provided by Government service, will make the profession of a teacher in Government Schools less attractive for young Indians. Further this measure has led to a certain suspicion that the Provincial Government in its desire to economise on teachers' pensions has allowed the weight of this economy to fall on non-European teachers. In support of this view a reference may be made to a remark of the retiring Superintendent at page 8 of the Superintendent's Report for 1930. In regard to pensions he says 'there does not seem to be any overt reason why non-Europeans, if able and willing to contribute on the same scale, should be inadmissible to such a scheme as is now under consideration for Europeans'.

31. *Sastri College*.—The formal ceremony of the opening of the combined Teachers' Training College and High School subscribed for by the Indian community and named Sastri College was performed by the Governor-General on the 14th October 1929. Work was started on the 3rd February 1930 with a temporary staff of teachers released from the Higher Grade School under a European Principal. Applications for admission were far in excess of the accommodation and in his report, dated December 1930, the Principal remarked that he could have wished that there had been room and teachers for another hundred boys. On April 22nd the permanent staff took over. It consisted of six lecturers from India, three Natal trained Indian teachers and a European Vice-Principal.

32. The gross enrolment for 1930 was 229 and the roll at present is 212. The average attendance last year was 197; of these 121 are in Standard VI, 47 in Standard VII, 30 in Standard VIII, 5 in Standard IX, and 9 in Standard X. From the College 118 candidates were entered for the Primary School Certificate, 19 for the Junior Certificate and 8 for the Matriculation examinations. Of the boys at present in the College 9 will take the Teachers' Junior Certificate and 5 the Teachers' Senior Certificate. There are 30 others who contemplate taking up teacher's training next year. In addition to the usual examination subjects, Hygiene, Nature Study, Music and Art have been introduced and very fair progress has been made in all of them. Next year it is hoped to introduce Physical Training as well.

33. *Miscellaneous*.—The Funds at the disposal of the Administration have not made it possible to introduce any system of medical inspection in Indian schools nor to give effect to Mr. Kichlu's recommendations in regard to farm schools.

34. No action has been taken to bring into effect Mr. Kichlu's recommendations in regard to the introduction of compulsory primary education. It is unlikely that for some years to come anything will be done in this direction since the 1928 Enquiry Committee in paragraph 8 (a) of its report (Appendix) expressed itself as opposed to compulsory education.

35. Some apprehension is being aroused among Indians by certain changes that are being proposed in the Primary School Certificate, an examination that is considered equivalent to Standard VI. The new regulations in connection with this examination provide for Indian pupils taking a special examination called the 'Teachers' Entrance Examination'. The provision of a separate examination for Indians has given rise to a certain general uneasiness. In particular it is feared that the change may adversely affect the chances of employment of Indians, for most of the chief trades (*e.g.*, furniture and bricklaying), with the exception of the engineering trade which requires the passing of the Junior Certificate, insist on a youth passing the Primary School Certificate before he can be

apprenticed. The Education Department has however informed the Agent that the changes in the examination are still under contemplation and that it is not likely that they will be such as to affect adversely the conditions in respect of apprenticeship to trades.

36. *Conclusion.*—The first conclusion that may be drawn from this survey is that as far as the funds at its disposal have allowed the Natal Education Department has made a genuine effort to improve Indian education. This is especially noticeable in regard to the adoption of the new system of grants-in-aid and the improvement in the salaries of teachers in Aided Schools. This year's and last year's chairmen of the Natal Indian Teachers' Society agree with this view. Further the Provincial Government is now spending practically the full subsidy on Indian education.

37. However, much still requires to be done. Though the European and Indian populations of Natal are practically equal there are five European children at school for every two Indians. Of the Indian pupils more than half are below Standard I and there are four times as many boys as girls. Further whereas for Europeans there are between four and five Government Schools for every Aided school, for Indians there are more than 6 Aided Schools for every Government School. The salaries of teachers in Aided Schools are still low and these teachers have no pension scheme or provident fund. There is a great need to remedy these defects, to improve existing school buildings, to open new schools and to convert Aided Schools into Government Schools. At present the Education Department has only the money provided by the subsidy to use for this necessary development. This subsidy is not earned by children under 7 years of age, in spite of the rapidly rising numbers of Indian children going to school it is based for each year on the last year's average attendance and it is calculated on a flat rate with the result that the more expensive pupil in a Government School costs the Province more than the subsidy he brings in. It was these circumstances that led Mr. Lawlor, an inspector who had been working especially on Indian education, to remark on page 15 of the Superintendent's report for 1929 "It seems absurd to attempt to raise Indian education in Natal to anything like European standards when the subsidy for Indians is less than one-third of that allowed for Europeans.....Unless an increased rate of subsidy can be furnished it will be impossible to remedy any but the more pressing grievances" This opinion appears to be perfectly correct and the proper development of Indian education would seem to require either an increased rate of subsidy or a decision by the Provincial authorities to spend on it money from provincial revenues in addition to the subsidy or preferably both.

38. In conclusion it may be useful to summarise the points which in the Agent's opinion need alteration. These points were mentioned by him in his address to the 1931 Section of the Indian Teachers' Society—

- 1 Expenditure on Indian education from Provincial Funds in addition to the subsidy.
2. Increase of the subsidy of £5-5-0*d.* per pupil.
3. Extension of the subsidy to pupils under 7 years of age.
4. Basing of the subsidy on the estimated attendance for the following year, rather than on the average attendance for the last year.
5. A child whose seventh birthday falls in the middle of a financial year should earn the full subsidy for that year.
6. Equal pension rights for Indian and European teachers in Government Schools.
7. A pension or a provident fund scheme for teachers in Aided Schools.
8. Progressive conversion of Aided and Private Schools into Government Schools.

9. Increasing the number of children attending schools, so that the proportion of attendance to the number of children of the school going age may be increased, especially by opening new schools, by converting Aided Schools into Government schools, by extending existing buildings and by constructing new ones.

39. *Fort Hare* [clause 111 (2) (b) of the *Cape Town agreement*].—There has been no great move on the part of Natal Indians to avail themselves of the educational facilities offered by Fort Hare. However last year Mr. Lazarus by taking his degree became the first Natal Indian to obtain a South African B. A. At present there are 3 Indian students at Fort Hare. Two of these hold bursaries provided by the Natal Education Department. For last year the Department provided two bursaries of £30 a year each to run for two years. This sum is sufficient to pay the school fees, but nothing more. At present there are no separate Indian hostels at Fort Hare.

---

APPENDIX.

No. 174, 1928.]

[23rd May, 1928.

THE subjoined Report of the Committee appointed, in terms of Provincial Notice No. 82, 1928, to enquire into and report upon the question of the education of Indian children is published for general information.

A. E. CHARTER,  
*Provincial Secretary.*

Office of the Administrator,  
Pietermaritzburg, 23rd May, 1928.

---

TO THE HONOURABLE HERBERT GORDON WATSON, COM-  
PANION OF THE IMPERIAL SERVICE ORDER, ADMINIS-  
TRATOR OF THE PROVINCE OF NATAL.

MAY IT PLEASE YOUR HONOUR :

1. In terms of Provincial Notice No. 82 published in the *Natal Provincial Gazette* of the 15th March, 1928, the following Committee was appointed :—

J. Dyson, Esq., M.E.C. (Chairman),  
F. H. Acutt, Esq., M.P.C.,  
C. F. Clarkson, Esq., M.E.C.,  
F. W. Fell, Esq., M.E.C.,  
F. C. Hollander, Esq., M.E.C.,  
J. A. Lidgett, Esq., M.P.C.,  
A. L. Pretorius, Esq., M.P.C.,

and Mr. C. A. B. Peck as Secretary.

with the following terms of reference :—

- (a) The existing facilities as a whole in town and country areas;
- (b) The conditions of service of Indian teachers in Government and Government-Aided Schools, including salary, promotion, discipline and pension;
- (c) The present system of Provincial grants-in-aid and any change which may be considered to be necessary;

- (d) The financial basis of Indian education, having regard to the resources of the Province, the various demands upon them, and the adequacy or otherwise of the existing Union Government subsidies in so far as they affect Indian education.

2. The investigation was conducted at the special request of the Union Government arising from the Indian Agreement. This Agreement was entered into by the representatives of the Union Government and the Government of India without any reference to or consultation with the Governments of the Provinces, and your Committee desires to record that as soon as the text of that Agreement (as contained in the White Paper presented to Parliament) was known, the Provincial Council of Natal passed a resolution in the following terms, which was adopted on the 10th May, 1927:—

- (1) That this Council views with misgivings the general conditions of the Agreement entered into between the Government of South Africa and the Government of India in respect to the Indian question.
- (2) This Council further deplures the fact that this Province (which is more seriously affected than any other part of the Union) has not been consulted through its Provincial Council on those points of the Agreement which contemplate—
  - (a) A relaxation of existing licensing legislation; and
  - (b) The provision of increased education facilities for the Indian community.

This Council respectfully represents to Parliament that these two matters involve not only questions of definite Provincial policy, but in the latter instance considerable financial obligations. Under these circumstances this Council urges that any contemplated action in these two directions should be referred until the fullest opportunity has been afforded to this Council to represent its views thereon.

- (3) That, in the opinion of this Council, the Agreement does not solve the Indian problem nor does it give protection to the European population against Asiatic encroachment.

3. Your Committee emphasizes that the request to the Provincial Administration was merely one for an investigation in order that the Government might be informed as to the position of Indian education in this Province.

4. Your Committee reports that it has taken voluminous evidence from witnesses representing the Indian community from every part of the Province, including that of the Agent-General for India (the Rt. Hon. V. S. Srinivasa Sastri) and has also been furnished with a comprehensive review of the position compiled by Mr. Kailas P. Kichlu (Indian Education Service) and published in a separate memorandum by him.

5. Your Committee records the fact that demands were put forward from all the witnesses for a far-reaching system of educational facilities based upon those presently enjoyed by the European population.

6. After fully reviewing all the evidence tendered and taking into consideration the factors of the problem as affecting the general community in this Province, your Committee finds—

- (a) That the existing facilities as a whole in town and country areas are inadequate for the reasonable needs of the Indian population;
- (b) That there is little left to be desired in the Government schools, but that in the Grant-Aided schools the general conditions of the buildings and the status, salaries and method of payment of Indian teachers are unsatisfactory;
- (c) That the grants-in-aid are inadequate on the present basis and that certain changes are desirable.



7. It was urged that there was an obligation under the Provincial Subsidies Act 1925 for the Provincial Administration to spend on each section of the school-going population not less than the amount earned by that section, and in this respect the full amount received on account of Indian school-going children had not been spent on that service. Your Committee is satisfied that this interpretation cannot be put upon this legislative enactment and that the Provincial Council has not exceeded its powers in allocating a smaller expenditure to this section of education than that earned by its school-going children. Your Committee also records the fact that a restrictive policy in regard to Indian education has been pursued by the Provincial Council up to the present moment, and is of opinion that in so doing the Council was interpreting the views of the general community. It should further be recorded that this policy existed prior to the Provincial Subsidies Act 1925, and has in no way been affected by that legislation.

8. Your Committee desires to make the following recommendations :—

- (a) That as it is necessary to extend the existing facilities for the education of Indian children, the most speedy alleviation of the present conditions can be found by an extension of the Grant-Aided schools throughout the Province together with the provision of Government schools in large centres of Indian population as and when funds permit, and that there should be no alteration in the present system of voluntary attendance:
- (b) and (c) That the present system of Grants-in-Aid which are now paid purely and simply on a capitation basis should be changed. The Aided schools should be graded by average attendance and the financial aid should be in the direction of a Provincial responsibility for the total cost of the teachers' salaries. A proper scheme of salary scales and conditions of service should be introduced on a more liberal basis than is at present in existence, and it should be made applicable to the whole of the Province. It is absolutely essential to establish an Indian Training College in order to supply the necessary qualified teachers to provide for the extension which has been referred to, and in this connection the Administration should accept the gift of the Rt. Hon. Mr. V. S. S. Sastri of a fully-equipped Training College and assume responsibility for its conduct and maintenance, and, further, as it is quite impossible to find professors in this country capable of starting the Training College, the first opportunity should be taken to import them from oversea.

9. Under the heading of Section (d) of the terms of reference, your Committee has considered the possibility of imposing some form of special taxation on the Indian community for educational purposes, but has found this to be impracticable. Your Committee is entirely opposed to any increase in the general taxation of the Province to provide for the contemplated expansion. If the Union Government subsidy is to remain at the present figure of £5-5s., which does not err on the side of generosity, the full amount earned by Indian school-going children will hardly be sufficient to finance the proposed alteration of salary scales in Grant-Aided schools. Your Committee is of opinion that the total amount of Indian education subsidy should be allocated to that service.

It must be pointed out that under these circumstances the mere continuance of the present subsidy will leave no funds available for any proposed extension. Your Committee is satisfied that a large and immediate increase in attendance can be anticipated but, as the Provincial Subsidies Act provides that the subsidy is only to be paid on the attendance figures of the previous year, a financial problem of some magnitude is presented. It can be stated safely that the Act above referred to only contemplated dealing with conditions existent at the time that it was passed, and did not take into consideration any abnormal demands such as have undoubtedly

arisen as the result of the Cape Town Agreement. Under these circumstances your Committee recommends that immediate representations be made to the Union Government to meet the financial obligations that will ensue, by providing that the subsidy for this abnormal increase of Indian children should be granted year by year in respect of the current year's increased attendance, for such period as the anticipated annual abnormal increase shall continue, instead of the deferred system which at present prevails; and further recommends that in the event of such financial assistance being agreed to the total amount of such funds available be allocated to the provision of Indian education. In this connection attention is drawn to the fact that the Provincial Subsidies Act makes no distinction as to the payment of subsidy in respect of the nationality of student teachers, and your Committee urges that the proposed Indian Training College should be subsidised on similar lines to those of the European Training Colleges.

10. Capital expenditure will be necessary in order to make provision for some of the recommendations contained herein and, as this can only be dealt with in the ordinary way on the capital estimates of the Province, the Committee recommends that the question of the funds now in hand belonging to the Indian Immigration Trust Board should be explored with a view to ascertaining whether these funds could not be made available for the purpose of forming a special capital fund for the erection of Government Indian schools and, in special circumstances, for the improvement of existing Aided schools; and, further, that representations be made to the Union Government urging that the necessary action, legislative or otherwise be taken to give immediate effect to this proposal.

11. Your Committee desires to place on record its appreciation of the action of the Government of India in placing at its disposal the services of two educational experts in the persons of Mr. Kailas P. Kichlu, M.A., Deputy Director of Public Instruction, United Provinces of Agra and Oudh, Vice-Chancellor of the University of Agra, and Miss C. Gordon, B. Ed., Professor, Teachers' Training College Saidapet, Madras, and to acknowledge the valuable services which they have rendered to the Committee during the course of the Enquiry.

12. The Committee records its appreciation of the services of Mr. C. A. B. Peck, who has acted as its Secretary, and of the courtesy and attention given by all the Provincial officers during the course of the Enquiry.

J. DYSON, *Chairman.*

FRANK H. ACUTT.

CHAS. F. CLARKSON.

F. W. FELL.

F. C. HOLLANDER.

JOHN A. LIDGETT.

A. L. PRETORIUS.

Provincial Council Buildings,  
Pietermaritzburg, Natal,  
16th May, 1928.

## Annexure II.

### Memorandum by the Agent of the Government of India in South Africa on Sanitation and Housing conditions.

Clause III (2) (c) of the Cape Town Agreement reads as follows :—

- (c) The Union Government are willing to take special steps under the Public Health Act for an investigation into sanitary and housing conditions in and around Durban which will include the question of—
- (i) the appointment of advisory committees of representative Indians; and
  - (ii) the limitation of the sale of municipal land subject to restrictive conditions.

2. It will be observed that the clause refers to the sanitary and housing conditions 'in and around Durban'. The area within the Borough is of course under the control of the Town Council. The area 'around' Durban (that is referred to is at present under the control of six (or seven if Pinetown is included) local bodies called Health Boards. The nature and position of these bodies is closely bound up with the housing and sanitary conditions of the 51,322 Asiatics who reside in peri-Durban, that is, in the areas controlled by the same Health Boards. It is specially in regard to the areas controlled by these Boards that the recommendations of the Conference in regard to Advisory Committees were made. The original Public Health Committees for the peri Durban area were instituted in accordance with the terms of the Public Health Committee's Ordinance No. 7 of 1923. In the original draft of this Ordinance, voters for these Committees were defined as 'registered Parliamentary voters' and section 8 declared that no person not a registered Parliamentary voter should sit on any of the Committees. Indians, therefore, were excluded both from voting for the Committees and from sitting on them. A subsequent alteration removed the objectionable portion of section 8, but left the definition of voters unaltered; therefore, since Indians were still precluded from voting, their position was not in practice improved.

An amending Ordinance No. 6 of 1924 did not alter the situation. The Indian community contested the validity of these Ordinances in the courts, and in November 1925 the Appellate Division held that they were *ultra vires*. However, by the Local Government (Provincial Powers) Act No. 1 of 1926, the Union Government altered the South Africa Act so as to enable the Provincial Council to set up similar local authorities and validated the acts of the previous Committees. The Provincial Council, therefore, passed the Local Urban Areas Administration Ordinance No. 4 of 1926. This Ordinance provided for the creation of the Health Boards which at present control peri-Durban. The primary duty of the Boards is the preservation of health. For this purpose they have powers to ensure proper sanitation and to control buildings and food supplies. Roads, apart from those maintained by the Provincial Administration, are also under their control. They levy an annual flat rate\* on buildings (usually at a rate of £1 a house) and on land (usually at a rate of 2/6d an acre on land under cultivation). Voters for these Boards are still defined† as registered Parliamentary voters. Following the appointment of a Commission on the extension of the boundaries of the Borough of Durban and the passing of an Ordinance providing for the extension of the Borough, the greater part of peri-Durban will be removed from the control of the Health Boards and included within the Borough, from August 1st, 1932.

3. In accordance with the Union Government's promise to take special steps to enquire into the housing and sanitary conditions of Indians in and around Durban, the Union Government provided for an enquiry being made into these matters by the Central Housing Board, which, under the chairmanship of Sir Edward Thornton, sat in Durban during October 1928. The chief object of this enquiry was to decide

\* Section 38 of the Local Urban Areas Administration Ordinance No. 4 of 1926 :—

38 (1) For defraying the expenses of administration every Board shall have power to levy an annual general rate on a basis of valuation, a flat rate or otherwise upon owners or occupiers of land and/or buildings whether movable or immovable within its area.

(2) Any part of a building or other rateable property, if separately let or occupied and under the control of the lessee or occupier, may be treated as a separate rateable property.

† Extract of section 2 of the Local Urban Areas Administration Ordinance No. 4 of 1926 :—

"Voters" means Parliamentary voters registered in any Electoral Division of the Province—

(a) who own or rent immovable property in an area proclaimed under this Ordinance; or  
(b) who reside or carry on business in such area.

on the best method of spending a sum of £50,000, which was earmarked under the Housing Act for Indian housing. Under section 4 of the Housing Act, the Government may place money at the disposal of local authorities in order that the latter may either use this money to erect approved dwellings and carry out approved schemes in accordance with section 5 or lend it out to individuals in accordance with the terms of section 6 in order that they may use it to build houses. The Central Housing Board recommended (paragraph 21 of their Report\*) that £25,000 should be placed at the disposal of the Durban Town Council to erect cottages for Indians on an area called the Eastern Vlei, within the Borough boundary. It further recommended (paragraph 22) that the remaining £25,000 should be used by the Town Council and the Health Boards for the purpose of granting loans under section 6 of the Housing Act to selected Indian owners in freehold of small plots in the peri-Durban area to enable them to build houses on these plots. It must, however, be pointed out that under section 6 of the Housing Act a local authority can only grant loans for areas within its own jurisdiction. The Central Housing Board further drew attention (paragraph 23) to the general Indian desire that Indian Advisory Committees in the Health Board areas should be placed on a statutory basis. It also pointed out the hardship occasioned to poorer Indians by the high rate of interest (10 per cent. per month for rates over one month in arrears) payable for arrears of Health Board rates and to the need for the rating of Health Board areas to be based on a valuation of property.

4. The Union Government therefore fulfilled its pledge of undertaking a special enquiry into conditions in and around Durban, and Sir Edward Thornton's recommendations were acceptable to the Indian community.

5. Unfortunately, the Durban Town Council was not inclined to carry out the most important part of these recommendations. The extension of the Borough boundaries will lead to valuation of property in peri-Durban and the paying of the ordinary and far lower Borough rate of interest on arrears of rates. But the Town Council wished to spend the £50,000 available on the building of an 'Indian village' at a place called Cato Manor in the Mayville Health Board area, several miles outside the present Borough boundary. The Indian community feared that this was in reality a scheme for the segregation of Indians and objected to it for the reasons shown in paragraph 8 of the Central Housing Board's report.\* Matters remained for a long time at a deadlock. Recently, however, the Town Council refused to allot any land within the Borough for an Indian housing scheme but, by a small majority, agreed to spend £25,000 on loans under section 6 of the Housing Act to individual Indian freeholders in the peri-Durban area. At the same time the Town Council has decided to cut up into strips the land it has acquired for the Indian village at Cato Manor and offer these for sale, declaring that money will be available for building for those who buy these strips. This decision has only been arrived at this month (September 1931), and has led to considerable criticism, largely on the preposterous ground that the Cato Manor scheme should be carried out in full, since it would then provide work for the European unemployed. It will, therefore, be seen that in spite of the perfectly clear recommendations of the Central Housing Board, which, though well informed of the Cato Manor scheme, did not recommend any expenditure on it, the Town Council was for long unwilling to help Indian housing in any acceptable way. Even now it has refused to build for Indians within the Borough and it is only with great difficulty that the granting of loans to Indians in peri-Durban has been agreed to. It is quite likely that these loans will not actually be issued until after the extension of the borough boundaries in August 1932; in fact the Town Council cannot issue these loans until the areas in question are brought within its jurisdiction. It must be confessed, therefore, that the attempts of the Town Council to carry out the agreement have been half-hearted.

6. Neither the Health Boards, nor the Indian Advisory Committees, have ever been popular with Indians. The Central Housing Board, in paragraph 16 of its report,\* gave the following good description of the situation: 'On the whole the peri-Durban local authorities have done a good deal in effecting

\* Appendix.

improvements in their areas, but it is clear that they are not strong enough financially to inaugurate any large measures of reform in the matter of housing and sanitation.' Indians complain that they have neglected the Indian Advisory Committees; in fact, when giving evidence before the Central Housing Board Mr. A. I. Kajee, speaking as chairman of the Greenwood Park and District Indian Committee, remarked in regard to the Health Boards, 'Beyond invoking our aid in the collection of rates, they have not availed themselves of our services at all.' While admitting that the Health Boards have not the money for any big schemes, it is clear that they have neglected to a considerable extent both Indian interests and the Indian Advisory Committees. For instance, it is said that where Europeans live, roads are good, and where Indians live, they are neglected. To a certain extent this may be due to the fact that Europeans tend to live near the big roads, but this will not explain away the whole of this charge; a perfect instance that has been seen is on the Roosfontein road under the Mayville Health Board, where precisely at the spot where Indian houses begin and European houses end, the road ceases to be metalled. A good example of the manner in which Indian advice has been at times neglected was given by Mr. Kajee in his evidence before the Central Housing Board. The witness described how the Greenwood Park Board had bought an unsuitable site for an Indian cemetery three miles from the nearest centre of Indian population, with the result that the Board's money was wasted. It must be admitted that the attitude of the Greenwood Park Board towards Indians became more sympathetic later, though the same cannot be said of the Mayville and Sydenham Boards. The fact remains that as long as the Advisory Committees have no legal status, and the Health Boards (or any other local authority in its relations with any other Indian advisory body) are not compelled to show reasons for refusing the Advisory Committees' advice and to submit to an appeal to the Administrator or elsewhere against such refusal and in fact are not obliged to take that advice at all, the value of the Advisory Committees to the Indian community must depend on the uncertain factor of the attitude of the members of the Health Boards towards Indians. These considerations led the Agent to include in his memorandum to the Select Committee of the Provincial Council a statement that Indians would never be fairly treated in regard to housing until they had some proper method of representation based on a limited franchise. The Select Committee, however, considered that questions of representation and franchise were matters for the general law of the Province and fell outside their terms of reference.

7. In conclusion, it cannot be said that the system of Advisory Committees has worked well. Indian opinion appears also to be opposed to the establishment of one big Advisory Committee for the whole of the new borough. If Advisory Committees continue in any form in the future, in order to be of value they should be placed on a legal basis and local authorities should be compelled to consult them on certain questions and to give reasons for disregarding their advice with further power for the Administrator to interfere in cases of obvious injustice.

8. The difficulties in regard to the conditions restrictive of Asiatic residence and occupation that are usually inserted in the sale of municipal land, date back to the passing of Ordinance No. 14 of 1922, usually called the 'Land Alienation Ordinance.' This empowered the Borough of Durban as follows:—

"The Town Council of the Borough of Durban, in selling or leasing any immovable property belonging to the said Borough, may with the consent of the Administrator, make provision in the conditions of sale or lease as to the style, class or value of buildings to be erected thereon and for restricting the use of such property solely to purposes of residence or business and for restricting the ownership or occupation thereof or both to and for prohibiting the ownership or occupation thereof or both by persons of European descent, Asiatics or Natives or persons of any one or more of such classes, and may insert in the title

deeds or leases of any such property the conditions necessary to give full force and effect to such provisions and/or restrictions."

The passing of this Ordinance was strenuously but unsuccessfully opposed by the Indian community. It will be observed that the imposition of restrictive conditions in the sale of municipal land depends on the consent of the Administrator. In this connection the Secretary for the Interior informed the Natal Indian Congress in 1922 that 'the Government considers it reasonable that the Administrator, in giving his approval to racial restrictions introduced into land sales, should see as far as possible that Asiatics are given reasonable opportunity of acquiring adequate residential sites.' This, however, seems to have had but little effect in lessening the number of sales containing restrictive clauses, as will be seen from the following Durban figures:—

*Sales in freehold—*

|  |    |
|--|----|
| (1) Number of sales of municipal land between passing the Land Alienation Ordinance and 1931 . . . . . | 20 |
| (2) Number of sales with restrictive clause . . . . .  | 19 |
| (3) Number of sales since February 1927 . . . . .  | 10 |
| (4) Number of sales mentioned in (3) containing restrictive clauses . . . . .                          | 9  |

The sales have been on the whole evenly distributed over the borough, especially in Stellawood and Morningside. The only sale without a restrictive clause was of a plot of land near the old Livestock Market, facing Carlisle, Lorne and Derby Streets.

*Leasehold—*

|  |    |
|--|----|
| (1) Number of sales in leasehold of municipal land between the passing of the Land Alienation Ordinance and 1931 . . . . . | 24 |
| (2) Number of these sales with restrictive clauses . . . . .   | 18 |
| (3) Number of these sales since February 1927 . . . . .  | 14 |
| (4) Number of sales mentioned in (c) containing restrictive clauses . . . . .  | 8  |

However, of the six sales in leasehold, which are shown above as not containing a restrictive clause, in only three is this clause entirely absent. In the remaining three sales only some of the lots put up for auction were free from this clause, the other lots being subject to it. Therefore, there have been only 3 sales in leasehold (as compared with the 1 sale in freehold) that have been entirely free of a restrictive clause, all having occurred since February 1927.

9. It will be observed, therefore, that since the Land Alienation Ordinance the Durban Town Council has pursued a policy of inserting anti-Asiatic clauses in their sales of municipal land. Further, at least in regard to sales in freehold, this policy has, except in one case only, not been altered since the passing of the Cape Town Agreement. Nor can it be said that the Union Government has done anything in the matter of exploring the possibility of limiting 'the sale of municipal land subject to restrictive conditions'.

8. On the other hand it was stated, *inter alia*, by the Indian representatives that the Council undertook to provide land for Indians within the Borough; that out of 14 municipal land sales all the land was earmarked for Europeans and none for Indians which was held to be a breach of the undertaking by the Council to the Government, particularly as some of the land sold might clearly be regarded as situated in Indianized quarters of the town; and that as Cato Manor, where it was proposed to establish an Indian Village, was outside the Durban Borough and the Council would accordingly not be able to exercise any rights over it as a local authority, there was the consideration that, apart from the opposition to the scheme on the score of segregation, the Village would likely be neglected in the matter of the provision of roads and other essential services which would thus tend to the creation of slum conditions.

9. In 1927 the Durban Corporation endeavoured unsuccessfully to promote the passage through the Provincial Council of an Ordinance providing for the extension of the Borough boundaries by including therein all areas already acquired or to be acquired by the Council outside the existing Borough, for the housing of its employees or others. Differences had arisen between the Council and certain Health Boards in the peri-Durban area regarding the use of the land owned by the Corporation in their jurisdiction and the Council's object was to secure municipal control over such land. Thus, to mention one point of difference, the Corporation wished to dispose of the land in building plots of one-eighth acre each whereas the by-laws of the Local Board concerned required that building plots should not be less than one-quarter of an acre each.

10. Whereas the Corporation has done a great deal for the better housing of Europeans in its area, little or nothing in this respect has been done for the Indian population other than for those actually in municipal employment. The new dwellings erected at the Tramway Barracks as also those under erection at the Magazine Barracks are of the double-storey type and a feature calling for criticism is the upstairs portion of the buildings which is designed for single quarters but in certain cases has been allowed to be occupied by families. Your Committee fears that it will be difficult to ensure adequate sanitary supervision over these quarters.

11. An inspection of the Barracks near the Power Station was also made; these Barracks had been condemned as unfit for human habitation and had apparently been evacuated, but were re-occupied temporarily by Indians employed by the Council's Waterworks Department pending accommodation being made available for them in the new dwellings under erection at the Magazine Barracks.

12. Although there is very little land available for building purposes which is owned by the Council, several vacant pieces of ground continuous to Indian-owned properties in Wards 4 and 6 of the Borough were inspected, certain of which it appeared could suitably be utilised for housing. If the latter were put up for sale as residential sites without the restrictive condition, it would not alleviate to any great extent the overcrowding problem, but it would tend to remove the sense of injustice caused by previous land sales to which reference is made in paragraph 8.

13. Amongst other land inspected was the Eastern Vlei near the Umgeni River. Your Committee considers that the higher portion of this land would be suitable for building purposes and that if the Council is really desirous of doing its duty towards the Indian population it might fairly consider the question of erecting houses here which could either be sold or let to Indians. It is considered that these houses could be erected in such a manner as not to spoil the amenities of the entrance to the Borough from Durban North.

14. In the peri-Durban area the real difficulty lies in the Indians not having title to the ground. A considerable proportion of the area is leasehold land let out in small allotments by big land-owners. The plots in many cases are very small and often contain more than one dwelling. Bad housing and insanitary conditions were unquestionably seen at their worst

4. Evidence was given by representatives of each of the local authorities concerned, namely: the Durban Corporation and the seven Local Administration and Health Boards established in the peri-Durban area at Greenwood Park, Sydenham, Mayville, South Coast Junction, Umhlatuzana, Malvern and Pinetown.

5. The Indian community was afforded full opportunity of expressing its views through representatives who attended on behalf of the Natal Indian Congress and the Natal Branch of the South African Indian Federation. Each local Authority also extended an invitation to representative Indians or designated members of the Indian Advisory Committee in its area to attend the enquiry at the same time as the local authority's representatives. It is to be mentioned that the Indian Advisory Committees in question were primarily established for the purpose of watching the interest of Indians as affected by local government measures enforced by the Health Boards functioning in the peri-Durban area. The somewhat hostile attitude of some of these Committees should, it is thought, disappear once it is recognised that the Health Boards are trying, as your Committee believes they are, to bring about an improvement in existing conditions and are prepared to consult the Committees and refer to them for opinion proposals affecting the Indian population. The fact that the Indian community is in no way represented on the Health Boards and that, even the Indian Advisory Committees have no official recognition remains, however, a very real grievance.

6. Dealing first with the position as it obtains in the Durban Borough area it is necessary to refer to the correspondence which passed between the Government and the Corporation in 1922 as an outcome of representations made by the Natal Indian Congress regarding the Durban Land Alienation Ordinance passed by the Provincial Council which empowered the Council to restrict ownership or occupation of municipal land and which it was contended would operate against the interests of the Indian community. In a letter dated 3rd July 1922, the Town Clerk pointed out that it was the Council's policy "to separate the population of European descent, so far as possible, from Asiatics and Natives in residential areas—not to segregate any section or class entirely in parts of the Borough—or from areas where at the present time any section has property or interests"; further, that "all sales of immovable property belonging to this borough are subject to the consent of the Administrator, and should the Council impose any condition in any land sale that would seriously affect the interests of the Europeans, Asiatics, or Natives, the persons affected could petition the Administrator to refuse consent until such interests were safeguarded". In intimating to the Indian Congress that the Government had advised assent to the Ordinance the Secretary for the Interior in letter dated 19th July 1922, added that, "the Government considers it reasonable that the Administrator, in giving his approval to racial restrictions introduced into land sales, should see as far as possible that Asiatics are given reasonable opportunity of acquiring adequate residential sites".

7. It was represented, *inter alia*, on the Council's side that the available land in the Borough is very small and, apart from low-lying ground which it was contended is unsuitable for residential sites, that there is no land in Durban to-day which can be utilized for housing the poorer class of Indian as an economic proposition; that the Corporation had bought at a reasonable price land outside the Borough area at Wentworth, Springfield and Cato Manor, suitable for the housing of Natives and Indians, which land will be made available for these purposes in fulfilment of the Council's undertaking to the Administrator upon the passage of Ordinance No. 14 of 1922 which gave the Council power to introduce a restrictive clause into its conditions of sale; that the leaders of the Indian community are not, however, inclined to co-operate with the Council in the proposed establishment of an Indian Village at Cato Manor; and that consequently the claim of the poorer class of Indian, whom the Council is anxious to assist as being in greatest need of better housing conditions, remains unmet up to the present.



## Appendix.

### Report of enquiry by the Executive Committee of the Central Housing Board into Sanitary and Housing conditions of Indians in and around Durban

1. In accordance with your instructions as conveyed by the Secretary for Public Health in his minute, dated 19th September 1928, the Central Housing Board, through its three members constituting the Executive Committee of the Board, has carried out an inspection and investigation of the housing and sanitary conditions of Indians in and around Durban.

2. The enquiry was the outcome of one of the conclusions reached at the Round Table Conference on the Indian Question in South Africa, held at Cape Town in 1926, under which the Union Government expressed its willingness—

“to take special steps under the Public Health Act for an investigation into sanitary and housing conditions in and around Durban, which will include the question of (i) the appointment of advisory committees of representative Indians and (ii) the limitation of the sale of municipal land subject to restrictive conditions.”

3. The enquiry opened on Tuesday the 23rd October 1928, and concluded on the Friday following. The Durban Corporation kindly placed a committee room in the Town Hall at the Board's disposal where evidence was heard on the Tuesday and Wednesday. The Thursday and Friday were devoted to making a tour of inspection of various localities in the Borough and peri-Durban area.

amendments) in sub-sections (3) (a) and (4) of Section 102. For the latter no short remedy can be proposed if, as I understand, the regulations under the Act do not admit of the result being achieved by means of the section (101) dealing with "exemptions". I feel sure however that, if the changes commend themselves to you, the methods by which they are to be brought about will present no difficulty to you and your advisers.

I understand that one or two points of difficulty have arisen, in connection with the working of the Act, which will render some slight amendment of its provisions necessary in the near future and that steps will be taken by private Members also to bring forward amendments. Whatever procedure is adopted in the case of the persons on whose behalf I plead,—whether their cases are to be met by the granting of exemption, the enlargement of the regulations, or the amendment of the Act itself,—it will be necessary, if they are to be helped at all, that the men now employed, either as waiters or as bar-men, should be permitted to continue in employment until the appropriate remedies are forthcoming. If, as is argued by the writer of the letter which I enclose, this can be achieved by the further renewal of the exemptions which at present are due to expire at the end of the year, I beg that you will allow the Magistrates concerned to renew such exemptions.

The Honourable T. J. de V. Roos, K.C.

Copy.

Union of South Africa,

Department of Justice,

Pretoria,

The 18th December 1928.

SIR,

Before leaving Pretoria on Saturday last, the 15th instant, the Minister of Justice directed me to reply on his behalf to your letter of the 12th idem, which had just reached him, and to express to you his regret that he was unable, through lack of time, to write to you personally.

Mr. Roos directed me to point out that clause 104 of the Bill as passed at the second reading in the House of Assembly and which was withdrawn at the committee stage, with certain exceptions forbade any licensee from employing *inter alia* any Asiatic in any capacity whatever on any licensed premises; but that clause 105 of the Bill as read a second time, and which with slight amendment now appears as section 102 of the Act, definitely embodied the principle that totally prohibited persons should not be employed in or in connection with the sale of liquor.

This principle was adopted by the Legislature with full knowledge of all the circumstances and results, and Mr. Duncan's amendment excluding the words "in or" as they appeared in sub-section (2) of the old clause 105 now section 102 of the Act—did not affect it; the object of that amendment was to prevent the prohibited persons from being excluded from working in a dining room in which liquor was supplied to customers.

As you are aware, Asiatics are in the Transvaal and Orange Free State totally prohibited persons, and the Minister feels that it would be impossible, and indeed it would be legally incompetent for him, to take any action to defeat the intention of the Legislature or to modify the operation of the law.

on leasehold land, whereas the conditions on freehold land were very much better. The explanation lies in the fact that leases are usually only annual ones and as there is no security of tenure there is no incentive to improve conditions. Free-hold land at any rate carries with it security of tenure and improvements effected are not subject to abandonment at the whim of the landlord. The barrack system of housing is very prevalent in some parts of the area and undoubtedly is one of the greatest evils the local authority has to cope with. The barracks generally consist of rows of rooms badly planned and constructed and often having no light or ventilation. Each room is usually occupied by a separate family and the sanitary conditions surrounding many of the barracks are very bad and a menace to health.

15. In none of the peri-Durban areas has a valuation of properties been carried out on account of the expense involved, and the local authority's main source of revenue is a flat rate levied on each dwelling. The system of imposing a flat rate was criticised by Indian representatives as being unfair on the poor man who occupied a small dwelling, and their contention can hardly be controverted.

16. On the whole the peri-Durban local authorities have done a good deal in effecting improvements in their areas, but it is clear that they are not strong enough financially to inaugurate any large measures of reform in the matter of housing and sanitation. There was one direction in which it was suggested that the local authorities in the outside areas could assist and that was by utilizing funds placed at their disposal under the Housing Act for the purpose of granting loans to Indians who owned ground and wished to erect thereon small cottages for personal occupation.

17. There is unquestionably an overwhelming case for the enlargement of the Borough boundaries but there are vested interests in the way and opposition from such quarters is to be expected from both within and without the Borough. Generally, however, public opinion in Durban appears to be ripe for an extension of the city boundaries, but owing to likely opposition from the quarters mentioned it is very doubtful whether the proposal for extension can be expected to come from the people themselves.

18. Although the question of the need for extension hardly falls within the terms of reference of your Committee, it is quite apparent to any impartial observer that from a public health point of view the Borough boundaries should be extended to include at least the whole of the areas falling under the jurisdiction of the Health Boards of Sydenham and South Coast Junction and possibly also a portion of Greenwood Park. In this connection also the question of including Durban North should be considered.

19. In fact the principle of the need for extending the Borough boundaries should be accepted by the Provincial Administration which should in your Committee's opinion appoint a Commission to decide definitely what should be the extended boundaries and to prepare a draft Ordinance for criticism by the local authorities concerned prior to its introduction to the Provincial Council.

20. While your Committee is convinced that the main solution of the problem lies in the extension of the Borough boundaries, it recognises that some considerable time may elapse before such extension becomes an accomplished fact and that it is necessary to consider in what other directions useful action can be taken meanwhile with a view to easing the acute position which obtains in regard to the housing of Indians.

21. To this end and as a first step it is suggested that of the sum of £50,000, which is earmarked under the Housing Act for Indian housing, an amount of £25,000 be made available to the Durban Council for erecting, under a scheme to be carried out on a suitable site at the Eastern Vlei, two and three roomed cottages for letting or sale on easy terms to Indians.

22. Subject to adequate steps being taken by the local authority for safeguarding itself from possible loss, it is recommended that the balance of £25,000 out of the £50,000 referred to in the preceding paragraph be placed

at the disposal of the Durban Council and of the Health Boards in the areas immediately adjoining Durban for the purpose of granting loans in terms of Section 6 of the Housing Act to selected Indians who own small plots of ground in free-hold and desire to erect thereon small cottages for personal occupation. It is to be pointed out, however, that the power which the Housing Act confers on local authorities to grant loans to individuals is purely permissive and not compulsory and that in any case the sanction of the Administrator must first be obtained before such loans can be granted.

23. During the hearing of evidence a matter that was specially stressed by Indian representatives was the Indian Advisory Committee system to which reference is made in paragraph 5. These Committees are not expressly provided for by law and as organised it seems doubtful whether they are the useful bodies they might be in procuring the co-operation of the Indian community in matters of sanitation and housing. The Local Urban Areas Administration Ordinance No. 4 of 1926 lays down the procedure for the constitution and periodical re-election of Health Boards, and if provision on similar lines could be made by law for the constitution and re-election of Indian Advisory Committees the status of the latter bodies would be considerably raised which would be for the general good. It was also asked whether in the event of the Health Board rejecting advice formally tendered by the Indian Advisory Committee, the Administrator could be empowered on appeal to remit the matter to the Board for reconsideration or after due enquiry to over-rule the Board. Such a procedure it was contended would ensure that advice tendered by the Advisory Committee would not be lightly set aside.

24. There were several other matters brought to the notice of your Committee which are, strictly speaking, not cognate to the enquiry, but which it is considered might fairly be reviewed by the Provincial Administration. Among such was the hardship created on the very poor through the operation of section 42 of the Local Urban Areas Administration Ordinance, No. 4 of 1926 which lays down that "all rates remaining unpaid for one month after such rates become due and payable shall become charged with interest at the rate of ten per centum per mensem, provided such interest shall not exceed the amount of the rate unpaid".

25. Another matter was the unanimous request on the part of the Indian community that in place of the flat rate at present levied the rating by the Health Boards in the peri-Durban area be based on the valuation of property.

26. In conducting its enquiry your Committee is indebted for the assistance received from His Worship the Mayor of Durban, as also from the Town Clerk who accompanied the Committee on its inspections and was present throughout at the taking of evidence. The thanks of the Committee are due also to Mr. J. D. Tyson, representing the Agent of the Government of India in South Africa, who did much to assist the labours of the Committee, particularly in ensuring that it received evidence from individuals who were really representative of the Indian community. Your Committee also cordially acknowledges the help and assistance it received from the Chairman and others representing the Natal Indian Congress.

E. N. THORNTON, *Chairman*

J. LOCKWOOD HALL, *Member,*

R. S. GORDON, *Member and Secretary.*

PRETORIA,

*The 8th December 1928.*

*Annexure. III.*

**Memorandum by the Agent of the Government of India in South Africa  
on  
“Unemployment among Indians.”**

**I.—SURVEY OF INDUSTRIAL POSITION.**

1. *Wage Act, 1925.* The following Wage Board determinations are applicable in the province of Natal :—

- Baking and Confectionery.
- Bespoke Tailoring.
- Catering (Tea Rooms, Restaurants, etc.).
- Clothing (Durban and Pietermaritzburg).
- Clothing (outside areas).
- Commercial Distributive Trade.
- Dyeing and Cleaning Establishments and Laundries.
- Furniture (Durban).
- Furniture (Pietermaritzburg).
- Glass Bevelling and Silvering.
- Leather.
- Sweet Manufacturing.
- Tea, Coffee and Chicory (Packing and roasting).

In all the industries mentioned in this list, with the exception of the Glass Bevelling and Silvering and the Leather industries, both Europeans and Indians are employed.

2. *Industrial Conciliation Act, 1924.*—The Natal industries where wages are in accordance with agreements drawn up under this Act are :—

- Biscuit Manufacturing (National).
- Building (National).
- Engineering.
- Leather (National).
- Liquor and Catering (Pietermaritzburg).
- Liquor and Catering (Durban).
- Printing (National).

Apart from the Liquor and Catering Trade the number of Indians in these trades is not very great comparatively and the councils consist entirely of European representatives. In the Liquor and Catering Trade, where the large majority of employees are Indians, both European and Indian employees (2 European and 4 Indians in Durban) serve on the Councils, though the employers' representatives are all European.

3. *Apprenticeship Act, 1922.*—Committees formed under this Act exist for the following industries in Natal.

- 1 Building (Durban).
2. Building (Pietermaritzburg).
3. Engineering (Durban).
4. Engineering (Pietermaritzburg).
5. Furniture (Durban and Pietermaritzburg).
6. Printing (National).

For the Furniture Trade there are Indians on the Committee; for the other trades the representatives are all European.

4. It will be seen therefore that in the two trades where Indian employees predominate, namely the Liquor and Catering and the Furniture Trades, the Indian workmen are taking their proper part in the carrying out of the Industrial Conciliation Act and the Apprenticeship Act. It is also of

interest to note that the actions of the Indian employees in these trades has not been such as to justify fears that they would put on one side the Europeans in these trades. The representatives chosen by the employees for the first Industrial Council of the Liquor and Catering Trade and the Apprenticeship Committee of the Furniture Trade were all Europeans, and, as has been mentioned above, there are still European employees' representatives on these bodies. In fact the two Europeans who are employees' representatives on the Liquor and Catering Industrial Council are almost the only Europeans in the Union, the others not having joined.

5. In regard to the industries which fall under the Wage Act, the Wage Board determinations usually contain the following recommendations. The hours of work are fixed (*e.g.*, 48 hours a week in the clothing industry). Minimum wage is also fixed (*e.g.*, £3-0-0 to £5-10-0 according to degree of skill required in regard to the Clothing Industry and 2s. 3d. an hour with a minimum of £5-8-0 a week for adult males in regard to the Furniture Industry). Insistence on wages being paid weekly is made. Further there is always a provision that piece work wages are not to be less than the minimum wage fixed for the particular class of work. Again, except in certain cases of absence, no fines by means of wage deductions are permitted. Apart from these provisions in regard to hours and wages, the awards usually lay down the ratio of adult male employees to females, juveniles and apprentices, fix the minimum age of juvenile employees (usually 14) and make rules for counter-acting attempts to evade the raising of the pay of male juveniles and apprentices at the end of each six months period that they work. Further a strong line is taken against outwork, especially in the clothing and bespoke tailoring industries, chiefly on the grounds that in industries where outwork is prevalent the work of Labour Inspectors becomes exceedingly difficult. Finally a week's notice previous to dismissal is required. It will be seen that all these provisions are decidedly to the benefit of employees and it would be difficult to take reasonable objection to them.

6. The objection that is generally taken to the fixing of wages by Wage Board awards, as opposed to the setting up of Industrial Councils is that these awards are 'inhuman', being fixed for a definite period and that they are not continuously under the review of the parties affected by them. Further the Industrial Council continues sitting while the determination it has made is in force. It can thus help the determination's smooth working by its policy in the matter of exemptions, etc. On the other hand—and this applies particularly to Indian labour which in spite of its recent forward strides is still ill-organised in comparison with European labour—it is not possible for employers in an industry where a Wage Board award applies to drive their employees into an agreement which is to the latter's disadvantage. In this connection however, according to Section 9 of the Industrial Conciliation Act the power of declaring an agreement arrived at under the Act binding on the parties, rests with the Minister. In conclusion it may be noted that, whether rightly or not, the establishment of Industrial Councils appears to be more popular, at any rate with Indians, than the settlement of wages by Wage Board determinations.

7. *Trade Unions.*—In regard to the position of Indians in the Trade Unions, all the Unions now have in theory an open constitution, without a colour bar. The following Natal Unions have Indian members :—

1. Durban and District Bakers' Union.
2. Durban and District Amalgamated Union of Laundries and Dry Cleaners.
3. Durban Tinsmiths and Tankmakers' Union.
4. Durban and District Tobacco Workers' Union.
5. Durban Municipal Indian Employees' Society.
6. Natal Furniture Workers' Union.
7. Natal Liquor and Catering Trades Employees' Union.
8. Durban and District Garment Workers' Union.
9. S. A. Typographical Union.

Of these Unions the Tinsmiths present a particularly difficult problem. The Union with which the (Indian) Tinsmiths' Union might be affiliated is the Amalgamated Engineers' Union. The rate of pay for the European members of the various Unions (e.g., the Boilermakers') that are grouped together in the Amalgamated Engineers' Union is 2/9d. an hour. The Tinsmiths being unaffected by either of the Industrial Acts are paid at the low rate of 6d. an hour.

To bring up the wages of the Indian Tinsmiths to a level which would enable them to be included in the Amalgamated Engineers' Union would require a very gradual raising of the level of their wages if they were not all to lose their employment. The Typographers' is a powerful union with a European majority. In June 1931 there were 246 Indian members of this Union of whom 209 were Grade II employees, that is men employed in the less skilled work. It is estimated that at present there are about 276 Indians employed in the Printing Trade.

8. The Furniture Union has an Indian majority, though there is a considerable European membership as well. Until a few months ago this Union had an Indian Secretary, who however has now been replaced by a European. The Indian workers in the Furniture trade have been somewhat backward in joining the Union. There are 219 Indian members of this Union, while the number of Indians now employed in the trade is estimated to be 425.

9. In the Liquor and Catering trade the arrangement of two parallel unions of European barmen representing the liquor side of the trade and Indian waiters representing the catering side, broke down. The European branch has ceased to exist and there is now a joint union, of which however there are only two European members. The Union has an Indian secretary and is the first union with non-European officials to push through an Industrial Council agreement. There are 490 Indian members of the Union in Durban, where the number of Indians in the trade is calculated as being about 550.

10. The other Indian unions, apart from the Furniture, Liquor, Catering and Typographers' Unions, do not function actively. Some however have a considerable membership, the Laundries and Dry Cleaners having 240 Indian members. The Garment Workers' Union has both European and Indian members, the Laundry Workers' and Tinsmiths' members are all Indians.

11. *Employers Organisations.*—There are 3 Indian Employers' associations registered in Natal, namely:—

1. Durban and District Garment making Employers' Association.
2. Durban and District Laundry, Cleaners and Dyers Organisation.
3. Bus Owners' Association.

12. The three chief industries which employ Indians are the Liquor and Catering, Furniture, Tailoring, and Clothing trades. It will be seen that in two of these Indians are well represented. It is in the smaller trades such as those of the Tinsmiths and Tea Packers that the representation of Indian employees is unsatisfactory. The two biggest unions, which in practice Indians have not joined are the Builders Union (Bricklayers) and the Amalgamated Engineers Union.

Further in certain industries Indian union members do not yet exert a great influence. Thus the considerable number of Indian members of the Typographers' Union did not prevent the Secretary of that Union protesting in his capacity of an official of the South African Trades and Labour Council against the granting by the Durban Town Council of housing loans to Indians unless this was done in such a manner as would give employment to Europeans in the building of the houses.

## II.—GOVERNMENT AND MUNICIPAL EMPLOYMENT.

13. Having dealt with the general industrial situation the unemployment problem will now be considered.

The present Government has, undoubtedly, pursued a 'white labour policy'. As far as Government employment is concerned, the replacement of Indians has, as far as can be ascertained, been by Europeans rather than

by Natives. Thus the Minister of Justice has been reported to intend to reduce the number of Native constables; the replacement of Indian constables has therefore probably been by Europeans. The figures given below show that the result of the Government allowing retrenchment to fall on Indian Government employees and the replacement of such employees at the end of their service by Europeans has led to a considerable reduction in the number of Indians in Government service.

|                                | 31st December 1927.                 |        | 1931.            |        |
|--------------------------------|-------------------------------------|--------|------------------|--------|
|                                | Cape.                               | Natal. | Cape.            | Natal. |
| South African Police . . . . . | 108<br>(All in Natal)<br>June 1927. |        | 76<br>June 1931. |        |
| Railways . . . . .             | 29                                  | 1,338  | 21               | 804    |

14. The Municipalities have not been as severe as the Government, but Municipal employment for Indians is also being reduced, especially in regard to those engaged in unskilled work. The Durban Town Council has kept up the number of Indians in the Durban Borough Police, the only separate police force in South Africa. There are now 30 Indian constables in this force and since 1927 only one Indian has been dispensed with and he was dismissed for misconduct. However the threat to Indian unskilled employment is shown by the case of Pietermaritzburg, where the installation of underground waterborne sewerage has led to the number of Indians employed by the Municipality being reduced from 224 in 1926 to 161 in 1931. It is true that the number of Durban Municipal employees has risen from 1,818 in 1926 to 1,930 in 1931 but the European employees have increased during the same period to a considerable extent. Further it would appear from a recent resolution of the Durban Town Council that that Council intends in the future to pursue a policy of replacing Indians by Europeans, though by a later resolution they have agreed not to put this into practice at least for the present.

15. Therefore the retrenchment of Indians in Government employ and the gradual closing of this and Municipal employment is a powerful factor in aggravating Indian unemployment.

### III.—PRIVATE EMPLOYMENT.

16. In connection with employment in private industries it may be of interest to note that following on a meeting held in September 1931, to discuss Indian unemployment, the Natal Indian Congress opened in Durban an unofficial bureau for the registration of unemployed Indians. Within the first four days 1,487 unemployed Indians registered, their trades being as follows:—

|  |     |
|--|-----|
| (a) Tinsmiths . . . . .                  | 99  |
| (b) Vanmen . . . . .                     | 6   |
| (c) Clerks . . . . .                     | 92  |
| (d) Factory hands . . . . .              | 144 |
| (e) Barbers . . . . .                    | 6   |
| (f) Bakers and Confectioners . . . . .   | 11  |
| (g) Laundrymen . . . . .                 | 61  |
| (h) Motor Drivers . . . . .              | 71  |
| (i) Furniture Makers . . . . .           | 165 |
| (j) Shop Assistants . . . . .            | 44  |
| (k) Butchers . . . . .                   | 7   |
| (l) Printers . . . . .                   | 39  |
| (m) Painters . . . . .                   | 59  |
| (n) Labourers . . . . .                  | 214 |
| (o) Tailors . . . . .                    | 12  |
| (p) Waiters . . . . .                    | 401 |
| (q) Jewellers . . . . .                  | 5   |
| (r) Shoemakers . . . . .                 | 6   |
| (s) Police . . . . .                     | 3   |
| (t) Teachers . . . . .                   | 16  |
| (u) Bricklayers and Carpenters . . . . . | 26  |



In this list—

(d) includes Machinists, Packers, Pastors, Labellers, etc.

(e) includes Polishers and Woodcutters.

(p) includes Barmen, Cooks, Porters, Page boys.

It is possible that a number of the men shown here were never in genuine, regular employment, but in spite of this the figures give some idea of the class of men out of employment.

17. Figures obtained from the Census Department and the Department of Mines show that there is one outstanding industry where the number of Indians employed has been very greatly diminished. This industry is the Natal coal mining industry where the number of Indians has been almost halved during the last four years. As far as can be ascertained this reduction has been brought about more by the closing down of mines than by the replacement of Indians by Europeans. The figures for Asiatics employed in these mines are as follows :—

|   | 1926. | 1931. |
|---|-------|-------|
| Producing and non-Producing Mines . . . . . | 1,527 | 810   |

18. In regard to other industries the following comparative figures were obtained for Natal from the census department :—

| Class of Industry.                                       | 1925-26.     | 1929-30.     |
|--|--------------|--------------|
| I. Treatment of Raw Material . . . . .                   | 218          | 216          |
| II. Processes in Stone, Clay, etc. . . . .               | 456          | 378          |
| III. Working in Wood . . . . .                           | 405          | 392          |
| IV. Metals, Engineering, etc. . . . .                    | 606          | 607          |
| V. Preparation and Treatment of Food and Drink . . . . . | 5,108        | 4,526        |
| VI. Clothing and Textiles . . . . .                      | 323          | 822          |
| VII. Printing . . . . .                                  | 297          | 333          |
| VIII. Vehicles . . . . .                                 | 63           | 98           |
| IX. Shipbuilding . . . . .                               | 16           | 44           |
| X. Furniture, Bedding and Upholstery . . . . .           | 432          | 429          |
| XI. Chemicals, Drugs, etc. . . . .                       | 711          | 538          |
| XII. Surgical, etc., Instruments . . . . .               | 2            | 3            |
| XIII. Jewellery, etc. . . . .                            |              |              |
| XIV. Heat, Light and Power . . . . .                     | 96           | 114          |
| XV. Leather and Leatherware . . . . .                    | 177          | 273          |
| XVI. Building and Contracting . . . . .                  | 47           | 44           |
| XVII. Miscellaneous . . . . .                            | 6            | 35           |
| Total for Private Industries . . . . .                   | <u>8,963</u> | <u>8,852</u> |

19. It may be interesting to compare with the figures given in this list and with those of the unemployed Indians who registered themselves with the Congress the opinion of the Secretaries of the Furniture and the Liquor and Catering Unions and of the Indian printer who acts as a kind of unofficial representative of the Indian members of the Typographical Union. The Secretary of the Furniture Union agrees with the Census Department's 1929-30 figure, since he estimates the number of Indians in the trade as 425. He does not however agree with the earlier figure. He declares that 102 of the Indian members of his Union are unemployed, as also about 200 non-Union Indian furniture workers. Support is lent to this view by the fact that 165 unemployed furniture workers registered themselves with the Congress. He declares that during the last 3 years there have been 92 replacements of Indians by Europeans.

20. The Indian printer who was consulted considers that the number of Indians in this trade has fallen from 333 in 1929-30 (the figure given in paragraph 18) to 276 in 1931.

21. In the Liquor and Catering Trade there is a general fear among Indian waiters that they are going to be replaced by Europeans. Up to date this fear seems hardly to be justified, in spite of the number of unemployed who described themselves as waiters to the Congress. One tea room on Durban Beach replaced its Indian staff of 8 by European waitresses, one hotel has given notice to its staff of 14 Indian waiters and there are isolated instances of Indian hotel porters being replaced by Europeans. On the other hand the big beach hotels continue to employ Indian waiters and one tea room (the Rotunda) after trying the experiment of European waiters returned to Indians. The Secretary thinks that 295 Indians are out of employment in this trade. He thinks that the number of Indians in the trade in Durban has decreased from 620 in 1928 to 550 in 1931.

22. Of the smaller Unions, the Secretary of the Tinsmiths thinks that 100 of his men have lost their jobs during the last three years, while the Secretary of the Laundrymen's Union considers that in his trade there are 60 unemployed. These last figures however must be considered as being very rough.

#### IV.—CAUSES OF UNEMPLOYMENT.

23. The question now arises as to whether the enforcement of industrial legislation has been the chief cause of this unemployment. There is no doubt that this legislation has led to a great rise in wages. The Divisional Labour Inspector for Durban considers that the present wage of £7 a month for waiters, fixed by an Industrial Council Agreement represents a 25 per cent. increase. The wages for tea packers have risen from £1-10-0*d.* to £2, a week. He admits that the wage of £18 a month fixed by a Wage Board Determination for male shop assistants of 5 year's experience and reduced only in August from £21-13-4, a month, is excessive. He states that there is difficulty in inducing the Indian employers (90 per cent. of the whole) in the laundry trade to pay their employees the Wage Board rate which works out as roughly £1-10-0*d.*, a week, for an average job. He further doubts whether a skilled Indian furniture worker really gets £5-8-0 a week, the Wage Board rate.

24. But a big laundry, the Durban Hygienic Laundry was consulted as to its number of Indian employees and though the exact figures were not given, the management were of opinion that the number has, if anything, increased since the passing of the industrial legislation. The same answer was obtained from a big tea packing firm Messrs. Glenton and Mitchell. In both these industries the employees have always been entirely Indian, so there is no question of replacement by Europeans; they are therefore good instances from which to estimate the effect of the industrial laws on Indian employment. Far more probable causes of unemployment would seem to be (1) replacement by Europeans, as was seen in the case of Government service, (2) the effect of the depression, as seen in regard to the Natal coal mines and (3) replacement of unskilled labour by machines as seen in regard to the Pietermaritzburg municipal employees. A good example of the last of these causes, combined possibly with a certain replacement by Europeans is given by the Lion Match Factory, which about 1924 was employing some 400 Indians and is now employing 100. These causes are aggravated by two other factors. The first is the propaganda carried on in certain newspapers and by certain bodies supposed to represent the European unemployed, for the replacement of Indians by Europeans. Thus during September 12 Indian Wrappers employed in Lever Brothers, Durban branch, have been replaced by Europeans as the result of pressure on employers to try European labour in unskilled jobs. The second factor is that the Indian unemployed, unlike the European, cannot move from one province to another in search of work. In conclusion, it may be said that the two industrial acts have certainly led to a number of Indians losing their work but these acts are not the prime causes, these being trade depression, the 'white labour policy' and the effect on unskilled labour of mechanical development.

**CONFIDENTIAL.**

GOVERNMENT OF INDIA.  
DEPARTMENT OF EDUCATION, HEALTH AND LANDS.

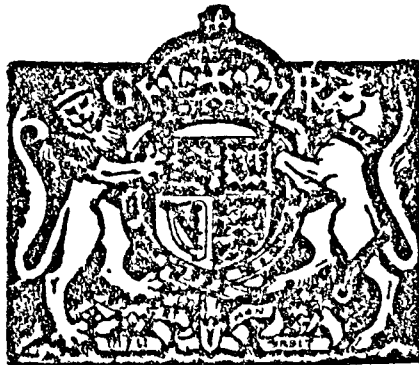
---

**BRIEF OF INSTRUCTIONS.**

Issued to the delegates of the Government of India to the Conference with the representatives of the Government of the Union of South Africa on the Indian Problem in the Union.

---

III.—Trade Licensing Laws.



NEW DELHI  
GOVERNMENT OF INDIA PRESS  
1931

## Trade Licensing Laws.

Each of the four provinces of the Union of South Africa has its own licensing laws and regulations. They are based on the same general principles, but vary considerably in some respects. It is the accepted policy of the Union, for reasons unconnected with Indian trading, that licensing should be the function of local authorities and this feature is common to the laws of all the provinces, which, for the sake of convenience, are summarised below.

2. *Transvaal*.—In the Transvaal, General Dealers' licences are issued by Receivers of Revenue in the service of the Union Government, and expire on the 31st December of each year. Any person who carries on a trade or business in any shop, store, or fixed place where goods are sold or offered or exposed for sale, must hold a General Dealers' licence. Since the passing of the General Dealers' Licences (Control) Ordinance, every applicant for a licence has to apply, in the first instance, for a certificate of fitness—

- (1) in the case of business within a municipality to the local authority; and
- (2) in other areas to Rural Licensing Boards.

Every local authority or Board has discretion to refuse a certificate of fitness on one of the following three grounds:—

- (i) that the premises intended for the business are not suitable as regards their sanitation, situation or character of the buildings;
- (ii) that the locality is not one in which it is desirable that the business should be carried on; and
- (iii) that the applicant or the person who will be in actual control of the business is not a fit and proper person to hold such a licence.

As regards businesses where articles of food or drink are produced, prepared, used or sold for human consumption, application for a certificate of fitness

may also be refused because of (i) the uncleanliness of the person in actual control of the business, or (ii) the granting of such a licence in respect of the premises for which it is sought will cause nuisance or annoyance to the persons in the neighbourhood. The decision of a local authority or Board on an application for a certificate of fitness authorising the issue of a *new* General Dealers' licence is final, and not liable to review, reversal or alteration by any Court of Law. As regards applications for renewal of existing licences, the licensing authority is required to record the evidence given for or against the application and the reasons for refusal, if the application is refused, and its refusal is subject to appeal to the Provincial Division of the Supreme Court.

*Orange Free State.*—In the Orange Free State, Asiatics and other coloured persons are by the laws of the former Republic, which are still in force, forbidden to trade or carry on business of any description. A discussion of the licensing laws of this province is not therefore necessary.

*Cape Province.*—The issue of licences in this province is governed by the Licences (Consolidation) Ordinance, No. 14 of 1916. The licences are issued by Receivers of Revenue, Magistrates, Postmasters, and other duly authorised public officers, but no licence to carry on certain specified kinds of business, including that of a general dealer or hawker, can be obtained unless the applicant produces a certificate of fitness from the local authority. Where no local authority exists, the Magistrate issues or refuses a certificate of fitness in his discretion. There is no appeal from the decision of the local authority, but the Administrator has a right to grant the necessary certificate if he is satisfied that it has been refused solely on the ground that there are already a sufficient number of general dealers in a particular area. Where a general dealer already in possession of a licence wishes to change the place of business and the certificate of fitness is refused by a local authority, there is a right of appeal to the Administrator.

*Natal.*—In this province, the issue of licences in municipal areas is governed by Act No. 18 of 1897, which provides

for the appointment of a licensing official by the Town Council or Town Board to issue annual licences in the Borough or Township, as the case may be, to wholesale or retail dealers. A Licensing Officer has absolute discretion to issue or refuse licences applied for; and his decision is not liable to review, reversal or alteration by any Court of Law, except in the case of applications for renewals of licences which, according to Act 22 of 1909, are appealable to the Supreme Court or Circuit Court. Applications for new licences refused by the Licensing Officer are appealable only to the Town Council or the Town Board. Outside Municipalities and Townships the issue of licences to wholesale and retail dealers is governed by the Rural Dealers' Licensing Law Amendment Ordinance, 1923 (No. 4 of 1923). Under this Ordinance, Rural Licensing Boards consisting of a Chairman and four other members appointed by the Administrator of the province have been set up, and as no one can be appointed to the Board who is not an enrolled voter for Parliament, the membership is exclusively European. Every Rural Licensing Board has discretion to refuse wholesale or retail licences but is bound to record, in regard to all applications, whether for the grant, transfer or renewal of a licence, any evidence given for or against the refusal of the application and, where an application is refused, the reasons for the refusal. Its orders on any application for a new licence or for the transfer of a licence are final and are not liable to review, reversal or alteration by any Court of Law, except where an order of refusal is on the ground that the applicant is not a fit and proper person. In such cases there is a right of appeal to the Rural Licensing Board of Appeal appointed by the Administrator. The Ordinance provides that one member of this Appeal Board shall be a person who has held office as a Judge or Magistrate, or who is an Advocate of the Supreme Court. An applicant for the renewal of a licence, whose application has been refused by the Licensing Board, is entitled to appeal first to the Rural Licensing Board of Appeal, and, finally, to the Provincial Division of the Supreme Court or the local Division thereof.

3. It will be observed from the foregoing summary that local bodies or, in

the boroughs and townships of Natal, their agents have a very wide discretion in the matter of issuing licences to trade, and the difficulties of Indian traders in regard to obtaining licences have arisen from the fact that the licensing authority, on which European traders are strongly represented, is in many places admittedly hostile to them and has used its powers to restrict trading by Indians because they are Indians. For example, in Durban, the practice has been that a European's application for new licences is granted almost always as a matter of course, whereas an Indian's licence is refused as a matter of course. The Asiatic Inquiry Commission, appointed by the Union Government in 1920, which was instructed to inquire into and report *inter alia* on the provisions of the law affecting the trading or carrying on of business by Asiatics generally, or in specified localities, came to the conclusion that Indians had legitimate grievances as regards the administration of these laws by municipalities in particular. The deputation which the Government of India sent to South Africa under the leadership of Sir George Paddison in 1925-26, saw no reason to differ from the conclusion of the Commission and, in the Cape Town Conference, the Indian Delegation recommended that, when the time came for revision of the existing Trade Licensing Laws, limitation of the discretionary powers of local authorities in the following ways might be considered—

- (i) the grounds on which a licence may be refused should be stated;
- (ii) the reasons why a licence is refused should be recorded; and
- (iii) there should be the right of appeal in the case of first applications and transfers as well as in the case of renewals to the Courts or to some other impartial tribunal.

These suggestions were based on the recommendations made on the subject by the Asiatic Inquiry Commission in 1920. No action, however, has so far been taken on them. On the contrary, the Transvaal Provincial Council recently passed an Ordinance amending the General Dealers' (Control) Ordinance of 1926 (No. 12 of 1926). Some of these

amendments are objectionable from the Indian standpoint, particularly the one which seeks to do away with the existing right of appeal to the Supreme Court or a local Division thereof when an application for a certificate to renew a licence is refused. Fortunately, the Governor General has reserved the amending Ordinance for further consideration and no further action on it will be taken until after the forthcoming Conference. As regards the administration of the existing licensing laws the information relating to Natal and the Cape recently submitted by the Agent is not complete and, for that reason, it is difficult to interpret. The two facts which emerge clearly from his report are—

- (1) that Durban still pursues a policy of refusing a large proportion of new Indian applications for licences; and
- (2) that in the rural areas in Natal, the Licensing Boards have on the whole been just.

On the other hand, as regards the Transvaal, from the evidence given by Mr. Tyson before the Select Committee on the Asiatic Tenure (Amendment) Bill, it would appear that in certain magisterial areas, at any rate, the number of Asiatics holding the General Dealers' licences was steadily diminishing, presumably as a result of prejudice on the part of the local authorities concerned. But even if there were conclusive evidence that the position in this respect had not deteriorated since the last Conference, the unsatisfactory\* character of the laws by which wide discretion is left to local bodies to pursue a policy of racialism remains unaltered. It is, therefore, suggested that the Indian delegates should repeat at the next Conference the suggestion in regard to the amendment of the Licensing Laws made by their predecessors in the former Conference. If the majority of local bodies are inclined to be more sympathetic to Indians than they have been in the past, they should welcome an early revision of the licensing laws on the lines recommended. If, on the contrary, their attitude has grown worse, the need for reform in the interests of

\*Please read Annexure I.



justice to the Indian community is more urgent. Even if it has not altered since the last Conference, it would be reasonable to urge that a reform which the Asiatic Inquiry Commission recommended as early as 1920 should no longer be delayed.

---

## ANNEXURE I.

*Extract from the 'Indian Opinion', dated 2nd October 1931.*

## PRESENT LICENSING SYSTEM.

## CONDEMNED BY A JUDGE.

We have all along complained of the extraordinary powers given to local authorities in regard to the grant or refusal of trading licences which are rarely if ever exercised impartially. Many cases have been given publicity in these columns where both the licensing officers as well as the Town Councils have proved their unfitness to exercise the powers vested in them in a just and proper manner. It has been the common and bitter experience of the Indian community. We now find that our views have been supported by Mr. Justice Krause, a well-known judge of the Transvaal Supreme Court who has condemned the system in strong terms as having failed most lamentably. We reproduce below a Reuter's report:—

*Johannesburg, Sept. 28.*—Giving judgment to-day in a case in which he upset a decision of the licensing committee of Johannesburg City Council to grant a butcher's licence in Yeoville, Mr. Justice Krause made some observations on the dangers of the system whereby business licences are adjudicated upon by bodies elected by popular vote.

"I have," he said, "unhesitatingly formed the conviction from this and several similar cases, which have come before the Courts, that it was a mistake for the legislature to entrust the granting or refusal of business licences to local authorities, composed as they are of persons who are returned to the Council by popular vote.

"Human nature being what it is and local influences what they are, in my view it is a positive danger to entrust such bodies with semi-judicial functions which call for an impartial, unbiased, honest and fair consideration of the merits of the applications which might be brought before them.

## "FOND DELUSION."

In theory the principle may look feasible, but in practice it has failed most lamentably. It is a fond delusion to expect a body composed of various types of citizens, drawn from all sections of the community and returned to the Council by popular vote, which is usually influenced by extraneous considerations and by local political influences, could perform semi-judicial functions in an impartial and unbiased manner.

In cases of pure routine the system may answer, but in cases which really matter and intimately affect the rights and interests of the community failure is a foregone conclusion.

Some of these men have not the mental balance to appreciate the true significance of their statutory duties; others must either abide by their pledges or suffer the inevitable consequences.

Others have business or financial interests to protect, and others again may have to succumb to the pressure of local and political influences or may be influenced in other ways which I need not mention.

It is not for the Court to suggest remedies, but the Court is entitled, where it is satisfied from practical experience that the system adopted by the legislature is a wrong one, to give expression of its views for the guidance of those who are entrusted with the duties of Government."

**CONFIDENTIAL.**

GOVERNMENT OF INDIA.  
DEPARTMENT OF EDUCATION, HEALTH AND LANDS.

---

**BRIEF OF INSTRUCTIONS.**

Issued to the delegates of the Government of India to the Conference with the representatives of the Government of the Union of South Africa on the Indian Problem in the Union.

---

IV.—The Transvaal Asiatic Tenure (Amendment) Bill.



NEW DELHI  
GOVERNMENT OF INDIA PRESS  
1931

## The Transvaal Asiatic Tenure (Amendment) Bill.

The Union Government have intimated that they desire the forthcoming conference at Cape Town to limit itself to the consideration of (a) the working of the Cape Town Agreement of 1927, and (b) the Transvaal Asiatic Tenure (Amendment) Bill (Appendix I). Subjects comprised in (a) have been dealt with in separate memoranda. This note attempts (i) to explain the circumstances leading up to the Transvaal Asiatic Tenure Bill and its main provisions, and (ii) to make suggestions as to the line to be taken by the Indian delegation in regard to it.

2. (i) The Bill deals with the following matters:—

- (1) Rights of Asiatics—
  - (a) to own, and
  - (b) to occupy immovable property in the Transvaal.
- (2) Granting to Asiatics of licenses to trade; and
- (3) Allocation to Asiatics in future, for purposes of trade and of residence of special areas where they may acquire and hold fixed property.

Before analysing these provisions, it seems desirable to trace the history of the present position in regard to the rights of Asiatics to own and occupy immovable property in the Transvaal, without which the provisions and purpose of the Bill cannot be appreciated.

3. (a) *Ownership*.—The laws of the Transvaal on this subject have always been restrictive in their application to Asiatics. Law 3 of 1885 of the Transvaal Republic, as amended in 1887, which applies to the whole province, provides that persons belonging to one of the native races of Asia cannot be owners of fixed property in the "Republic", except only in such streets, wards and locations as the Government, for purposes of sanitation, shall assign to them to live in. After the promulgation of this law, locations were assigned to Asiatics in certain towns, but the Republican Government showed no anxiety to enforce its provisions strictly or immediately. Acquisition of fixed property for purposes of ownership was, in fact, permitted through the agency of a nominal European trustee, who generally executed a mortgage bond in favour

of the purchaser to the full amount of the purchase price and gave him an unrestricted power of attorney to deal with the property. Even Government officers acted as such trustees "with the consent and at the instigation of the Government". After the passing of the Transvaal Companies Act of 1909, Indians also started acquiring fixed property by forming themselves into joint stock companies. This practice was less attended with risk than the other under which there was always the chance of the trustee being declared insolvent and the property being claimed by his creditors as it was registered in his name. Legislation purporting to close both avenues of acquiring rights of ownership of fixed property was passed in 1919 (Act 37 of 1919), although existing rights were specifically protected. But, although the intention of the legislature appears to have been to make the prohibition of acquisition and ownership of landed property by Asiatics absolute, the actual terms of the law, which is reproduced in Appendix II, do not appear to have proved effective for the purpose, and Asiatics have continued to acquire ownership of land in the Transvaal even after Act 37 of 1919 was added to the Statute Book. The principal methods employed for the purpose are set out below :—

- (i) Allotting 51 per cent. of the shares of the company formed for the purpose to a European shareholder; and
- (ii) Dividing all shares into voting and non-voting and assigning the majority of the voting shares to the European. Thus a company is floated with a small capital, far less than the value of the land which it is proposed to purchase. The shares of this company are divided into two classes, voting and non-voting shares, the former class numbering only 2 per cent. of the total shares. The European shareholder is given the majority of the voting shares, but none of the non-voting shares. Technically speaking, therefore, the European has the controlling interest. The Articles of Association of the company, however, contain clauses requiring all resolutions of either the directors or the shareholders to be unanimous.

In addition, acquisition through trustees also appears to have been practised since the passing of the Act.

4. (b) *Occupation*.—Soon after the promulgation of Act 3 of 1885 the question arose whether it forbade (i) residence outside locations on grounds other than sanitary or (ii) occupation of premises for purposes of trade. The Republican Government held the view that the law prohibited Asiatics from occupying premises outside locations for trade also. His Majesty's Government, however, stoutly maintained that it was never intended that Asiatics should be relegated to locations except for residential purpose and for sanitary reasons, and that Law 3 of 1885 did not restrict Asiatics from trading anywhere. In September, 1893, the Volksraad passed a resolution to the effect that Law 3 of 1885 should be strictly applied in such manner that all Asiatics and persons falling under it should have to confine themselves, in respect both of habitation and trade, to the locations assigned to them, an exception being made in respect of existing lease-holders for the unexpired portion of their leases. The difference of opinion between the Republican Government in the Transvaal and His Majesty's Government was submitted for arbitration to the Chief Justice of the Republic of the Orange Free State who decided (a) that the interpretation of the Law was entirely a matter for the High Court of the Republic, and (b) that the resolution of the Republican Parliament of 1893, in so far as it constituted an interpretation of the Law of 1885, was invalid. The view of the Republican Government that the Law of 1885 covered residence as well as occupation for purposes of trade was upheld by a judgment in the case of Tayab Haji Muhammad Khan by the High Court of the Republic in August 1898. But, in spite of these facts, the law was never strictly enforced and Indians were permitted not only to trade but to reside outside locations.

In 1903, the Crown Colony Administration issued a notice that no new licences to trade be granted to any Asiatics except to carry on business in bazaars set apart for them. This action was taken because of an agitation among Europeans against the influx of Asiatics about that time. The notice was challenged by means of a test action in the Supreme Court. And in the

case of Habib Motan, the Chief Justice of the High Court of the Colony of the Transvaal decided as follows:—

“Section 2 (*d*) of Law 3 of 1885, as amended by the Volksraad resolution of 12th August 1886, does not apply to the business premises but only to the residence of Asiatics. The Government, therefore, has not the power under either of these measures, to refuse to grant to Asiatics licences to trade in places outside the boundaries of the locations allotted to them for occupation.”

5. The development of gold mining in the Transvaal along the area known as the Witwatersrand created fresh problems and gave rise to fresh legislation which imposed additional restrictions on the occupation of “proclaimed land” by Asiatics. In 1898 an Act (No. 15 of 1898) known as the Gold Law was passed. Section 133 of this provided that “no coloured person may be a licence holder or in any way connected with the working of the diggings\*, but shall be allowed only as a workman in the service of the whites.” The real object of the law appears to have been to prevent Asiatics from leasing land for the purpose of mining. Advantage was, however, sought to be taken of it to prevent Indians from acquiring land or buildings on lease in order to reside or trade thereon. The Indian community, which is mainly composed of traders, naturally challenged an interpretation of the law which aimed at preventing them from trading on the Witwatersrand. And in Khota’s case in 1909 the Supreme Court gave the opinion (i) that the prohibition in section 92 of this Law against non-white persons being holders of stands did not prevent them from acquiring and exercising leasehold rights of such stands, and (ii) that the prohibition in section 133 referred only to such licences as diggers’ and claim licences, and did not prohibit coloured persons from holding general dealers’ licences to trade on diggings. The Indian contention was thus upheld.

6. Meanwhile, the Gold Law of 1898 had been amended by Act No. 35 of

---

\* “Proclaimed land” means land proclaimed as a public digging; and a

“Digging” signifies a proclaimed area thrown open by lawful authority for prospecting, digging and mining.

1908. The important sections, which are 130 and 131, are quoted below:—

130. *Prohibition against acquisition of rights under this Act by coloured persons.*—(1) Save as is provided in section twenty-four no right may be acquired under this Act by a coloured person; and the holder of a right acquired under Law No. 15 of 1898 or a prior law or under this Act shall not transfer, or sub-let, or permit to be transferred or sub-let, any portion of such right to a coloured person, nor permit any coloured person (other than his *bona fide* servant) to reside on or occupy ground held under such right.

(2) Any person contravening this section shall be guilty of an offence, and liable on conviction to a fine not exceeding fifty pounds, and in the case of a continuing contravention to a fine not exceeding five pounds for every day during which such contravention is continued.

131. *Restriction on residence of coloured persons on proclaimed land in districts of Class\* A.*—(1) No coloured person shall be permitted to reside on proclaimed land in districts comprised in Class A, except in bazaars, locations, mining compounds, and such other places as the Mining Commissioner may permit.

(2) Any coloured person contravening this section shall be liable on conviction to imprisonment for a period not exceeding one month, and upon such conviction the Mining Commissioner may cause any structures occupied by or erected for the use of such coloured person to be removed.

(3) Nothing in this section shall apply to coloured persons in the employ of a white person in so far as they live on the premises where they are so employed nor to coloured persons who at the commencement of this Act were lawfully in occupation of premises.

Before the amending Bill became law, His Majesty's Under Secretary of State for the Colonies was asked in the House of Commons whether "the effect of the proposed new law will be to deprive coloured persons including British Indians of the right they now possess to

---

\*According to Section 7 (2) of Act 35 of 1908, they are Johannesburg, Boksburg and Krugersdorp. In addition, the mining districts of Pretoria, Heidelberg, Klerksdorp, Barberton, Pietersburg, Pilgrims Rest, and Ottoshoop are comprised in Class B and the Governor may, from time to time by proclamation in the Gazette, declare that any mining district or a portion thereof shall be comprised in either one class or the other.



reside in the mining districts". His Majesty's Government referred the matter to the Transvaal Government whose Attorney General gave the assurance that "no right or privilege which a coloured person has at the present time is taken away by the new Act". The Colonial Secretary was not satisfied whether the assurance covered the privilege which coloured persons had to acquire rights which were open to them before. A further assurance was, therefore, received that "the new law carried out the spirit of section 133 of the Gold Law of 1898", and acting on this the Secretary of State for the Colonies did not advise His Majesty to exercise his power to disallow the amending law. Before the Asiatic Inquiry Commission in 1920, the Government of India's representative argued that the Gold Law of 1908 could not, in the light of the assurance, be interpreted otherwise than in accordance with Khota's case. The Commission, however, did not accept this plea, on the ground that the judgment in Khota's case was given six months after the assurance, and that the Transvaal Government who gave the assurance, understood the relevant provision of the Law of 1898 to prohibit Asiatics from acquiring and exercising (i) leasehold rights to stands granted to whites under section 92 of that law, and (ii) the right to hold general dealers' licences to trade on diggings. This is now the authoritative legal view, and would appear to have been accepted by Mr. Gandhi who, in a letter, dated 7th July 1914, to the Secretary for the Interior said that, as regards the Gold Laws, he understood "vested rights" to mean the right of an Indian and his successors to live and trade in the township in which he was living and trading, no matter how often he shifts his residence or business from place to place in the same township. This obviously referred to Indians who, since the passing of Act 35 of 1908, had acquired rights which sections 130 and 131 of that Law sought to prohibit. And section (1) of Act 37 of 1919 (Appendix II), which was passed on the recommendation of a Select Committee appointed on the petition of certain Indians in the Transvaal, was designed to protect interests which had grown up since Act 35 of 1908 became operative, and which that law did not permit or protect.

7. The immediate cause of setting up a Select Committee in January 1930, which recommended the passing of the

Transvaal Asiatic Tenure (Amendment) Bill, was the action of the Town Council of Johannesburg which, on the advice of counsel, declined to issue trading licences to Indians within its jurisdiction on the ground of doubt as to the title of the applicant to carry on business on premises for which the licence was sought. Other grounds for setting up the Select Committee were certain judicial decisions, which had the effect of drawing attention to the fact (i) that in private townships on the Witwatersrand Indians were occupying, for purposes of trade, premises in contravention of the title deed\*, and (ii) that in certain developed townships, such as that of Springs, Indian occupation of premises was valid, on the ground that the relevant restrictive provisions of the Gold Law of 1908 did not apply to such townships†. It was stated that on all three grounds, European opinion in the Transvaal was greatly agitated. Moreover, the attitude of the Municipal Council of Johannesburg placed all Indian traders whose licences could not be renewed in a most anomalous position because licenses have to be renewed annually. The Select Committee was, therefore, appointed to inquire and report upon the position created by these decisions and on the question how far the intentions of Parliament as embodied in Act 37 of 1919, were being given effect to, and whether, and, if so, to what extent, an amendment of that Act was desirable.

The Select Committee met in the early part of 1930 and, to quote from its own report, "found it undesirable and impracticable to exclude any evidence which, even indirectly, could shed any light on the position with which it had to deal" The evidence submitted to it was representative of both the European and the Asiatic communities and the views of the Agent of the Government of India were also placed before it. The Committee came to the conclusion that the position, which had arisen as a result of illegal occupation in the mining areas, was indeed serious, and that Law 3 of 1885, as amended by Act 37 of 1919, no doubt intended that Asiatics should not own fixed property in the Transvaal outside reserved areas,

\*<sup>(1)</sup> The North Eastern Districts Association (Proprietary) Ltd, *versus* the Norwood Land and Investment Co, Ltd, and

<sup>(ii)</sup> Franz Koltisch *versus* Max Pietsch and B. B. Dabhaha

†Town Council of Springs *versus* Fakir Moosa and Moosa Essop Sidat

either individually or collectively, and either directly or indirectly. They accordingly recommended legislation on the lines of the bill of which the main provisions contemplate:—

- (i) Absolute prevention of the acquisition in future, directly or indirectly, individually or through joint stock companies, of fixed property in ownership by Asiatics, in the Transvaal outside areas that may be set apart for them. A lease of such property for 10 years or longer is to be construed as ownership.
- (ii) Strict enforcement from the 1st May 1930 of the restrictive provisions of sections 130 and 131 of the Gold Law of 1908. Even townships like Springs, which the Supreme Court recently held\* to be outside the purview of the Gold Law are, in future, to be brought within its purview. And, when an area ceases to be proclaimed land, the restrictions as to occupation by Asiatics are to continue.
- (iii) Empowering local authorities which are entrusted with authority to issue certificates of fitness for obtaining trading licences, not to issue such certificate to any person unless they are satisfied that the proposed holder of the trading licence and the person actually in control of the business, if they are Asiatics, have a lawful title to occupy the premises on which the trade is to be carried on. Against an order of refusal on the question of title the person aggrieved may appeal, first to a Magistrate and subsequently to the Transvaal Provincial Division of the Supreme Court.

8. Mr. Tyson, who gave evidence before the Select Committee on behalf of the Government of India, made the following suggestions:—

- (1) *Ownership*.—It is a well-established principle, especially with regard to laws restrictive of the ordinary rights of citizenship, that the law allows what it does not prohibit. If Indians have,

\*The Town Council of Springs *versus* Fakir Moosa and Moosa Esam Sida.

even after the Act of 1919, formed companies to own land in a manner which does not constitute an infringement of that statute, it would be only fair and just that such companies, having been formed on a basis which was not at the time illegal, should be protected in any further restrictive legislation. As regards the holding of land through trustees, this is not and never has been illegal. If this is to be made illegal for the future, the existing interests should be protected.

(2) *Occupation.*—It is impossible to give accurate figures to show how far the existing businesses are protected by the Act of 1919. The result of personal interrogation at 201 shops inside and outside Johannesburg showed that out of 201 licences, 72 were protected by Act 37 of 1919, 121 were unprotected and 8 were doubtful. (The Select Committee in their Report state that the number of trading licences not protected by the Act has been variously estimated between 60 per cent. and 75 per cent. in respect of the Witwatersrand area alone.) This has been the result, not necessarily or, perhaps, even largely, of deliberate evasion of the law, but because of the force of circumstances, *e.g.*, the termination of a former lease by the raising of rent, or the vacation of premises in which an Indian was protected by the Act of 1919 in order to take up premises on the opposite side of the street which, in some cases, happens to be in another Township, or the lapse of trading owing to bankruptcy or absence. Government did nothing to prevent the growth of these interests; indeed, it benefited by pocketing the licence fees. (The Select Committee admitted in their Report that the failure to enforce the law has been largely due to defects in the machinery of administration, and that no department of State has hitherto considered itself to be entrusted with the duty to guard the public interest against contraventions of public law.) Moreover, in the Transvaal, the whole history of the restrictive laws shows that the administration has been more generous than the law. All existing interests should, therefore, be protected in the same manner as by the Act of 1919, *i.e.*, present occupants and their successors in title, should be safeguarded in the exercise of the privileges that they now enjoy.

(3) The suggestion that not only on proclaimed land, but all along the

Transvaal Municipalities should be empowered to set apart areas where Indians might reside and trade should not be acted upon:—

- (a) Because segregation is deeply resented on sentimental grounds by Indians; and
- (b) It will have the effect practically of ruining the Indian community in the Transvaal, which is primarily a trading community, as it will lose the custom of the white population if it is relegated to inaccessible and insanitary "locations".

9. Mr. Tyson's suggestions were substantially the same as the Government of India instructed their Agent in May 1930 to put forward if the Bill were proceeded with. The Bill, however, was postponed to the following session. In July 1930, a Sub-Committee of the Standing Emigration Committee of the two Houses of the Indian Legislature was consulted on the provisions of the Bill. Its suggestions as to the lines on which modifications of the Bill should be sought were the same as those provisionally decided upon by the Government of India.

Had the Bill been proceeded in the summer of 1930 with, representations would probably have been made accordingly. At an Emergency Conference, however, held in Johannesburg on the 5th and 6th October 1930, the South African Indian Congress passed a resolution to the effect, that the Bill was wholly unacceptable to the Indian community on the following grounds:—

- (1) That it was a violation both in letter and spirit of the Cape Town Agreement;
- (2) That it imposed disabilities upon Indians in regard to their trade, residence and occupation and deprived them of their vested rights in the Transvaal; and
- (3) That it aimed at their compulsory segregation and their ultimate ruin in that province.

The Conference urged that the Union Government should withdraw the Bill and introduce the necessary legislation to give relief to Indians in the Transvaal. This Resolution was re-affirmed at a subsequent meeting of the Congress.

at the end of December; according to reports received through Sir Kurma Reddi, now Agent in South Africa, almost every speaker supported the attitude of 'no compromise'. The delegates at the meeting declared that if the Government of India agreed to any compromise, they would agree for themselves and not for the South African Indian community. Mr. Andrews also expressed the opinion that if the Bill alone were dealt with, only a few fragments of vested rights might be saved. Then the Indians would try to find some other loopholes for trade, occupation and residence outside the segregated areas, and they would be charged once more with "evading the law". This, he said, would be a patch-work policy at the best. He preferred the whole policy of the Gold Laws to be discussed at the next Conference, presumably with a view to securing, not only the abandonment of the Bill, but some liberalisation of the existing laws.

10. In consequence of the agitation among Indians in South Africa of which the resolutions summarised in the previous paragraph were the outcome, His Excellency the Viceroy telegraphed privately early this year to the Governor General of South Africa, suggesting postponement of the Bill so as to secure a calm atmosphere for discussion of the Cape Town agreement which was due to come up in a year's time. The Union Government agreed to postpone consideration of the Bill until after the forthcoming Conference. Now that the Conference is due to meet next January, the attitude of the Government of India towards the measure has to be finally defined.

There is little doubt that the Union Government will find it impossible to give up the Bill, which is the handiwork of a Select Committee of the House of Assembly on which all political parties were represented, and which has received considerable support from the European population of the Transvaal, unless the Conference promises results which they can represent to their political following as an adequate *quid pro quo* for dropping the proposed legislation. Moreover, some legislation is unavoidable, because of the *illegality* of the interests, especially those relating to the occupation of premises for trading purposes, which have

grown up since 1919, and which the Act of that year does not protect. In the note on Assisted Emigration, reference has been made to the importance which leaders like Dr. Malan attach to the reduction of the Indian population. Indian non-official opinion, on the other hand, is strongly opposed to the Government of India continuing to co-operate with the Union Government in the attainment of that object. It is evident that, unless the Union Government's representatives at the Conference are disposed to give up their traditional objective of reducing the Indian population by means of assisted emigration, the Government of India will have either to continue to co-operate with them, or to give up all hope of securing relief for the resident Indian population, either in respect of the Transvaal Asiatic Tenure (Amendment) Bill or of the other existing disabilities. The choice of alternatives would be enlarged only if the Union Government's representatives were prepared to accept for their present objective satisfaction along other lines, *e.g.*, development of trade. This avenue of rapprochement, however, cannot be seriously explored, partly because the Union Government are afraid of making concessions to their Indian subjects for material advantages—the fear is that their political opponents will accuse them of corruption if they agree to treat their Indian subjects better for commercial gain—and partly because there is not much in the way of commercial advantage that India can offer to South Africa. Both the abandonment of the policy of assisted emigration and the adoption of an energetic policy of upliftment of the Indian community could be urged on humanitarian grounds or in the interests of the solidarity of the British Commonwealth of Nations, to which both South Africa and India belong. Experience, however, shows that these arguments do not evoke practical response from South African statesmen. Finally, it has been suggested that appeal to world opinion should be made. This again, it is regretted, does not promise a fruitful method of making the Conference a success from the Indian standpoint. On the assumption, therefore, that it will be found necessary to give a further trial to the principle of assisted emigration, it is suggested that, in regard to the Transvaal Asiatic Tenure (Amendment) Bill,

the Delegation might take the following line:—

*First alternative—*

- (1) That the Bill and the Acts which it purports to make effective, *viz.*, the Law of 1885, the Gold Law of 1908 and Act 37 of 1919, are a denial of the elementary right of citizenship to own and occupy property and are bound to encourage evasion. Moreover, the legislation is inconsistent with the spirit of the undertaking given by the Union Government at the last Conference "to devise ways and means to take all possible steps for the uplifting of every section of their permanent population to the full extent of their capacity and opportunities".

The Indian population of the Transvaal is now a fixed factor. All avenues of augmentation by influx from abroad have been closed to it. Its trading activities though they may be objectionable to competitors in trade, are admittedly useful to an important section of the White population of the province. Instead, therefore, of being harassed by provisions such as those contemplated in the draft Bill, it should be progressively relieved of the disabilities now imposed upon it. If the state of public opinion in South Africa will not permit of legislation to repeal the present restrictive laws either as regards the ownership or the occupation of property, an endeavour should be made—

- (a) To protect, as regards occupation, interests which have grown up since 1919 and which are not protected by Act 37 of that year; and
- (b) To make some provision for the expansion of Indian trade. If the right to acquire premises on proclaimed land were not limited, it would be sufficient to suggest, for this purpose, that the licensing law should be revised on the lines suggested by the Asiatic Inquiry Commission and repeated by the Indian



Delegation in the 1926-27 Conference. But, on the assumption that only interests already acquired will be protected, expansion will be impossible unless provision is also made to permit a new licensee, who seeks to open a new place of business, to acquire premises for the purpose. This seems to involve, besides amendment of the licensing laws, some power of exemption by some authority from the Gold Law. The proper authority in respect of Indians will be the Minister of the Interior, and a convention may be made that on the recommendation of the Agent of the Government of India, a number of exemptions may be given each year for the Transvaal. The Agent will make such requests at his discretion on the recommendation of representatives of the local Indian community.

*Second alternative—*

11. If alternative (1) above is found impracticable and discussion of the details of the Bill cannot be avoided, improvement of its provisions should be sought in the following way:—

- (i) *Ownership of property.*—Indians who have acquired fixed property since 1919, in the legitimate belief that the methods adopted for the purpose were not prohibited by the law and the transactions are not invalid according to the present law, should be safeguarded in the possession of those rights;
- (ii) As regards premises occupation of which is not protected by Act 37 of 1919, the present occupants and their successors in title should be protected;
- (iii) In unproclaimed areas, the present position, which does not prohibit the acquisition of premises on lease by Indians, should be maintained;
- (iv) No separate areas be set apart where Indians will be compelled to reside and trade;
- (v) If an application for a certificate of eligibility to obtain a trading licence is opposed by

a local authority on the ground that the applicant is not lawfully entitled to occupy the premises where he intends to carry on business, the objector should be required to obtain a ruling from the Magistrate on the question of title, and the decision of the Magistrate should be subject to appeal to the Supreme Court.

12. Alternative (2) (para. 11), may be inconsistent with the Resolution of the emergency conference of the South African Congress of last year, but if efforts to secure the adoption of alternative (1) fail, it will be better to press for improvement of the Bill than to refuse to discuss it out of pique. It is hoped that if the matter is properly explained to the local Indian leaders, they will not persist in the attitude reflected in last year's resolution.

---

## APPENDIX I.

## BILL.

To amend in certain respects the law relating to occupation of certain land in the Province of the Transvaal by Asiatics and to provide for matters incidental thereto.

(Introduced by the MINISTER OF THE INTERIOR)

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

1. *Amendment of section one hundred and thirty of Act No. 35 of 1908 (Transvaal).*—Section one hundred and thirty of the Precious and Base Metals Act, 1908 (Transvaal) (hereinafter referred to as the Gold Law) is hereby amended by the addition of the following words at the end of sub-section (1) thereof "and no coloured person other than such *bona fide* servant may reside on or occupy any such ground".

2. *Amendment of section one hundred and thirty-one of Act No. 35 of 1908 (Transvaal).*—Section one hundred and thirty-one of the Gold Law is hereby amended—

(a) by the deletion of the words "be permitted to" in sub-section (1);

(b) by the deletion of the words "proclaimed land" in sub-section (1) and the substitution therefor of the words "or occupy any land, which has been or purports to have been proclaimed a public digging under any provision whatsoever of this Act or Law No. 15 of 1898 or of a prior law, and which has not been lawfully de-proclaimed, whatever its situation, the nature of its tenure, the nature and extent of any rights in regard thereto under this Act or any other law, or the condition of its surface may be, or may have been on the date of such proclamation.

3. *Retrospective effect of sections one and two.*—The provisions of sections one and two shall be construed as having come into operation on the first day of May, 1930. Provided that any coloured person who was lawfully residing on, or occupying any ground or land referred to in either of those sections immediately prior to the date when its provisions became or are, in terms of this section, deemed to have become applicable to such ground or land, shall be entitled to continue such residence or occupation, subject to compliance with the requirements of any other law.

4. *Prohibition of occupation of proclaimed land by coloured persons to continue after de-proclamation.*—(1) If any land which was at any time subject to the provisions of section one hundred and thirty or one hundred and thirty-one of the Gold Law, has before the first day of May, 1930, ceased to be a public digging it shall, nevertheless continue to be subject to those provisions of that section, or any amendment thereof, as if it were still a public digging, as long as it is situate within the area of jurisdiction of any municipal council or village council or health committee: Provided that any coloured person who was, on the first day of May, 1930, lawfully residing upon or occupying such land, shall be entitled to continue such residence or occupation subject to compliance with the requirements of any other law.

(2) Any land which was, at any time subject to any provisions of section one hundred and thirty or section one hundred and thirty-one of the Gold Law, or any amendment thereof, shall, subject to any provisions of Act No. 18 of 1913 or of this Act which may be applicable thereto, remain subject to the provisions of the said section one hundred and thirty or one hundred and thirty-one even if it ceases to be a public digging, as long as it is situate within the area of jurisdiction of any municipal council or village council or health committee.

5. *Exempted Areas.*—(1) Within one year after the commencement of this Act every municipal council or village board within whose area of jurisdiction Asiatics reside and within which area is included any ground or land referred to in section one hundred and thirty or one hundred and thirty-one of the Gold Law, or any amendment thereof, shall subject to any law relating to the laying out of townships, define an area or areas within its area of jurisdiction for the accommodation of Asiatics and indicate in respect of any such area whether any Asiatic may reside but may not carry on business therein or whether he may carry on business but may not reside therein, or whether he may both reside and carry on business therein.

(2) If the area or areas so defined are, in the opinion of the Minister of the Interior, after consultation with the Minister of Mines and Industries, suitable and of sufficient extent for the purpose indicated as aforesaid, to meet the reasonable residential and business requirements of all Asiatics residing or carrying on business in the area of jurisdiction of such council or board, he shall, subject to any law relating to the laying out of townships, by notice in the *Gazette*, define such area or areas as an exempted area or areas and indicate in such notice in respect of every such area, in accordance with the indication of such council or board, whether an Asiatic may reside therein but may not carry on business therein, or whether he may carry on business therein but may not reside therein, or whether he may both reside and carry on business therein.

(3) Any Asiatic may thereupon, notwithstanding the provisions of any other law, acquire the ownership of or any other real right in or a lease or other right of occupation of any land in any such area and may reside or carry on business thereon or permit any other Asiatic to reside or carry on business thereon, in accordance with such indication, subject to compliance with any law relating to residence or to any such business.

(4) If any such council or board fails to define in accordance with the provisions of sub-section (1) an area which is or areas which are, in the opinion of the Minister of the Interior, suitable and of sufficient extent to meet all reasonable residential and business requirements of all Asiatics residing or carrying on business in the area of jurisdiction of such council or board, the Minister of the Interior shall, subject to any law relating to the laying out of townships, after consultation with the Minister of Mines and Industries, and with such council or board, as soon as may be, by notice in the *Gazette* define an area or areas within such area of jurisdiction as an exempted area or areas and indicate in such notice in respect of every such area whether an Asiatic may reside therein but may not carry on business therein, or whether he may carry on business but may not reside therein, or whether he may both reside and carry on business therein, and the provisions of sub-section (3) shall thereupon apply in respect of any such area.

(5) No land may be included in an exempted area in terms of this section if the title deed of that land contains any servitude or condition prohibiting its transfer to or occupation by an Asiatic, unless the owner of every piece of land in whose favour such servitude or condition is intended to operate, signifies his consent in writing to such inclusion.

6. *Amendment of section one of Act No 37 of 1919.*—Section one of the Asiatic (Land and Trading) Amendment (Transvaal) Act (Act No. 37 of 1919), is hereby amended—

(a) by the deletion of the expressions "British Indian" and "Indian" wherever they occur and the substitution therefor of the words "coloured person".

(b) by the addition of the following new sub-sections (2) and (3), the existing section, as hereby amended, becoming sub-section (1):

"(2) The provisions of sub-section (1) shall not exempt any coloured person from any provision of the said section *one hundred and thirty or one hundred and thirty-one*, or any amendment thereof, in respect of any number of pieces of land in any township in excess of the number of pieces of land on which he resided or which he occupied in such township on the first day of May, 1919, or in respect of any area in such township in excess of the area on which he resided or which he occupied in such township on the said date.

(3) If any coloured person was, on the first day of May, 1930, residing upon or occupying any land and such residence or occupation was by virtue of any provision of the said section *one hundred and thirty or one hundred and thirty-one* or of this section unlawful, such coloured person may, subject to compliance with the requirements of any other law, nevertheless continue such residence or occupation till the thirtieth day of April, 1935. Provided that he has, before the first day of September, 1930, furnished the Minister of the Interior with a written notice, specifying the land which he unlawfully resides upon or occupies, the nature of such residence or occupation and the period during which he resided on or occupied such land and such other particulars in regard to such land, residence or occupation as the Minister may require him to furnish."

7. *Substitution of section two of Act No 37 of 1919.*—Section two of Act No. 37 of 1919 is hereby repealed and the following new sections *two, three, four, five, six, seven, eight, nine, ten and eleven* substituted therefor the existing section *three* becoming section *twelve*

2. *Restrictions in connection with certain fixed property.*—(1) The expression "fixed property" in Law No. 3 of 1885 (Transvaal) and in this Act shall be construed as meaning any real right in immovable property in the Province of the Transvaal outside an area assigned for the occupation of Asiatics under paragraph (b) of article two of the said Law, as an exempted area, in terms of the Transvaal Asiatic Tenure (Amendment) Act, 1930, other than a mortgage bond over immovable property securing a *bona fide* loan granted in the ordinary course of business, for an amount which either alone or together with any other mortgage bond having priority over the first mentioned mortgage bond, does not exceed one half of the value of such property as at the time of the registration of such mortgage and shall include any lease of immovable property for a period of ten years or longer or any lease which empowers the lessee to renew it for any period or periods which, together with the period of the original lease, equal or exceed a period of ten years,

(2) No Asiatic company shall hold any fixed property.

(3) The provisions of sub-sections (1) and (2) shall not apply in respect of any fixed property which, on the first day of May, 1930, stood lawfully registered in any deeds registry in favour of—

(a) any Asiatic, as long as that fixed property is held by him or by any other Asiatic who inherited it from an Asiatic; or

(b) an Asiatic company while held by such company.

- (4) No person shall hold any fixed property on behalf of or in the interest of an Asiatic or Asiatic company, and any person who purports or agrees to hold any fixed property on behalf of or in the interest of an Asiatic or Asiatic company shall be guilty of an offence: Provided that the provisions of this sub-section shall not apply in respect of any fixed property held immediately prior to the fifteenth day of May, 1930, by any person on behalf or in the interest of an Asiatic or an Asiatic company, while so held by such person
- (5) Any fixed property registered in any deeds registry in favour of any Asiatic or Asiatic company which such Asiatic or company is debarred from holding by virtue of the provisions of Law no. 3 of 1885 (Transvaal) or of this Act shall become the property of the State and any person other than the registrar of deeds or registrar of mining titles or any of their subordinate officers, who is in any way instrumental in effecting any such registration, in favour of an Asiatic or in favour of a company which is, on the date of such registration, an Asiatic company, shall be guilty of an offence:

Provided that if any such Asiatic or company purports to transfer such property to a person who may lawfully hold it, the rights of the State under this sub-section in respect of such property shall terminate on the expiration of one year after the registration of such transfer in a deeds registry

- (6) Any condition or provision inserted after the fifteenth day of May, 1930, in any document whatever purporting to empower any Asiatic or Asiatic company to exercise any influence upon the transfer of fixed property shall be void.
- 3 *Notification of registrar of companies.*—(1) Whenever any private company holds any fixed property, any share in or debenture of such company held by or pledged to—
- (i) an Asiatic; or
  - (ii) an Asiatic company; or
  - (iii) any person on behalf or in the interest of an Asiatic or an Asiatic company, shall be forfeited to the State.
- (2) It shall be the duty of the secretary and of every director of any company referred to in sub-section (1), which holds any fixed property, to notify the registrar of companies whenever any Asiatic or Asiatic company or any other person on behalf or in the interest of an Asiatic or Asiatic company holds any share in or debenture of such first-mentioned company
- (3) Any secretary and director who fails to comply with the requirements of sub-section (2) shall be guilty of an offence unless he proves that he was ignorant of the fact which it was his duty, in terms of sub-section (2), to convey to the registrar of companies and that he could not reasonably have ascertained that fact.
4. *Safeguarding of existing rights.*—The provisions of section *three* shall not affect any share in or debenture of any company which was, on the first day of May, 1930, held by an Asiatic and not transferred by him since that date or by any other Asiatic who inherited it from an Asiatic. Provided that such company did not after the said date acquire any fixed property
5. *Action to give effect to forfeiture of shares.*—(1) The secretary of any company a share wherein or a debenture whereof has been forfeited to the State in terms of section *three* shall make such entries in any register, book or document under the control of such company and issue such documents as the registrar of companies may direct for the purposes of giving effect to such forfeiture.
- (2) Whenever any such secretary fails to comply with any direction given to him by the registrar of companies in terms of sub-section (1), such secretary shall be guilty of an offence.
6. *Onus of proof.*—Whenever it has been proved in any proceeding under this Act, whether civil or criminal, that an Asiatic holds any share in or debenture of any company or that any other person holds any such share or debenture on behalf or in the interest of an Asiatic, such company shall be deemed to be an Asiatic company, unless the contrary is proved.
7. *Certain foreign companies not to hold fixed property*—(1) No foreign company (as defined in section *two hundred and twenty-nine* of the Companies' Act, 1926, (Act no. 46 of 1926), shall acquire any fixed property or shall be capable of holding any fixed property acquired after the first day of May, 1930, unless it has a place of business in the Union and has complied with the requirements of section *two hundred and one* of the said Act.
- (2) No Asiatic may occupy any land (other than land situate in an area wherein an Asiatic may hold immovable property) if such land is held by any foreign company or by any company in which a foreign company holds a controlling interest or if any such company holds any real right in respect of such land other than a mortgage bond referred to in sub-section (1) of section *two* or if any such company holds in respect of such land a lease referred

to in that sub-section, provided that the provisions of this sub-section shall not apply to any Asiatic who is the *bona fide* servant of any person in lawful occupation of such land. Any Asiatic contravening this sub-section shall be guilty of an offence.

8. *Company with bearer shares or debentures may not permit Asiatics to occupy its fixed property.*—If any company which has issued any shares or share warrants or debentures entitling the bearer thereof to any rights in regard thereto, holds any land (other than land situate in an area wherein an Asiatic may hold immovable property) or a real right in respect of such land other than a mortgage bond referred to in sub-section (1) of section *two* or holds in respect of such land a lease referred to in that sub-section no Asiatic shall occupy such land (except as a *bona fide* servant of any person in lawful occupation thereof) and if any Asiatic occupies any such land in contravention of this sub-section he shall be guilty of an offence and if such occupation was permitted or could have been prevented by such company, the secretary and every director thereof shall likewise be guilty of an offence.
9. *Proof of authority to trade before issue of certificate for licence.*—(1) Any authority entrusted by law with the issue of any certificate which any person desiring to take out a licence to carry on any business or trade in the province of the Transvaal is required to produce before such licence may lawfully be issued to him, shall, subject to the provisions of sub-section (3) of section *one* not issue any such certificate to any person applying therefor unless such person proves that the proposed holder of such licence and the person who will be in actual control of the business or trade to be licensed, are not Asiatics, or if they are Asiatics, that they may lawfully carry on the business or trade for which a licence is desired on the premises whereon such business or trade is to be carried on.
- (2) Any person whatever may, within two months after the issue of any such certificates by any such authority, and any applicant for such a certificate whose application therefor has been refused, may, within two months after such refusal, appeal against the decision of such authority to the magistrate of the district wherein the business or trade in question is to be carried on and such magistrate may cancel such certificate and any licence issued on the strength thereof or may issue such certificate in lieu of such authority. The decision of the magistrate on any such appeal shall be subject to an appeal to the Transvaal Provincial Division of the Supreme Court, as if it were a civil judgment of a magistrate's court.
10. *Penalties.*—Any person who commits an offence under or contravenes any provision of this Act shall, on conviction, be liable to a fine not exceeding fifty pounds or in default of payment of such fine, to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment.
11. *Definitions.*—In this Act—
- “ Asiatic ” means any Turk and any member of a race or tribe whose national home is Asia, but shall not include any member of the Jewish or the Syrian race or a male person belonging to the race or class known as the Cape Malays;
- “ Asiatic company ” means any company wherein a controlling interest is held by an Asiatic;
- “ coloured person ” has the meaning assigned to that expression in section *three* of Act no. 35 of 1908 (Transvaal);
- “ controlling interest ” in relation to any company means a majority of the shares or shares representing more than half the share capital or shares of a value in excess of half the aggregate value of all the shares in such company or shares entitling the holders thereof to a majority or preponderance of votes, or debentures for an amount in excess of half the share capital of such company or the power to exercise any control whatsoever over the activities or assets of such company;
- “ deeds registry ” includes the mining titles office;
- “ licence ” includes any renewal thereof.
- 8 *Amendment of section one of Act no. 12 of 1924.*—Section *one* of Act no. 12 of 1924 is hereby amended by—
- (a) the insertion of the word “ male ” after the word “ Malay ”;
- (b) the deletion of the words “ section *two* ” and the substitution therefor of the words “ any provision ”.
- 9 *Short title.*—This Act may be cited as the Transvaal Asiatic Tenure (Amendment) Act, 1930.

## APPENDIX II.

*The (Union of South Africa) Asiatics (Land and Trading) Amendment (Transvaal) Act, 1919.*

Act No. 37 of 1919. Date of commencement—3rd July, 1919.

To make further provision with reference to the prohibition of ownership of land by Asiatics and with reference to the restrictions as to the occupation of land and trading by them.

(Assented to—21st June 1919.)

(Signed by the Governor-General in English.)

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

1. Those provisions of sections *one hundred and thirty* and *one hundred and thirty-one*—of Act No. 35 of 1908 (Transvaal) which relate to the residence on or occupation of ground held under a stand licence on proclaimed land by coloured persons and any provisions similar thereto contained in the conditions of any deed of grant or freehold title in a Government Township (as defined in Act No. 34 of 1908, Transvaal) issued under the last-mentioned Act shall not apply—

- (a) to any British Indian who on the first day of May 1919, was, under the authority of a trading licence lawfully issued, carrying on business on proclaimed ground or on any stand or lot in such township, or to the lawful successor in title of any such Indian in respect of such business; or
- (b) to any person *bona fide* in the employment of such a British Indian or his successor in title,

so long as such British Indian or successor in title continues so to carry on business on the same ground or stand or lot on which or on any other ground or stand or lot in the same township in which it was being carried on on the first day of May, 1919:

Provided that nothing in this section shall be construed as abrogating any exceptions contained in the said sections *one hundred and thirty* and *one hundred and thirty-one* or in the conditions aforesaid.

2. Those provisions of Law No. 3 of 1885 (Transvaal), and any amendments thereof heretofore enacted which prohibit a person belonging to any of the native races of Asia from being an owner of fixed property in the Transvaal subject to certain exception specified in such amendments shall, subject to the same exceptions, be construed also as prohibiting any registration of a mortgage over fixed property in favour of a person belonging to any of the native races of Asia, otherwise than as security for a *bona fide* loan or investment in the ordinary course of business and also prohibiting the ownership of fixed property in the Transvaal by any company or other corporate body in which one or more persons belonging to any of those races have a controlling interest and the registration of such a mortgage in favour of such a company or corporate body otherwise than as security as aforesaid:

The provisions of this section shall apply as from the first day of May, 1919, provided that in respect of any fixed property acquired by any such company or corporate body before the first day of May, 1919, the aforesaid provisions of Law No. 3 of 1885 (Transvaal) shall be construed as if this Act had not been passed. Any such company or other corporate body which may have acquired the ownership of fixed property since the first day of May, 1919, shall dispose thereof within a period of two years from the commencement of this Act, or within such further period as any superior court having jurisdiction where the property is situate on application may allow, and on the failure of such company or other corporate body so to dispose of such property then and in that case such property shall on the petition of any member of the public be sold by order of such a court.

3. This Act may be cited for all purposes as the Asiatics (Lands and Trading) Amendment Act (Transvaal), 1919.

**CONFIDENTIAL.**

GOVERNMENT OF INDIA.  
DEPARTMENT OF EDUCATION, HEALTH AND LANDS.

---

**BRIEF OF INSTRUCTIONS.**

Issued to the delegates of the Government of India to the Conference with the representatives of the Government of the Union of South Africa on the Indian Problem in the Union.

---

V.—Immigration (Amendment) Act, 1931.—  
Position of registration certificate holders in the Transvaal.



NEW DELHI  
GOVERNMENT OF INDIA PRESS  
1931



**Immigration Amendment Act, 1931 :  
Position of registration certificate  
holders in the Transvaal.**

On the 2nd February 1931, Dr. Malan asked for leave to introduce a new Immigration (Amendment) Bill. The text of this Bill had not been published beforehand and no notice of introduction given either to the Agent of the Government of India or to the South African Indian Congress. It contained provisions affecting (a) the Indians' right of Cape and Natal entry granted by section 4 (2) (a) of the principal Act, No. 22 of 1913; and (b) repealing sections 2 and 11 of Act No. 36 of 1908. As regards (a), satisfactory modifications were effected before the Bill became law. (b), which caused the greatest trouble and with which the Transvaal Indians are still dissatisfied, needs discussion, especially as, in deference to Indian opinion, the Union Government have been informed that our Delegation to the forthcoming Conference reserve the right to raise this matter.

2. The repealed sections of Act 36 of 1908 are reproduced below :—

2. (1) Every person—

(a) who is an Asiatic as defined by Act No. 2 of 1907; and

(b) by or in respect of whom an application for registration was on the tenth day of February 1908, or on any day subsequent thereto up till the tenth day of May 1908, made to the registrar or other duly authorised officer; and

(c) to or in respect of whom a certificate in the form set forth in the Schedule to this Act was issued by the registrar;

shall, when in possession of such certificate, be deemed to be the lawful holder of a certificate entitling him to enter and reside in the Colony.

(2) Every person who, having been the lawful holder of a certificate of registration under Act No. 2 of 1907, has been permitted to obtain a certificate in the form in the Schedule to this Act in substitution for such first mentioned certificate, shall also be deemed

to be the lawful holder of a certificate entitling him to enter and reside in this Colony.

(3) Every Asiatic who holds any certificate mentioned in this section shall be subject in all respects to the provisions of this Act and not to the provisions of Act No. 2 of 1907.

\* \* \* \* \*

#### PART II.

\* \* \* \* \*

11. Every certificate of registration shall be accepted as conclusive evidence in all places that the lawful holder thereof is entitled to enter and reside in this Colony; provided that this section shall not apply to persons who have, under section five or six of the Immigrants' Restriction Act, 1907 or any amendment thereof, been removed from the Colony.

Their main feature is the right of the lawful holder of a certificate of registration to enter and reside in the Transvaal. Sub-section (2) (b) of Section 4 of the Immigrants' Regulation Act (No. 22 of 1913) excluded this class of persons from the category of prohibited immigrants. At the last Cape Town Conference, Dr. Malan announced that the Union Government contemplated amendment of the provision relating to domicile in section 30 of Act No. 22 of 1913, so that "a person shall be deemed for the purposes of the Act, to have lost his domicile within the Union if he absented himself from the Union and did not re-enter the Union within 3 years from the date of his departure". Dr. Malan remarked that, as the amendment was to be of general application, it did not come within the purview of the Conference, and Sir Muhammad Habibullah, speaking for the Indian Delegation took note of the Minister's statement. When the principal Act (No. 22 of 1913) was revised in 1927 by (Act 37 of 1927), the definition of domicile was amended accordingly, with the addition that for Indians the period of 3 years would count from the date of departure or from the enforcement of the Immigration and Indian Relief (Further Provision) Act, 1927, whichever may be later, *whether or not an Indian was in possession of a registration certificate.* The Minister of the Interior and his Department appeared to have been under the impression pre-

sumably because of the words in italics in the last sentence, that this definition of domicile had the effect of taking away the privilege of entry into and residence in the Transvaal granted by sections 2 and 11 of the Transvaal Act 36 of 1908 read with section 4 (2) (b) of the principal Act of 1913. In a judicial decision, however, the courts held that the amendment of the law regarding domicile by Act 37 of 1927 did not affect this privilege. The Minister accordingly proposed legislation to repeal these two sections of the Transvaal Act No. 36 of 1908 as also section 4 (2) (b) of the Act of 1913.

3. The Indian community in South Africa, who were greatly agitated over the proposed amendment, claimed that they had been deprived of one of their most sacred vested rights which had been acquired after all the sufferings of the passive resistance movement. It was urged that the change would have the effect of turning all registration certificates into so many scraps of paper, thus taking away all existing rights of residence conferred by registration and throwing upon every Asiatic resident in the Union the responsibility to prove his domicile in the country on pain of deportation as a prohibited immigrant if he could not establish that either he or the person through whom he claimed residence originally entered the Union lawfully. Even General Smuts, whose attitude towards the Cape Town Agreement has not been very friendly, said, in the course of the debate on the Bill, that if this provision became law, not a single Indian living in the country would have any security of title or secured right, and a member of his party, Mr. Duncan, moved an amendment to it which, however, was lost. The efforts of the Agent of the Government of India to secure either postponement of the Bill until the next conference or a modification of it also failed, and the amendment is now law.

4. In an appreciation of the legislation which the Agent of the Government of India in South Africa recently submitted, the following conclusions are recorded :—

- (1) That the Act will definitely put a stop for the future to registration certificate holders staying outside South Africa for more than 3 years.

- (2) That it will destroy any chance of return for Indians who, relying on the provisions of Act 36 of 1908 in regard to registration had failed to return before July 1930 after over 3 years absence or, having returned, have once more sailed for India.
- (3) That the burden of proof in a case in which an Asiatic is declared a prohibited immigrant will be on the Asiatics instead of on the Government, as before. It is said that the shifting of the burden of proof will be the result of sec. 2 (h) of the new Act which cancels any right of entry or residence given by a registration certificate.

As regards (1), the Agent admits that it was probably what the Union Government intended to achieve by Act 37 of 1927 which amended the definition of domicile. In support of this it may be mentioned that, giving evidence before the Select Committee on the position of Indians in the Transvaal early in 1930 Mr. Tyson said that "they (Indians) can no longer return to India for more than three years, because the domicile is lost and the Indians cannot come in again". As regards (2), the Agent observes that the number of people affected will probably not be great, but that those who are affected will suffer a clear injustice. With regard to (3), he is doubtful whether this will really be so.

5. The Department of E., H. & Lands is of opinion that the most that can be urged against the change is (a) that it ought not to have been made without prior consultation with those concerned, and (b) that, inasmuch as Act 37 of 1927 did not specifically take away the right of entry into and residence in the Transvaal conferred by the repealed sections of Act 36 of 1908, at least notice of the repeal should have been given, so as to enable Indians holding Transvaal registration certificates, who had been away from South Africa for more than 3 years from the date of coming into force of Act 37 of 1927, to return to the Transvaal if they so wished. A period of 3 years' notice was actually suggested by the Agent of the Government of India

to the Minister, in the course of representations made by him regarding the Bill, but was not accepted by Dr. Malan.

It is also possible to argue that, besides affecting the right of entry, the repeal also places Indians lawfully resident in the Transvaal at the mercy of hostile officials, since the registration certificate is no longer conclusive evidence in all places of the right of the lawful holder thereof to reside in the Transvaal. Against this, however, there is the assurance of the Minister that holders of registration certificates already lawfully resident in the Transvaal would in no way be molested or deprived of their existing rights.

6. In the opinion of the Department of Education, Health and Lands, it is doubtful whether the matter is of sufficient practical importance to justify its being raised either in the Conference or discussed with the Minister outside the Conference. In view, however, of the stir which the change caused among Indians in South Africa and the sentimental value which Indian opinion in this country also attaches to the repeal of provisions which were enacted as a result of Mr. Gandhi's Passive Resistance Movement, it is suggested that the Delegation should be given discretion to discuss the subject with the representatives of the Union Government, should they, after consulting Indian opinion on the spot, consider that it is desirable to do so.

**CONFIDENTIAL.**

GOVERNMENT OF INDIA.  
DEPARTMENT OF EDUCATION, HEALTH AND LANDS.

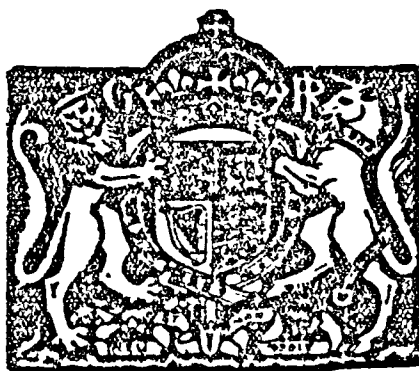
---

**BRIEF OF INSTRUCTIONS.**

Issued to the delegates of the Government of India to the Conference with the representatives of the Government of the Union of South Africa on the Indian Problem in the Union.

---

VI.—Admission into South Africa of Indians visiting the Union temporarily for business, study or travel.



NEW DELHI  
GOVERNMENT OF INDIA PRESS  
1931

**Admission into South Africa of Indians  
visiting the Union temporarily for  
business, study or travel.**

In view of the desire of the Dominions of Canada, Australia, South Africa and New Zealand to retain the predominantly European character of their populations, it was agreed at the Imperial War Conference of 1918 that "it is an inherent function of the Governments of the several communities of the British Commonwealth including India, that each should enjoy complete control of the composition of its own population by means of restriction on immigration from any of the other communities." But, in order to relieve Indians desiring to visit the Dominions for pleasure, commerce or education, of the harassing procedure generally adopted in respect of ordinary immigrants, it was also agreed that visits for these purposes should be allowed, the right of visit or temporary residence, in each individual case, being embodied in a passport or written permit issued by the country of domicile, and subject to *visé* there by an officer appointed by, and acting on behalf of, the country to be visited, if such country so desires. Mr. Burton speaking on behalf of South Africa agreed to the resolution suggesting this arrangement. In practice, however, the South African Government have not acted up to it, and the present position is that Asiatics being prohibited immigrants in South Africa on economic grounds any Indian merchant, student or tourist wishing to visit that country has to obtain beforehand permission from the Minister to enter the Union on conditions which include a deposit of £25. It was pointed out to the Union Government some time ago that the essential object of the 1918 Resolution\* was that passports issued in India, after adequate enquiry into the *bona fides* of the applicants, should ensure, as a matter of course, that Indian merchants, traders or tourists from India can visit the Union of South Africa for temporary residence, and that this was the spirit in which the Resolution had been interpreted and applied by the Governments of the other self-Governing Dominions. The Union Government, however, did not agree to modify their

---

\* Reproduced in Appendix I.

view, as they felt that if Indians were admitted to the Union for purposes of temporary residence freely, the number of visitors would be so large that it would lead to a public outcry which would aggravate the existing delicate position.

2. So long as the same conditions applied to all Asiatics wishing to visit South Africa temporarily, there could be no question, after the Union Government had emphatically expressed their unwillingness to observe the 1918 Resolution, of reopening the matter. In October last, however, the Union Government came to an arrangement\* with the Japanese Government under which they agreed to admit into the Union—

- (1) tourists,
- (2) persons visiting South Africa merely for the purpose of study or scientific investigation,
- (3) wholesale merchants and buyers of South African produce for export as well as their respective staffs, provided that the number of persons recommended under this class is restricted to a reasonable limit, and
- (4) the wives and children of any person admitted under (1), (2) and (3), on the recommendation of the Consul for Japan, on permits issued for one year in the first instance, but renewable from time to time on the recommendation of the same authority for further period not exceeding one year at a time, without requiring any deposit, and free from any liability to be treated on arrival at a Union port as a prohibited immigrant.

This arrangement has the effect of placing Japanese subjects, who are foreign nationals, at a distinct advantage as compared with Indians, although the latter, apart from the fact that they are nationals of a country belonging to the British Commonwealth of Nations can invoke the acceptance by a former South African Minister, Mr. Burton, of the "reciprocity" resolution of 1918, already referred to, as justifying at least similar treatment as is now accorded to the Japanese. Mr. Burton agreed to the resolution as a representative of the Union of South Africa and the

\* For text of the agreement, see Appendix II.



treatment now accorded to Japanese visitors of the classes specified is similar to what the resolution proposed for Indians wishing to visit the Dominions.

3. According to Dr. Malan this concession has been made to Japan in order to dispel the idea that the Japanese were all prohibited immigrants in the Union and to remove the "blot on their escutcheon". Indian sentiment is no less sensitive on points of national honour than that of the Japanese, and the preferential treatment now accorded to Japan has come in for the comment that India's membership of the Commonwealth, instead of being of any advantage to her, exposes her to humiliations, because she cannot deal with the Dominions as an independent power. Although this argument may not have any force, since India's constitutional position within the British Empire in no way hampers her freedom to negotiate direct with the Union of South Africa for the adjustment of such questions, the favourable treatment now accorded to Japanese nationals for temporary visits would seem to justify renewal of representations to the Union Government for according similar treatment to visitors of these classes from India in consonance with the spirit of the 1918 Resolution. If the assurance of the Japanese Consul in South Africa of the *bona fides* of a temporary visitor is sufficient to justify suspension of the requirement of previous permission by the Union Minister of the Interior and of other conditions such as the payment of a deposit on landing, there seems to be no reason why the assurances of the Government of India or their Agent should not be treated as of similar validity. The fact that in South Africa there is a large Indian population, while there are practically no Japanese permanently settled there, would not affect the number of passports that may be issued in a year to Indians wishing to visit South Africa temporarily for pleasure, trade or study, since the Government of India, who are no less alive to the necessity of not alarming European opinion than the Government of the Union, will see to it that passports are issued only to persons of good position, who have no intention whatsoever of abusing the privilege and whose visit will be of mutual benefit to South Africa and India, whether in commerce or as a stimulus to friendly relations between the two countries.

When it is admitted that the prejudice against Indians that exists among the European population of South Africa is due largely to their ignorance of the finer aspects of Indian civilisation and culture, the Union Government should find it easy to recognise that encouragement of visits by the right type of Indian will prove of real educational value. The Department of Education, Health and Lands, therefore, suggests that this matter should be taken up with the Union Government by the Indian Delegation. The question whether it shall be dealt with in the Conference, or outside the Conference, *e.g.*, by representations to the Minister, may be left to be settled by the Delegation on arrival in South Africa. The Delegation should also be authorised, if the question is discussed, to agree to some specified limitation of the number of visitors admitted in any one year if this will have the effect of securing for India the privilege recently conceded to Japan.

---

## APPENDIX I.

*The Reciprocity Resolution of the Imperial Conference of 1918.*

"1. It is an inherent function of the Governments of the several communities of the British Commonwealth, including India, that each should enjoy complete control of the composition of its own population by means of restriction on immigration from any of the other communities.

"2. British citizens domiciled in any British country, including India, should be admitted into any other country for visits, for the purpose of pleasure and commerce, including temporary residence for the purpose of education. The conditions of such visits should be regulated on the principle of reciprocity as follows:—

- (a) The right of the Government of India is recognised to enact laws which shall have the effect of subjecting British citizens domiciled in any other British country to the same conditions in visiting India as those imposed on Indians desiring to visit such country.
- (b) Such right of visit or temporary residence shall, in each individual case, be embodied in a passport or written permit issued by the country of domicile and subject to *visé* there by an officer appointed by and acting on behalf of the country to be visited, if such country so desires.
- (c) Such right shall not extend to a visit or temporary residence for labour purposes or to permanent settlement.

"3. Indians already permanently domiciled in the other British countries should be allowed to bring in their wives and minor children on condition, (a) that not more than one wife and her children shall be admitted for each such Indian and (b) that each individual so admitted shall be certified by the Government of India as being the lawful wife or child of such Indian.

"4. The Conference recommends that the other questions covered by the memoranda presented this year and last year to the Conference by the representatives of India in so far as not dealt with in the foregoing paragraphs of this Resolution, to the various Governments concerned with a view to early consideration".

APPENDIX II.

Imperial Japanese Consulate,  
Cape Town.  
16th October 1930.

W. J. H. Farrell, Esq.,  
Acting Secretary for External Affairs,  
Cape Town.

Sir,—I have the honour to acknowledge the receipt of your note of this day's date with reference to the correspondence which has passed between us in connection with the temporary admission of Japanese students, tourists and merchants to the Union of South Africa and to inform you that I am authorised to confirm, on behalf of the Japanese Government, as is contained in my letter of the 4th October 1930 addressed to the Minister of External Affairs, the arrangement as arrived at between that Government and the Government of the Union of South Africa with regard thereto, which arrangement is fully set out hereunder—

- (1) In order to assist the Union Government in giving effect to the terms of this understanding, the Japanese Government will arrange that passports for visiting the Union will not be issued to Japanese subjects other than those whose admission is recommended by the Japanese Government through the Consul for Japan under this understanding.
- (2) The Union Government will make provision that no Japanese subject whose admission is recommended by the Consul for Japan in terms of this understanding will be served on arrival at a Union port with a notice declaring him to be a prohibited immigrant.
- (3) The Union Government will cause to be issued to every person so recommended in terms of this understanding a temporary permit to enter the Union or one or more Provinces thereof subject to such conditions, prescribed by regulation, as may be set out in the permit.
- (4) The Union Government will not insist upon a deposit being made by any such recommended person against the issue of a permit, the Union Government shall, however, continue to levy on every such person the fee charged to all persons on the issue of temporary permits and which at present amounts to the one pound.
- (5) The Consul for Japan will recommend for admission in the Union under this arrangement Japanese subjects belonging exclusively to the following classes—
  - (1) Tourists.
  - (2) Persons visiting the Union solely for the purpose of study or scientific investigation.
  - (3) Wholesale merchants and buyers of South African produce for export, as well as their respective staffs. It is understood that the number of persons recommended under this class will be restricted to a reasonable limit.
  - (4) The wives and children of any person admitted under paragraphs (1), (2) and (3).
- (6) The permits issued under this understanding shall be for one year renewable from time to time on the recommendation of the Consul for Japan for a further period or periods each not exceeding one year.
- (7) It is understood that—
  - (1) Any person who enters the Union under a permit as contemplated in this understanding shall not be entitled in consequence to reside in the Province of the Orange Free State or to settle in that Province for the purpose of trading or farming.
  - (2) Children born to any such person during such temporary domicile shall have no claim in consequence to Union nationality, birthright or domicile.
  - (3) No person falling under the provisions of paragraph (d), (e), (f), (g) or (h) of sub-section (1) of section four of Act No. 22 of 1913 of the Union as amended, will either be recommended for admission or admitted to the Union.
  - (4) Whenever any Japanese subject who has been admitted to the Union under this arrangement fails to comply with the conditions of his temporary permit, the Japanese Government will, upon request to that effect being made by the Union Government to the Japanese Consul, arrange for his maintenance and removal from the Union without cost to the Union Government.
  - (5) This understanding shall not be construed so as to derogate from the right of the Union to administer and carry into effect the Immigrants' Regulation Act, 1913, the Quota Act, 1930, or any amendment of those measures and shall be subject to review at any time after two months' notice to that effect.
- (8) This arrangement will commence on and be of full force and effect from the date of this note.

I have, etc ,

(Sgd.) S. YAMASAKI,  
Acting Consul for Japan.

**CONFIDENTIAL.**

GOVERNMENT OF INDIA.  
DEPARTMENT OF EDUCATION, HEALTH AND LANDS.

---

**BRIEF OF INSTRUCTIONS.**

Issued to the delegates of the Government of India to the Conference with the representatives of the Government of the Union of South Africa on the Indian Problem in the Union.

---

VII.—Indian franchise—  
(a) Political; and  
(b) Municipal.



NEW DELHI  
GOVERNMENT OF INDIA PRESS  
1931

## INDIAN FRANCHISE.

(a) *Political*.—Section 36 of the Union of South Africa Act, 1910, provides that only those persons are entitled to vote for the election of members of the House of Assembly who possess such qualifications as existed for parliamentary voters in the several Colonies at the establishment of the Union. This provision applies to Indians as to other classes of the population of the Union. Its effect is that, except in the Cape Province, where no distinction is made in the matter of franchise on the basis of race or colour, Indians do not enjoy the right to vote at parliamentary elections. In Natal, where the Indian population is the largest, they have lost the parliamentary franchise by the operation of Law XI of 1896 which lays down that "persons who not being of European origin, are Natives or descendants in the male line of Natives of countries which have not hitherto possessed elective representative institutions founded on the parliamentary franchise" are disqualified from being registered as voters. Persons whose names were already on the voters roll at the time, and who were otherwise competent and qualified as electors when the Act was passed, were excluded from the operation of this provision, but this has not prevented the number of Indian voters in Natal dwindling to a mere handful. In 1929, which is the latest year for which the information is available, there were only 16 Asiatics in the whole of the province on the electoral roll. In the Transvaal and the Orange Free State, non-Europeans have never enjoyed the political franchise. In the Transvaal, Law No. III of 1885 specifically excluded persons belonging to one of the native races of Asia, including the so-called "coolies" (Indian labourers), Arabs, Malays and the Muhammadan subjects of the Turkish Empire from the "Burghar rights of the South African Republic". In the Orange Free State the settlement of Asiatics is practically prohibited.

2. The denial of political rights to Indians in the Dominions has always been a sore point with Indians and the Government of India have consistently striven to secure the parliamentary franchise for Indians who have from

time to time settled in the various self-Governing Dominions. In 1921 their representative at the Imperial Conference moved the following Resolution:—

“The Conference, while reaffirming the Resolution of the Imperial War Conference of 1918, that each community of the British Commonwealth should enjoy complete control of the composition of its own population by means of restriction on immigration from any of the other communities, recognises that there is an incongruity between the position of India as an equal member of the British Empire, and the existence of disabilities upon British Indians lawfully domiciled in some other parts of the Empire. The Conference accordingly is of the opinion that in the interests of the solidarity of the British Commonwealth it is desirable that the rights of such Indians to citizenship should be recognised”.

3. For the implementing of this Resolution which was adopted, South Africa alone dissenting, the Government of India deputed Mr. Sastri to the Dominions of Australia, New Zealand and Canada in 1922, and, as a result of Mr. Sastri's efforts and of subsequent representations, the position has been improved in Australia. In Canada, where the Indians in British Columbia do not enjoy the Provincial or the Federal franchise, no headway has been made, though at the 1930 Imperial Conference informal representations were made to the Canadian Prime Minister, who promised to take the matter up on his return to the Dominion. The attitude of the Union of South Africa, however, as expressed in the 1921 Conference was that South Africa was unable to accept this Resolution in view of the exceptional circumstances of the greater part of the Union, and this was re-affirmed in 1923 by General Smuts, when Sir Tej Bahadur Saprú proposed that the Dominions, where action had not already been taken to implement the Resolution of 1921, should receive a Committee appointed by the Government of India in order to discuss how effect could be given to the terms of the Resolution of 1921. Since 1923 the question of conferring upon Indians in South Africa the political franchise has not been raised, because it was felt that such a step would only have the effect of alarming un-official European opinion and

impeding the progress of efforts to secure the upliftment of the resident Indian community in the economic and the social field. The previous Conference which met at Cape Town in 1926-27 did not discuss this question for the same reason. And when legislation was passed early this year, which had the effect of slightly enlarging the number of European male electors in the Cape Province by introducing the adult suffrage for Europeans, the local Indian community made no protest. It may be added that when the Union Parliament passed legislation last year enfranchising European women on the basis of adult suffrage, no protest was made by the resident Indian community, nor was any action suggested to the Government of India by their Agent in the Union, although the legislation had the effect of introducing racial differentiation in the Cape where, until the change made in 1930, all sections of the community had been subject to a common property and educational qualification.

4. There is no doubt that an influential section of Indian opinion holds that the difficulties in South Africa will not be removed unless the Indians resident there get a vote. Mr. Andrews, whose opinion on Indian questions overseas carries great weight in Indian non-official circles, suggested in the course of his comments on the recent changes in the Cape franchise, that the Government of India should "revise and restate" their own position. As was stated in the Memorandum presented by the Government of India to the Imperial Conference in 1921, a final solution of the controversy over the status of Indians will probably be found only by the admission of British Indians to full rights of citizenship. Only then will Indian nationalist sentiment be satisfied, and Indians in South Africa enabled to safeguard their own interests. At the same time, it will be unwise to ignore the truth of the statement in paragraph 3 of the conclusions reached by the Round Table Conference on the Indian question in South Africa that "it is difficult for the Union Government to take action which is considerably in advance of public opinion". Although this statement referred specifically only to the proposal for the upliftment of the Indian community in



the sphere of education, public health and certain economic matters, it has even stronger application to the question of franchise. The sentiment of the European population of South Africa, which is politically dominant, is undoubtedly against the extension of political equality to Indians. Indeed, the vocal section of the European public wishes to impose upon the Indian population additional disabilities in the matter of their rights to trade and to own or occupy immovable property. In the circumstances it may be urged that little practical advantage could accrue to the Indian community in South Africa by any attempt to raise now their claim to political enfranchisement. Such an attempt is bound to be resisted by the South African representatives at the Conference because of the likely effect of even a discussion of the matter on European opinion in South Africa, and might even have the effect of endangering what prospects there might be of securing concessions from the Union Government in regard to the Asiatic Tenure (Amendment) Bill, and the promise of a more vigorous pursuit of the policy of upliftment in the economic and educational sphere, which the Union Government accepted after the last Conference. The Department of Education, Health and Lands, is therefore, of opinion that at the early stages of the Conference the Indian Delegation should not raise the question of the political franchise, although there would be no objection to a general reference being made on a suitable occasion to political enfranchisement as the ultimate and ideal solution of the Indian problem in South Africa. There may also be circumstances where it may be necessary for the delegation to definitely assert this right, *e.g.*, when an agreement cannot be reached.

(b) *Municipal*.—In the Transvaal and the Cape, the position is the same as in respect of the political franchise. In the Cape Province, Indians enjoy both the municipal and the political vote. In Natal, Ordinance No. 19 of 1924 (The Boroughs Ordinance of 1924) limited the Boroughs franchise to persons registered as parliamentary voters, and Ordinance No. 3 of 1925, which amended the local Township Law 11 of 1881 in respect of the qualifications of voters, made a similar provision as regards the

local vote for townships. As a result of these two Ordinances Indians who were not enrolled in a Borough or Town roll on the 1st day of July, 1924, or the 1st January, 1925, respectively, became disqualified for the local franchise.

In view of the power vested in local bodies as regards the grant of licences for trading, the local Indian community will probably value the possession of the municipal franchise even more than the political. For, if they possess the privilege, they would be better placed than they are to-day to moderate the anti-Asiatic attitude of those local bodies which are hostile to Indian trading. It is unlikely, however, that either in the Transvaal, where Indians have never enjoyed the municipal vote, or in Natal, where they were deprived of it as recently as 1924-25, local European opinion would permit legislation to this end to pass through the Provincial Legislative Councils. At the same time there is no reason why an attempt should not be made to induce the Union Government to use their good offices with the Provincial Administrations of Natal and the Transvaal for promoting legislation which would provide for setting up Advisory Boards, consisting of Indians, whom Town Councils and Town Boards would be bound to consult in regard to all civic matters that are likely to affect Indians residing within their jurisdictions. A suggestion to this effect was made in 1927 in respect of local bodies in Natal and it is considered that, if local Indian opinion is prepared to accept such Boards, the suggestion should be put forward again at the forthcoming Conference.

In this case again although the chances of success are extremely poor, it will be as well for the delegation to know that the assertion of this right has the approval of the Government of India while the discretion to assert it or not is left to the delegation.

FIRST DAY.

SECRET.

**PROCEEDINGS OF CONFERENCE**

**BETWEEN**

**REPRESENTATIVES OF**

**THE GOVERNMENT OF INDIA**

**AND**

**REPRESENTATIVES OF**

**THE GOVERNMENT OF THE UNION OF SOUTH AFRICA.**

---

*CAPE TOWN, Tuesday, 12th January, 1932.*

Proceedings of Conference between Representatives of the Government of India  
and Representatives of the Government of the Union of South Africa.

---

Cape Town, Tuesday, 12th January, 1932.

PRESENT :

Representing the Government of India :

The Right Hon'ble V. S. Srinivasa Sastri, P.C., C.H.

Sir Geoffrey Corbett, K.B.E., C.I.E., I.C.S.

Sir Darcy Lindsay, Kt., C.B.E.

Sir Kurma Reddi, Kt. (Agent General for India in the Union of South Africa).

Mr. G. S. Bajpai, C.I.E., C.B.E., I.C.S.

Mrs. Sarojini Naidu.

Representing the Government of the Union of South Africa :

Gen. the Hon'ble J. B. M. Hertzog, M.P., Prime Minister and Minister of External Affairs.

Dr. the Hon'ble D. F. Malan, M.P., Minister of the Interior, Education and Public Health.

The Hon'ble O. Pirow, K.C., M.P., Minister of Justice.

The Hon'ble E. G. Jansen, M.P., Minister of Native Affairs.

The Hon'ble Patrick Duncan, K.C., C.M.G., M.P.

Mr. G. H. Nicholls, M.P.

Officials attending the Conference :

The Hon'ble E. Baring (Secretary to the Agent General for India in the Union of South Africa).

Mr. Ricketts (Assistant Secretary to the Agent General for India in the Union of South Africa).

Mr. P. I. Hoogenhout (Secretary for the Interior).

Mr. H. N. Venn (Commissioner for Immigration and Asiatic Affairs).

The Conference met at the Houses of Parliament at 10 A.M.

---

*The Prime Minister* : Dr. Malan, Mr. Sastri, Mrs. Naidu, and Gentlemen :  
Let me express my pleasure at having the opportunity of bidding you all welcome to this Conference in which I shall take no part except in so far as the few opening words I have been asked to address to you. I am very sorry to hear that the Leader of the Delegation from India, Sir Fazl-i-Husain, is so indisposed as not to be able to be here this morning. Particularly do I desire to bid him and his fellow delegates from India a hearty welcome to South Africa and to assure them all of our best wishes, not only personally, but also in the successful accomplishment of the great task with which they have been entrusted. The chief object of this Conference—the main task incumbent upon each individual member—is, I take it, in general terms to harmonise the interests of our respective countries in respect of the Indians resident in the Union of South Africa, and more particularly therefore to consider in how far the Agreement of 1927 has succeeded in achieving that end or what other and further steps may be necessary and possible for the attainment of that object. It is not for me in any way to seek to influence the free and unbiassed consideration of these questions by the Conference. I do, however, feel the necessity of giving expression to the hope that whatever the results may be of your discussions and deliberations the decision of the Conference will be such as to assure for the future a closer friendship and ever increasing measure of friendly feeling and hearty co-operation between the Union of South Africa and India. To achieve this great end I feel it will be necessary that in its discussions the Conference be imbued with the same spirit with which the Conference of 1927 entered upon

its deliberations, that is to say in the full determination to try mutually to understand and appreciate one another's difficulties and to endeavour to solve these difficulties in a manner consistent with the highest interests of both countries. The 1927 Conference, I venture to say, has been fruitful of the greatest blessing to South Africa no less than to India in having inaugurated, fostered and encouraged a spirit of mutual goodwill and esteem between the two countries such as was completely unknown before, and I have no doubt that the labours of the present Conference will be blessed with the same rich harvest of mutual understanding and goodwill and with full confidence we will be able to look forward to future relations. Let us not forget that we are pioneers in the task of cultivating friendship and establishing active national relationship between South Africa and India, and that here as everywhere else the path of the pioneer is strewn with difficulties and dangers of the most unexpected nature. Whatever these may be let us determine especially at this Conference not to lose courage but to persevere in our endeavours.

Mrs. Naidu and Gentlemen, with these few words I shall close and leave you to apply yourselves to so an important a task as far as all are concerned. I only have to wish you every success.

*Mr. Sastri* : Prime Minister, on behalf of my colleagues I desire in the first place to acknowledge your inspiring message this morning with gratitude and appreciation. We reciprocate to the full the sentiments of goodwill and friendship to which you have given every expression and we are animated by the same desire to bring about a renewal of the good understanding and cordiality which the Commission of 1927 established for the first time between the peoples of India and South Africa. To me personally it is a great satisfaction to be taking part for the second time in proceedings of this nature. There are many features of the former Conference that I shall like to recall with especial pleasure, but Prime Minister if you will allow me to say so, what exceeds in interest to all of us is that feature which marks your connection with this Conference. If you will carry your memory back to those days of 1926 when you had just returned from the Imperial Conference in London, you will remember that in opening that Conference you said in somewhat more emphatic form what to-day you have so aptly said, that you for your part were determined that the Conference should end in complete success. I have felt and I have often said that it was that very note in your opening speech that set the tone of our entire proceedings and contributed a great deal to the ultimate result which has been claimed in both continents as a happy augury to all concerned. I am happy that you struck the same note this morning and I do hope that although you have in terms renounced your connection with the future of this Conference you do not mean that we are to take your words all too literally, and that Dr. Malan on the one side and we on the other will always have your active sympathy and counsel that your wide experience might from time to time suggest so that our conversations here may proceed on correct lines and always be characterised by mutual understanding and mutual forbearance. I take the liberty, Prime Minister, in saying that as often as we feel any doubt or difficulty we shall feel that we have the right of access to the Prime Minister, and it is in that hope and with full reciprocation of the feelings you have expressed this morning that we start on our deliberations. Certain words in your message this morning take my mind home to a thought of which I am sure this Conference is very conscious. You spoke of harmony, you spoke of peace, you spoke of concord, and we look at these things in a way that makes them appear as if they were all parts not insignificant and not altogether without meaning to the peace and harmony and concord of the larger world. Prime Minister, you and I have exchanged few words since we met, but twice I remember in these few words has occurred the idea of in what a sad plight the world generally seems to be to-day. Yes, who can reflect without dismay upon the disharmony and general lack of concord that seems to obtain amongst the peoples in the world to-day. Whoever in my judgment helps to reduce the volume of this disharmony and lack of concord does something of the very highest, and whoever by design or by error of judgment adds thereto does a disservice to the whole human race. This morning, Prime Minister, you have started us upon a task which, let us all hope, will lead to the establishment of a regular understanding between our two peoples and thereby reduce the volume of this misunderstanding and alarm that has seized our races for the moment. That would be in the larger sense a truly happy ending to our work. May I further in making these observations appeal to you and your colleagues for the right to allow us to co-operate with you in this work. I am speaking for all my colleagues when I affirm our full intention

of giving to your side's view of our business every consideration of friendliness and sympathy. We trust this will return to us in full measure, and even as we expect that you will not forget your duties and obligations to your own people so we expect you will allow us on this side to bear these duties and obligations of our people in the difficulties of our common task. In these duties and obligations on both sides we should constantly bear in mind the words of the Prime Minister and labour for a renewal of the concord that has already been established. If we bear this double task in mind we feel that we can go ahead.

*The Prime Minister thereupon left the room.*

*Mr. Sastri* : In accordance with the proceedings at our last Conference I think it will be well if we proceed to find a Chairman for ourselves. I propose that we request Dr. Malan to take the Chair at our proceedings and to conduct them just as he did before. May I ask you, Dr. Malan, to take this Chair ?

Dr. Malan thereupon took the Chair.

*The Chairman* : I must thank Mr. Sastri and the other members of the Conference for the great honour they have done me in electing me again to the Chair. I can only say that I hope that the same spirit of goodwill and cooperation that was a marked characteristic of our Conference in 1927 will also prevail on this occasion. That spirit made the task of the Chairman an easy one and I hope it will also be evinced at this Conference.

I think our task this morning will be more especially to fix the agenda for the Conference. I may say in that connection that there has been correspondence between the Government of the Union and the Government of India in which the general lines on which the Conference should proceed has been laid down. I may say briefly that there are two outstanding questions which have to be considered by the Conference. The first is the question of the renewal of the Cape Town Agreement which was arrived at five years ago : and the other is the question of the position which has arisen subsequently on the Witwatersrand. With regard to the question of the renewal of the Cape Town Agreement, as we all know, at the conclusion of our Conference five years ago it was understood by both sides that if that agreement was approved of by our respective Governments it would be given a fair trial and it was mutually agreed that five years would be necessary to say whether that agreement would or would not be a success. Now as a matter of course at the end of that five years period a Conference had to be held anew to consider the experience which was gained in the meantime and to take stock of the position and deliberate as to our future action. Now this, I take it, is the main object of this Conference, and for that reason I suggest that first of all we begin at our next sitting to consider this main point of the renewal of the Cape Town Agreement in the light of experience gained. The other question would naturally follow,—that is the position which has arisen on the Witwatersrand as a result of the illegal occupation of stands on proclaimed ground by Indians, and which has been the subject of various judgments of the Supreme Court. That matter has been considered by Parliament, which appointed a Select Committee to go into the whole question. The Committee took evidence and its report was accepted by Parliament, but the legislation which was then recommended was not passed pending the holding of this Conference. These are the two main subjects. If there are other points that are raised I take it they would be more or less in connection with these two and would be of a subsidiary kind. This suggestion I wish to make to the Conference.

*Sir Kurma Reddi* : I was not present at the last Conference. Is it your desire that we should have, say, two or three members on this side to draft an actual programme of the subjects which have to be considered at this Conference, or is it your desire that we should sit as a whole and put on paper which subject is to be discussed ?

*The Chairman* : If I remember rightly the procedure was this. On the subject of discussion there was first of all a statement made by the leader of the delegation on one side. Then just in a preliminary way the Conference discussed that. After that the Conference adjourned to give the delegation on the other side an opportunity to consider the statement and give their reply at the next sitting. Of the two subjects that have to be considered at this Conference I should say that as far as the first is concerned, namely the question of the renewal of the Cape Town Agreement, it would be reasonably expected that the Union delegation should first of all make a statement to the Conference of their

view as to how that agreement has come up to their expectations or otherwise. After that has been submitted to the Conference then the delegation from India would have the opportunity of considering and replying, or of making any suggestions that they think they can make in connection with the matter. As far as the second point is concerned I think the opposite would be expected. The case of the Union in regard to that matter is set out in the report of the Select Committee to Parliament, so it is not necessary for us to make a statement. I think it would be right for the delegation from India to make representations with regard to that matter. If we adopt the procedure I have suggested then I would suggest that at the next sitting I make a statement on behalf of the Union delegation with regard to the Cape Town Agreement. That would set the ball rolling and open the matter for discussion and afterwards for a considered reply on the part of the delegation from India.

*Sir Darcy Lindsay* : Then any point arising out of the Cape Town Agreement would be open for discussion although not contained in your statement ?

*The Chairman* : That is to say anything connected with the Cape Town Agreement. We would cover the whole field of discussion of the last Conference.

If there is no other suggestion before the Conference the next thing is to fix the time for the next meeting. I would suggest that we meet tomorrow morning at 10 o'clock.

(The Conference adjourned at 10-50 A.M. until tomorrow at 10 A.M.)

SECOND DAY.

SECRET.

PROCEEDINGS OF CONFERENCE

between

Representatives of

THE GOVERNMENT OF INDIA

and

Representatives of

THE GOVERNMENT OF THE UNION OF SOUTH AFRICA.

---

CAPETOWN, Wednesday, 13th January, 1932.



PROCEEDINGS OF CONFERENCE BETWEEN REPRESENTATIVES OF  
THE GOVERNMENT OF INDIA AND REPRESENTATIVES OF THE  
GOVERNMENT OF THE UNION OF SOUTH AFRICA.

---

Cape Town, Wednesday, 13th January, 1932.

PRESENT:

Representing the Government of India:

The Rt. Hon. V. S. Srinivasa Sastri, P.C., C.H.

Sir Geoffrey Corbett, K.B.E., C.I.E., I.C.S.

Mrs Sarojini Naidu.

Sir Darcy Lindsay, Kt. C.B.E.

Sir Kurma Reddi, Kt. (Agent General for India in the  
Union of South Africa.)

Mr G. S. Bajpai, C.I.E., C.B.E., I.C.S. (Secretary to  
the Indian Delegation).

Representing the Government of the Union of South Africa:

Dr. the Hon. D. F. Malan, M.P., (Minister of the Interior,  
Education and Public Health) Chairman of the Conference.

The Hon. O. Pirow, K.C., M.P. (Minister of Justice).

The Hon. E. G. Jansen, M.P. (Minister of Native Affairs).

The Hon. P. Duncan, K.C., C.M.G., M.P.

Mr G. H. Nicholls, M.P.

Officials attending the Conference:

The Hon. E. Baring, I.C.S., (Secretary to the Agent  
General for India in the Union of South Africa)  
Assistant Secretary to the Indian Delegation.

Mr P. I. Hoogenhout, (Secretary for the Interior)  
Secretary to the Union Delegation.

Mr H. N. Venn, (Commissioner for Immigration and Indian  
Affairs).

Mr F. C. van Blerk, (Clerk in the Department of the  
Interior).

---

The Conference met at 10 a.m.

THE CHAIRMAN: I forgot to say yesterday that we have arranged mutually that the Secretary for the Union Delegation will be Mr. Hoogenhout, the Secretary for the Interior, and that Mr. Baring will act as Assistant Secretary to the Indian Delegation.

MR. HOOGENHOUT: I wish Mr. Venn, the Commissioner for Immigration and Indian Affairs to be permitted to attend the Conference, and also Mr. van Blerk, who is our personal clerk in Cape Town, in case we want any papers from the office.

This was agreed to by the Conference.

THE CHAIRMAN: I would further propose that we as a Conference send a message to Sir Fazl-i-Husain expressing our regret at his illness and his inability to attend the Conference, and wishing him a speedy recovery.

Agreed to.

THE CHAIRMAN: We shall now begin our work for this morning. On the part of the Union Delegation I wish to submit the following statement of our views with regard to the Cape Town Agreement.

At the conclusion of the Cape Town Conference of 1927, it was mutually understood by the respective delegations that the agreement then entered into shall, if approved by both Governments, be given a fair trial, and that after five years the position shall again be reviewed in the light of the experience gained. It is now our duty impartially and frankly to state how that position impresses us and what the conclusions are to which we have come.

Speaking generally, we have no hesitation in saying that the Cape Town Agreement has been a powerful influence in fostering friendly relations between the Governments of the

Union/

(11)

Union and of India. During the past five years the exchange of views and other communications, both by personal contact and otherwise, have been numerous, and without exception they have been pervaded by a spirit of mutual goodwill and co-operation, which was as welcome as it was new. It is evident that this improved atmosphere was due to the Agreement itself. At the same time there can be no doubt that it was also as much due to the fact that as a result of the Agreement India was permanently represented in South Africa by Agents-General who have proved to be men of outstanding tact and ability. We wish to record our earnest desire, which we feel confident will be endorsed by our Government and people, that whatever the fate of the Cape Town Agreement itself might be, the Government of India will continue to be represented in South Africa and that the relations between South Africa and India will continue to be as friendly and happy as ever.

In our judgment of the position we can, however, not ignore the fact that the Cape Town Agreement was not primarily intended to improve our international relations. On the contrary, its value was explicitly and from the outset considered to be dependent upon the question in how far it would during the five years period prove to be a real contribution towards the solution of the Indian problem in South Africa. And this question again was, from the South African point of view, dependent upon the success of the assisted emigration scheme which formed the main basis of the previous Conference and the only condition upon which the Union Government could at the time agree to this particular form of negotiation. To put the matter concisely, the position seems to be this: if the assisted emigration scheme can be proved to have worked satisfactorily and to have borne results commensurate with the magnitude of the problem, to the solution of which it was intended to contribute/

contribute, or failing this, if the scheme could even now be amended so as to ensure this result, then there would be good and sufficient grounds for considering the renewal of the Agreement favourably. If, however, the contrary must be established, then no good object would be served by its continuance, and in fact South Africa would not be justified in tying her hands in the solution of her own problems without an adequate counterbalancing advantage to herself.

In view of all the facts we are definitely of opinion that the Cape Town Agreement has not by any means fulfilled reasonable expectations. During the first 18 months or so, and taken as a beginning, the results of the assisted emigration scheme were not unsatisfactory. The subsequent and rapid decrease in the figures, which recently have to some extent again risen, presumably as a result of the prevailing unemployment, cannot, however, be described otherwise than as a collapse and a failure. For the first five months, that is from August 1st to December 31st of 1927 the number of assisted emigrants rose to 1,677, i.e. to an average of 335 per month, and during the succeeding calendar year it amounted to 3,489, i.e. about 290 per month. During 1929, however, the figure dropped to 1,328, and in 1930 to 1,012, being only 110 and 84 per month respectively. During the last period for which figures are available, that is from January 1 to November 30, 1931 the number was 1,754, averaging 160 per month.

The total number of assisted emigrants during a period of four years and four months, namely 9,260, does seem to be not inconsiderable in itself, though it certainly is far below original expectations. If against this, however, is set off the 200 who have returned so far and the 3,224 new entrants during the shorter period of four years for which we have figures (August 1, 1927 to July 31, 1931), it will be seen that the balance of emigration over immigration is small,

being/

being approximately only 1,285 per annum, i.e. 107 per month. In fact in a particular year like 1930, when the emigration figures were lowest, the balance was altogether negligible.

If these data prove the insignificance of the scheme in relation to the general emigration and immigration figures, they certainly prove its futility in relation to the absolute as well as the comparative increase of the Indian population in the Union. During four years, that is from 1926 to 1930, the Indian population increased by 11.18 per cent, while during five years, from 1926 to 1931, the European population increased by only 10 per cent. On an average the Indian population increases more rapidly than the European to the extent of .2 per cent per annum in Natal, 1 per cent per annum in the Cape, and 2.78 per cent in Transvaal. In these circumstances it will be readily understood why even on the ground merely of numerical increase the presence of the Indian continues to be regarded as a menace.

Apart from the futility of the assisted emigration scheme, we must further point to the important fact that the Cape Town Agreement has hardly fulfilled the reasonable expectation that it would be accepted by the Indian population in South Africa and thus be a means of improving inter-racial relations. Without going into details we can confidently state that a very large section of the Indian population has always looked upon the Agreement with suspicion and has even openly rejected it, while the failure of the assisted emigration scheme must, to a very large extent, be directly ascribed to their active opposition. The Cape Town Agreement has consequently failed as a settlement in any true sense of the word.

In establishing these facts we wish to record it as our considered opinion that the non-success of the Cape Town Agreement was in no wise due to any failure or laxity on the part of the Government of India in the fulfilment of their

undertakings/

undertakings. We are convinced that they have faithfully, as far as lay in their power, done everything that could reasonably have been expected from them. We rather ascribe it to difficulties beyond their and our own control, that have not been foreseen, and further to the fact that the possibilities of assisted emigration must in the nature of the case be limited and must in future become so increasingly.

In view of what has been said we are definitely of opinion that the Cape Town Agreement should now lapse, unless of course it could be proved to be capable of such amendment as would make it satisfactory and effective. In further support of this view we need hardly stress the fact that with the rapid increase in the percentage of South African born Indians, the Indian problem is fast becoming a matter of exclusively South African concern. In these circumstances it would be wrong to burden the Government of India with a greater responsibility for the relations between the Union and her own citizens than they might legitimately be called upon to bear. And it would be equally wrong to cultivate or encourage among South African Indians the idea that in any case of difference with their own Government they could always appeal to the Government of India. An agreement which ties the hands of South Africa in any way without at the same time ensuring to her a clear and adequate counterbalancing advantage can in these circumstances only become a continual source of irritation instead of being, what the Cape Town Agreement was intended to be, an instrument of goodwill and friendly co-operation.

I take it that our discussions on this statement this morning will just be preliminary, and that we give the Delegation of the Government of India the fullest opportunity to consider this amongst themselves so as to give their official reply here as a Delegation later. It is now open

to/

to any member of the Conference to say anything.

THE RT. HON. SRINIVASA SASTRI: We thank you for giving us the opportunity of hearing your views and for giving us time to formulate our reply. We shall want one or two days for consideration of this statement. You will agree it is very important and we must consider it most carefully. In the meantime you will allow us to ask you just a few questions. First of all I will say that this statement is so important that I think it necessary to keep it perfectly confidential. It would be a misfortune if it became known to the Indian community. I therefore beg the parties all round to keep this an absolute secret.

SIR GEOFFREY CORBETT: The whole of this statement only deals with the assisted emigration part of the Cape Town Agreement. Shall we be given the opportunity of dealing with the full agreement?

THE CHAIRMAN: The other part is the part with which you are more concerned. The part with which we are more particularly concerned and which we laid stress on at the previous Conference is the part dealing with the assisted emigration scheme. It stands to reason therefore that we should give our views with regard to that. As far as the other part of the Agreement is concerned I daresay you were in the position to know during the five years period how the undertaking was carried out on the part of the Union and to what extent you have been satisfied. So we think it is rather for you to make any remarks with regard to that and not for us.

SIR GEOFFREY CORBETT: The only point in my mind is in regard to paragraph 2 of the Agreement, where the Union Government recommends that Indians domiciled in South Africa prepared to conform to Western standards of life should be allowed to

do/

do so. Has there been any progress in this direction? I should like to know whether you will express your views on that aspect of the Agreement. Another question I should like to put is: can you state more fully and exactly why it was that the assisted emigration did not reach the figures we anticipated at the time and why it fell off so very abruptly in two years. The fact of its rising again subsequently is I understand due to unemployment during the last couple of years. You say it is due to active opposition of a certain part of the Indian community. I am sorry to think that that should be the case. Could you not give us more details on that point?

THE CHAIRMAN: At one time I believe, in Natal especially, not only was opposition definitely expressed at public meetings by a section of the Indian community but special leaflets were also distributed.

MR VENN: We found letters written by a man in Durban and sent to India to be posted there saying what a terrible state he was in and what a terrible state the other Indians were in. Many of the Indians, especially those on the sugar estates, are very ignorant, and they had hold of a story that the ships did not go to India at all but went to British Guiana and that these emigrants never saw India again. There was another story that the ships were after the style of a dredger and had false bottoms, and that when they were half way across these bottoms were opened and the emigrants went to the bottom of the sea. Another story was that they were not allowed to land in India, but that they simply went there and were shipped somewhere else. These stories helped considerably to decrease the number of emigrants. The Indian Congress and all the Indian Societies affiliated agreed that they would do their best to carry out the terms of the Cape

Town/



Town Agreement, but towards the finish the Congress held special meetings and, in conflict with their direct promise that they would assist as far as possible, they told the Indians not to go. Meetings were then held and the leaders of the Indian community in Natal impressed upon these people that they should not accept this emigration scheme. As a matter of fact they did everything they could to hinder it.

THE CHAIRMAN: I think recently a mass meeting of Indians was held in the Town Hall in Durban at which they decided to oppose a renewal of the Cape Town Agreement.

MR VENN: That is so, as long as it included the assisted emigration scheme. That was the main objection.

THE RT. HON. SRIVINASA SASTRI: In that movement the Congress took part?

MR VENN: Yes, the leaders did. I have a report here dated the 27th November 1931. It was only in October and November that the leaders of the South African Indian Congress came into the open in regard to their opposition. They were always in opposition, but this was the first time they came into the open. The South African Indian Federation was always opposed to the scheme.

SIR GEOFFREY CORBETT: Can you give us some idea of their reasons for opposition?

MR VENN: No, they alleged it was on account of the treatment the people received in India, that they were much worse off in India than here. Whether there was anything else behind it I cannot say.

SIR GEOFFREY CORBETT: You say that evidence was manufactured by letters being sent to Durban.

MR/

(18)

MR VENN: We had one case particularly where a letter was written by a man in Durban and sent to India to be posted from there.

SIR GEOFFREY CORBETT: That indicates a desire to suggest that the Indians are unhappy in India?

MR VENN: Undoubtedly.

SIR GEOFFREY CORBETT: Why was there the desire to suggest that?

MR VENN: I could not say what was at the back of their minds in opposing the Indians leaving South Africa at all. I think they thought the greater the number they have here the greater the power they would have.

THE HON. MR P. DUNCAN: There has been considerable agitation in India itself against this scheme.

MR VENN: I think the Federation were against it because the Congress had expressed its approval of the scheme. I believe that if the Congress opposed it the Federation would have been in favour of it.

MR HOOGENHOUT: We had a copy of a book that was published in India in which were certain views expressed by the Rev. Andrews and several leading Indians in connection with repatriation, and I think that that had a great influence with the Indians in Natal.

SIR GEOFFREY CORBETT: Did this opposition start in Natal or in India?

MR VENN: There was a good deal of opposition from the Indian Federation before any word came from India. There were certain leaders like John Roberts who were opposed to it from  
the/

the very start.

SIR DARCY LINDSAY: It is stated that the new entrants numbered 3224?

MR VENN: Those are the wives and minor children of Indians domiciled in the Union. They came in under section five of Act No. 22 of 1913. The figure 3224 does not include anyone who was here before, they are all new entrants, and persons who had the right to acquire permanent domicile in South Africa.

MR BAJPAI: Does the figure include people who have come in to escape the consequences of the change in the definition of domicile in the Act of 1927? The Act of 1927 definitely laid it down that three years continuous absence would involve a loss of domicile and therefore the right to return to this country. Does this figure include people who have come in in order to avoid the loss of domicile?

MR VENN: No, those people came in by right of a certificate of registration. These are all new entrants who have not been in the Union before.

THE CHAIRMAN: The figures given by the Department to us form a true statement. These 3224 were women and minor children?

MR VENN: That is right.

SIR DARCY LINDSAY: Is it much above the average of previous years' experience?

MR VENN: I should not say it is very much above the average right through. In the Cape there were comparatively few, there were 179 women, 169 boys and 44 girls making a total of 392. In Natal there were 369 women, 323 boys and 151 girls, making a total of 848. In the Transvaal there were 891 women, 719 boys and 374 girls, making a total of 1984. In

the/

the Transvaal the majority of the Indians are Mohammedan traders who as a rule do not establish a home if they can possibly help it in the Transvaal. They have their wives in India and bring their sons between 8 and 16 so that they can have them registered.

MR HOOGENHOUT: In regard to the active propaganda against this emigration scheme, a large meeting of Durban Indians was held in Durban on Friday the 22nd November 1931, and at that meeting the President of the South African Indian Congress said -

"Without going further into the matter I desire to say that our community has had enough of this repatriation scheme. The Congress is not going to allow the bartering away of the rights of a section of the community for the benefit of those who remain here. Rich or poor we are in this country as Indians. As Indians we will sink or swim together."

SIR KURMA REDDI: These figures are up to the 30th November 1931, can you get the December figures as well?

MR HOOGENHOUT: Yes, we can wire for that and can have them by to-morrow morning.

SIR DARCY LINDSAY: The census figures are given for four years, was that on a regular census?

MR VENN: No, these are based on the figures before the Conference in 1926 and 1927. I took all the departures and then I took the births and deaths and the new entrants. We have a regular registration of births and deaths. There has been no census of Indians since 1921.

MR HOOGENHOUT: I would accept our figures in preference to census figures.

SIR GEOFFREY CORBETT: These may be wrong on the census figures?

MR/

(21)

MR HOOGENHOUT: You cannot possibly take the census as correct in every detail.

SIR DARCY LINDSAY: The increase has been more in the Transvaal than in other parts.

MR VENN: Yes, there is a bigger percentage but the numbers are not greater. With regard to the increase in the period under review - 1926 to 1930 - we show in the Cape an increase of only 581; in Natal we show an increase of 15,288 in four years, of which 12,456 are Indian Immigrants and their descendants, there was an increase of 2832 "passenger" Indians in Natal. In the Transvaal there is an increase of 3568 on a total population in 1926 of 15,747.

SIR GEOFFREY CORBETT: That is very surprising because the population in the Transvaal for many years has been almost stationary?

MR VENN: No, I would not say that by any means.

SIR GEOFFREY CORBETT: It rose from 10 to 15,000 as a result of 25 years. It was 10,000 before the Boer war. The figure in the last four years seems to be a much larger proportion than in previous years.

MR VENN: It is an increase on increase.

SIR GEOFFREY CORBETT: This is increasing more rapidly than the Europeans in the Transvaal?

MR VENN: Yes.

SIR GEOFFREY CORBETT: Although the birth rate was lower in the Transvaal than in Natal?

MR VENN: I have just shown you that 1984 new entrants came in.

MR/

MR HOOGENHOUT: We get very few Indians from the Transvaal going back to India. The emigrants are mostly from Natal.

MR VENN: Taking it all round the Transvaal Indian is more prosperous than the average Indian in other parts of the Union and they have larger families.

SIR GEOFFREY CORBETT: That high percentage is due to the large number of new entrants?

MR VENN: Yes partly. From the 1st January 1927 to the 31st December 1930 there were 3000 births in the Transvaal and 1300 deaths, making a difference of about 1700. That, with the new entrants, makes an increase of 3600 during the period. In 1930 the population was 19,315. The actual increase was 3568.

SIR KURMA REDDI: What was the population in 1921. According to my recollection it was about 13,000.

MR VENN: In the census figures it is given as 15,747 in 1926, and 13,405 in 1921. Now it is 19,300. There is an increase of 3,600 since 1926.

SIR GEOFFREY CORBETT: Have you the 1911 figures here?

MR VENN: No, but we can get them from the census returns. With regard to the Cape the figure of 7236 is below the actual number, because they are mixed here with the Malays and ordinary coloured people and in the registration of births the offspring are registered either as Malays or coloured people. I do not think the figure of 581 reflects the true increase in the Cape at all. I think if you were to analyse the census forms you will find that the number is greater.

SIR KURMA REDDI: One of the considerations at the last Conference was the idea of happy home life. The Indians used to leave their wives in India and they then found it necessary to

go across to visit their families in India.

MR VENN: The number of wives coming out has certainly increased, but we still find with the ordinary Mohammedans that where the man has six children, four girls and two boys, he will bring the boys and the mother out but will leave the girls in India. The fact of their bringing their families out here would not therefore make a very great difference in the number of minor children, but it would make a difference in the number of wives for the simple reason that the boys cannot come unless the mother comes with them.

THE CHAIRMAN: Have you any comparison on the number of entrants in the successive years before and after the Cape Town Agreement?

MR VENN: No.

THE CHAIRMAN: It would be interesting to know whether as a result of the Cape Town Agreement there has been an increase in the number of new entrants under that head.

MR VENN: I would not say there has been as a result of the Cape Town Agreement. It may be as a result of amending legislation. I do not think that the Cape Town Agreement had any particular effect on it, but amending legislation had.

MR HOOGENHOUT: Sir Darcy Lindsay asked for some figures, I am able to give them now. I have the figures for 1904, 1911 and 1921. In 1904 in the Transvaal there were 9799 males and 1522 females. In 1911 there were 8990 males and 2022 females. In 1921 there were 11,056 males and 4935 females. Between 1904 and 1911 there was practically no increase, the increase dates from 1911 onwards. Now there are 11,804 males and 7511 females. There is a large increase in the females./

females.

SIR GEOFFREY CORBETT: I admit I could not understand the increase of 40 per cent in nine years, but it is obvious now that the number of males has not greatly increased since 1921, it is merely the number of females that has increased.

MR HOOGENHOUT: There is an appreciable increase in the males; it is 800.

SIR GEOFFREY CORBETT: That is an increase of 6.4 per cent in 9 years.

SIR DARCY LINDSAY: Those figures do look as if Clause 5 of the Agreement had some bearing on them.

MR VENN: Yes so far as the number of women are concerned.

SIR DARCY LINDSAY: It was said that boys were brought in for registration and then sent back again to India. That does not very much apply now under the conditions of the agreement?

MR VENN: No, they do not go back. But that is not the reason, it is because they cannot get certificates of identity. If a boy comes for the first time and goes away soon after he must return again before he is 16 because he has no domicile rights and can only enter as the child of an Indian domiciled here.

SIR DARCY LINDSAY: Under this Clause I should have thought that the influx of children would also have been greater than before.

MR VENN: They may bring two boys at once instead of bringing them out one by one, but I do not think that in the ultimate result there is any difference because they still leave

their/



their daughters behind.

SIR KURMA REDDI: I would like to have some information in regard to these 3000 wives and children. Is this influx of wives and children likely to be repeated in the coming years. I would also like to know whether the changed definition of domicile where a man loses the right of domicile after a continuous absence of three years has not something to do with the influx during these years.

THE CHAIRMAN: As far as the general question is concerned I should think that very much depends upon the difference still existing between the male Indian population in the country and the female Indian population. If the number of males exceeds by a very large percentage that of the females then I take it for a long time to come that balance will be redressed by importation from India. Perhaps Mr Venn will give us some information.

MR VENN: It is very difficult to give a direct answer to that question. One has got to take it that the majority of the Indian population in the Union are immigrants or their descendants, in which case there is very little travelling backwards and forwards to India. To-day there are 76,700 males and 66,200 females; a total of 142,900 Indian immigrants. Nothing will make any difference so far as the Mohammedan trader is concerned, unless we can absolutely bar him from going to India and keeping his wife and family there. We get all sorts of excuses why they do not bring their wives out. One man wrote and told us that his wife was in a terrible condition with leprosy. We wrote to the authorities and had her examined and were informed that she was perfectly healthy. This man did not want to bring his wife out and he knew that a person suffering with  
leprosy/

leprosy was a prohibited immigrant. They want as far as possible to leave their wives and daughters in India.

MRS NAIDU: On the other hand a good many Mohammedans marry Malay women.

MR VENN: Not a great many.

THE CHAIRMAN: The Malays are living practically only at the coast. At Port Elizabeth to a smaller extent and to a much greater extent in Cape Town. As a rule they do not go inland. You will find that this intermarriage takes place only at the coast.

MR VENN: I am surprised that they do not intermarry more frequently because in law, according to a judgment given, if an Indian male marries a Malay female according to Mohammedan rites the offspring are regarded in law as Malays. They are mixed to a certain extent at present. A certain number marry the Cape coloured people as distinct from the Malays. One of the reasons for the small increase in the male population in the Transvaal is due to the fact that a lot of the original Indians who went there a good many years ago are dying out, and those who have not died, when they have made a certain amount of money, go back and live in India. We have many cases of men of 55 years and upwards who have money who go and live in India. That accounts for the small increase in the number of males.

MR HOOGENHOUT: Quite a considerable number of the well-to-do Indians send their sons to India for education. They would not be shown in the census.

MRS NAIDU: I know the merchant class do that.

MR HOOGENHOUT: We get applications every day from Indians  
to/

(27)

to extend the period beyond three years, and we agree in those cases.

MR VENN: Before we brought in the amending law of 1931 it was a very common thing for an Indian boy to arrive here, register and return to India on the same boat, and then he did not come back again until 17 or 18 years of age. Their power of competition was by that time strengthened because they had imbibed all the Indian ideas of cheap living in the villages, and when they came out here they continued the same thing. On the other hand the boy who comes out here when young and is educated here has got different ideas of what he requires. He may want a motor bike and such things.

(The Conference adjourned at 11.20 a.m.  
until Friday the 15th instant at 10 a.m.)

THIRD DAY

SECRET

PROCEEDINGS OF CONFERENCE

between

Representatives of

THE GOVERNMENT OF INDIA

and

Representatives of

THE GOVERNMENT OF THE UNION OF SOUTH AFRICA.

---

CAPETOWN, Friday, 15th January, 1932.

PROCEEDINGS OF CONFERENCE BETWEEN REPRESENTATIVES OF THE  
GOVERNMENT OF INDIA AND REPRESENTATIVES OF THE GOVERNMENT  
OF THE UNION OF SOUTH AFRICA.

---

Cape Town, Friday, 15th January, 1932.

PRESENT.

Representing the Government of India:

The Rt. Hon. V. S. Srinivasa Sastri, P.C., C.H.

Sir Geoffrey Corbett, K.B.E., C.I.E., I.C.S.

Mrs Sarojini Naidu.

Sir Darcy Lindsay, Kt. C.B.E.

Sir Kurma Reddi, Kt. (Agent General for India in the  
Union of South Africa).

Mr G. S. Bajpai, C.I.E., C.B.E., I.C.S. (Secretary to  
Indian Delegation).

Representing the Government of the Union of South Africa:

Dr. the Hon. D. F. Malan, M.P., (Minister of the Interior,  
Education and Public Health) Chairman of the Conference.

The Hon. O. Pirow, K.C., M.P. (Minister of Justice).

The Hon. E. G. Jansen, M.P. (Minister of Native Affairs).

The Hon. Patrick Duncan, K.C., C.M.G., M.P.

Mr G. H. Nicholls, M.P.

Officials attending the Conference:

The Hon. E. Baring, (Secretary to the Agent General for  
India in the Union of South Africa) Assistant Secretary  
to the Indian Delegation.

Mr P. I. Hoogenhout, (Secretary for the Interior) Secretary  
to the Union Delegation.

Mr H. N. Venn, (Commissioner for Immigration and Indian  
Affairs).

Mr F. C. van Blerk, (Clerk in the Department of the Interior).

---

The Conference met at 10 a.m.

THE CHAIRMAN: I have a message for the Conference from Sir Fazl-i-Husain. The resolution of sympathy which was adopted by the Conference at its last sitting was conveyed to Sir Fazli by our Secretary, Mr Hoogenhout. I have received the following note from Mr Hoogenhout:

" I conveyed the resolution of sympathy adopted by the Conference to Sir Fazl-i-Husain on the 13th instant. Sir Fazli requested me to express his thanks and appreciation to the Conference, and to add that he deeply regretted his enforced absence from its deliberations and hoped that success would attend its efforts."

I take it that this morning's business of the Conference is to hear the reply of the Delegation of the Government of India to our submission at the last sitting regarding the Cape Town Agreement.

THE RT. HON. SRIVINASA SASTRI: Mr Chairman, last Wednesday you made an important statement in which you explained the impressions and conclusions of the Union Delegation on the Cape Town Agreement. This morning we propose to deal with the same subject on a somewhat wider scale, although we shall endeavour to make our observations as brief as possible.

If I may say so, Mr Chairman, you anticipated our own sentiments in placing in the forefront of your speech the conclusion that the Cape Town Agreement has been a powerful influence in fostering friendly relations between the Governments of India and of the Union of South Africa. The promotion of closer friendship and an ever increasing measure of goodwill and hearty co-operation between India and South Africa should be the keynote of our deliberations, and it is with that object that, we submit, the future of the Agreement should be approached.

You expressed it to be the definite opinion of your Delegation, Mr Chairman, that the Cape Town Agreement had not fulfilled reasonable expectations. This opinion appears to be

based/

based primarily on your conclusion that the results of the scheme of assisted emigration have been unsatisfactory. We shall, therefore, endeavour to deal with this point first. In our view the total number of assisted emigrants which reached the figure of 9,260 during a period of four years and four months is, to quote your words, 'not inconsiderable', especially when the economic condition of the world during the latter part of this period is taken into account. The fall in the prices of primary commodities has substantially reduced the attractions of emigration to a predominantly agricultural country like India. During the last two years our experience in India has been that assisted emigration to Malay and Ceylon, which in normal times averages nearly a quarter of a million persons a year, has practically ceased for the same reasons. It is not to be wondered at, therefore, that the general economic depression should have acted as a deterrent to Indians who have long been settled in South Africa to try their fortunes in another country. But we recognised that, apart from this temporary cause, more permanent causes, such as the difference in climate of the two countries which particularly affects the South African born Indian, may be operating to reduce progressively the flow of population from South Africa to India. We are, therefore, prepared to concur in your conclusion that the future possibilities of any scheme of assisted emigration to India must become increasingly limited. But the Cape Town Agreement also contemplated the possibility of the Union Government organising schemes of emigration to other countries, where Western standards are not required, and we should be glad to know whether this aspect of the matter has been investigated. Possibly, world economic considerations have so far stood in the way of such investigation. Should enquiry into the possibility of enabling Indians to settle in other parts

of/

of the world where climatic and economic conditions are similar to those prevalent in South Africa be contemplated, we of the Indian Delegation would be prepared to recommend to our Government that they should co-operate with the Union Government in exploring its possibilities.

But whatever the possibilities of emigration may be, it seems to us to be an exaggeration to suggest that the numerical increase of the Indian population in recent years constitutes a menace. Percentages, unless carefully analysed, are apt to be misleading. Nor, in the absence of a census enumeration of the Indian population, can the deduced figures be accepted as final. Taking them, however, for what they are worth, we find that the Indian population of the Cape increased in four years by 581 as against an increase of 41,656 in the European population during the census quinquennium 1926-1931. A corresponding comparison for the Transvaal shows an Indian increase of 3,568 as against a European increase of 87,341. Moreover, in the Transvaal more than half the increase is due to new entrants, namely women and children from India. In fact, since 1904, the male Indian population has increased only by 2005, while the number of females has risen from 1522 to 7511. Thus the increase of the Indian population in the Transvaal during the last 30 years represents a redress of the sex ratio rather than a general increase. This, while in itself satisfactory, will also tend ultimately to diminish future immigration of women from India. Even in Natal, where the import of indentured labour by the Natal Government has made the Indian population really substantial, comparison of the available figures since 1911 shows that the tendency has been for the European population to outstrip the Asiatic, with the result that, while in 1911 there were only 98,114 Europeans as against 133031 Indians, at the 1931 census the European figure had risen to 177,424 against an estimate of 166,678  
Indians/



Indians at the end of 1930. This remarkable change in the relative number of the two communities has been largely due, of course, to the emigration of Indians from Natal, but even if this emigration should cease the European population would undoubtedly retain the lead which it has now secured, since the door is practically closed now to the entry into Natal of new Indian immigrants for permanent settlement.

I shall now review briefly what has been done by the Union Government under paragraph 2 of the Cape Town Agreement, in which it is recognised that Indians domiciled in the Union, who are prepared to conform to western standards of life, should be enabled to do so. The Indian educational system in Natal has been substantially improved as a result of the enquiry promised in Part III of the Annexure to the Agreement. Though an investigation into housing and sanitary conditions in and around Durban was not possible precisely in the form originally contemplated by the Union Government an investigation by the Executive Committee of the Central Housing Board was conducted, as a result of which a sum of £50,000 has been made available to be spent on advances to Indians for building houses. In the administration of the Industrial laws also, we understand that the Departmental officers concerned have shown a sympathetic attitude in assisting Indian labour to organise itself. As regards licensing laws, an Ordinance passed by the Transvaal Provincial Council to amend the Transvaal General Dealers' (Control) Ordinance, 1926, which sought to widen the discretion of local authorities in the matter of refusing certificates of fitness, has, on the advice of Ministers, been reserved by the Governor-General. We are glad to have this opportunity of expressing our gratitude to the Union Government for the spirit in which they have worked this part of the Agreement and, in particular, to you, Dr Malan, for your ready accessibility and unfailing sympathy towards the Agent of the Government/

ment of India. We appreciate that progress in the upliftment of the Indian community may not have been so rapid hitherto as may have been wished, partly owing to severe financial stringency, and partly because the provincial and minor local authorities to whom, under the constitutional system of the Union, certain functions of Government are assigned, naturally take some little time to recognise all their responsibilities towards the permanent resident Indian population.

In a striking passage of the address with which he opened our proceedings, the Prime Minister said "The chief object of this Conference and, therefore, the main task incumbent upon each individual member is, in general terms, to harmonise the interests of our respective countries in respect of Indians resident in the Union, and, more particularly, therefore, to consider how far the Agreement has succeeded in achieving this end, and what other or further steps may be necessary and possible for the attainment of that object." This, Mr Chairman, admirably expresses what, in our view, should be our objective, namely, to ensure continuous and effective co-operation between our two Governments in respect of Indians resident in the Union. For, it will be recognised that, as the Government of India were parties to a system of immigration which created the Indian population of South Africa, they have a responsibility towards that population which they must continue to discharge until the Indian community is able to represent effectively its interests to the Union Government as part of the body politic. Now, as you have stated, Sir, the Cape Town Agreement has been a powerful instrument in fostering friendly relations between the Governments of the Union and of India - relations which, we consider, are essential to harmonise the interests of our two countries in respect of Indians resident in the Union. It is our considered opinion, therefore, that we should not lightly discard this

proved/

proved instrument, and that the Agreement, modified in any way that may be considered desirable after our discussions, should be continued. Should this happy consummation eventuate, it follows that we shall be prepared to recommend to our Government that the appointment of Agent, which, you have assured us, you and your Government and your people earnestly desire, should be continued.

THE CHAIRMAN: Shall we follow the procedure we followed at the last Conference, that is first to give an opportunity to the Union side of the Conference to ask any questions or for further information. Then we may perhaps have a preliminary discussion again and after that the Union Delegation will consider its reply, and at the next meeting even if we do not submit anything in writing we shall be better able to discuss this question in all its bearings.

THE HON. P. DUNCAN: Mr Sastri has said the Cape Town Agreement also contemplated the possibility of the Union Government organising schemes of emigration to other countries where western standards are not required. Can the Indian Delegation give us any information as to any investigation undertaken by India in regard to that matter - in regard to the possibility of establishing Indian settlements in other countries?

SIR GEOFFREY CORBETT: Speaking from personal experience I went to the Fiji Islands in 1902 on behalf of the Government of India and was very much struck with the possibility of Indian colonisation there, and also in the Solomon Islands in the South Pacific. I also discussed the matter with representatives of the Australian Government and ascertained that there were reasons why they would very much like to see those islands in the Pacific occupied by Indians, because they recognised there were others who might gain occupation

of/

of those islands.

MR VENN: There was some idea of Indian colonisation in British Guiana and I think the Indian Government sent a delegation there.

MR BAJPAI: As a matter of fact there have been two visits to British Guiana. One was in 1922 and another in 1924, and both came to the conclusion that there was excellent scope for colonisation in British Guiana, but before that can be permitted certain improvements of land and so on will have to be undertaken.

MR VENN: The Union Government were requested at that time by the Government of India to send over a representative Indian, but the Indians at that time were so antagonistic that they would not listen to it and would not send a representative to see what British Guiana was like. They turned it down with a very heavy hand.

SIR KURMA REDDI: Requests came from Madagascar for a number of men. We thought it was for the purpose of settlement, but on investigation we found that they wanted these Indians only for the purpose of serving for fixed periods, which we thought was not very different from the old system, so we did not proceed further. Perhaps a further investigation may reveal possibilities.

SIR DARCY LINDSAY: In 1927 I went to Brazil on a Parliamentary visitation and was struck with the possibilities of Brazil for a colonisation scheme. If land were taken up by the Government and labour, such as the Natal labour, were placed on the land on a share basis, I foresaw a very successful scheme might be worked out. The Japanese have penetrated somewhat in that direction. When I was at San Paulo I was

told/

told there was a Japanese colony about 30,000 strong which had taken up land. I think it was a syndicate that had taken up the land and brought the Japanese over and settled them there. The Japanese delegates visited the Colony and were highly satisfied with the position. The political rights are satisfactory and Brazil was anxious to get labour for the development of the country. It is a fine country with excellent soil, but they have no labour for growing certain crops which otherwise they might grow. I think a visitation to Brazil to look into the possibilities of colonisation might be very valuable.

THE CHAIRMAN: We have found in South Africa that there is no real objection on the part of the European to the Indian as an Indian, but where the objection really comes in is against the Indian as a trader. Now what I find in general in the country - and especially in regard to questions asked in Parliament or discussions taking place in Parliament in connection with any emigration scheme - that one is asked how many of a particular class of Indians, the trading Indian, is leaving the country, and especially how many are going from the Transvaal. That has always been our difficulty. In how far would any scheme you are thinking about affect that particular class of Indians to which I refer?

SIR DARCY LINDSAY: It may affect that class because they go where they can find custom, and they would find custom amongst their own people. My idea was not in connection with the trader, it was more in connection with the worker of the soil.

THE HON. O. PIROW: Most of us have some idea from the information we have received of the feeling that has been created amongst local Indians by the agitation against any scheme, even against the repatriation scheme.

SIR/

SIR DARCY LINDSAY: Under such scheme they would be more free to go from one country to another.

THE HON. O. PIROW: Do you think it would be more attractive than returning to India under the present scheme, and that the feeling which has been stirred up can be modified in such way that the Indians would be prepared to consider such a scheme at all?

SIR DARCY LINDSAY: I personally have not discussed the matter with local Indians, but I am of opinion that if a suitable scheme could be worked out it would be bound to prove attractive.

MRS NAIDU: Yes, especially if purely voluntary with prospects of betterment to the younger people.

THE HON. P. DUNCAN: One can easily understand that the prospect of going back to India is not a very attractive one.

SIR DARCY LINDSAY: That is so.

THE HON. P. DUNCAN: If there were a settlement scheme where they had the opportunity of getting land and bettering themselves, where they are not under political disabilities as they are here, it may be attractive.

SIR DARCY LINDSAY: They have tasted the sweets of colonisation in South Africa, that is why they dislike returning to India.

THE HON. O. PIROW: Sir Kurma has been in touch with local Indians and can say whether this agitation is growing?

SIR KURMA REDDI: In the first place the body which opposed the assisted emigration is not a body with which the Government of India was in touch. It was a body of a few recalcitrants who for some reason always went contrary to others. That body is a very uninfluential body of persons and without the least

influence/

influence with the Government. It is only in the last couple of months that the Congress really spoke, and that I understood to be more or less in defence of themselves after a person called Peters, who was appointed to go and explain the conditions available for money and passage. This man Peters went out of his way to tell intending repatriates that as soon as this Conference is finished there would be no further agreement between this Government and the Government of India, and a number of other things. On one occasion I met this man at Dannhauser where he was working. Some of the Indians at that place thought he was going out of his way in making statements that were not authorised. He was with me for some little time on one occasion when a man came in and said "Let me say something to Peters," but Peters found an excuse to go away. I asked what was the matter and they told me he was spreading rumours about certain things not directly consistent with the terms of the Agreement and that in fact he was throwing out more inducements. This was brought to the notice of the Congress and it was only then in November 1931 that the Congress opposed the scheme. That is just two months ago. Until then we knew that the Congress was willing to a large extent to assist us. So far as I was concerned when the Federation were making these statements I reprovved them in a public speech. After that a certain member of the Congress went to India and made his own enquiries as regards the conditions under which the repatriates were living. According to his version he found that conditions were not favourable and there was a certain amount of suffering amongst the returned Indians. As far as the Government of India is concerned we had a report of what was being done in India and we were satisfied that this unhappiness was not so great as represented by this man. Of course there were some difficulties

in the way of climatic conditions and so forth. I do not think, therefore, that the Congress as a body would, if a settlement scheme as now suggested, is placed before them oppose it, but on the other hand I have reason to believe that we might fairly expect them to do their best to help it forward as far as lies in their power. I believe we can expect their co-operation in any reasonable scheme if we give reasons to show that these people will not be unhappy in this new place.

THE HON. O. PIROW: Can you give us an idea who the gentlemen are who some time ago in Johannesburg proposed resolutions for guidance of this Conference - resolutions which struck some of us as extraordinary and certainly did not convey any suggestion that any scheme of repatriation or any settlement scheme is likely to appeal to them. They insisted that they were citizens of South Africa and wanted full equality everywhere with the European population?

SIR KURMA REDDI: I think they are the Congress. This was only after this trouble had arisen. Perhaps it may be said that if they treated Peters as he deserved then nothing of the kind would have happened. But in their own imagination they saw something beyond Peters and that got them into this frame of mind. They were not contemplating anything as regards this settlement we are now considering. That question was never before them.

MR NICHOLLS: They represent substantially Indian opinion in South Africa?

SIR KURMA REDDI: Yes, as far as the emigration scheme goes.

THE CHAIRMAN: I have an impression there are two bodies in South Africa representing the Indians - the Congress and the Indian/



Indian Federation - and that these two are opposed to each other not only as organisations but also opposed to each other with regard to the attitude which the Indians should adopt in South Africa in regard to the Agreement. In South Africa the Indian Congress at the beginning took up a friendly attitude. I was always under the impression that they co-operated very cordially with the Agent General and that they were opposed to the Federation. It was very difficult for me always to judge as to the relative weight of these two bodies. I have had deputations come to me from both sides, and the men from the Congress always said "Well, the others are only a small body", and the people from the Federation have always maintained the attitude that the Indian Congress really does not count at all. As I say it is very difficult for me to judge the relative weight of these two bodies. Can you give us any information on this point? On the answer to that question depends what the attitude of the bulk of the Indians is to the emigration scheme.

SIR KURMA REDDI: Undoubtedly the Indian Congress represents the vast bulk of the Indians in this country. On the other hand the Federation has concerned itself with the class of people who have no property. Some of them have been to gaol for ordinary crimes. One of them went insolvent, and if it was in these days he would have been sent out of the country. They appear on the scene just when there is anybody coming across from India. At other times one does not hear from them. They wanted to hold a conference when the delegation was in Johannesburg. They sent me a memorandum of proposed resolutions and wanted the delegates to attend the conference. They made arrangements for the week we came to Johannesburg,

but/

but the whole thing fell through and there was no man to be seen. Some of these men are clever in their own way and are able to point out flaws here and there, and they attract certain persons who listen to them, but when they meet the public they find things impossible, and so they dropped their meeting. They called a big conference of the Federation but it came to nothing. Three or four of the leaders have absolutely no character at all and cannot be relied upon.

THE CHAIRMAN: You have also provincial bodies, apart from the general body - the South African Congress. Are these affiliated bodies?

MRS NAIDU: These three provincial bodies together make the South African Congress.

THE RT. HON. SRIVINASA SASTRI: I clearly recollect the facts and they are as Sir Kurma has reported. There are a few men opposed to everybody of prominence in this country. They are still there and one hears the same names. I do not think they are gaining in strength. They make a lot of noise.

MRS NAIDU: I think the heads are Mr Anglia and Mr Roberts.

MR VENN: I do not think that even the Congress actually represents the opinion of any appreciable percentage of the total Indian population of the Union. If you go through Natal you will find that they represent very few. How many members have they got?

SIR KURMA REDDI: My opinion is exactly the reverse. The Congress has got a very large following indeed. I have been to all the villages in Natal and in every place the Congress has a large following.

MR/

MR VENN: The Protector of Indian emigrants comes into touch with the general body of Indians and he says that the Congress do not represent the Indians. If these Indians want something they go to the Congress in the same way they would go to the Federation. They are not really followers of the Congress.

MRS NAIDU: It does not depend upon actual membership.

SIR KURMA REDDI: I think Mr Robinson comes in contact with those Indians working on the plantations who fall under the scheme and not in contact with the bulk of the people. He does not come in contact with the traders and the land owners.

MR VENN: I am not speaking of the traders, I am speaking of the bulk of the Indian population in Natal.

SIR KURMA REDDI: I can assure you I have mixed with the class of indentured labour and I have been in the homes of at least 100 persons on the plantations and on the coal mines, and I have found all these people to be loyal to the Congress. I have told them that I would do something for them and they have answered that they will go to the Congress.

MR VENN: They tell a different story to Mr Robinson. He deals with all Indian Immigrants. There are 142,000 of these out of a total of 166,000 Indians in Natal and he assures me that most of them say they do not want to have anything to do with the Congress. Their complaint is that they are scarcely represented on the Congress. They say the Executive consists of nobody but traders and men of

money/

money. That was their great complaint. Mr Robinson has no other reason for saying they do not believe in the Congress. We accept the Congress as the voice of the people so there would be no object in his saying what he has said from that point of view.

SIR KURMA REDDI: I can reasonably claim that I have come into touch with more people than Mr Robinson.

MR NICHOLLS: I am from Natal and I am prepared to accept what Sir Kurma Reddi says - that the South African Indian Congress represents the bulk of the Indians in Natal. That is the expression of the people we have heard, so we take that to be the bulk of the people in Natal.

THE HON. O. PIROW: In his statement to the Conference this morning Mr Srivinasasa Sastri said "It will be recognised that, as the Government of India were parties to a system of immigration which created the Indian population of South Africa, they have a responsibility towards that population which they must continue to discharge until the Indian community is able to represent effectively its interests to the Union Government as part of the body politic."

Is this intended to convey that there is an obligation - a duty - on the part of the Indian Government to listen to any and all representations from Indians here in connection with matters which may be matters of internal South African administration, or is this merely intended to emphasise that in so far as the Government of India can be of any assistance in the solution of those problems it accepts that obligation?

THE RT. HON. SRIVINASA SASTRI: In the representations the Government of India is to make to the Union Government their

object/

object is always to help the Union Government to see the problem in perspective. It is true that the Indian Government have always held it to be their duty, having sent Indians out to this country without their own sanction, to see that they and their children are properly looked after by those to whom they first sent them. Their belief is that until these emigrants are accepted as part of the permanent population and given the same rights of access to the Governments and the same opportunity of having their wishes known and their grievances redressed, - until they are citizens of the country to which they have gone, the Government of India are bound to look after them, not in the sense that they will deal directly with them, but they will make representations to the Governments concerned as occasion requires as to the position the population hold, and their grievances and any particular wants which might harass them from time to time. That right they have always exercised. I believe it is recognised that the Union Government have never refused the Indian Government access to their own consultations on several occasions before on representations having been received. It is only that that is meant here and nothing further. It is not meant that the Government of India will deal with the local Indian population themselves directly.

MR HOOGENHOUT: Would your remarks apply to South African born Indians?

THE RT. HON. SRIVINASA SASTRI: I think they would until South African born Indians have reached the status of citizenship and can protect themselves.

THE HON. O. PIROW: When they have achieved complete equality?

THE/

THE RT. HON. SRIVINASA SASTRI: I will not say that. That is a progressive status. That may never be reached. Nevertheless if amongst you who seek seats in Parliament there are a few who represent these people, who habitually stand up for them and consider it their duty to represent their wishes and wants and fight for them, then that will be the end of the time that the Government of India will stand sponsors for them. You spoke of a certain section having threatened the Cape Town Agreement. Can we not find a great section of the Europeans who have never been in favour of the Agreement? At the present moment meetings are being held in Pietermaritzburg and Greyton, where the Indians are denounced as a menace and foreigners who ought to be got rid of. Such things go on. We cannot say the opinion of one section is the opinion of everybody.

THE HON. O. PIROW: Everybody will recognise the tact with which the Government of India has so far approached this problem, and appreciate what you say. What I really wanted to know - it is a matter of principle more than anything else - is whether the emphasis is in respect of the obligation of the Government of India to the Indians here, or whether it goes further and says there is a claim to represent these Indians. The same as I take it this Conference is limited to the discussion of particular problems, and I cannot conceive this Conference as far as the Union delegates are concerned discussing all these things relating to Indians which the Indian Government may consider desirable. That is why these words are rather important. If it is a claim in a general way to represent the rights and grievances of these Indians, or if it merely emphasises the obligation which the Government of India feels on its part.

THE/

THE CHAIRMAN: In the memorandum we submitted the other day this point was emphasised by us and what Mr Pirow refers to now is really a reply to that. Perhaps I may just be allowed to emphasise two aspects of this particular point which we put in our memorandum. The first is that we are up against difficulties of administration on account of the Agreement if it is understood that whenever a question affecting the India population arises in the country we must first of all always refer the matter, as we faithfully did, to the Government of India. Take for instance these differences which are arising on the Witwatersrand. There we had a series of judgments of the Supreme Court with regard to the legality, or the illegality, of the occupation of stands on the Witwatersrand by Indians. That was the position. It was rather urgent and we were pressed from various quarters to act, or rather it was represented to us from the Witwatersrand that the position had become very grave and serious. While the Agreement lasts it is practically impossible for us to act. It costs much delay and the result was that because of our inability to deal with the question, and to deal with the question expeditiously, on the part of interested persons in South Africa on the part of a large section of the European population an attack was made on the agreement. They said that the inability of the Union Government to deal with this arose from the fact that there was an agreement with the Government of India. Now I merely quote this example, but there are other examples as well. We practically tie the hands of the Union Government and of the Provincial administrations in all matters relating to Indians, and that as I say creates difficulties and delay, and that is the reason why from the side of the European community the agreement is attacked. The fact that we tie our hands is  
very/

very easily understood from the administrative point of view. Now the other aspect which we emphasised is this: that after all we recognise on both sides that a very large section of the Indian population is permanently settled in South Africa. Whatever we may do in regard to assisted emigration from the country we can only succeed to a limited extent, and for good or evil the Indian population is resident in South Africa permanently. That being so the right policy for both the Government and the Indian population to face this fact, and the idea each must keep in view is that the Indian population shall consider the Government of South Africa as their Government and South Africa as their country. The difficulty, as far as I can see, is this: if under the Agreement every question affecting Indians in South Africa must be referred to the Government of India there must be consultation, and though it actually does not mean that, but yet in the idea of a good many people it means interference or giving the Government of India a sort of veto over any action of the Government of South Africa. That hinders the progress which we like to see taking place. The Agreement is being criticised from the point of view that Indians in South Africa permanently settled in the country should consider themselves as South Africans and not appeal to an outside Government on every question.

SIR GEOFFREY CORBETT: Do you not feel that too much has been made of the understanding we had in 1926-1927 by calling it an Agreement. As I understood it at the time, the Agreement proper was 6 or 7 clauses merely embodying a declaration of policy on behalf of your Government, and a declaration of policy on our side. The Agreement clauses were limited to the effective co-operation in carrying out the policy which was yours. That is how I have always read it, and not

as/



as a charter which will handicap you in dealing with the Indian population. It was meant to embody in written form the condition that had been in existence ever since emigration began to recognise and help each other to overcome embarrassments.

MR NICHOLLS: I would like to ask Mr Sastri if he would be good enough to tell us what he intends to draw in the statement he made to the Conference. Previously, Sir Kurma Reddi has agreed that the South African Indian Congress is the body which represents the Indian people in South Africa. Now, how far does the Indian Delegation consider that they will have to go in reaching that position when it will not be necessary for India to interfere at all in the affairs of South Africa? The resolution adopted by the South African Indian Congress contained this clause: "The removal of all disabilities imposed upon, and differential treatment meted out to, Indians as outlined in the President's speech delivered before this Conference." The President of the Indian Congress in his speech said this: "I would emphasise the fact that the time has arrived when the question of granting the franchise to our community must receive the serious attention of the Government. Although in the past we have not pressed for that which we enjoy in Natal and consider to be our legitimate right as citizens of South Africa, we feel that both Parliamentary and municipal franchise should, as in the case of Natal, be now restored and extended to the Transvaal; that the universally accepted maxim 'No taxation without representation' well and truly applies to us" and so on. When you, Mr Sastri, speak of the Indian Government having the right to interfere in South Africa until rights of citizenship were obtained by Indians - - were you  
going/

going that far?

THE RT. HON. SRIVINASA SASTRI: There are two points I would like to mention as a preliminary to my own answer. The first is that this particular constitutional problem has not to my knowledge been discussed by the Government of India and no definite resolution has been arrived at by them and no doctrines laid down. They have merely been deduced from the general practice of Governments. I know of no State paper in the Government of India organisations which lays down exactly how far they will pursue their subjects outside the Indian jurisdiction and state their cases to the respective Governments. That is a matter arising, as I have said, from daily practice and, although from time to time the Government of India may make representations in regard to the position of Indians the Government does not hold itself bound to take up every trifling matter that the local Indian population may raise, nor does the Government of India make itself merely the mouthpiece of these people. For instance, there is a great deal in the resolutions adopted by the South African Indian Congress from which you were quoting which the Government of India will not be prepared to endorse or advocate or refer to the attention of the Government of South Africa. We are here for an extremely limited purpose and it is the policy connected with that purpose which we are competent now to pursue. It is not for me to enter upon a theoretical discussion as to how far we should go to reach the position which the South African Indian Congress has laid down in the resolution you read to me. I have not read the resolution before and I am not prepared to advocate or sustain every proposition that the President of the Indian Congress has laid down, but still I should think personally that there are constitutional/

constitutional ways in which the subjects of the Government are free to approach that Government to make their wants known and to see that their views are efficiently heard by the law making body. These means of approaching the Government are not now open to the Indian community in South Africa:

The Indian community is shut out of the municipal franchise; Indians are shut out of the Parliamentary franchise. Few of the statesmen consider themselves representatives of Indians or even bound to consult them, and therefore the Indian community has not the regular constitutional means of making its wishes known or its grievances heard in the highest quarters. Any representations that individual Indians may be able to make naturally receive only that hearing and that attention to which their personalities entitle them. It is necessary for the Government of India to back them now and then when it considers the matters arise above a certain level of urgency and importance. The Government of India will not back the Indian community on every municipal squabble but it is only on general questions that concern whole populations or sections of the Indian community or that threaten interests of great importance that the Government of India may take up the matter. The Government of India cannot concern itself over trifling matters; its time is fully occupied with other matters and it cannot afford to be sending representations to, or corresponding with or cabling to, other Governments. It is only in cases where the grievances of the Indian community are exceedingly urgent that the Government of India will make representations in the matter.

THE CHAIRMAN: In connection with what you say may I put this to the Conference. There are two extremes which we must exclude from our considerations. The one extreme is the

view/

view that an outside Government may interfere in connection with any matter in which they are particularly interested so far as a particular section of the population is concerned and make representations thereon. I think it is accepted in international relations that Governments may approach each other with regard to questions in which they are interested, especially so far as minorities are concerned, and which affect that Government's people. Now from this point of view I should say it cannot reasonably be expected that the Government of India should never make any representations to the Government of the Union with regard to Indian questions in South Africa. The other extreme which we must exclude is this, that on every possible occasion the Government of India should directly approach the Union Government and object to this or object to that. Such a position would amount to interference; it would make administration very difficult in the country and would be a continual source of friction between the two Governments. We can exclude these two extremes in our consideration of the matter. There is a means of communication between Governments which is generally recognised throughout the world - this communication is conducted through official Government representatives in the various countries. The Government of the Union is very often approached by the official representative of the Government of China in this country, namely, the Chinese Consul with regard to Chinese matters or in regard to the relations between the Union and China. The Government of the Union is approached by the Japanese Consul with regard to matters concerning Japan. The Government of the Union is approached by the Consul of Czecho-Slovakia with regard to anything which his Government wants to communicate to us. Now, what I would put to the Conference

is this, whether the representative of the Government of India in South Africa should not be placed in exactly a similar position. That is to say, without any formal understanding or formal agreement, everything affecting Indians in South Africa should first be referred to the Government of India through their representative here; that it should be left to the discretion of the Government of India to make any representations that they may desire to through their representative in this country and the Union Government can reply to such representations in the same way as we now reply to representations made by the Government of any other country, namely, through its official representative in the Union. This is just a suggestion I am making. We can think about it and see whether there is not a possibility of some solution with regard to this particular point in this direction.

THE HON. E. G. JANSEN: The difference between a representative of the Government of India in this country such as you have suggested and representatives of other countries is this, the other countries deal with their own subjects whereas in the case of the representative of the Government of India he would be dealing with South African subjects.

THE HON. P. DUNCAN: It is true that these Indians are our own nationals, but they are not our own nationals in the same sense of a German or a Frenchman who settles here and becomes naturalised. The German or Frenchman, when he becomes a naturalised South African subject, is at once eligible to exercise political rights, whereas Indians, although they are South African nationals, are excluded from participation in the exercise of political rights. For this reason I would be prepared to see a representative of the Government of India

having/

having a bigger responsibility towards the people of the Indian race than the Consul for Germany or the Consul for France has with regard to persons of German or French races, as the case may be, who are South Africans.

THE CHAIRMAN: If I may ask another question: In regard to the possibilities of the return to India of a larger number of Indians than have been returning lately, do you think anything more can be done in that direction? We have been speaking of sending them to other territories.

THE RT. HON. SRIVINASA SASTRI: As you know, Dr Malan, I was the first Agent of the Government of India in this country and in my time, although it was brief, I tried to be of some assistance to the Union Government in carrying out that part of the Cape Town Agreement which was concerned with assisted emigration. When I went back to India I made it a special part of my business to enquire into all cases of repatriated emigrants who had anything to say about their prospects in India. I saw several persons and I interviewed the officers concerned and every time I was convinced personally that both the Government of Madras and the officers concerned had done everything under the Agreement that was possible and that the officer particularly was a man of great sympathy and did even more than the law required him to do; he did everything possible. Nevertheless, unfortunately -- and I say this to you in confidence -- nevertheless the conditions in India are such that it is impossible for us to absorb any more people. At present the depression is so severe that we can hardly feed the mouths that we have. The addition of even a few hundreds in the respective villages is a burden that India is unable to bear. These returned emigrants at the present

moment/

moment cannot find work in India and quite apart from this question of employment there are social and other difficulties into the bargain. It is true therefore that these Indians who have returned to India under the assisted emigration scheme have written back to their friends in South Africa regarding their position in India, and I do not think it a wonder at all - anyone would in these conditions. I think therefore, speaking quite frankly, that the prospects of this assisted emigration scheme have been almost exhausted. Unemployment in this country may stimulate a flow of Indians back to India to some extent, but we must not be misled by that circumstance. I think the wisest thing is to take it that the experiment of the assisted emigration scheme has reached its culminating point.

THE HON. P. DUNCAN: Do you think, Mr Sastri, there is any prospect of success on a large scale - - because unless it is on a large scale it is useless to think about - - do you think there is any prospect on a large scale of the policy of emigration of Indians of South Africa to some other field where there are prospects. What I thought of was this, they might be sent to a place like Mauritius. The mass of the Indians in this country have been trained in sugar fields and the chief crop in Mauritius being sugar may mean that emigration to Mauritius may be a success. Would it be worth while to enquire what the possibilities of a place like that are as far as emigration of our Indians are concerned.

THE RT. HON. SRIVINASA SASTRI: Mauritius is, I think, full up. There is no market for Mauritius sugar and the Indian population there is so large that they would resist the influx of more Indians. The Indians, at present in Mauritius would

themselves/

themselves raise objections to Indians from South Africa being admitted.

MR BAJPAI: I may mention for the information of the Conference that the possibility of sending further settlers from India to Mauritius was investigated by an officer of the Government of India some time ago and the Government of India came to the conclusion, on the report of this officer, that as far as Mauritius was concerned we had very little scope for settlement. On the contrary, British Guiana offered good possibilities for settlement.

THE RT. HON. SRIVINAZA SASTRI: I would also mention another thing. In India among the educated classes who take an interest in these big questions, a feeling has been growing that we have not been able to protect Indian emigrants abroad to a sufficient extent and that therefore it is not wise to send helpless people whom from the beginning those who employ them consider as inferior and who will not allow them to rise above a certain stage. We have therefore artificially allowed the feeling to grow that all emigration must for the moment be stopped. How long that feeling will last, I do not know. I do not share that feeling; I think emigration is good for us and one of the objects we should encourage. At the moment, however, as I have said, public feeling in India is strong against emigration because of the fact that we have suffered all over the world in status, in prestige and in consideration internationally because of the people whom we indiscriminately sent out and who have reduced our prestige all over. We do not want to indulge in large experiments of that kind, but it would be an advantage to us to get over that feeling, and if we are able politically and otherwise

to/



to back up our populations when they go abroad to, say, a country like Tanganyika where there is room for any number of settlers, it would be to our good. Tanganyika is a wide field and it invites people, especially Indians who by tradition know the ways of agriculture. They are wanted out there in numbers and the moment it can be said that India is standing on her own legs and can look after her nationals, I think she could do nothing wiser than to plan a colonisation scheme on a large scale in consultation with the Governments of the countries to which she proposes to send her nationals. I think if the Union Government and our Government collaborated and exploited the possibilities offered for emigration in Tanganyika or Brazil or in Portuguese East Africa we could do a lot, but such emigration must be done on a scale, as Mr Duncan suggests, commensurate with the object we have in view of affording relief to existing areas where the population is thick. It must be done on a large scale and taken up seriously and it must be taken up by the Governments upon reports submitted by experts sent out to investigate the possibilities. I think the Government of India would be quite prepared to help the Union Government in this matter.

MR NICHOLLS: There is one point that occurs to my mind. Sir Geoffrey Corbett spoke about the South Seas. It ought to be possible to affect an exchange between India and Australia and some of these South Sea islands which are extremely fruitful. With a proper organised scheme of emigration under which development can be carried out and proper plans for settlement made the whole of our Indian population question could be solved. The emigrants would be able to govern themselves; they would have all the political rights and gain prestige  
where/

where perhaps they have lost it in Fiji. This ought to be a practical scheme.

SIR GEOFFREY CORBETT: I may mention that on my return from Fiji I had several interviews with those interested and they were extremely enthusiastic from an economic point of view to encourage Indian settlement in the Solomon Islands and the matter was not undertaken because of this political agitation referred to by Mr Sastri which has grown up in India against colonisation in any form. The embarrassments in connection with our emigration schemes have been no pleasure to us I can assure you. What has been in my mind and I have mentioned it and it has been received favourably is that the Indians of Natal might form an advance guard of settlement in these places. They are accustomed to the modes of life there and they might establish themselves and prepare the way for a larger colonisation scheme under which they would have the feeling that they were fulfilling a great national work in building up a colonial enterprise in the South Seas or elsewhere. That might appeal to their imaginations. Instead of the stigma of being sent back to their own country they would feel that they were building up new homes for their people.

MR BAJPAI: The sentiments which Sir Geoffrey has just given expression to animated Mr..... in Brazil who has been writing very encouraging reports. The idea would be colonisation and not working for someone.

THE CHAIRMAN: This is all very interesting, but unfortunately I have to attend a Cabinet meeting. We must prepare the Estimates for next session, and I accordingly suggest that the Conference do now adjourn.

The Conference adjourned at 11.30 a.m.  
until Monday at 9.30 a.m.

FOURTH DAY.

SECRET.

PROCEEDINGS OF CONFERENCE

between

Representatives of

THE GOVERNMENT OF INDIA

and

Representatives of

THE GOVERNMENT OF THE UNION OF SOUTH AFRICA.

---

CAPETOWN, Monday, 18th January, 1932.

PROCEEDINGS OF CONFERENCE BETWEEN REPRESENTATIVES OF THE  
GOVERNMENT OF INDIA AND REPRESENTATIVES OF THE GOVERNMENT  
OF THE UNION OF SOUTH AFRICA.

---

Cape Town, Monday, 13th January, 1932.

PRESENT,

Representing the Government of India:

The Rt. Hon. V. S. Srinivasa Sastri, P.C., C.H.

Sir Geoffrey Corbett, K.B.E., C.I.E., I.C.S.

Mrs Sarojini Naidu.

Sir Darcy Lindsay, Kt. C.B.E.

Sir Kurma Reddi, Kt. (Agent General for India in the  
Union of South Africa).

Mr G. S. Bajpai, C.I.E., C.B.E., I.C.S., (Secretary to  
Indian Delegation).

Representing the Government of the Union of South Africa:

Dr. the Hon. D. F. Malan, M.P., (Minister of the Interior,  
Education and Public Health) Chairman of the Conference.

The Hon. O. Pirow K.C., M.P. (Minister of Justice).

The Hon. E. G. Jansen, M.P. (Minister of Native Affairs).

The Hon. Patrick Duncan, K.C., C.M.G., M.P.

Mr G. H. Nicholls, M.P.

Officials attending the Conference:

The Hon. E. Baring, I.C.S., (Secretary to the Agent General for  
India in the Union of South Africa) Assistant Secretary to  
the Indian Delegation.

Mr P. I. Hoogenhout, (Secretary for the Interior) Secretary to  
the Union Delegation.

Mr H. N. Venn, (Commissioner for Immigration and Indian  
Affairs).

Mr F. C. van Blerk, (Clerk in the Department of the Interior).

---

The Conference met at 9.30 a.m.

THE CHAIRMAN: I think this morning we shall resume our discussions in connection with the possibility of the renewal of the Cape Town Agreement. At our last meeting we had a general discussion in regard to what has been submitted on both sides and we have been exploring the possibilities of making the agreement entirely satisfactory to both sides. This morning we shall just resume those discussions with the possibility I hope that we may at the end of our discussions this morning arrive at some practical steps which we may further take. Perhaps to help our discussions I shall, from the side of the Union Delegation, add a few words. I shall not go into details now in what I wish to say with regard to what has been submitted from the Government of India at our last meeting. I may just say that it strikes me there are three things emerging from the discussions on what has been submitted on our side and what has been submitted from the other side. The first is that on both sides we think that there is something in the Cape Town Agreement, or connected with the Cape Town Agreement, which we wish to preserve. It has been admitted on both sides that the Agreement, whatever its defects may be, has done good. It has established good relations between the two Governments. No doubt it has also in more than one way facilitated the discussions on various points which have cropped up during the five years and in which both Governments are interested. Naturally more particularly from the Union point of view there are certain things which we like to preserve and which are valuable to us. The first is the assistance we got, not directly but indirectly from the Government of India, in connection with the assisted emigration scheme. I take it that the assisted emigration from the country on the side of the Union Government

is an established policy. It has been followed now for many years. I take it that that will remain the policy of the Union Government in the future. The fact that the Government of India takes up a friendly attitude and assists the emigrants when they arrive in India is naturally of great value to us. It takes away the prejudice which it would otherwise receive to a larger extent on the part of the Indians in this country against emigration to India. That is something which we on our side would like to continue in the future, and as far as the Government of India is concerned, I take it that whether or not they have that agreement with the Government of the Union with regard to the emigrants that arrive in India, they would in any case recognise the responsibility to care for and look after the interests of those who return to India from anywhere, whether from South Africa or from Fiji or from any other part of the world. Under the arrangement which has existed so far in connection with the Cape Town Agreement I think we have all the assistance of the Government of India in the discharge of this duty in so far as we give detailed information beforehand to the Government as to the number that will be likely to arrive in India at a certain time, their occupations and so forth. I take it that will be of value to the Government of India in the discharge of their duty in future. Whether that be under the Agreement or not we would like to continue to convey this information from our side. We do not go so far and suggest that the Government of India carries responsibility with regard to Indians who permanently live in this country, still we would recognise on our side that the Government of India is interested in these people, especially under the circumstances which have been set out, namely, that the

Government/

Government of India originally has to some extent been responsible for Indians coming to this country as indentured labourers. I may say in passing that really the trouble has not so much arisen in connection with the Indians who have come out as indentured labourers as with others who followed their footsteps and came into more direct competition with Europeans as far as commerce is concerned. My point is this: that we are generally agreed that there are certain aspects of the Cape Town Agreement which we on both sides would like to see preserved. Further, I take it, we are also agreed that the assisted emigration scheme is of great importance to South Africa in the solution of, or in dealing with the trouble we have here. Rightly or wrongly there exists in South Africa the idea that the Indian, being in South Africa in the numbers he is, constitutes a menace to the Europeans; that the European in competition with the Indian, more especially in trade, is at a disadvantage. We have the experience in South Africa that the fact that we have the assisted emigration scheme, and especially when that emigration scheme works satisfactorily, very much lessens the fear to which I have referred, and it becomes much more easy for any Government to deal with this question in a calm atmosphere in South Africa. So from the psychological point of view it is of great importance that South Africa should have this assisted emigration scheme and that it should work as satisfactorily as possible. We further agree to a very large extent that under the Cape Town Agreement this assisted emigration scheme has not quite fulfilled expectations. The difference between us is more one of degree. We attach to the results somewhat less importance than you do. In any case I think we all agree that there has been a very marked

drop/

drop in the numbers of assisted emigrants and that the scheme has not worked so satisfactorily as was originally expected. For that reason you have come forward with the suggestion that the possibility might be further explored of assisted emigration to other parts of the world besides India. Your attitude is that there is not much more to be expected as far as the return of Indians to India is concerned; not much more than we have had so far; but that there might be greater or considerable possibilities with regard to their settlement overseas in other parts of the world.

The third point, which has emerged from our discussions here, I should say, would be this: That there should be, if the Agreement is renewed, no idea of interference of an outside Government in the affairs of South Africa, and that the Agreement if continued shall be drawn up in such a way that it shall not give the impression, in South Africa especially where we have to do with this problem, that South Africa's hands are tied, as we expressed it before, without their being justification enough for it, - without there being a counterbalancing advantage for South Africa.

Let me just say a few words with regard to the last point I have mentioned here, namely, the removal of any idea of interference from outside, or that the hands of the Union are tied in a manner that cannot be justified. When we look at the annexure to the Agreement, namely the summary of conclusions, then I think we all agree that the Cape Town Agreement, even if it is continued, will have in any case to be recast. It really consists of two parts. One part, the Agreement itself, is merely a statement of policy. The two Governments have met in Conference and they have discussed the problems in which they both have an interest, and they

have/



have come to the conclusion that there is a certain policy with regard to this matter in which they both agree. Then there is the second part; that is the part embodied partly in a statement or annexure, which consists of certain things specified which had to be done - which were to be done in the immediate future. As far as that is concerned it has been carried out. That is something of the past. It is what has been agreed to at the last Conference, and it has actually been embodied in the form of legislation in the Union. For instance this arrangement with regard to assisted emigration; it has been embodied in a Bill which was introduced immediately after the Conference met here in the Union and that stands to-day on our statute book. Then further it was agreed, in order to give the Cape Town Agreement a fair trial, that certain legislation which then had actually been introduced into Parliament, shall be withdrawn so as to give the working of the Agreement every possible chance of success.

Further, it was agreed that, in order to facilitate communication between the two Governments, the Government of India shall be represented by an Agent General in South Africa. That is something which has also been carried out, and so I think in any case if we renew the Agreement the time has come when it shall in some way or other be recast, and should put in our further agreement what we think should be included and avoid what gives rise to misunderstanding or offence. Sir Geoffrey Corbett during the course of our discussions last time mentioned the fact that many people both here and in India - but probably more here than over there - really misunderstood the whole intention and nature of the Agreement. This would be a good opportunity to put the Agreement/

Agreement in such form that there shall be no possibility of its nature being misunderstood in future.

Still dealing with this particular point, we have discussed among ourselves the suggestion I made at our last meeting with regard to the Agent General as being the main channel of communications in future between the two Governments. Now my colleagues agree with me that that would be something which we can further go into, and possibly if we arrive at some understanding with regard to that it may go very far to solve our difficulties in connection with the Agreement. To speak generally I may say that the idea up till now has been too much this: That the Agent General of the Government of India in South Africa is here more especially in connection with the Agreement, that otherwise he would really have no work in South Africa; that otherwise there would be no justification to have him here. Arising from that some people in South Africa very naturally come under the impression that he is here as leader of the Indian population permanently established in South Africa to air their grievances. They have no leader themselves and India is sending a leader to South Africa to assist these people to voice their grievances. Now actually that is not justified. Actually we know that the Agent General in South Africa for the Government of Indian, has always acted correctly, and not only acted correctly but there have been always the most excellent relations between him and the Government of the Union. In any case we cannot avoid under existing circumstances the impression with a good many people in South Africa that that is not so. Now if the Agent General for the Government of India in South Africa should be placed more or less in the same position as the representatives of

other/

other outside Governments are placed in South Africa or elsewhere he is the main channel of communication between Government and Government and nation and nation. I think that would go far to remove the idea that in any matter relating to Indian interests in South Africa our hands are tied in the form of an Agreement.

Now the other point is your suggestion in connection with the possibility of overseas settlements outside India, I think you will recognise that this proposal, as far as its advantage to South Africa is concerned, is still problematical, and apart from that, even if it is not problematical, then there is no immediate advantage that we can derive from it in the future. We shall have to wait a considerable time before any scheme which we may draw up now will have proved satisfactory. In any case we think it is worth while to investigate it further, and I think it is one of the points that we can fruitfully further discuss and explore in our meeting this morning. I take it if any investigation is to take place into the possibility of such a proposal it must be a joint investigation between the Government of the Union, the Government of India and the Indian community in South Africa. If these three take part in the investigation we are most likely to arrive at satisfactory results.

That is what I have to say by way of introduction. I think we may have a fruitful discussion on this matter until 11.30 o'clock.

If an enquiry is made as suggested do you think that the conditions in India are at present such that the Government of India would be able to associate itself with such enquiry? What would the effect be psychologically on the political situation in India? Will that not give rise to suspicion?

MRS/

MRS NAIDU: I think after a little while it will be possible to educate public opinion in India.

SIR DARCY LINDSAY: I think if the investigations were not solely on behalf of South African emigration but if they were on the part of India to investigate possible channels of colonisation from India it would be of advantage to South Africa. Such a colonisation scheme would attract more from here if colonists from India were also in the scheme.

MRS NAIDU: Too much stress must not be laid on the fact that it was for Indians from here, but for Indian colonists from India or any other part.

SIR GEOFFREY CORBETT: I think there is great force in that suggestion. It would remove the idea that it was a means of getting rid of the Indians out of South Africa if it was a general colonisation scheme.

THE CHAIRMAN: In the Agreement that exists to-day we already have something of this nature. The Agreement says that any emigrant wishing to participate in an emigration scheme authorised by the Government of India will be given the same facilities in India as India nationals. I take it under the existing Agreement that an Indian wishing to emigrate from South Africa must first of all, before he can participate in such scheme, go to India and only then can he be recruited there for overseas settlement by the Government of India on the same terms as Indian Nationals. The direction in which we want to have that altered is that the Government of India and the Government of the Union conjointly start or interest themselves in a settlement somewhere overseas and that Indians from South Africa can directly benefit and need

not/

not first of all go to India for that.

SIR DARCY LINDSAY: I think the reference in the Agreement was more in connection with indentured labour from India to the Fiji or Malay Peninsula.

MR BAJPAI: There is no indentured labour now to any part.

SIR KURMA REDDI: This question of colonisation has been gaining attention. Some books have recently been published; one by a Frenchman, Mr Etienne Deunery, and translated into English called "The teeming millions of Asia", and the other by Mr H. Dawson called "The future of the Empire." These try and point out future difficulties in Asia, particularly China, Japan and India. My friends write to me that a population census was taken and it was found that we were just 32 millions more than 10 years ago. I think it will not be difficult for us in India to educate public opinion - if education were necessary - in favour of a scheme such as Sir Darcy Lindsay has mentioned, which is not confined to a particular people from one country, but to all Indians wherever they may be. I think the people in this country would agree to such a scheme if a satisfactory place is found. At any rate it will not be difficult to get acceptance of such scheme.

THE RT. HON. SRINIVASA SASTRI: With regard to the Chairman's remarks on the assisted emigration, perhaps Mr Bajpai wishes to say something.

MR BAJPAI: I did not understand the Chairman to say that the assisted emigration scheme to India would continue.

THE CHAIRMAN: It will still be the policy of the Union Govern-

ment/

ment, that if any Indian wishes to return to India he will be assisted in doing so. What I said in connection with that was that the Government of India on their side, whether there is an agreement or not, recognised their responsibility with regard to these people when they returned.

MR BAJPAI: As regards that; quite independent of the Agreement itself, it is the recognised policy of the Government of India to do what they can for the Indians who come back from different parts of the world where they had settled.

SIR GEOFFREY CORBETT: It appears in the Agreement merely as a declaration of the existing policy.

THE RT. HON. SRINIVASA SASTRI: Would not that apply to South African as well as to home born Indians?

MR BAJPAI: We draw no distinction between South African born and Indian born Indians. We treat them all as people of the Indian race coming back to India. As I say it does not exclusively apply to Indians coming from South Africa, but also to Indians coming back from Fiji and Trinidad both Indian born and born there.

MR HOOGENHOUT: Are they not prohibited immigrants?

MR BAJPAI: No we do not prohibit them under our immigration laws.

THE HON. O. PIROW: So far neither as far as the Government of India is concerned, or as far as the population at large is affected, has there been any definite emigration policy in India. The most we can say is that certain politicians have given their attention to this problem, and there are

certain/

certain nebulous hopes and certain tentative and sporadic investigations in that direction. Is there anything at all to which we can pin our faith for the future?

MR BAJPAI: I do not think it is quite correct to say the investigations have been sporadic, or the policy nebulous as regards settlements. We had three definite investigations with a definite objective for a definite permanent settlement of Indians abroad. Sir Geoffrey Corbett was at the head of one that went to Fiji for that purpose. There were two investigations to British Guiana and another to Mauritius. The only reason that the schemes did not materialise was that certain financial difficulties arose. The Government of British Guiana were in favour of a settlement scheme but they were not financially in a position to spend money on a preliminary investigation and preparation of land. So the thing was left in abeyance.

THE HON. O. PIROW: Has the Government of India done anything in connection with this. Has it made it clear what it is and what numbers may be affected by it. It may be one thing for India to arrange for the emigration of 30 to 50 million of its subjects, but the numbers with which we are concerned are very small indeed and I cannot quite appreciate how India can participate in a scheme involving 50,000. If we have this investigation, what will be done when the investigation is concluded; will the Indian Government take any further steps or merely allow matters to rest? What possibility is there at the present time; there are difficulties in proceeding with any such scheme.

MR BAJPAI: I do not think that the difficulties in India to which you refer will stand in the way of the possibility of a settlement abroad. The question whether your policy should

be made dependent upon our determining how many millions will go abroad appears to be rather different. We cannot under any scheme determine how many millions will be going from India or how many thousands from South Africa.

THE HON. O. PIROW: Supposing there is this further investigation on the part of the Government of India, it may again result in no effect being given to the scheme.

MR BAJPAI: It may be to new countries. Apart from that the last investigation was three years ago and conditions may have altered since them.

THE HON. O. PIROW: Are we doing anything more than just playing with an idea, an idea which appeals strongly to most of us.

MR BAJPAI: It is more than that. As I pointed out in the case of British Guiana, the Government was in favour of the scheme but was not prepared to spend money on the preparation of the land owing to financial conditions. If the Governments of India and the Union promote such a scheme the financial side will be carefully considered by the Union Government with a view to giving practical effect to any scheme that may be worked out.

THE HON. O. PIROW: From the point of view of the Indians resident in South Africa, we have seen the attempt of the Congress here and the resolutions passed for our guidance. Is there any possibility of getting these people who are the leaders of the Indian community in South Africa to consider any such scheme, and is there the faintest hope that a single trader will avail himself of such scheme.

MR BAJPAI: Mr Sastri has been more in touch with the Indian

people/



people locally and may be able to answer you. I have my own views which I may be given the opportunity of expressing later on.

THE RT. HON. SRINIVASA SASTRI: It is difficult for me to say anything. It is difficult unless the Indian community are taken into our confidence and promise assistance in any investigation in regard to this scheme. It is not possible to say now what their views will be. In fact I am beginning to think that even as with the emigration scheme to India they are likely to shake off the last trace of acquiescence and whatever we call they will take it into their heads to oppose us. Supposing we want to continue the agreement and slightly modify the assisted emigration can we expect the local Indians to be parties to it as they have been hitherto? I very much doubt whether their minds have not changed radically. But I have hope, in answer to Mr Pirow's question, that a scheme for emigration to other countries on a somewhat considerable scale is likely to meet with better consideration in their hands, especially because the Chairman in his last remarks threw out the idea that in any such scheme the Government of the Union, the Government of India and the local Indian community will have to take part. I think that is an exceptionally helpful remark, and if the local Indian community is brought into the arrangement I think there is every chance of such scheme not merely being examined but being settled. I have such a hope, but I will not assert it with perfect confidence. Perhaps my friend, Sir Kurma Reddi, will be able to throw some light on the matter. Do you share my hope that if the Indian community be associated with the enquiry there is a better chance of its materialising?

SIR KURMA REDDI: Yes, certainly. From the practical point of

view/

view I have looked at it from different angles, and I think if left to themselves there is very much better chance of getting their consent. They will insist upon its being voluntary repatriation, without any compulsion. If it is to be part of a big scheme in India and some Indians were to go, that will be an example to South African Indians, but if they are asked to go from South Africa to a new country they will be reluctant to do so. So far as the consent of the Indian community is concerned a man like Mr Sastri should speak to them and point out the reason for it and the possibilities of the scheme. That can only be undertaken at a later stage when we know the conditions of the country to which they are to go. I am hopeful, as Mr Sastri is, that the leaders of the Indian community here will co-operate.

THE RT. HON. SRINIVASA SASTRI: It is all very vague and I am afraid it will be of no comfort to Mr Pirow.

SIR KURMA REDDI: This can only be discussed when we know the country they are to go to.

THE HON. P. DUNCAN: As far as British Guiana is concerned, is it so that the Government were willing to take part in a settlement scheme apart from the question of finance. Will it mean that they are willing to co-operate?

MR BAJPAI: I should say so. The investigation showed that the territory in British Guiana is far in excess of the very few people that inhabit it. If the land is properly prepared and so on there is practically no limit to the number of people that can go over.

MR VENN: Sir Cecil Rodwell said in his opinion British Guiana could absorb 3,000,000.

MR/

MR BAJPAI: The possibilities of a settlement are unlimited. Provided an auspicious beginning can be made, numbers would follow.

MR NICHOLLS: We have an expression of opinion by the Chairman that an investigating body should be appointed consisting of members from the Union Government, the Indian Government and the Indian community here resident in South Africa. I take it this investigation is not necessarily confined to British Guiana but will include other countries, and that when negotiating with British Guiana and the Governments of the territories concerned a proper plan will be drawn up which may induce Indians here to seek settlement in a country where they can make a decent livelihood. Can we know during the sitting of this Conference whether the Indian Government would be prepared to take part in such investigations immediately during the next few months. It is no good talking about this in the air. We like to come down to concrete matters and decide the machinery by which we are going to do it.

MR BAJPAI: I think it should be possible to tell the Conference. We have the Minister in charge of that particular department in Cape Town at the moment and hope to interview him during this week. I have no doubt that he can answer your question. Anyway he can communicate with the Government of India in the meantime.

MR NICHOLLS: It will be extremely helpful in our discussions. Such investigating Committee will have to travel far afield to various countries. It will have to be a competent Committee; a Committee which will put concrete results before this country.

THE CHAIRMAN: It will help us very considerably if we can possibly find out from the most responsible leaders of the Indian community in South Africa whether they would not oppose any investigation of that nature and dissociate themselves from it altogether. I feel it will carry us nowhere if the Government of the Union and the Government of India should investigate the possibilities of such a settlement and from that investigation the Indians dissociate themselves altogether in this country. It will mean that as far as they are concerned it will be a failure. So if we can sound the most responsible leaders among them it will assist us.

MRS NAIDU: So far the trend of our deliberations has been quite confidential, and we have not consulted any Indians with regard to that. We shall have to do that now.

THE HON. P. DUNCAN: I was wondering whether there may not be danger in doing so. Could we not put it vaguely to them without going into details or saying where the place will be.

SIR GEOFFREY CORBETT: The difficulty is that they have got to be approached extremely carefully to get it out of their minds that this is a mere dodge to get them out of South Africa. You will have to put it as a colonisation scheme from India as a whole.

MRS NAIDU: The young men want more prospects than they have for the future here. If there is no coercion there would be more chance of their co-operating. That is what they are really up against in the assisted emigration scheme. They say if anybody wants to go let him go.

MR VENN: I think the coercion is more imaginary than real.

The/

The only way to do it is to let the proposal be put before the leaders of the Congress as coming from the Indian Delegation and not from the Conference.

THE HON. P. DUNCAN: Or you can say "Are you in favour of joining in an investigation of a scheme for such emigration."

MR NICHOLLS: You might appeal to them in a different way. After all all the Indians here are trained pioneers. They are much more suitable to develop a new country like British Guiana than any people you can bring from India. They have acquired economic habits suitable for the country. They are trained sugar workers, and India can help them immensely by accepting products from that country. You can put it before them in a way which would appeal to their patriotism, that they are coming forward as pioneers for their brothers in India to follow in their footsteps. They are going to open up a country which others from India could not do. They will be an asset to any country which accepts them, but unfortunately in our conditions here with millions of barbarians, it all tends to make it impossible for us to keep them. As workers in a new field there will be quick economic development of British Guiana. It will be very wonderful for India itself and the Indians to see what they can do for colonisation, of the whole world.

SIR DARCY LINDSAY: In any such scheme of development the Union Government will not withhold their hand as regards assistance similar to what they are giving at present?

THE CHAIRMAN: No, I take it that the settlers going in for such settlement scheme will be included in our assistance given to those emigrating to India.

SIR DARCY LINDSAY: That would be a great lever of inducement.

As/

As Mr Nicholls has said, colonisation in South Africa has made the Indian suitable for colonisation in a country such as we visualise. The colonist from South Africa with a little money in hand will be able to start on a good footing. To my mind the scheme would be particularly effective if we can show him what the country is like and what the prospects are.

THE HON. O. PIROW: Mrs Naidu has mentioned that some of the younger generation are not satisfied with their prospects. It would be helpful if the dissatisfied members approached the Union Delegation to provide further prospects outside the country.

SIR GEOFFREY CORBETT: I think we should consider amongst ourselves the right way in which the Indians should be approached in the matter beforehand. It is an extremely difficult question.

THE HON. E. G. JANSEN: If it is put to the Indian community that the suggestion has been made - that the suggestion has come from the Indian Delegation - and we are not prepared to go into it unless we find that it has some sort of support from them.

THE CHAIRMAN: Under the emigration scheme that we have it is shown conclusively that there is a fairly large number of Indians still in this country who want to go. They are dissatisfied with what the Government of India do for them over there, and it is for you to say to them "Well we cannot do anything more in India than we have been doing now. But are you willing that we should explore in conjunction with the Government of the Union some other scheme that will assist you better."

MRS/

MRS NAIDU: If that is accomplished will they not ask what the possibilities are, and whether they lose their right as South African Nationals if they want to come back again.

THE CHAIRMAN: I should say they would be in the same position as they are now, and as other Indians going back to India; they would not lose their South African Nationality unless they remain away continuously for three years.

MR NICHOLLS: They are not asked to agree to anything at the moment. All they are asked to agree to is to co-operate with the Union Government in investigating some other scheme.

MR HOOGENHOUT: Do you think it likely that the leaders of the Indian community will agree to any scheme that will weaken their position in South Africa numerically. If you have an emigration or settlement scheme in another country it would weaken the position of the Indians in South Africa considerably. Another point is would the pioneers who have settled in this country and those that have been born here agree to go to new territory not known to them and to new hardships.

SIR KURMA REDDI: It will be more or less a choice of competitive conditions. If we are able to convince them that the country to which they are asked to go is such that it would surely benefit them, or that under any circumstances they will be better off than here, there is the possibility, and even the probability, of their accepting it, though, of course, there is the feeling with some of them that emigration is thinning their ranks and weakening their position. At the same time they will have to weigh the inconveniences and disabilities they have, and if they feel that they are convinced that in the country to which they

may/

may go their conditions will be better than here, that other feeling will be reduced, because it does not depend upon those that will remain here but on those that will be willing to go. Individual and self interest will induce them to go to the place where conditions will be better.

MR HOOGENHOUT: Will they go unless they are sure that conditions will be better?

SIR GEOFFREY CORBETT: Am I correct in thinking that as the law now stands if a South African born Indian leaves South Africa for three years he becomes a prohibited immigrant.

MR VENN: Only if he leaves under the assisted emigration scheme. If he leaves without any assistance from the Government he can return at any time, but not so under the scheme.

MRS NAIDU: Supposing he goes to this colony of his own free will, then he can always come back?

MR VENN: Yes, if he goes without Government assistance.

SIR GEOFFREY CORBETT: I thought he lost domicile after three years absence?

MR VENN: Yes, but he does not lose birth right. He has birth right under section 5 (e) of Act No. 22 of 1913.

MR HOOGENHOUT: I doubt very much from the impression I have got from the Indian leaders that they would be prepared to accept any condition like that in the future.

MR VENN: If reports of the new country are good a few would go without any assistance whatever and would have the right to return at any time if they are South African born Indians.

But/



But I think you will find only a few of them going.

SIR DARCY LINDSAY: With regard to the point that has been raised by Mr Hoogenhout about weakening their position. Is not that feeling held by a few in proportion to the total, and is it not more the concern of the labourer himself when he considers he has better prospects in another land. I do not think he is the person likely to be influenced very much by the point raised by Mr Hoogenhout.

MR VENN: The worker, especially on the sugar estates, is rather an ignorant fellow in these matters, and would be influenced by the leaders if they went round and told them not to go. We know the effect of the ridiculous stories they told with regard to the existing scheme.

MR HOOGENHOUT: It is very likely they will follow the lead given by the leaders of the community and would not think for themselves. The impression I got is that they think "What are you people worrying about 140,000 or 160,000 here in a big country like this. What we want is improved conditions, we do not want to leave the country." Even if you have got your emigration scheme to other countries it is doubtful if you will get the Indian community to accept it.

THE HON. O. PIROW: If the Delegation approached the local Indians or if they approached the Delegation there is the possibility that the local Indians may be under the impression that we have agreed that pending the investigation the Indian problem is left where it is. We have not discussed that matter at all. There is the possibility that in the minds of those with whom the Delegation may come in contact there may be the idea that it will be

permanent/

permanent, and there is the possibility that the leaders of Indian opinion in South Africa may say "We are prepared to investigate", but in their own minds they are convinced that pending any such investigation nothing further will be done with the Indian question as a whole.

THE RT. HON. SRINIVASA SASTRI: Can you approach them with us in some way?

THE CHAIRMAN: The only danger is that if this matter gets abroad to the Indian community generally it may give rise to agitation and resolutions and suspicion as to what we are doing here. Is there a possibility of approaching the leaders without its going any further?

SIR GEOFFREY CORBETT: I think we had better think it over and let you know before we do anything.

MR NICHOLLS: You can find out whether the Indian Government would be prepared to help.

MR BAJPAI: I think as far as the Government of India is concerned they will be quite sympathetic.

SIR GEOFFREY CORBETT: With regard to the status of the Agent General; what exactly is the status of the representative of other Dominions here?

THE CHAIRMAN: I am afraid they are only trade commissioners here.

SIR GEOFFREY CORBETT: The British Government has a High Commissioner.

THE CHAIRMAN: He has set duties in connection with the Native Territories.

SIR/

SIR GEOFFREY CORBETT: They have no High Commissioner in the sense that you have one in London?

THE HON. P. DUNCAN: Yes.

SIR GEOFFREY CORBETT: Do communications from His Majesty's Government pass through the High Commissioner.

THE CHAIRMAN: Not necessarily. I think ordinary communications from the British Government come through him.

MR HOOGENHOUT: The Consular work comes through the High Commissioner.

SIR GEOFFREY CORBETT: His duties are not confined to the native territories?

MR HOOGENHOUT: No.

SIR GEOFFREY CORBETT: The others are trade commissioners?

THE CHAIRMAN: Yes.

SIR GEOFFREY CORBETT: Speaking rather personally I always imagined myself that the appointment of an Agent here in the first instance was to provide you so to speak with a consultant with regard to education, sanitation and so forth, and that that was merely a temporary function until you found your feet in the matter of the upliftment of the Indian population. Future appointments would become much more of a commercial character. In fact I think it has been considered by the Government of India whether the next Agent appointed here should not have some commercial experience.

THE HON. O. PIROW: Does not this question depend largely on what we may decide on as regards assisted emigration.

After/

After all if the Agreement remains in some form or other the position of the Government of India will to some extent be bound up by it, and if the Agreement comes to an end altogether then the position of the Agent General is ended. The suggestion that you should have a commercial representative is one that should be seriously considered. I would suggest that we postpone this question until we know where we are as regard assisted emigration. If there is to be a scheme of assisted emigration undoubtedly the Agent General will have to participate in some way or other. If there is not, it seems to me personally all that would remain would be in connection with commerce.

THE HON. P. DUNCAN: The question is would there still be room here for an Agent General in our present circumstances.

MR NICHOLLS: I think this question should be left over until we know where we are, whether anything can be done towards the investigation of this settlement.

THE CHAIRMAN: Can we not possibly go a step further now even though there is a good deal of uncertainty with regard to certain matters. It will bring the whole question in more concrete form before the Conference if this question is referred to a sub-committee to draw up a draft revised agreement. Of course we do not tie our hands. The Agreement if continued must in any case be re-cast, and such sub-committee could consist of two on our side and two on the other side to go into the whole matter. They could go through the Agreement and Annexure clause by clause and see what must be eliminated and what must be added. This would all be in a provisional way, and as soon as possible they would submit the draft to the Conference. We would then have something concrete before us.

THE/

THE HON. O. PIROW: There is this further point. Whilst it will undoubtedly be to the interest of India as well as of South Africa to have a certain understanding on certain points, it may also be to their interest not to have anything in the nature of an agreement. We know the hostility that was raised because the present Agreement was misinterpreted. Sir Geoffrey Corbett said that calling it an Agreement was putting it higher than it should be. It may be to the interest of both delegations if we do not have any form of agreement. If you appoint a sub-committee we decidedly decide against that.

SIR DARCY LINDSAY: Would not that come up for further consideration as these further points were raised before us, - whether there should be an understanding or agreement?

THE HON. P. DUNCAN: I am in difficulty to see what there is going to be agreed about, unless there is going to be a general agreement about the colonisation scheme. Apart from that what is there to agree to. We had the last Agreement which was a declaration of policy. That declaration given still stands as far as we are concerned.

THE CHAIRMAN: That really is the agreement.

SIR GEOFFREY CORBETT: What we do want is something to indicate the friendly relations between the two countries. It is of sentimental value.

THE HON. O. PIROW: I suggest this for consideration - whether it would not in the end suit both Governments if at the conclusion of the Conference there was, with the necessary expressions of regret, a statement that we have been unable to come to an agreement; but at the same time there is an

exchange/

exchange of good wishes and a re-iteration on the part of the Union of its policy as originally set up. I put this forward for consideration. This would not have the effect of bringing about that widespread dissatisfaction there appears to be in respect of the agreement in India and the definite resentment there is in South Africa. Would not that be eliminated, whilst the really valuable part of the understanding between the two Governments - the expression of goodwill and the declaration of policy - remains.

THE RT. HON. SRINIVASA SASTRI: I am rather concerned that in both India and South Africa there is more dissatisfaction than satisfaction with the existence of the agreement. I am glad to think that there is some amount of satisfaction on both sides. I think the main feature is the satisfaction there is on both sides, and the dissatisfaction that now has arisen is on the assisted emigration scheme. If by our common consent that scheme is modified I do not see where the dissatisfaction will come in. On the other hand - I will not express my own personal point of view - there is so much satisfaction on both sides that our Governments have agreed on certain matters. If we were to dismiss the agreement with an expression of regret the impression on both sides would be very unfortunate. I attach tremendous importance to the continuance of our agreement in some form or other. The impression at the end of the Conference left to the world should be that the two Governments continue to be friendly and in cordial relations. If in terms we said that there was no agreement, however much we qualified that negative statement, that continuance of good relations could not be deduced. What I am anxious about is that in some way or other we must devise some formulae which will state to the world that the Agreement is still in  
being;/

being; that we have done nothing to terminate it, and that everything should be done to maintain it. Great sentimental value attaches to it. The mere fact that somehow things are being composed is very helpful. I should beseech you with all earnestness on the other side to consider ways of keeping up this understanding in some form. I am very much concerned at the suggestion Mr Pirow makes, but I realise the great qualification which he attaches that we can explain that while the Agreement is terminated the goodwill continues. It will be very difficult if the goodwill continues that any necessity should be found to terminate the Agreement in form. That suggestion of goodwill can take the form of an agreement or understanding or convention, but do not tell the world that anything which has subsisted is terminated, except if you like that there is no emigration scheme. The Government of India for its part will continue to show to the emigrants that return to India the same consideration that they are showing and are bound to show as a matter of policy to all those who from abroad return from time to time. I very much wish that you would take the question from the other side. Instead of being negative let us be affirmative in the solution of the discussions we are going to have.

THE HON. O. PIROW: May I add in connection with the view which the vast majority of the Europeans in this country have of the existing Agreement that you need only read through the evidence given before the Select Committee in connection with the Trading Licences Act, at present still before the House, to see that almost the whole of the Indian evidence called upon the Agreement and stated that this type of legislation was a breach of the Agreement. Now

the/

the witnesses were wrong in making that statement. The Agreement has nothing to do with legislation. That legislation was not a breach of the Agreement, but there is the definite attitude - the impression that the Indians have in connection with the Agreement. I can assure the Conference that correspondingly the European population were also under, and still are under the impression that in a very far reaching matter the Government has bound its hands in connection with this Agreement. Everywhere one is struck with that feeling both on the part of the Indian and European population.

MR NICHOLLS: I think we are approaching this from a wrong angle. I fully appreciate Mr Sastri's desire that the Agreement should be continued. I realise that he almost accomplished a superhuman effort during his tenure as Agent General in reconciling much of the antagonism between the two races here in South Africa. It was very remarkable, but I think Mr Sastri under-rates the antagonism which exists to-day on account of this Agreement. There is a definite antagonism all round the Union against this Agreement, and if an agreement of any kind is ultimately to be arrived at it seems to me that rather than to attain an Agreement on the lines of the existing Agreement we should go step by step. Let us first decide upon what we agree beforehand. Is there anything upon which we do agree. First the Union takes up the attitude that as far as the Union is concerned the whole basis of the agreement is the assisted emigration. Now are we arriving at a solution of what we consider our trouble - the lessening of the number of Indians here in South Africa. As far as the Union is concerned the reducing of the Indian population has been a complete failure. The

Indian/



Indian population is precisely as it was when the Agreement was entered into. That is common knowledge throughout the whole Union. Now can we in any way improve the position regarding that fundamental desire of the Union? If we can explore this possibility of colonisation and arrive at anything tangible, that is perhaps the first step to an agreement; but surely until that has been dealt with we are talking in the air with regard to an agreement. The Agreement apart from that merely means an obligation upon the Union Government to do certain things to uplift the Indian community. We have done that throughout these five years. The records show that the Union Government has as far as is humanly possible done all it can to uplift the Indian community. In the matter of education in Natal we have gone a long way. In an endeavour to provide housing we have done everything possible. We have purchased land in three large blocks adjacent to Durban. One cannot buy land in Durban itself because the whole European population cannot live in Durban itself but live in the suburbs. Now we have purchased land in the suburbs of Durban and the Union Government have offered to advance money for the establishment of a housing scheme. This was met with opposition on the part of the Indian Congress, and so the scheme has had to be dropped. As far as the Union Government is concerned I think they have honourably endeavoured to carry out the clause of the Agreement in regard to upliftment. Therefore before considering whether we should draw up a new Agreement let us explore the first condition of the Agreement or arrive at a possible scheme for lessening the total number of the Indian population. If we can do that, and if the Indian Government is prepared to undertake with us an investigation into the whole problem,

which/

which will take some time, we shall see more clearly where we are. But to go now and start fashioning an agreement with two members from the Indian Delegation and two members from this side and to put something before us in which we are not agreed fundamentally seems wrong. I would suggest that we go step by step and deal with the question as we see it fundamentally.

THE CHAIRMAN: My idea in making the suggestion was the possibility of avoiding any declaration that we make to the public here or in India to say that either the Agreement has been renewed or that it has been terminated; in this way that we merely state that we have considered the whole position in the experience we have had during the past five years and we have agreed that the relations between the Government of India and the Government of the Union shall in future be as follows, apart from the declaration of policy. "The arrangements which have existed so far in connection with the assisted emigration scheme continue." We want them to continue. We have got the assurance also from the Government of India that they shall observe the responsibility in regard to these returned emigrants. Now this arrangement will continue, and in connection with that any communications which there may be between the two Governments with regard to any questions arising in future shall be through the Agent General, and then we can more definitely define what his position is. We want something just more or less on these lines. Then we do not say whether we terminate, and we do not say whether we renew, but we define for the future what the relations between the two Governments will be.

THE HON. P. DUNCAN: I agree with Mr Sastri. I think it

unfortunate/

unfortunate if we express regret or state that we are not able to agree. It will have a bad effect on both sides. I think it is true that there is no adequate material to come to an agreement on. I think it would be useful if we were to make that clear, but at the same time we should agree upon a common statement of future relations and state our policy with an expression that our friendly relations will continue. It will be a pity if the people here and in India are told that we are unable to come to any agreement.

MR NICHOLLS: I think the consideration of the Agreement should be left over until we know what the Indian Delegation proposes in regard to the investigation of the settlement. I would hate the Delegation to think for a moment that we feel that the Indians are undesirable or anything like that. That is not in our minds, but I hope everyone appreciates the difficulties of administration of the problems with which we are faced here in South Africa. We all have a high regard for India and what it stands for. I would hate to feel that I have given pain to any member of the Delegation in saying the Indians were not a blessing to South Africa. That is only because they conflict with our political problem, but we are making some effort to bring the problem to an end which is best in the truest interest of the Indians themselves and ultimately the interest of South Africa.

SIR DARCY LINDSAY: On the understanding we arrived at five years ago do you wish to make out that the idea was to very considerably reduce the Indian population, or was it to keep pace with the birth rate. My own impression was that the Union Government would be satisfied with the scheme if we kept well within the increase due to the birth rate.

MR/

MR NICHOLLS: I think the correspondence with the Government of India will make it clear that the Union Government were looking for a considerable diminution of the total number of the Indian population.

THE RT. HON. SRINIVASA SASTRI: My clear recollection was that Dr Malan used the word 'stablise.' I think it was realised on all sides that it may be possible to actually reduce the number by emigration. We made that counterbalance the natural increase of the population here. That was as much as we could look for. 'Stabilise' is the word that was used.

THE CHAIRMAN: I think Mr Nicholls is more correct. Any encouragement given was to reduce the total population as far as possible.

THE HON. E. G. JANSEN: My impression was that this was the only basis on which the Conference was held, namely the prospect of reducing the Indian population.

MR NICHOLLS: The actual increase in spite of repatriation is 19437.

THE RT. HON. SRINIVASA SASTRI: The importation increase will be there.

SIR GEOFFREY CORBETT: The basis of the last Conference was stated in the Preamble of the Agreement: "to explore all possible methods of settling the Indian question in the Union in a manner which would safeguard the maintenance of western standards of life in South Africa by just and legitimate means." Clause 2 of the Agreement recognises that Indians domiciled in the Union, who are prepared to conform to western standards of life, should be enabled to

do/

do so. And Clause 3 provides that for those Indians in the Union who may desire to avail themselves of it, the Union Government will organise a scheme of assisted emigration to India or other countries where western standards are not required.

SIR DARCY LINDSAY: There are not a great number left who can leave other than your nationals. I think the figure is put down as 30,000 other than were born in the country.

MRS NAIDU: Have you more than 20 per cent left of the Indian born people?

MR VENN: I think it is just about 20 per cent.

MR HOOGENHOUT: I think quite 80 per cent have been born here. That is the evidence given before the Select Committee by the Indian community.

MR VENN: It is quoted by the Congress as being 85 per cent.

MR BAJPAI: I think the figure supplied by Mr Venn to the Delegation the other day was Indian born people under indenture, about 35,000. So that it works out at a little less than 20 per cent of the total population.

MR NICHOLLS: In considering a scheme we are not considering the Indians born in South Africa.

MR BAJPAI: No, I am not suggesting that.

THE CHAIRMAN: Shall we give time till to-morrow for both Delegations to consider the matter from their particular views with regard to the overseas settlement, and for consultation with the Indian community.

(The Conference adjourned at 11.30 a.m.  
until to-morrow at 9.30 a.m.)

FIFTH DAY.

SECRET.

PROCEEDINGS OF CONFERENCE

between

Representatives of

THE GOVERNMENT OF INDIA

and

Representatives of

THE GOVERNMENT OF THE UNION OF SOUTH AFRICA.

---

CAPETOWN, Tuesday, 19th January, 1932.

PROCEEDINGS OF CONFERENCE BETWEEN REPRESENTATIVES OF THE  
GOVERNMENT OF INDIA AND REPRESENTATIVES OF THE GOVERNMENT  
OF THE UNION OF SOUTH AFRICA.

---

Cape Town, Tuesday, 19th January, 1932.

PRESENT:

Representing the Government of India:

The Rt. Hon. V. S. Srinivasa Sastri, P.C., C.H.

Sir Geoffrey Corbett, K.B.E., C.I.E., I.C.S.

Mrs Sarojini Naidu.

Sir Darcy Lindsay, Kt., C.B.E.

Sir Kurma Reddi, Kt. (Agent General for India in the  
Union of South Africa).

Mr G. S. Bajpai, C.I.E., C.B.E., I.C.S. (Secretary  
to Indian Delegation).

Representing the Government of the Union of South Africa:

Dr the Hon. D. F. Malan, M.P., (Minister of the Interior,  
Education and Public Health) Chairman of the  
Conference.

The Hon. O. Pirow, K.C., M.P. (Minister of Justice).

The Hon. E. G. Jansen, M.P. (Minister of Native Affairs).

The Hon. P. Duncan, K.C., C.M.G., M.P.

Mr G. H. Nicholls, M.P.

Officials attending the Conference:

The Hon. E. Baring, I.C.S., (Secretary to the Agent  
General for India in the Union of South Africa)  
Assistant Secretary to the Indian Delegation.

Mr P. I. Hoogenhout, (Secretary for the Interior)  
Secretary to the Union Delegation.

Mr H. N. Venn, (Commissioner for Immigration and Indian  
Affairs).

Mr F. C. van Blerk, (Clerk in the Department of the  
Interior).

---

The Conference met at 9.30 a.m.

THE CHAIRMAN: We will resume our discussions of yesterday. Has any member of the Indian Delegation any remarks to make.

THE RT. HON. SRINIVASA SASTRI: We wish to say something. Sir Geoffrey Corbett has a few remarks he wishes to address to you.

SIR GEOFFREY CORBETT: When we parted yesterday, Mr Chairman, we were asked to ascertain definitely whether the Government of India would co-operate with the Union Government in exploring the schemes of emigration which we have been tentatively discussing. We were also asked to consider whether it would be prudent at this stage to sound the Indian community in South Africa and ascertain whether they would support such a scheme. Since we met yesterday we have consulted our leader, Sir Fazl-i-Husain, who is the member of the Government of India in charge of the Department which deals with emigration, and he has authorised us to say that the Government of India are willing to co-operate with the Union Government in exploring the possibilities of settling Indians in countries other than India itself. I want to make one point clear arising out of that. I think those who are acquainted with the past history of this case will realise that the Government of India have always appreciated the importance which the Government of South Africa attaches to the question of reducing the number of Indians in South Africa and especially, perhaps, in Natal. I think the whole history of the last 30 years is witness to this. The correspondence, representations and negotiations which have taken place on the subject bear this out. Our reasons for this attitude are, I think, clear. In the first place, we are anxious to remove a cause of friction which may endanger the friendly relations which exist between our two countries/



countries, and secondly, we do believe that it is in the interests of the permanent Indian population of South Africa. We believe that their numbers are really a handicap to them and tend to obstruct their social, economic and political progress. At the same time we have to recognise the view held by Indian leaders in South Africa, to which Mr Venn and Mr Hoogenhout have more than once referred. We have to recognise their view that their numbers are a source of strength, and we have to accept the possibility of organised opposition to any scheme of emigration which we may propose. Unless this opposition is forestalled and prevented, I think any scheme of emigration which we may investigate, however promising it may be on its merits and from other points of view, is likely to meet with opposition. We of this Delegation will do our best to prevent any such opposition, and we now therefore suggest that we be permitted by this Conference to take two or three of the Indian leaders now in Cape Town into our confidence and ascertain their views. Unless we do this, I personally, and I think all my colleagues, feel that we would not be justified in proceeding with these negotiations on the assumption that it is possible to effect any substantial reduction in the Indian population in South Africa by the means which we have been discussing and considering. We now come to the specific point and that is that we should now be authorised to take two or three of the Indian leaders here in Cape Town into our confidence and ascertain from them whether we can obtain their support to the enquiries which we propose.

THE CHAIRMAN: Do you think these Indian leaders to whom you refer are altogether representative of the feeling of the Indian community? Are they, for instance, fully representative of the feeling of the Indian community in Natal  
and/

and in the Transvaal?

SIR GEOFFREY CORBETT: I think I must ask Mrs Naidu or Mr Sastri to reply to that question.

THE RT. HON. SRINIVASA SASTRI: Yes.

MRS NAIDU: I think the people we would consult would represent the bulk of the Indian community in Natal.

THE CHAIRMAN: Are they representatives of the Indian Congress?

MRS NAIDU: Yes.

THE RT. HON. SRINIVASA SASTRI: We do not want to consult anyone who is not connected with the Congress. As I said the other day, and I need hardly repeat it, there will always be a certain set of people opposed to movements of this kind. We must reckon their opposition exists and the fact that the same set of people figure on these occasions rather discloses the volume of their opposition. There are very few and I do not believe they will be able effectively to prevent anything that, with the consent of the Congress leaders, we put forward.

MRS NAIDU: I think so as well, and we do not give any recognition to the other people.

MR VENN: Without wishing to ascertain the names of the Indian leaders you will consult, I presume you will include Mr Christopher? All along Mr Christopher has been one of the most antagonistic members of the Congress towards any form of emigration of Indians from South Africa. Looking back through the files of old papers I find that he was one of the leaders who went against the suggestion that an Indian from Natal should join that delegation or committee of enquiry which went to British Guiana somewhere in 1921, and

he/

he took up a very hostile attitude in regard to that matter.

THE CHAIRMAN: Is Mr Christopher a Congress representative at present?

MRS NAIDU: He is a member of the Natal Congress, and of the South African Congress.

THE RT. HON. SRINIVASA SASTRI: Mr Christopher has also, I think, been an opponent of the assisted emigration scheme. He does not like that scheme. He has communicated his views regarding the scheme to Congress but he has allowed himself to be over-borne and has held his tongue. Mr Christopher is a man of honour and is one of those whom we must take into consultation. Because of the fact that he is likely to be an opponent we must take him into our confidence. He is trustworthy and influential and if we win him over as a convert he will be of value.

MR VENN: Undoubtedly. He will be of more value than anyone else in Natal.

THE CHAIRMAN: Is the President of the Congress in Cape Town?

MRS NAIDU: Yes, he is.

THE CHAIRMAN: Well, as far as I am personally concerned, I have no objection to the course which you propose to adopt. I do not know whether any of my friends have any objection to your consulting with Indian leaders in South Africa.

THE HON. P. DUNCAN: No.

THE HON. O. PIROW: I think the move is an excellent one. In fact, it is the only one possible at the present time, but I would like to make this suggestion. The position is that the Delegation is approaching the leaders of the Indian Congress/  
Congress/

Congress - it is not a deputation from Congress approaching the Delegation - and asking their good services, so it is quite possible when these gentlemen are approached they may feel in a bargaining mood and they may put forward conditions. I would like to suggest that if it is at all possible these gentlemen should consider the enquiry purely on its merits and not subject to this, that and the other condition which it might be suggested should be imposed on the Union Government.

SIR GEOFFREY CORBETT: Personally I feel strongly that the matter should be considered on its merits only because it is only then that it is likely to be successful.

MRS NAIDU: It does not commit the Government of India or the Union Government to anything at this stage.

SIR GEOFFREY CORBETT: There will be no bargaining. I have always been opposed to a reduction of the Indian population of Natal as a set off against some trade concession granted to Indians in the Transvaal.

SIR DARCY LINDSAY: That is the feeling of the people themselves. I do not think they will favour any bargaining.

THE RT. HON. SRINIVASA SASTRI: I think it is worth while remembering that there is an aspect of this enquiry which is dependent on the South African question. The Government of India in undertaking this enquiry undertake it for themselves. There is that aspect also.

THE CHAIRMAN: Mr Godfrey will be included, I take it? He is a very influential man in your community.

THE RT. HON. SRINIVASA SASTRI: Do you mean the advocate?

THE CHAIRMAN: Yes.

THE RT. HON. SRINIVASA SASTRI: He is not here at present.

MRS NAIDU: He would go with the Congress.

THE CHAIRMAN: I think at the meeting that they had in November last in which a rather hostile attitude was taken up against the assisted emigration scheme Mr Christopher and Mr Godfrey were associated with each other.

MR VENN: They are very much opposed to the assisted emigration scheme. They may not object to a colonisation scheme which would be different. I think if a good many went from India under the colonisation scheme there would be no objection. As a matter of fact, the scheme would be mainly for Indians from India; the number of Indians that would go from here would be very small compared with the number that would go from India.

SIR GEOFFREY CORBETT: I think at the start you may expect more from here than from India.

MR VENN: I take the scheme as a whole. I think in a year or two after the scheme was started a good many Indians would go whether their leaders were opposed to it or not. You would get a fair number but we would not get the number that we would like. At the present time, in spite of the hostility of the leaders of the Indians in South Africa against the emigration scheme, in December and November we had more Indians leaving than we had before: they came at a greater rate owing to the economic conditions in the country.

SIR GEOFFREY CORBETT: There is one point arising out of the present world economic conditions which must be borne in mind. I suppose you could hardly have a worse time than the present

moment/

moment for embarking upon a colonisation scheme. I think emigration from one country to another has almost ceased. It will take a little time for anything like the scheme we have been considering to become established and I do not want the Union Government to have any ideas that anything immediate or striking will happen. We can only sow the seed.

THE CHAIRMAN: One feels that the real objection from the point of view of the Indian community in South Africa to an emigration scheme is one of sentiment. The Indians are under the impression that if they agree to any scheme of repatriation to India or even if they agree to any scheme of overseas settlement in which South Africa alone is concerned it fastens on them a stigma of inferiority - that they are undesirable. The only way to remove that feeling would be for a fairly large number of Indians from India participating in the scheme. That would remove the stigma very largely.

MR HOOGENHOUT: In going through the file on the question of settlement in British Guiana I find that after everything was cut and dried the whole scheme was shipwrecked on the question of finance, and I think this side of the question should be gone into before we go any further. Supposing we find 10,000 Indians wishing to use the scheme and leave the country, will we have the money?

MR NICHOLLS: The financial side of the scheme depends on the report of the committee appointed to investigate the possibilities of a scheme. If, after the committee has reported its finding the two Governments find it is beyond their financial resources, the whole scheme falls away. Preliminary steps of investigation are not likely to entail

much/

much expense on either Government. I suppose the number that will carry out this investigation will be two or three from either side. Both Governments will appoint men to the committee of investigation who are competent and men who can draw up a scheme which can be placed before the Governments of India and of South Africa, and the cost of that would be a few thousand pounds on either side.

MR HOOGENHOUT: All that has been done before, Mr Nicholls.

MR NICHOLLS: It has not been done in the manner I suggest. It has not been done for a big colonisation scheme.

THE RT. HON. SRINIVASA SASTRI: Did you actually go?

MR HOOGENHOUT: No. The investigation was carried out by your Government and the Government of British Guiana. You are going to take the Indian community into your confidence and will be laying before them the scheme of colonisation in some other country and therefore I think the question of finance of such a scheme should be considered.

SIR DARCY LINDSAY: It would be interesting to find out what the Japanese scheme of settlement is. If, as Mr Venn tells us, there are 100,000 Japanese settled under their scheme it looks as though it is a successful one.

MR VENN: Every "Maru" boat that passes through here is full of Japanese emigrants.

SIR DARCY LINDSAY: What is the Japanese scheme?

MR VENN: I think it has a good deal of support from the Japanese Government,

THE CHAIRMAN: That is something that can be investigated,

namely/

namely, how the Japanese manage their settlement scheme.

SIR DARCY LINDSAY: I cannot help thinking there is a good deal of private enterprise about the Japanese scheme of settlement. I should imagine that syndicates have been formed to take up and develop land on a settlement basis. That is what I have in mind about the Japanese scheme and the same idea is in my mind as regards the possibilities of our scheme.

MR HOOGENHOUT: May I read a few lines from a letter from Mr Tyson on this very subject of the question of Finance. Mr Tyson was the Secretary to the Agent General for India in the Union and writes: "The Government of India have conducted prolonged negotiations on this subject with the Government of British Guiana. The Agent is now informed by the Government of India that the Government of British Guiana, after extensive consideration of the expenditure to be incurred, have addressed to the Secretary of State for India a request that, in view of the extensive cost involved, the notification of the coming into operation of the scheme may be indefinitely postponed." That was in 1927, after everything appeared to be cut and dried.

SIR DARCY LINDSAY: That is what we said yesterday.

MR BAJPAI: I said that yesterday; it is nothing new.

MR HOOGENHOUT: Would any Government be prepared to accept the expenditure?

MR BAJPAI: We must have an estimate of the expenditure before we can say whether we shall take the responsibility.

MR HOOGENHOUT: Was that not got before?



THE HON. P. DUNCAN: It is quite one thing for the Government of India to say they could not finance the scheme; it is another thing for the Union Government.

MR HOOGENHOUT: Would the Government be prepared - -

THE HON. E. G. JANSEN: I take it that we are in this position, namely, that the question of finance and other details are for the moment out of the question; we cannot consider them. All we want to know is whether any scheme, whatever the details may be, is acceptable to the Indian community of South Africa, and for that purpose it is suggested that the Indian Delegation consult certain leaders of Indians in South Africa. If it appears to them that there is no chance of the South African Indians accepting or supporting a scheme of that kind, what is the use of going on? That is the end of it.

THE HON. O. PIROW: Quite apart from that. Personally I am pessimistic about such a scheme as has been suggested, but should it be possible I feel that the bulk of the people of this country will be prepared to make fairly substantial sacrifices to get rid of the surplus Indians in the country.

THE CHAIRMAN: Anyway it is proved as a result of the enquiry made by the Government of India before that apart from finance there is no difficulty.

MR BAJPAI: That is so.

MR HOOGENHOUT: That is the only difficulty in the way.

THE CHAIRMAN: You do not anticipate any difficulty of a sentimental nature in India itself?

MR BAJPAI: Well Mr Sastri yesterday said something about

general/

general political opinion in India in the past about emigration or colonisation schemes. He told the Conference that the general political opinion in the past was against emigration from India, but so far as emigration to British Guiana and Fiji is concerned there are Indians there at present and we do not anticipate that there would be any sentimental objection to further emigration there. The whole reason why the scheme for further emigration to British Guiana was not carried out was because of finance.

THE CHAIRMAN: I think the whole thing will depend on what attitude Mr Gandhi takes up. I seem to recall that he has said that Indians who have gone to colonies are happier there than they are in India. In other words, in principle more or less he takes up the attitude that he is against the encouragement of any repatriation scheme. Now the point is what his attitude would be with regard to a scheme of emigration from India - whether he would be in favour of that to relieve pressure in India itself?

MR BAJPAI: Mrs Naidu could perhaps answer that best.

MRS NAIDU: If conditions are favourable I do not see why Mr Gandhi or anyone else should object to a scheme of emigration from India. The objection in the past has been against repatriation. I do not think anyone would object to people going abroad if they can better their prospects.

THE HON. E. G. JANSEN: I take it the real objection in India is against repatriation on the indentured system?

MR BAJPAI: Where they are not subject to political disabilities. We at present have emigration to Ceylon.

MR NICHOLLS: I think the only definite objection so far to

a scheme of emigration has been the objection raised by the Government of British Guiana. The Government of British Guiana could not finance the scheme; it was not an objection from the Government of India.

MR BAJPAI: That is it.

THE RT. HON. SRINIVASA SASTRI: In British Guiana I think the trouble was that there was a change of Governorship and the policy slightly veered round.

MR BAJPAI: Well that and the catastrophic fall in the price of sugar which synchronized with it.

SIR GEOFFREY CORBETT: We must look all the facts in the face and we must remember that when the world is suffering from over-production it is not a favourable time to embark on a scheme for further production may be received unfavourably.

MR NICHOLLS: India can easily bring about a state of prosperity in British Guiana by giving preference on sugar which she now obtains from Java.

SIR GEOFFREY CORBETT: When our Fiscal Commission reported one of the definite recommendations they made was that in any scheme of preferential duties which we may in future adopt we should give preference to the products of colonies which were produced by Indians. We have never gone any further with that proposal because we have never taken up the question of preference seriously. We have one decker tariff. What the future will bring forward I do not know, but preferential tariffs are in the air now and I am quite certain that in any preferential arrangements that were brought into our tariff scheme would always be considered.

MR NICHOLLS: Do you know what the total importation of  
sugar/

sugar into India is?

SIR GEOFFREY CORBETT: About 800,000 tons. I have been out of India such a very long time, except for a short interval last summer, that I cannot be certain of the exact figure.

MR NICHOLLS: That is five times the production of Demarara.

SIR GEOFFREY CORBETT: Yes. India gets most of its imported sugar from Java.

THE CHAIRMAN: The Japanese settlement is not in Java.

MR BAJPAI: It is in Brazil.

SIR GEOFFREY CORBETT: British Guiana is attractive to us because there are no political disabilities there. In fact, Indians are in the majority there.

THE CHAIRMAN: Probably there will be no political disabilities in Brazil.

SIR DARCY LINDSAY: There are none in Brazil according to my information.

MR HOOGENHOUT: Is it your wish that we get information from the Japanese Consul here about their settlement scheme in Brazil? I think we could get it without saying why we want it.

SIR GEOFFREY CORBETT: I should deprecate any such enquiry until after we have consulted the Indian leaders here about the scheme. If such enquiries were made rumours may be set on foot, and Mr Venn has already given us stories about rumours.

THE CHAIRMAN: I take it there is no objection against the Indian Delegation approaching the Indian community and sounding their views about such a colonisation scheme as has been put forward? When about will you be able to let us know the result/

result of your consultation? To-morrow?

MRS NAIDU: The day after to-morrow.

SIR GEOFFREY CORBETT: I should like to consider the date when we should put our case forward about the Transvaal Tenure Bill.

THE CHAIRMAN: As far as we are concerned you can do that at any time.

SIR GEOFFREY CORBETT: Our leader is invalided at present and I would prefer him to be present when that question is dealt with by the Conference. He is a lawyer and also the Minister in charge of the Department under which the matter falls.

THE HON. P. DUNCAN: When will he be up?

SIR GEOFFREY CORBETT: That I cannot tell. It would be helpful if he could see our statement before we put it in. It is rather a handicap on us to put forward a statement without our leader looking at it.

MRS NAIDU: The beginning of next week will be better for the presentation of our statement.

MR BAJPAI: If all goes well our leader expects that he may be able to attend the Conference on Monday. That is merely an expectation.

SIR GEOFFREY CORBETT: We could put our statement in perhaps on Friday morning and our leader could be here for the discussion on Monday. Meanwhile we might proceed with these more fundamental questions.

THE HON. P. DUNCAN: You may take a little longer time to consult the Indian community than you think.

THE/

(107)

THE RT. HON. SRINIVASA SASTRI: It does not mean delaying the result of the consultations. We can go on with the Transvaal matter.

MRS NAIDU: The two questions are not dependent on one another.

THE CHAIRMAN: Well, is there anything else we can discuss this morning? There will hardly be anything to discuss to-morrow if we are to hear from the Indian community only the day after to-morrow.

SIR GEOFFREY CORBETT: I feel that until we have cleared this out of the way it would be better not to have a meeting.

THE CHAIRMAN: I would suggest that we adjourn until the day after to-morrow, at 9.30.

(The Conference thereupon adjourned at 10.10 a.m. until Thursday, at 9.30 a.m.)

SIXTH DAY

SECRET

PROCEEDINGS OF CONFERENCE

between

Representatives of

THE GOVERNMENT OF INDIA

and

Representatives of

THE GOVERNMENT OF THE UNION OF SOUTH AFRICA.

---

CAPETOWN, Monday, 25th January, 1932

PROCEEDINGS OF CONFERENCE BETWEEN REPRESENTATIVES OF THE  
GOVERNMENT OF INDIA AND REPRESENTATIVES OF THE GOVERNMENT  
OF THE UNION OF SOUTH AFRICA.

---

Cape Town, Monday, 25th January, 1932.

PRESENT:

Representing the Government of India:

The Hon. Khan Bahadur Mian Sir Fazl-i-Husain, K.C.,  
I.E., K.F., Member of the Governor-General's  
Executive Committee (Leader of the Delegation).

The Rt. Hon. V. S. Srinivasa Sastri, P.C., C.H.

Sir Geoffrey Corbett, K.B.E., C.I.E., I.C.S.

Mrs Sarojini Naidu.

Sir Darcy Lindsay, Kt., C.B.E.

Sir Kurma Reddi, Kt. (Agent General for India in the  
Union of South Africa).

Mr G.S. Bajpai, C.I.E., C.B.E., I.C.S., (Secretary to the  
Indian Delegation).

Representing the Government of the Union of South Africa:

Dr The Hon D. F. Malan, M.P., (Minister of the Interior,  
Education and Public Health) Chairman of the  
Conference.

The Hon. O. Pirow, K.C., M.P. (Minister of Justice)

The Hon. E. G. Jansen, M.P. (Minister of Native Affairs).

The Hon. P. Duncan, K.C., C.M.G., M.P.

Mr G. H. Nicholls, M.P.

Officials attending the Conference:

The Hon. E. Baring, I.C.S., (Secretary to the Agent  
General for India in the Union of South Africa)  
Assistant Secretary to the Indian Delegation.

Mr P. I. Hoogenhout (Secretary for the Interior)  
Secretary to the Union Delegation.

Mr H. N. Venn (Commissioner for Immigration and Indian  
Affairs).

Mr F. C. Van Blerk, (Clerk in the Department of the  
Interior).

---

The Conference met at 9.30 a.m



THE CHAIRMAN: Before resuming with the business of the Conference I would like to say how pleased the Conference is that your health, Sir Fazli, has improved to such an extent that you are able to be in our midst this morning. The work which the Conference has done so far has been more or less preliminary and of a tentative nature. The main work of the Conference is still being done, or must still be done so that we can have practically the full benefit of your advice and of your assistance. I can assure you that we do not expect you to make up leeway and to fulfil a double task. We are all very pleased indeed to have you here this morning.

THE HON. SIR FAZL-I-HUSAIN: I am most grateful to you, Mr Chairman for the words of welcome you have spoken. I am also very grateful for the good wishes you sent me when I was actually in the nursing home. My colleagues who know much more about this problem than I do - some of them have been working at it for years now and they can rightly be described as experts on these problems - have given me their advice. I have had the advantage of their advice and I have been kept informed from time to time as to the various matters which have come under discussion by the Conference. I am glad to be able to tell the Conference that I am now strong enough to proceed with the work of the Conference from day to day or on such days as may suit the convenience of the Conference. The last time the Conference adjourned it was to enable the Indian Delegation to ascertain the views of the leading Indians in South Africa on certain points and I would now like to ask the indulgence of the Conference for another day to enable me to make a statement, either to-morrow or such other day as may be decided upon. To-day, if I may, I propose making a statement of our views on the position regarding the occupation of fixed property by Asiatics on proclaimed land for purposes of trade or residence in the Transvaal, and their right to own such property

in/

in that Province. Is it your wish that I proceed with this statement?

THE CHAIRMAN: Yes. The position of overseas settlement of Indians is of such vital importance that we must give the Indian Delegation as much time in the matter as they require. The Conference agrees that the statement with regard to that be heard to-morrow instead of to-day. You may proceed with the other matter.

THE HON. SIR FAZL-I-HUSAIN: I will read our statement. It is as follows: "We propose this morning, Mr. Chairman, to submit our views on the position regarding the occupation of fixed property by Asiatics on proclaimed land for purposes of trade or residence in the Transvaal and their right to own such property in that Province. You told us, Sir, that the Report of the Select Committee on Asiatics in the Transvaal might be taken as representing the views of the Union Delegation in the matter. We shall, therefore, endeavour to make the principal recommendations of the Committee the basis of our remarks.

The Committee's proposals, stated broadly, are -

(1) That sections 130 and 131 of the Gold Law, Act No. 35 of 1908, should be amended so as effectively to prevent in future both occupation of and residence on proclaimed land by Asiatics.

(2) That this prohibition should be extended to areas such as Springs and to deproclaimed land in a township of municipal area, interests lawfully acquired before the 1st May, 1930 being safeguarded.

(3) That while the protection given to certain Asiatics by section 1 of Act No. 37 of 1919 should be continued, interests which have grown up since 1st May, 1919 in contravention of the Gold Law, should be protected only for a period of five years, beginning from 1st May, 1930, after which the persons concerned must move into areas specially assigned to Asiatics for trade or residence or for both.

(4) That legislation should be undertaken so as to ensure that Asiatics shall not own fixed property or lease it for more than ten years anywhere in the Transvaal outside reserved areas, either individually or collectively, and either directly or indirectly.

(5) That local authorities should be empowered to refuse certificates for licences unless the applicant proves that he is lawfully entitled to occupy the premises on which business is to be conducted.

In the Transvaal, Mr Chairman, legislation in the past has been restrictive as regards the ownership of fixed property by Asiatics anywhere and, as regards occupation and residence, restrictive in relation to proclaimed land only. But it is generally admitted that administration has not been in conformity with the law. It is this discrepancy between the law and its administration which has given rise to misunderstanding and to the difficulties which we are now considering. The Conference would no doubt like to ascertain whether the law or its administration has more correctly reflected from time to time the policy of the Government in the Transvaal and, if the Chairman approves, discuss fully and frankly what the future policy should be. Once the policy is determined and clearly defined, the law and the administration can be harmonised with it.

It was stated at the last Conference, Mr. Chairman, that the Union Government firmly believe in and adhere to the principle that it is the duty of every civilised Government to devise ways and means and to take all possible steps for the uplifting of every section of their permanent population to the full extent of their capacity and opportunities. It is on this basis that our views on the question of policy have been framed. The Indians in the Transvaal are mainly traders. The great majority of them are also permanent residents of the Province and cannot even

maintain/

maintain their present position unless they have opportunities to trade. This they will not have if they are to be confined to areas where there may be little or no trade. Nor will it be easy for them to conform to western standards of life if they are segregated for residential purposes. For similar reasons, it seems undesirable to restrict their right to own property to areas in which Indians alone may own property. Such a limitation can only tend to promote a sense of humiliation and to encourage evasion of the restrictive law. We venture, therefore, to suggest that the policy of the Government should be to allow Indians in the Transvaal facilities for residence and trade and for owning and leasing property, without segregation. Apart from arguments based on equity and enlightened policy which we have mentioned, this recommendation seems justified by the consideration that for the last 50 years the Indian trader has proved useful to the community, especially to the farmer, and that it would be unwise when recent economic experience has demonstrated the necessity for narrowing the gap between wholesale and retail prices, to discourage a class of distributors who have discharged this duty more successfully, perhaps, than any other class of traders, by being satisfied with a narrow margin of profit. We, Sir, do not presume to suggest how the policy, which we have recommended, should be given effect to. This is a matter which, in our opinion, the Union Government can best deal with, though we shall be prepared if desired, to give you such help as we can. But of the wisdom and justice of the policy, which we have taken the liberty to submit for your consideration, we are convinced.

In conclusion, Mr. Chairman, we wish to submit that local authorities should not be empowered to refuse certificates for licences to trade unless the applicant proves that he is lawfully entitled to occupy the premises on which the business is to be conducted. Experience shows that questions of title cannot be satisfactorily/

satisfactorily adjudicated by popular bodies which have neither the requisite judicial training nor the necessary immunity from pressure from parties which regard the Indians as their trade rivals. We suggest that executive action to enforce the law in regard to occupation is a matter for the Government and the determination of title is a matter for the judiciary alone."

THE CHAIRMAN: Do any of the members of the Delegation of India wish to supplement this statement? ( No member signified his desire to do so). Do any members on the Union Government side wish to ask any questions with regard to the points raised in the statement?

THE HON. P. DUNCAN: I take it that the principle underlying this statement is that the view of the Delegation of India is that Indian traders should be allowed to reside anywhere without restriction on proclaimed land or on unproclaimed land subject to the laws of the country. That is, I take it, the underlying principle in the statement just submitted?

THE HON. SIR FAZL-I-HUSAIN: That is the underlying principle in the statement.

THE HON. P. DUNCAN: If that were agreed upon it would involve not merely legalising the position of the Indian traders who have been allowed to establish themselves contrary to the law of the country, but it would involve the repeal of these restrictive clauses in the Gold Law.

THE HON. SIR FAZL-I-HUSAIN: I think the statement I read made it clear that what was desired at this stage was not legislation of a repealing character, but to vest the Government with the power to put the law in motion. We feel that the Government is the proper body to deal with the situation and not the local authorities, and we feel this because with discretion in the hands of the Government the disabilities of Indians will be less

humiliating/

humiliating than at present.

THE CHAIRMAN: I should say, generally, that we must not forget that we are dealing on the Witwatersrand with a position which has resulted from a judgment, or from a series of judgments, of the Supreme Court. We have not so much to do with an alteration in the policy laid down by the Union Government with regard to Indian trade generally in the country as with the position which has arisen through a contravention on a fairly large scale of existing laws. If that had not taken place on the Witwatersrand to that extent then Parliament and the Select Committee which Parliament appointed in 1930 would not have dealt with this matter at all, but in spite of the law and in spite of the fact that at least after 1919 the law must have been quite clear to Indian traders in the country the law was contravened to a very large extent and Indians in large numbers settled on the Witwatersrand for trade purposes against the provisions of the law. Now, if Parliament had not stepped in then as a result of the judgment of the Court large numbers of Indian traders would have been ejected. The Bill with which we have to deal now, and in connection with which representations are being made, is a result of Parliament dealing with this matter. Now, the other part of your representations deal with the power of local authorities, more particularly with the power of local authorities on the Witwatersrand, where you have got land proclaimed under the Gold Law, and your representations are that these local authorities shall not have the power to refuse the granting of a licence on the ground that the stand is occupied illegally. You must not forget that here again we have not to do with a matter of policy generally, but we must devise machinery. That has been felt by Parliament, and that has been felt by the Select Committee which Parliament appointed, namely, that we must devise some machinery

to/

to prevent in the future the same thing taking place that has taken place and that has landed us where we are, and if the local authority which issues the licences or gives the certificate cannot go into that matter as to whether the ground is occupied legally by the applicant or not, then the question is what authority shall decide. If there is no authority to decide then we are in danger of getting a repetition of exactly the same thing that we had in the past. I think we must look at it in that light.

THE HON. P. DUNCAN: Does not your Bill provide for the question of title being brought before the Magistrate's Court?

THE CHAIRMAN: Yes; there is an appeal to the Magistrate's Court. So in this matter there is really after all a safeguard by an appeal to the Magistrate's Court. An appeal is easy and inexpensive, so there is always in the background a judicial body dealing with the matter. It is not left altogether to the local authority.

THE HON. SIR FAZL-I-HUSAIN: Our representation possibly goes a little beyond that. We say that the position should be that the Government have the right of intervention and stopping unlawful occupation of land by traders. The business of the local body is to satisfy itself that for purposes of trade the applicant for a trading licence is a fit and suitable person. So far as the question of his title to possession is concerned that is not a matter for the local authority but rather for the Government to deal with. The reason why we wish the Government to have that power, and nobody other than the Government, is that the law which is to be enforced is a disabling Act, is a law which limits the chances of a person obtaining opportunities to trade, and we feel that only the Government should have the power to decide whether it shall intervene or not. It may be considered that what we want is perhaps too much in advance of the European feeling/

feeling to-day, but whether what we want is fair is another matter. On that point we have no doubt that what we are asking for is reasonable.

THE HON. P. DUNCAN: In what way would the Government intervene? Would you make illegal occupation of land by traders a criminal offence and have a prosecution?

THE HON. SIR FAZL-I-HUSAIN: No. The Government simply intervenes when it believes that cases of occupation have increased to such an extent that various interests in the Parliament could not remain unaffected. Whether the increase is as much as it is believed to be we have not yet been able to ascertain; it may be or it may not be. Such figures as we have tried to collect do not make the point at all clear. If by any chance the increase is not considerable then naturally there is no case for taking any action. If, on the other hand, the increase is very considerable we will not say that the Government is not entitled to review the position and say well we have to take the matter in our hands, the law was here and they were given certain facilities which, strictly in accordance with the law, they should not have been given, and therefore we will put the case right.

THE CHAIRMAN: Perhaps I may explain the position. If local authorities under this Bill should take the action for which they are then made responsible in view of the fact that they have to decide whether they should issue a licence - if they get the right to refuse a licence on the ground of illegal occupation by the applicant then the local authority will in that case act practically exclusively on information which the Government supplies to it. I take it that if the Bill is passed then steps will be taken to have a register of all legal businesses or legal occupation by non-Europeans on proclaimed land. That information will be supplied to the local authorities and if there is any application from an Asiatic for a licence and such Asiatic is not

on/



on the register which is officially supplied to the Municipality then, as a matter of course, the application will be refused. If the application for a licence is refused the applicant will always have a right of appeal to the Magistrate's Court against the decision of the local authority and to establish his right.

MR. VENN: The appeal can go to the Supreme Court from the Magistrate's Court.

THE CHAIRMAN: Yes, ultimately it can go to the Supreme Court.

THE HON. SIR FAZL-I-HUSAIN: Perhaps I have not been able to make clear that whether it goes to the Magistrate's Court or to the Supreme Court, it goes on the basis of a law which is detrimental to the Indians' rights. If putting that law into motion were in the hands of the Government itself then only the Government could take the initiative. If, on the other hand, the law is to be put into motion by the local body then it has effect straight away and that possible palliative in the hands of the Government disappears. Under our proposal the Government may let this respite continue but there would be a distinct change of policy. Up to now they were content to let things slide so to say but in future an agency will be entrusted to seeing that there is no place where the law is not to be enforced by the local authority so to speak.

THE HON. P. DUNCAN: Do you suggest that the Government should have the right to go to towns where Indians are trading in contravention of the law and say because they have been allowed to go and trade there in contravention of the law the law will not be enforced? Do you suggest the Government should be empowered to go to these places and say here is an area where the law will not be enforced?

THE HON. SIR FAZL-I-HUSAIN: What I suggest is that if the Government finds this contravention has reached alarming proportions it is up to the Government to intervene. May I point out that

no/

no one can be prosecuted for sedition but by the Government and there are many cases of seditious writings where the Government does not set the law in motion and prosecute. If you leave to the local body or to any agency except the Government the enforcement of the law as it stands then I cannot help urging that it will affect the Indian very detrimentally.

THE HON. O. PIROW: Do you want to ask us in the first instance to go in deliberately for a policy which will reverse the decision arrived at by a Select Committee of Parliament which represents not only Government policy but represents also the policy of all those who participated in the work of the Select Committee, including Mr. Duncan? Let me put this to you. Supposing there is this reversal of policy, are you relying on slackness on the part of the officials as possibly may have been the case in the past - or may I put it this way, the fact that certain officials, perhaps rightly, thought the question of occupation did not interest them as it was not part of their duty, or are you hoping that the Government will deliberately lay down apart from this reversal of policy of taking away from local authorities the right of granting and refusing licences the Government will in addition reverse its own policy and will say well we shall not intervene in evasions of the law but only with definite evasions and breaches of the law if there are so many that there is a public outcry? I am afraid I do not quite follow the suggestion that the Government having deliberately and definitely decided that these breaches of the law must cease should now rob the local authority of the right which we intend to give them that they can question the title of an applicant and we say we go back on all that. All our deliberations have been taken and decisions arrived at and we must go back on that and decide that we and we alone shall put the law in motion and we shall only do so if there is an evasion of that law on

a large scale.

THE HON. SIR FAZL-I-HUSAIN: Whether the Government will continue its policy or modify it in the light of the Select Committee's report - -

THE HON. O. PIROW: The Government's attitude has been clear that there has not been machinery definitely constituted for the purpose of dealing with these particular breaches of the law.

THE HON. SIR FAZL-I-HUSAIN: Does it not all boil down to this, that it is contemplated to take certain measures which result in worsening the position of the Indian traders in the future as compared with the past?

THE HON. O. PIROW: Most definitely where they have been guilty of breaches of the law.

THE HON. SIR FAZL-I-HUSAIN: We will not say whether justified or not. Whatever it is it is a definite policy of worsening the position of the Indian traders in future as compared with their position in the past. Naturally we do not say that is quite right.

THE CHAIRMAN: I should say that the question of the position of Indians on the Witwatersrand on proclaimed land was made out in 1908. It was decided in 1908. Now, unfortunately, in one respect at least from an administrative point of view the law was not strictly enforced and the result was that from time to time contravention took place on a large scale and because from time to time contravention took place the idea, I am afraid, arose with the Indian community that they could contravene the law and not suffer for it. When that idea got abroad among the members of the Indian community contraventions of the law naturally took place on an increasingly large scale and that landed us ultimately where we are to-day. Now I should say that we must do one of two things. The first is that the law remain unaltered and that it be enforced. The alternative is to change  
the/

the law. I think from an administrative and Government point of view it is most unsatisfactory to have a law and not to enforce it.

THE HON. E. G. JANSEN: Does not the suggestion of the Delegation of India amount to this, that they wish Indians still to be able to obtain licences in respect of premises of which they are illegally in occupation?

THE HON. SIR FAZL-I-HUSAIN: The question of whether the occupation was legal or illegal would not be determined under my suggestion.

THE HON. O. PIROW: It would be a definite illegal occupation.

THE HON. SIR FAZL-I-HUSAIN: I think, Mr. Chairman, what you have stated is a very fair statement and you will appreciate our position that we find it really impossible at this late day to be able to go to our people and say you should be prepared to do without such facilities as you have enjoyed in the past through the Union Government's kindness, or, as one may put it from a lawyer's point, through failure to enforce the law. It does not matter to the Indian tradesman what was the cause; he had it. It is extremely difficult to reconcile them to renounce their interests in the Union on the ground that they were not legally entitled to them. We are here to assist and to help bring about a state of affairs where the divergence between the law and the actual position is reduced to a minimum. Apart from suggesting that we desire the law should remain and it should not be acted upon, we ask you if you can modify the law suitably to reflect the policy as has been understood by Indians on this subject? If you do this, we will be most grateful, and help in every way that lies in our power, but we cannot say that any hard and strict enforcement of the law will be welcome to us. Above all things we wish you to feel quite certain that illegal occupation has increased to the extent which warrants this legislation. If you have

have the requisite information on this subject and feel satisfied with it we on this side of the Conference will be very glad to have that information.

THE HON. P. DUNCAN: I am not sure whether I understand your proposal. I am not thinking now of those men who are already trading, but what is going to happen in future. Would not your proposal involve this, that Indians will go to the licensing authority and get licences to trade on ground which, under the law, they are not entitled to occupy? The licensing court will know nothing about their not being entitled to occupy the ground on which the premises for which they want a licence are situated and they will give them the right to go and trade there. Then after they have been established in trade the Government comes along and says you are trading on ground which you have no right to occupy and we are not going to consider whether we should eject you or not. You we will eject because there is a public complaint; this man we will leave. Would that not be a hardship?

THE HON. SIR FAZL-I-HUSAIN: That will lead to a serious difficulty in the administration of the law, but would it not be possible to act something like this. These trading licences, I understand, are annual institutions. As soon as the Government comes to hold the view that a certain limit has been reached notify them that in the following year the law is going to operate.

THE HON. E. G. JANSEN: That will bring about a position that instead of their being allowed to remain on for five years as proposed in the Bill - instead of the licences being ended in five years they may be ended before that.

THE HON. SIR FAZL-I-HUSAIN: It does only if the law is put into action by the Government. After all we have said the Union Government is the best judge of that position. We cannot help your South African Indian subjects by insisting upon the laws as they stand; we have to leave them to you.

THE/

THE CHAIRMAN: I am against that proposed procedure and for my part I think it is fatal. If you leave the carrying out of the law regarding the occupation of ground by Asiatics in the hands of the Government it depends on the Government whether they are lax or not to establish it as a principle that the Government should enforce or not enforce the law according to their own policy and that would certainly throw the whole Indian Question into the party political arena. You will continually get agitation against the Government which lays it down as a policy that they can desist from enforcing the law, and instead of calming down the feeling of the country it will have just the opposite effect. You must not forget that the European stand-holders, especially on the Witwatersrand, are organised into leagues to protect their rights - their trading rights as against Asiatics and as soon as a Government is known to have laid it down to enforce the law in a lax manner there will be no end of agitation and everytime when an election takes place the Government will hear about that.

THE HON. SIR FAZL-I-HUSAIN: That trouble is bound to arise at one time or another. You are the best judge whether to face it now or to put it off for a bit.

THE CHAIRMAN: The more we get the question of Asiatics out of the political arena the better.

THE HON. SIR FAZL-I-HUSAIN: I entirely agree. I have not the slightest desire to have this question brought into party politics.

MR. NICHOLLS: I take it what the Chairman of the Indian Delegation has in mind is a differential policy towards the Indians and towards Europeans in the issuing of licences. At present all licences are issued irrespective of race by the one body. All apply to the same authorities for licences and they all conform to the same requirements. If anything goes wrong they have the right of appeal. Now it is suggested, I understand, that

the/

the Government should take into its own hands the matter of issuing licences in the country; in other words, take that function out of the hands of the local authorities.

THE HON. SIR FAZL-I-HUSAIN: I am afraid I must have expressed myself badly to give you that impression. That certainly is not my intention. I do not want differential treatment for Indians. The power of the local authority giving or refusing licences should remain intact. The question is whether the local authority should be empowered to go into the question of title which I have no doubt legal opinion on the Conference will realise is not usual. Local bodies do their own council work and not the judicial work of going into questions of title. I should not be misunderstood as desiring differential treatment between Indians and Europeans.

SIR GEOFFREY CORBETT: I think there is some misunderstanding on this question of law and title. Mr. Duncan, I think, at the beginning of the discussion said do you wish us to make illegal occupation a criminal offence. I do not pretend to be an expert but I think it is under sections 130 and 131 of the Gold Law, and the Government has unrestricted power to remove under sections 130 and 131 for illegal occupation, and our point is that it is open to the Government to move the Courts. If the Government's policy is that all illegal occupation should be stopped forthwith it has the power to do so under the law, but what we venture to doubt is the desirability of making a municipal committee a Court of first instance on questions of title. It is not even that a municipality has permissive power to question a title. That I think was the recommendation of the Select Committee, but in the Bill as drafted it is compulsory on the local authority or municipality to go into the question of title to the land to which the licence is applied. Clause Eight of the Bill says

"...before such licence may lawfully be issued to him, the local authority shall, subject to the provisions of subsection (3) of section one, not issue any such certificate

to/

to any person applying therefor unless such licence and the person who will be in actual control of the business or trade to be licensed, are not Asiatics, or if they are Asiatics, that they may lawfully carry on the business or trade for which a licence is desired on the premises whereon such business or trade is to be carried on".

This is constituting the municipal committee into a Court of First Instance on a question of title in every case that comes before it. If you want to have a general clean up - I am not going into your question of policy - our view is that it is the Government that should take the initiative under the existing Gold Law rather than bring in fresh legislation constituting every municipality as a Court of First Instance in a question of title. That is the only point.

THE HON. O. PIROW: Is your objection to the municipality based on the fact that it is a non-legal body.

SIR GEOFFREY CORBETT: It is a non-legal body.

THE HON. O. PIROW: What is the difference between leaving the matter in the hands of the local authority with a right of appeal against its decision to the Magistrate's Court and sending it to the Magistrate's Court and the Appeal Court in the first instance?

SIR GEOFFREY CORBETT: It is an additional cost.

THE HON. O. PIROW: Is it a matter of expense?

SIR GEOFFREY CORBETT: It is a matter of trouble. The Government has the power and the Government can go to the Courts at once.

THE HON. O. PIROW: I would like to eliminate that. I want to test this. Is there any reason, apart from the possibility of additional expense and trouble, why you should not go to the municipal licensing body first before going to the Magistrate's Court? Let us leave the Government and its power out of the question for the moment because that involves the difficulty whether you should give the discretion or decision to a local body, a Court of Law or an executive body which is entirely different/



different. I am trying to investigate the position that the local authority is not the proper body. Do you go further and suggest that there may be a waste of time and expense?

SIR GEOFFREY CORBETT: I feel that a local authority is not a proper tribunal to deal with such questions as title. If I was constituted a court to decide these cases I should consider myself incompetent to do so and I should consider it a great hardship for any applicant for a licence to have to come before me to have his case considered.

THE HON. O. PIROW: Are you not under a misapprehension in regard to title in this country? In England title involves a detailed investigation. In this country it is one of the simplest things in the world to determine.

SIR KURMA REDDI: May I add a few words to what Sir Fazl-i-Husain has said and perhaps give some explanation of what Mr. Pirow has been saying. You will find it in the evidence given by Mr. R. F. MacWilliam before the Select Committee in 1930. Mr. MacWilliam is a member of a land company which of course is by no means too friendly to the Indian. He said before the Select Committee, and you will find his evidence on page 125 of the Report - - with your permission I shall read his evidence: He said

"Now you put the question to me whether I think it desirable that the administration of the Act should be vested in a particular official as at present it is nobody's duty to look after the Act. I certainly think so; that is one of the reasons why I suggested on the lines which were put forward by me. One has founded the whole thing on the title and I think it naturally and easily follows from that that in the first instance the real official to be vested with this right is the Registrar of Mining Rights or the Registrar of Deeds".

In another portion of his evidence on which I cannot now lay my hands he says he does not recommend that municipalities should be allowed to deal with questions of title. It has been held by the Courts that questions of title should not be decided by municipalities. For instance, in what is known as the "Benoni case" the

judge/

judge of the Supreme Court said that it was not desirable that these questions of title should be decided by municipalities. His reasons for saying this were many. I have not the decision of the Court in this case before me, but if I remember rightly one of the reasons advanced by the judge in support of his contention was that local feeling and, if I may use the words, prejudices will also play a part in deciding the question which would not be the case if it was left to a Court of Law to decide. That I understand was the decision in the Benoni case. Then again in another case, I believe the "Spring's case", one of the judges said that the Gold Law could be enforced only by the Government and not by municipalities. Unfortunately when the question involved in the Spring's case came up before the Appellate Division it was decided on another point and this question was not decided one way or the other, but the fact remains that the Supreme Court has made that observation. As a matter of fact more than two judges have declared that questions of title should not be decided by local authorities and considering also that a European body such as represented by Mr. MacWilliam has stated that this question of title is a matter which should be more in the hands of the Government than in the hands of a municipal body it should be in the hands of the Government. Municipal councillors will give more heed to representations made to them by local merchants who have the vote than they would to Indians who have not the vote whereas judges are free from all these influences and the considerations which may be advanced by local merchants to local bodies will not enter into the matter when the judge has to decide.

THE HON. O. PIROW: That is not what you are asking. What your leader suggests is that this be left to the executive, not to the Supreme Court. All that the judges have stated is that in certain circumstances it is better to leave the decision of questions affecting title to the Supreme Court. That is not

your/

your leader's contention. You are not suggesting that these cases go to the Supreme Court but that they be left to the discretion of the Government.

THE HON. SIR FAZL-I-HUSAIN: The Executive is to move in the matter, not to decide.

THE HON. E. G. JANSEN: It seems to me that that difficulty could be overcome by providing that before the application for a licence is made the applicant establish his right before the Magistrate's Court or before the Supreme Court. If this were done it would eliminate the question of municipal bodies deciding questions of title.

MR. NICHOLLS: Your argument seems to be based on a desire to bring about a state of evasion of the law. You object to giving authority to the licensing authority to assure itself that the person applying to it for a licence is the owner of certain land. In the past licences have been granted without their being sure on that fact and this has led to evasions of the law. Now your objection to the Bill is based on the ground that the local licensing authority should not satisfy itself that the applicant is entitled to a licence, and therefore you desire to continue this evasion of the law.

THE HON. SIR FAZL-I-HUSAIN: Subject to this, that when the Government desires, it can take up the matter to the test.

MR. NICHOLLS: The Government has not the machinery for doing that.

THE HON. SIR FAZL-I-HUSAIN: Two suggestions have been made as to the authorities which the Government can vest with power, but they will be acting under the advice of the Government.

THE HON. E. G. JANSEN: It seems to me that if that statement were adopted the Government would be bound to test everyone of them. How can the Government avoid that?

THE HON. SIR FAZL-I-HUSAIN: I am afraid I do not quite agree.

It/

It is not in every case that the Government should test them.

THE HON. E. G. JANSEN: See in what position you place the Government if it is decided that this man's occupation of land should be decided and this man's not. It will place the Government in an impossible position.

THE HON. SIR FAZL-I-HUSAIN: I recognise the difficulty. The strongest objection to my suggestion was the one stated by the Chairman.

MR. HOOGENHOUT: I think Sir Kurma Reddi is labouring under a misapprehension in regard to the evidence given before the Select Committee by Mr. MacWilliam. The evidence quoted by Sir Kurma was the reply of Mr. MacWilliam when a question was put to him on the Companies Act of 1919. If Sir Kurma turns to page 103 of the Select Committee's evidence he will see that Mr. MacWilliam says definitely that "The Johannesburg Council feel it is vital in the interests of the white community that they should have the power to control Asiatics trading in the Johannesburg municipal area". It was definitely stated by Mr. MacWilliam when he led the evidence of the Johannesburg Municipality that the Municipality wanted this power.

SIR KURMA REDDI: I am glad you have corrected me, but perhaps I quoted from the wrong place. I know there was one witness who expressed himself against municipalities having the power to decide questions of title.

THE CHAIRMAN: In the interests of the Indian community is it not better that the Government should confine itself to applying the information on their register to the local authorities and let the local authorities then act on their own responsibility rather than to put the power of initiative in ejecting in the hands exclusively of the Government? You must not forget that the occupation by Asiatics of land on the gold mining areas, proclaimed areas, is not only in respect of trade; it is in  
respect/

respect of occupation generally for any purpose. Now if the Government alone is entrusted with the duty of seeing that the law is not contravened then they may eject a good many more Indians than the municipalities would for the reason that the municipalities are only concerned with questions of trade.

THE HON. SIR FAZL-I-HUSAIN: I quite appreciate the point made that it is putting the Government into a very difficult position to take the initiative, and whether some agency other than the Government could not be entrusted with that work. As long as the Government is entrusted with that work has the same feeling in the matter we do not mind - the same feeling of responsibility in the matter. The Government would approach the problem in a particular way. An agency which has not that broader outlook which the Government has and which cannot bring that broader outlook to bear on the point is bound to act in a different way. We appreciate your position and will consider the suggestion you have made and also other alternatives.

THE HON. P. DUNCAN: You will also have to consider the case where the Indian is not only trading on proclaimed land but on private land. There the owner can eject him.

THE HON. SIR FAZL-I-HUSAIN: He must take his chance as he has done up to now. We appreciate that position.

MR. VENN: Would it not be easier for the Asiatic generally to have this law? The municipality may have granted a licence and the Asiatic has been trading for 2 years and the Government, under your suggestion, comes along and discovers he was trading there illegally and ejects him. Would it not be better if that man's licence was refused him in the first instance by the municipality on the ground that he would be trading illegally were he granted that licence? If the person who was refused such a licence thought he had a right to it he could appeal to the Magistrate. If the Government did not take action or did not notice he was trading/

trading illegally until a year after he had been granted a licence to trade and then to eject him, would that not be a greater hardship on the Indian than if his licence was refused in the first instance by the Municipality? There would have been no need for him to start his business and establish credit and he would have had the right of appeal against the refusal of the municipality to grant him a licence.

THE HON. E. G. JANSEN: On the general point of view on the other side is it fair to other traders, Europeans and Asiatics, that a man should obtain a licence in respect of premises which he is not even entitled to occupy?

THE HON. O. PIROW: May I put it this way. I really understand the suggestion of the Delegation of India to come to this. You are not pleading for condonation by Act of Parliament as we have had it on so many occasions, but you would like to see condonation in the discretion of the Executive. I take it Mr. Sastri and Sir Kurma Reddi will have some idea of the feeling that has been engendered amongst the European population by these successive condonations. I take it you will also consider before making any proposal whether it would not so aggravate the position as far as the European feeling is concerned that in the end the Indians might suffer much more.

THE HON. SIR FAZL-I-HUSAIN: We will have to take that very seriously into consideration. Nothing is further from our thought than to bring about anything approaching bad feeling. Just as we are most anxious to appreciate the feeling that might be created among the European population we wish you to consider to what extent, after these years, the action contemplated will affect the feelings of Indians who have been in occupation and in enjoyment of these rights. The best thing to do is to devise a plan which will harmonise the law with the practice and the practice in future to be more in conformity with the modified law. We appreciate the position/

position of the Union Government very well indeed. We are not ignorant or unaware of it.

MR. NICHOLLS: I wonder whether it is generally appreciated by the Indian Delegation to what extent the Indians have the trade of South Africa in their hands. We have a few figures which show that whilst the Asiatics number only 10 per cent compared with the European population they have 30 per cent of the total trading licences in the country - all kinds of licences.

SIR GEOFFREY CORBETT: Have you any information about comparative turnover?

MR. NICHOLLS: I do not know whether we can get that.

SIR GEOFFREY CORBETT: Compare Stuttafords.

MR. NICHOLLS: I think you are inclined to underestimate the turnover of Asiatic traders. They have over 80 per cent of the total native trade in Natal. Take a few more figures. The European population of this country is 1,827,000 according to the last census; the Bantu races number 5,277,000, and the mixed and coloured number 577,000, a total of 7,682,000. The Asiatics, in the last census according to the latest estimates, number 193,000 or .025 of the total population of South Africa and they have 30 per cent of the total trading licences of South Africa. In the case of Natal the Indians number 166,000 against a total population of 1,473,000, or 11 per cent of the total population and they have 48 per cent of the licences, so I do not think the Indian has any real complaint as far as South Africa is concerned. May I put this point to you. Surely a nation of people have a right to a fair proportion of the trade of their country. The people we are speaking about in the Transvaal are all traders with the exception of a few who are waiters in hotels.

THE HON. SIR FAZL-I-HUSAIN: Can you tell us what they should be instead of being traders?

MR. NICHOLLS: I am merely stating the facts.

THE RT. HON. SRINIVASA SASTRI: It is difficult. It comes to this. Here is a population whose position in trade you attack by quoting comparative figures as if it were their fault. Can you kindly take that book from which you were quoting or other statistics and quote figures to show the position occupied by Indians and Europeans in other walks of life. Please remember that this community with which we are dealing is a trading community. Even in India they do the same thing. They came out here for the purposes of trade and they have taught their children to do the same thing. They do that and nothing more and to say that they should have only a portion of the trade and nothing more would be to say they must go without bread.

MR. NICHOLLS: I am not losing sight of that. I want to put figures.

THE RT. HON. SRINIVASA SASTRI: These figures have no meaning. You cannot press those figures to any point.

MR. NICHOLLS: I put this point, the point referred to by the Chairman. The point we do want to impress upon you is the feeling of the European population of this country and political difficulties would be created if they were lost sight of.

MRS. NAIDU: But how do you propose to meet the position? You do not open up any other walks of life to them. They have nothing open to them. They cannot become artizans.

THE RT. HON. SRINIVASA SASTRI: We are all concerned with solving this problem on lines of equity.

MR. NICHOLLS: We are dealing with trade in the Transvaal. If we come to Natal I could tell a different story.

SIR DARCY LINDSAY: In your percentages, Mr. Nicholls, is it not a fact that a great many licences are held by the hawker class?

MR. NICHOLLS: Yes.

SIR DARCY LINDSAY: The hawking business is not one to which the European takes. I went to the township of Krugersdorp and I think



I found there 23 shops occupied by Indians. I did not count the number of European shops, but I went up and down several streets and it seemed to me that there were about 150 European shops. The proportion of European shops to Indian shops in this particular township was very great and it did not appear to me that the one community was in any way interfering with the other. The Indian community were all located in two streets, and a few European shops mixed up with them. On the other hand, in the European area, I think, there was only one Indian shop - there was only one Indian shop in the other part of the town. I was very struck indeed about this fact. It was the first time I had been to one of these townships and I was very struck indeed with the point of view that the Indian trade was not actually interfering with the European trade.

SIR GEOFFREY CORBETT: On the general question of number of licences, the figures and percentages quoted by Mr. Nicholls may be misleading. I happen to have first hand information regarding this question because I was attached to the Lange Commission for five months when that Commission was making its enquiry, and the finding of the Lange Commission on this question was that there was really no basis of comparison between the number of licences and the number of shops. I think it is quite common practice for an Indian shop to have 4 or 5 licence holders and then again other Indian licence holders have no shops at all. For this reason the only real basis of comparison is the number of Indian shops compared with the number of Indian licences and not the number of licences held by the respective sections of the community. The second basis of comparison is the extent of trade of the two classes of the community.

SIR KURMA REDDI: On a matter of personal explanation arising out of Mr. Hoogenhout drawing my attention that I had quoted Mr. MacWilliam's evidence under a misapprehension. The evidence

I should have quoted was that given by Mr. Wilford before the Select Committee. Mr. Wilford gave his evidence as representing the North-Eastern Districts Association (Proprietary) Limited. May I read the evidence he gave. The portion of his evidence to which I wish to refer will be found on pages 88 and 89 of the Select Committee's Report. He said:-

"We think the initiative in the matter could be taken by the objector. If an objector objects under the proposed Act to the Council granting a trading licence on the ground that occupation is illegal, we would like the matter to be referred to the magistrate for decision as to whether the licence should be granted or refused. In regard to costs, the magistrate will make such order as he thinks fit. If the objector loses then he will have to bear the costs. There would be an appeal to the Supreme Court against the decision of the magistrate. I think it undesirable that a municipal council should sit as a legal body at all. They do not appreciate the position".

That is the portion I wanted to read, and I have to extend my thanks to Mr. Hoogenhout for drawing my attention to the fact that the evidence I did quote earlier was quoted wrongly.

MR. BAJPAI: In connection with the point raised by Sir Geoffrey Corbett, I should also like to draw the attention of the Conference to what was said in evidence before the Select Committee which considered the position in 1930, namely, that the total number of licences that were issued to Indians did not by any means reflect the actual number of Indian traders. Many Indians take out licences because they fear a new law is being brought in which will preclude their being able to obtain the licences later on, and those licences are never exercised.

MR. VENN: It is true that one man may have three licences. In the old days he took out a general dealer's licence covering everything. To-day, if he sells meat he has to have a butcher's licence, and if he sells fresh produce he has to have another licence. If he wants to sell fireworks he has to have a special licence and the same thing applies with regard to the sale of medicines.

SIR/

SIR DARCY LINDSAY: I went to Roodepoort and visited a very small shop which was divided by a partition. The owner of this shop had three licences; he had a grocery on the one side and vegetables and fruit on the other and for each of these he had separate licences. Then, in addition he had a third licence, a general trader's licence. The case of the man I am now citing was not an exceptional case. I am merely giving this instance as against the figures quoted by Mr. Nicholls.

MR. NICHOLLS: That might apply to Europeans as well.

SIR DARCY LINDSAY: Possibly.

THE CHAIRMAN: Well, can we carry the discussion any further to-day, or shall we adjourn until to-morrow? In the meantime we can consider the aspects that arose in this morning's discussion.

MR. NICHOLLS: I think, Mr. Chairman, we want to be clear whether what the Indian Delegation are recommending is what Mr. Pirow described as a condonation of the law.

THE CHAIRMAN: I take it the Indian Delegation will consider the whole position again and re-state its views to-morrow. Shall we put it like that? In the light of the discussion this morning the Indian Delegation re-state their case to-morrow?

SIR GEOFFERY CORBETT: I think the discussion has been very valuable to us because until this morning we had no first hand information of the Union Government's views.

THE HON. SIR FAZL-I-HUSAIN: The course you suggest would be best unless you wish a statement to be made on behalf of the Union Delegation specifically raising points.

THE CHAIRMAN: No. I should say that we just continue the discussion to-morrow. It is not necessary for you to submit anything in written form.

THE RT. HON. SRINIVASA SASTRI: In addition to Mr. Pirow's points, if there are other points which have to be raised by the Union Government side it would be an advantage to us to consider them

also/

also in the interval - if there are any other points.

THE HON. SIR FAZL-I-HUSAIN: That is what I intended by asking whether the Union Delegation would not like to embody all their points in a statement, but if that is the only point it is not necessary to trouble about it.

THE CHAIRMAN: I think when we began I stated the position more or less like this, that as far as the Transvaal Asiatic Tenure (Amendment) Bill is concerned the case of the Union Government is laid down in the Report of the Select Committee of 1930 and in the Bill before Parliament, and it is for the Delegation of the Government of India to make representations with regard to that and then we consider those representations, so we do not bring forward any particular policy.

THE HON. O. PIROW: I am sorry to interrupt. All I intended by my question was not to put forward the point of view even of myself. I merely wanted to understand what the representations of the Delegation of the Government of India amounted to; that was all.

THE CHAIRMAN: If there is nothing else for this morning we adjourn until to-morrow, at 9.30 a.m.

(The Conference adjourned at 11 a.m. until tomorrow at 9.30 a.m.).

SEVENTH DAY.

SECRET.

PROCEEDINGS OF CONFERENCE

between

Representatives of

THE GOVERNMENT OF INDIA

and

Representatives of

THE GOVERNMENT OF THE UNION OF SOUTH AFRICA.

---

CAPETOWN, Tuesday, 26th January, 1932.

PROCEEDINGS ON CONFERENCE BETWEEN REPRESENTATIVES OF THE  
GOVERNMENT OF INDIA AND REPRESENTATIVES OF THE GOVERNMENT  
OF THE UNION OF SOUTH AFRICA.

---

Cape Town, Tuesday, 26th January, 1932.

PRESENT:

Representing the Government of India:

The Hon. Khan Bahadur Mian Sir Fazl-i-Husain, K.C., I.E., K.F.,  
Member of the Governor-General's Executive Committee  
(Leader of the Delegation).

The Rt. Hon. V. S. Srinivasa Sastri, P.C., C.H.

Sir Geoffrey Corbett, K.B.E., C.I.E., I.C.S.

Mrs. Sarojini Naidu.

Sir Darcy Lindsay, Kt., C.B.E.

Sir Kurma Reddi, Kt., (Agent General for India in the Union of  
South Africa).

Mr. G. S. Bajpai, C.I.E., C.B.E., I.C.S., (Secretary to the  
Indian Delegation).

Representing the Government of the Union of South Africa:

Dr. the Hon. D. F. Malan, M.P., (Minister of the Interior,  
Education and Public Health) Chairman of the Conference.

The Hon. O. Pirow, K.C., M.P., (Minister of Justice).

The Hon. E. G. Jansen, M.P., (Minister of Native Affairs).

The Hon. P. Duncan, K.C., C.M.G., M.P.

Mr. G. H. Nicholls, M.P.

Officials attending the Conference:

The Hon. E. Baring, I.C.S., (Secretary to the Agent General for  
India in the Union of South Africa) Assistant Secretary to  
the Indian Delegation.

Mr. P. I. Hoogenhout (Secretary for the Interior), Secretary  
to the Union Delegation.

Mr. H N Venn (Commissioner for Immigration and Indian Affairs).

Mr. F. C. van Blerk (Clerk in the Department of the Interior).

---

The Conference met at 9 30 a.m.

THE HON. SIR FAZL-I-HUSAIN: Mrs. Naidu will on behalf of the Indian Delegation make the statement which we promised to make.

MRS. NAIDU: At our last meeting, Mr. Chairman, we were authorised to consult confidentially the leaders of the Indian community, now in Cape Town, regarding the suggested investigation into the possibility of enabling Indians to settle in other countries where climatic and economic conditions are similar to those prevailing in South Africa. The consultations took longer than some of us expected. In view of the importance of the matter to those for whom these leaders speak, this is not to be wondered at. As we anticipated, they are unable to accept the view that they are either an undesirable element of the population of South Africa, or a menace to any section of it. However, out of patriotic motives, and to ascertain whether there exist any good opportunities for South African Indians in other countries, they are prepared to co-operate in exploring outlets for colonisation. But they do not wish this to be taken to imply that they will either support or acquiesce in the scheme of assisted emigration to India which they consider has exhausted itself for economic and climatic reasons, and they wish to be regarded as free to dissuade persons from taking advantage of the scheme, if it should be continued hereafter on an organised scale.

THE CHAIRMAN: If I understand the position correctly it means that the Indian community in South Africa will, if they think that conditions will be bettered by a colonisation scheme overseas, support such scheme. but on the other hand they wish to consider themselves at liberty actively to oppose the existing scheme of assisted emigration to India. If it is merely a natural flow of Indians from South Africa to India they will not oppose it, but if there is any organisation in it, as there must necessarily be if we must continue our bonus system, and if the Government of India continues in an organised way to make these Indians welcome

in/

in India when they return there, then the Indian community here will actively oppose such scheme.

MRS. NAIDU: Not in the case of anybody who wishes to take advantage of the bonus scheme, but they feel that no propaganda should be made or exaggerated hopes held out. In such a case they want to feel at liberty to be able to tell the people that the economic and climatic conditions are not favourable for emigrants, and they would like to be able to tell them that they are going to co-operate in considering a scheme in a new country where it may be possible for them and their families to go and better their prospects, whereas in India they do not better their prospects. Is that what you understand they want, Mr Sastri?

THE RT. HON. SRINIVASA SASTRI: Yes.

THE HON. SIR FAZL-I-HUSAIN: Their objection is to organised propaganda which does not represent the position correctly, that is to say which gives a wrong impression of the possibilities. That is really the root of their objection. On account of the false hopes held out they feel they cannot be a party to it, knowing the circumstances under which these emigrants are to live.

MR PIROW: If we knowingly or intentionally mislead the Indians they reserve to themselves the right to explain the true position.

Is it necessary for them to make any such reservation unless they are definitely expressing a doubt about the bona fides of the Union Government?

THE HON. SIR FAZL-I-HUSAIN: I should not say that there is any question of expressing a doubt about the bona fides of the Government, but we know that when individuals are entrusted with certain work it is impossible to lay down what they may or may not say.

THE HON. P. DUNCAN: If the Government were to control its present system, or some system or other of offering bonuses to Indian emigrants and of providing places where they can go to wait for a few days for the ship, and provides facilities to make it easy for them, would that be considered to be organised emigration which/



which they would oppose?

MRS. NAIDU: I think if any Indian knew that there was a bonus and wanted himself to take it and to go at the risk of losing his domicile, then no one has the right to stop him from doing so. But what they do object to is any kind of direct or indirect coercion. Agents come to the estates and ask the master for permission to hold a meeting, and read out to these people circulars issued by the Government and paint a bright picture of the prospects and bring coercion to bear upon them. They feel that so many Indians being thrown out of employment is indirect coercion to make them go, and that they are tempted to do so by having something in hand.

MR NICHOLLS: If there is any application for repatriation we are to paint a similar picture of the conditions in India as painted in this book?

MRS. NAIDU: If a man goes voluntarily and takes the bonus it is at his own risk. It is the agent that goes to the estates and calls these people together, and that kind of propaganda, that they object to. If a man wants to go they cannot stop him, but they do not want to induce him or press him to go by direct or indirect means. That is what they feel about it. Is not that so, Sir Kurma?

SIR KURMA REDDI: Yes.

MR VENN: I think the Congress has exaggerated the pressure brought to bear on these people. A European goes round and gives them leaflets, otherwise these leaflets would never get to the Indians on these Estates at all. In many cases the employers are against the scheme and want to keep their employees, and there are other sections of the community working against it. These men do very little; they hand the leaflets out and if asked about the scheme they explain it.

THE HON. E. G. JANSEN: Is it clear that if we investigate this proposed scheme the Indian community will co-operate? It seems  
from/

from the statement that they will co-operate in the investigation but will they do so in any emigration scheme that may be set afoot later on?

MRS NAIDU: If they feel that there is a chance of bettering their prospects under the scheme and that they can eventually own land I think the younger men will naturally want to go. I do not know what the old people will do. My impression is that the Indian community will whole-heartedly co-operate in such a scheme.

SIR GEOFFREY CORBETT: I thought they were rather keen about it.

MRS. NAIDU: If they can go there to better their prospects and not be sent as undesirables.

SIR GEOFFREY CORBETT: It depends whether the conditions are found to be attractive. I think amongst the more educated Indians particularly there is a feeling that they do not want their children and grandchildren to be brought up in an atmosphere where they are to be warped and cramped by racial feeling. They feel strongly about that and want an opportunity to go where they can have equal rights with other people. If the thing went well at the start, it might ultimately end in a considerable exodus.

MR NICHOLLS: At the same time there may be propaganda against it in India. We do not know how far the repatriation scheme has failed in India. Apparently one investigation was carried on by private enquiry into the conditions in Calcutta. The Government enquiry into the conditions at Madras showed there was no hardship at all, but a private enquiry revealed a distressing state of things, which the whole of the press of India took up and blamed the Indian Government. To what extent that private report and the opinion it drew forth are animated by political considerations we are not in a position to judge, but it would be a thousand pities if this very promising scheme were to fail because of the opposition which will be created in India against it.

MRS NAIDU: There would be no opposition to an investigation. We  
are/

are not forcing anybody to do anything, and I do not see how anybody can make political capital out of it. You are not framing legislation but merely asking for their co-operation. They are not being bound. As a matter of fact there never was opposition when the Government of India did send out a delegation to investigate conditions for the surplus Indian population.

SIR GEOFFREY CORBETT: I think if the Indian community out here, and public opinion in India as represented by Mrs Naidu, are associated with this scheme, there will be no possibility of its being attacked in the Indian press.

THE HON. O. PIROW: It strikes me that it is a bit unfortunate that the South African Congress saw fit to make any statement as to the right it reserves to itself. If there is any misrepresentation, deliberate or negligent, by the Government or by its agents, they, as the constituted leaders of the Indian community, will have not only the right but it will be their duty to counteract that misrepresentation. At the same time they are putting us in a rather difficult position in saying they are prepared to co-operate in one scheme but in another scheme they reserve to themselves the right to counteract any misrepresentation. In that form it does make the impression that if we accept their co-operation we are admitting the probability of either deliberate or negligent misrepresentation by the Government or its agents, and it seems unfortunate that that question should have been introduced.

SIR GEOFFREY CORBETT: I feel that very much, what you have said. I personally, and others, put that very strongly to them. What I feel is that in their minds they are extremely sensitive of being accused afterwards of a breach of faith, and that is why they have said they must make their position clear in regard to emigration to India of South African born Indians. They want to make it clear so that there can be no suggestion afterwards that they are acting to the contrary. They want to establish themselves as men whose word is their bond. They do not want to be told at a  
later/

later stage that "it is all very well to co-operate in this but behind our backs you are opposing settlement in India". I think it almost superfluous to stress this point. They are unduly sensitive to my mind, but perhaps in the circumstances one cannot blame a certain amount of sensitiveness.

MRS. NAIDU: They naturally want to safeguard themselves as men of honour; they want to be absolutely free so that you will not charge them with a breach of faith afterwards. They do not propose to stand up in the market places and denounce the scheme, but they want to have the right to say to anybody who says "shall I go", "why do you want to go when you can wait a little while and see what comes of this other scheme".

THE HON. O. PIROW: They will also adhere to all the other points they laid down at their last emergency meeting; it is only natural that they will. We do not expect them as grown up men with a good deal of common sense, actively or passively to repudiate anything they have said in their manifesto. I take it that those are still their ideals and that they will press forward those views. If they are honest it is their duty to do so. We know one particular view that they held until lately. That is the particular view, or agitation or action in connection with which they make this reservation. The Union delegation can obtain their co-operation on the distinct understanding that they will have the right to agitate further in a certain direction. That is looking at it from the long angle and any agreement we arrive at will be misinterpreted by the European population. If we accept their offer to co-operate we also accept their promise to agitate at any moment. We are in a difficult position.

MRS. NAIDU: I do not think they laid this down as a condition for you. It was really for our information that they said these things and we thought it only right to pass it on to you. It is not a condition which they attach, but they want us to know the position

in/

in which they stand and do not wish to have unnecessary friction afterwards or spoil the administration of the co-operative scheme.

THE HON. O. PIROW: Why not say "We are prepared to co-operate, and for the rest we stand by everything we have said".

SIR KURMA REDDI: If no agreement is reached, which I hope will not be the case, there will be opportunity to press for these 14 points but as long as there is an arrangement between the two Governments in the sense of an agreement they will act up to it and will not press any of these points, with the exception of what is contained in the Statement. That is what I understood.

THE HON. O. PIROW: They put up these points merely for the purpose of bargaining.

MRS. NAIDU: No, that is what they feel they ought to have as part of the population of South Africa. But the time may come when public feeling will be sufficiently altered or enlightened to see that they may be right in their demands.

SIR GEOFFREY CORBETT: They put them forward as points the Delegation might press before the Conference. To come back to the emigration proposals. I see Mr. Pirow's objection, but it is right to make it clear that the information they put before us in writing was only for our information and was not intended to be conveyed to the Government. They made clear the precise position in their minds, and I personally felt, as in the last Conference, that we should put all our cards on the table and show exactly what may happen. On this question it is merely for the Union Government to consider whether it is worth while going on with the colonisation idea with the co-operation of the Indian community here. It is merely a question of the balance of advantages.

THE CHAIRMAN: What I should like to guard against is that there shall be a real set back in respect of a solution of the whole problem along the lines we have followed so far. The position as it was was this, that as a result of the last Conference initiated

this/

this assisted emigration scheme. It was part of the Agreement. After the Agreement was entered into and was announced both in India and South Africa we approached the leaders of the Indian community in South Africa for their support. The occasion more particularly when they were approached was when Mr. Andrews approached us with the idea that we might, in order to give the Agreement as fair a chance as possible, condone on a fairly extensive scale, the Indians who entered the country illegally. At that time I approached the Indian community and said that I can only agree to that if we can get the moral support of the Indian community in South Africa for the Agreement, generally of course that part of the Agreement with regard to the assisted emigration scheme. We got the support of the Indian Conference and the scheme went through, but then subsequently a section broke away and formed the South African Indian Federation and offered particular opposition to the emigration scheme. Now the position in any case was this that as far as the Indian Congress was concerned they never told us that they would actively support the assisted emigration, though they at least morally undertook that they would not oppose it. They accepted the Agreement in its entirety. Now if they make a reservation at this stage and hold their hands free to oppose, then instead of taking a step forward, or even maintaining the position we had, we have stepped back. We may have the whole Indian community on occasion, in circumstances in which they think they are justified, up in arms against the emigration scheme and the whole scheme will collapse, and we will not get a single Indian to go. I would very much like to guard against that possibility.

SIR GEOFFREY CORBETT: Did you consider the future prospects of the emigration scheme? I think we were inclined to agree in our discussions that the scheme has more or less died a natural death.

THE CHAIRMAN: Generally I would say that we must take it that the assisted/

assisted emigration scheme to India, even though there may be an improvement in the future, will never succeed to this extent that it will fulfil our original expectations. I go so far as that, but in any case I personally think that even so, more Indians would emigrate out of South Africa under the assisted emigration scheme to India than would under the colonisation scheme now before us.

SIR DARCY LINDSAY: When you say 'Indians', have you in mind the Indian born only or the South African born, because the colonisation scheme we proposed, or suggested, was very much to attract the younger men who would be South African born.

THE CHAIRMAN: I have not much hope in regard to the South African born Indian. Under the assisted emigration scheme the unit is a family. If the father and mother agree to go, then of course the minor children go.

SIR DARCY LINDSAY: That was rather one of the hardships of the scheme, that the South African children were taken away before they had any knowledge of the position, and were not allowed to come back unless the whole family came back. I think that is one of the points that the Indian community felt was rather a hardship. I should imagine that even the exodus of Indian born with their families must become increasingly less because the children have already grown up. Comparatively very few of the original Indians are here, and their families are becoming older every year.

THE HON. SIR FAZL-I-HUSAIN: In the case of emigration from South African to India, both the climatic and economic conditions very definitely operated against the emigrants, and it seems to me the Government of India can do nothing more especially in these days of retrenchment; services of those already employed are being dispensed with on account of the closing down of works. One does not really see how, in any case, when they come to India from South Africa, they can really improve their position or even have the same chances they have here. We have racked our brains to see

to/

to what extent we can counteract these drawbacks and help them. The climate is beyond us. How can one expect us or any Government to select these people for employment when other employees in the Railways and other Departments are being thrown out. So the only thing left is sentiment. The economic conditions are against them, and the health point of view is against them. How can you expect sentiment to operate in cases where the father and mother are old and weak and the children are grown up. There must be a continuous tendency for the father and mother to become less and less dominating. That is an inherent difficulty, and is there any way of overcoming that difficulty. There is thus an element of sentiment alone in support of the scheme, but all other considerations operate against it. In the case of sentiment if a man has a feeling of home sickness and wants to go, let him by all means do so. Therefore we say you must face the problem as it stands, irrespective of all these obstructions of the Congress, or whatever you like to call it.

THE CHAIRMAN: I think we will be able to judge better the attitude of the Indian community in South Africa with regard to the assisted emigration to India if we can know more exactly from them as to what they will not object to. That may be easy enough to say. For instance the information we give as the Union Government to the Indians in South Africa in regard to the assisted emigration scheme without exercising pressure - surely the Government is entitled to spread information with regard to that. Would they consider that as propaganda and oppose that? Do they object to that? There are various other matters that may be mentioned in connection with what we consider to be essential in the proper working of that scheme. They should say whether they object to that; then at least we know where we are, but as stated in the general way they have done they simply keep their hands free to do anything. It is up to them to say whether they will object or not, and whether

there/



is pressure or not where in reality there should be nothing of the kind.

THE HON. O. PIROW: You emphasised that in return for condonation on a fairly large scale these people were approached and for a number of years they have not been actively hostile. What guarantee have we got today even if they agree that the day after tomorrow they will not change their minds as they did in connection with the original scheme. There was a good deal of European opposition at the time to this condonation, but somehow the Government considered it necessary and equitable under the circumstances.

SIR KURMA REDDI: In India there was a very great deal of opposition to this assisted emigration scheme and the Government in 1927 succeeded in persuading the leading Congress men to desist from criticising the Agreement, and much against their will and better sentiment they did not oppose. These people may not have been very grateful but they have not obstructed.

THE HON. P. DUNCAN: How far did this offer of co-operation in regard to the colonisation scheme go? Supposing it was decided to send some people to British Guiana or some other country to report on the possibilities of a practical scheme, would these people be prepared to take a hand in that?

MRS. NAIDU: Oh yes, they will co-operate whole-heartedly.

MR. BAJPAI: I think they are more than serious about this matter, they are keen.

MRS. NAIDU: Yes, it is an outlet.

MR. HOOGENHOUT: Do they not say they will only consider exploring the scheme?

MRS. NAIDU: That is all that we are asked to do. You cannot commit them to a scheme that may not be acceptable. We were asked to find out whether they would assist in an investigation as a result of our discussions here. But they go further and say that if it is profitable they will certainly recommend it.

MR. NICHOLLS/

MR. NICHOLLS: Personally I have not much faith in the repatriation scheme to India, but I have a considerable amount of optimism with regard to possible colonisation. I personally do not think that the South African Indian will refuse to go there. Of course the Indian has not emigrated much in the past; they do not go overseas and at no time travel a good deal. The same lure which attracted these people to South Africa originally, the idea of earning slightly more than they earned in India and returning with their savings, will no doubt take hold in this country. I think they have grown today out of touch with India and have grown more accustomed to our western standards than to eastern standards. I think that if a properly worked out scheme is put before them quite a number will go. That is a possibility that ought to be explored. I think that with the assistance of the local Indians, pledged to work whole-heartedly in co-operating, as Mrs. Naidu said, and with the co-operation of the Indian Government and ourselves we can in the next 12 months explore the possibilities of this scheme and arrive at a decision between ourselves as to whether we are likely to achieve success or whether it is something which is an illusion and should be dropped.

MRS. NAIDU: After a great deal of consultation among themselves they think it a good plan of having every opportunity of exploring it on its own merits. That is the impression they left on us.

SIR DARCY LINDSAY: It is not only a plan put forward by the Union but it is put forward by India - it is co-operation between the two countries. Mr. Nicholls referred to Indians not having emigrated before. I think the opposition was against the original indentured labour scheme, and afterwards when the settlers did not get all the privileges that India would like them to have. Then perhaps the Indian is not a colonist in the way that perhaps Mr. Nicholls and others understand the term. They are rather slow to go and see on their own, but when somebody else opens up the country or estates

then/

then they are keen enough to emigrate to those places, but on their own in the past there has not been that effort. For trading, yes they will go. We have had an example in East Africa. The trader goes out because the place is made for him - the country is made for him, but in the case of the cultivator it has not been the experience that the Indian is prone to go on his own account.

THE CHAIRMAN: May I state what the position is again. The proposal was made from the side of the Delegation of India that we investigate the possibilities of supplementing the assisted emigration scheme to India by a scheme for overseas settlement. Then the question was raised in the Conference as to whether, even if the two Governments were willing to co-operate, we could get the co-operation of the Indian community in South Africa. Now you report that you have secured their willingness to associate themselves with such an enquiry. It is now for the Delegation of the Union to consider further and give their reply to you as to whether we can under these circumstances accept or not. Now I think we will require time to do that. Personally I may say the only thing that really disturbs me is in this reservation with regard to the assisted emigration scheme. I do not know how far if we definitely leave them a free hand in the general terms of the statement which Mrs. Naidu made, that may not be abused. That is the only thing that really hinders me. Do you know what it is they would not object to in this scheme, - in how far they would not object to what we consider to be essential for the successful working of the scheme?

MRS. NAIDU: What do you call the "successful working"? If I know that I can find out their answer. Do you mean that the Government is entitled to do propaganda and send out circulars?

MR. HOOGENHOUT: They do not want recruiting to be done.

MRS. NAIDU: I presume so.

MR. BAJPAI: The word recruiting was not mentioned, it was called propaganda by the Government.

MR. VENN/

MR. VENN: This is quite new to me that there was any propaganda. We only have three recruiters altogether.

MR. BAJPAI: The word "recruiter" is an unfortunate phrase.

MR. VENN: It is. As far as I know there was no pressure whatever brought to bear on these people.

THE HON. P. DUNCAN: You cannot have recruiting without propaganda.

MR. VENN: We had leaflets distributed. A lot of the people cannot read and some of those who can read could not understand it. Mr. Rodgers explained it to them, and then it came about that the Indian Congress stated that the men were being forced to go owing to the recruiters informing them that in January the scheme would stop; that after this Conference, at the expiration of five years from the commencement of the Cape Town Agreement, the scheme would not be continued. That was absolutely incorrect. The people asked whether at the end of the Agreement the scheme would be continued and Mr. Rodgers simply told them that he did not know. That was immediately twisted by the Congress to mean that there would be no scheme after the end of January this year.

THE HON. E. G. JANSEN: Is that possibly one of the reasons for the greatly increased numbers.

MR. VENN: That is the complaint of the Congress, that there was such a big lot of applications in November.

SIR DARCY LINDSAY: To what extent is the propaganda, or the recruiters, extended to the South African born Indian?

MR. VENN: No enquiry is made whether an Indian is South African born or not.

SIR DARCY LINDSAY: The position is placed before him as much as before the others. I think it is that point that the Congress are hurt over. They seem to plead more for the South African born Indian than for the others. They feel that the South African born Indian belongs more to this country and has not got the same opportunities/

tunities in India that he should have here. I think their pleading is very much on behalf of the younger men.

MR. NICHOLLS: What else can you do. You are only sending a bellman to tell them that there are certain benefits; that they can get a bonus and go to India. Five years ago we agreed upon a repatriation scheme. One country agreed to accept and the other country agreed to send them there. How are the people to know of it unless the news is conveyed to them?

MRS. NAIDU: Is it still necessary after five years to go on with the propaganda? Every Indian knows it by now. There was ample opportunity of knowing everything, and if they want to avail themselves of it they will find the means of going to the office.

SIR KURMA REDDI: Cannot I mention a case in regard to this. I happen to know of a particular case which I mentioned last time. It is not about Rodgers but about Peters. In October last I was at Dannhauser visiting the coal mines and was told that a number of Indians were discharged and that their places were taken up by natives. The men were warned they would not have full time; the work was reduced and wages went down. I was told in that place that this man Peters, who was accompanying me round the town, was going about and telling them stories. Two of them are these. One is that as soon as this Conference is over no more emigration will be allowed. Contact will be broken as the Union Government was not willing to have anything more to do with the contract. The second story is that the mines are determined to send the Indians from this country. That was one of the reasons for discharging them from service so that a larger number would be leaving the country. Also that if they go before January 1932 they will have the opportunity of getting the bonus but that they will come to grief afterwards. I asked my informant whether it was true or whether he was simply explaining what was in the papers, but he said he will prove it in my presence. I sat down and this man said 'May I ask Peters

a few questions'. The moment he said that Peters said he had to go and excused himself. He evidently did not like to answer the questions. It was these reports that were responsible for the feeling. They have nothing against the Government so far as I am aware. They often concede the point that the Government and the higher officials are not aware of what this man was doing. Why I mention this is because to my mind it does not appear in which there is any serious difference between the two Delegations. It should be one of those points on which there should be no serious differences with unfortunate consequences. As pointed out by our leader the conditions in India are not at present too good. The climatic and economic conditions, as well as so many other conditions are against them. But what the Indians here perhaps are afraid of, is that besides this kind of force by the Agents, there may be some trouble on account of Indians being thrown out of employment both on the mines and plantations, and also from the municipalities in virtue of the circular issued by the Government that a certain proportion of these employees must be Europeans. In the municipality of Durban for instance some 50 Indians were discharged, some of them being men with 10 to 15 years service. They were turned out with a week's or month's notice and left adrift.

The leaders of the Congress were afraid there might be circumstances such as these in which case they may have to approach the Government. This reservation includes also the privilege of approaching the Government in this country, and means that any consent they give to the scheme might not bar them from doing certain things.

I do not think there is much chance of many people leaving under the assisted emigration scheme, but on the other hand in the case of the colonisation scheme, if the Union Government is satisfied and the Indian Government is satisfied and the Indians themselves, who sent their own representative, are satisfied, I should think

there/ .

there is a greater chance of opening up in that direction because they will improve their conditions and perhaps find the atmosphere more congenial than here. To that part of the scheme the Indians have given their consent and their honesty cannot be doubted. They are men of honour and will keep their word. The reason I want to mention this is to safeguard their honour. Somehow in this country they are very sensitive of their honour and of keeping their word, and we have to respect them for that. So far as the colonisation scheme is concerned we can reckon upon their co-operation, and if it is satisfactory more will be attracted to this scheme than to emigration to India.

MRS. NAIDU: These people only wanted to make clear their position to us, because if they subsequently did anything they did not want us to send them a cable to ask them why they have broken their word. We were not bound to mention this at all to the Conference, but we thought we shall be absolutely frank about it so that you can take everything into account.

THE CHAIRMAN: I think we understand the position now. May I suggest that we leave it now to the Union Delegation to consider the whole position, and perhaps we will make some suggestions from our side and consider the question whether we will agree to the enquiry suggested.

THE HON. O. PIROW: I want to be on my guard that I have not misunderstood the Indian Delegation. I understood Sir Fazli to say that the Indians going back to India from here would definitely be worse off in every respect except as regards the sentimental attachment in the case of the old people.

THE HON. SIR FAZL-I-HUSAIN: That is my view.

THE HON. O. PIROW: So that if the Government were to induce Indians to go over under an assisted emigration scheme it would be definitely inducing them to go somewhere where in your opinion they would be worse off in every respect except as regards sentiment?

THE/

THE HON. SIR FAZL-I-HUSAIN: Yes.

THE RT. HON. SRINIVASA SASTRI: In the case of the South African born Indian there is no sentiment.

THE HON. SIR FAZL-I-HUSAIN: We tried to go into this matter very thoroughly and explored all possibilities of fixing these people up in positions.

MR. NICHOLLS: May we take it then that the Indian Delegation is opposed to repatriation to India as a general principle?

MR. HOOGENHOUT: There is one important phase. When you discussed the prospects of settlement, did you discuss them as applying to all Indians in South Africa or only to those not born in South Africa?

MRS. NAIDU: For all Indians, traders, farmers and anyone who wanted better prospects.

MR. HOOGENHOUT: Including the South African born Indians?

MRS. NAIDU: Yes, they want expansion.

THE CHAIRMAN: I am just afraid if the Indian community and the Indian leaders keep their hands free to oppose the assisted emigration scheme that they will merely take their stand and say it is owing to the fact that the Indians will not improve their conditions, and that is sufficient. Then they will oppose it, not on the ground of anything that the Government has done under the existing law or under the scheme, but merely because they are of opinion that the Indians are better off in this country than in going to India; then even to the extent that the scheme can still work successfully it will fall to the ground.

THE HON. SIR FAZL-I-HUSAIN: Take a family of six going from here. The parents are old and weak and in a year or two they die leaving their minor children. They have no connections there. Such cases are bound to occur and critics just collect them. You have only to place these facts on record. It is these facts that create such a strong impression. In many instances the people may stay on the  
land/



land and get on, but others are unfortunate and become poverty stricken.

THE CHAIRMAN: In so far as concerns families going under the emigration scheme, they go as families and must return as families if they return at all. The whole family must return.

MR. BAJPAI: The minor children, yes.

THE CHAIRMAN: I take it the objection is more especially in connection with the South African born Indian. The heads of the families are Indian born, and the South African born are only in these cases minors. Now he is in the same position as the minor in the case of any family emigrating anywhere in the world from one country to another. As long as the children are minors their destiny is bound up with the parents. I do not think they can consider that a particular hardship.

MRS. NAIDU: They do consider it a hardship because the mother and father for the sake of a few pounds in hand sign away the birth right of the child.

SIR GEOFFREY CORBETT: Supposing the father and mother die and the children are still minors and they have an uncle or aunt in South Africa, they cannot come back to their own relatives in South Africa?

MR. VENN: Yes they can.

SIR GEOFFREY CORBETT: After three years they cannot come back?

MR. VENN: No. A minor in this case is a person under 16 years of age. Any child of 16 years or older is an adult.

MR. BAJPAI: That we understand.

MR. VENN: It is only the very young children that go with the parents. Boys or girls of 16 or more go on their own.

MR. BAJPAI: The hardship is in the case of these minors in the event of their parents dying.

SIR DARCY LINDSAY: Would an individual minor be able to come back supposing his parents die on refunding the amount that was paid?

MR. VENN/

MR. VENN: Not if he was one of a family.

SIR DARCY LINDSAY: You said a minor can come back.

MR. VENN: If he was the only child.

SIR DARCY LINDSAY: You did not make that qualification. But supposing he were an only child would he have to refund on his own account only or what his parents received?

MR. VENN: Section 11, 6, (1), (c), (ii) provides that "in the event of the death of the Indian or a member of the family, the repayment in respect of the person concerned as provided in sub-paragraph (1) of this paragraph may be remitted". We have remitted in numerous cases where the father or mother have died. Take the case of a child leaving here when two years old, there would be no hardship in his case because he would know more about India than about South Africa.

SIR GEOFFREY CORBETT: Do you not consider it no hardship if they cannot come back to see their relations? Supposing you were not allowed to go back to Australia to see your own relations.

MR. VENN: If I came as a child of two or three years I should not know my relations in the country of my birth.

MRS. NAIDU: It may be a hardship because the relations are the only people who may be looked to to support them.

MR. VENN: That is a point, yes.

MR. BAJPAI: What is the position of a child like that who has no relatives in India?

MR. VENN: He cannot return after the three years have elapsed. If you remove that provision then the scheme is no emigration scheme at all, but is simply a scheme for giving people a free passage to India and £20 to spend when they get there.

THE CHAIRMAN: It will expedite matters if we now pass on to the other question. If we have a further discussion until 11.30 on that then the Union Delegation can consider these two questions together and give a reply on both at the next meeting.

MRS. NAIDU/

MRS. NAIDU: You also want us to find out to what part of the scheme, or to what extent there would be opposition if you do have a scheme.

THE CHAIRMAN: It will assist us very much.

THE HON. O. PIROW: Should not we leave that question over until the Union Delegation discusses that, or we may leave an impression in the minds of the local Indians which may lead to disappointment.

MR. NICHOLLS: Why is it that the few thousand repatriates who have gone back to India have found so little welcome there; why have they been left to suffer as stated in this report? I understood that measures were taken by the Government of India to ensure that they will be taken back into the economic life of the country, yet there are resolutions moved from public platforms pointing to the evil conditions under which they are living in the suburbs of Calcutta. Apparently in Madras the repatriation worked very well.

MRS. NAIDU: Not at all. I do not think it has worked. The framers of this report did not go into the parts where the people have villages, and probably these people never heard of the enquiry. I think the conditions in Madras are the same as in other places.

MR. NICHOLLS: Here is India with her teeming millions and they fail to absorb these people in their economic life. We do not know what the hitch has been on the other side. What endeavour has there been by the Indian Government to find employment for these people?

THE RT. HON. SRINIVASA SASTRI: The Indian Government never offered to find occupation for these. That is a mistaken impression altogether. The Indian Government only undertook to give them suitable information and to provide facilities to obtain employment. They did not undertake to provide employment for them. It would be imposing upon the Government a super-human task.

THE HON. SIR FAZL-I-HUSAIN: As a matter of fact I took pains to get all the information possible on the subject. We found in the

first/

first place that wages in South Africa were much higher than in India. The second factor is that the standard of living and the extent of comfort enjoyed by the people who return from here is definitely higher than the standard of living and the standard of comfort of the people there. Here are two factors which make it exceedingly difficult for any organisation we provide for helping them to succeed. One cannot force them to take employment. When offered employment they naturally compare the wage offered with the wages paid over here, and then find themselves adrift. The standard of living and the economic conditions are against them. We keep in touch with them in case we do get work for them. Where there is Government land to be given out, they are given the first choice in preference to anybody else. Our officers have been keeping in touch with them. They keep records of their money and put it into the banks. The suggestion was made that some sort of interest be given them and that is being done. We cannot do better.

MR. BAJPAI: It may help if I present the matter statistically. By the end of 1931, 9,000 people had gone back. We had figures of the distribution of these people in the different provinces up to some date in June 1931. Now an important factor to remember is that about the date that the report was written there were no more than 130 Indians come back from South Africa, a very small proportion of the total number of people gone back from this country. As against that you have the position in the annual reports submitted to us by the Government of Madras on the strength of the information by our special officer to look after these Indians from South Africa. Seventy per cent of those capable of working had actually found land and settled on the land. The real difficulty was in regard to something like 200 people who had applied for different kinds of employment. With them he succeeded to a  
suitable/

suitable extent. The difficulty was in regard to people who turned the job down because they said the wage was not satisfactory. The suggestion that everyone that goes back from here is suffering in India is more than exaggeration, it is a complete perversion of the truth.

SIR GEOFFREY CORBETT: Yesterday our Delegation put forward a statement in which we suggested that it might be profitable to discuss what the future policy in regard to Indians in the Transvaal should be, and that when the policy was determined the law and administration might be harmonised. We put forward as a basis for discussion our suggestion that the policy might be to allow Indians in the Transvaal facilities for residence and trade and for owning and leasing property without segregation, and you on your side said that your policy might be taken as embodied in the Report of the Select Committee. I think myself there was an inclination to regard these two policies as being mutually inconsistent, and I feel that we should make a serious attempt now to see what the difference really is between the two policies and in how far they can be harmonised. I think our difficulty on this side has been to understand exactly what the intentions of the Select Committee were, and I think it would be very profitable if we could go through the more important points and ascertain exactly what the intention was. Now the policy which we suggest is to allow the Indians in the Transvaal facilities without segregation, and I would suggest that we consider how far that policy can be harmonised with the recommendations of the Select Committee. With regard to pages vii and viii of the Report of the Select Committee on the subject of exempted areas, embodied in section five of the Bill, had these exempted areas the intention of creating a condition of segregation? Are these areas in which Indians alone are allowed to own property? Are they "assigned" to Indians as in the Report, or as in the Bill merely areas which are exempted from the restrictions

of/

of the existing law, areas in which other communities to which these restrictions do not apply are equally capable of holding property?

THE CHAIRMAN: At the same time it is not correct that this particular part of the Bill lays down the general policy for the Transvaal or even the general policy for the Witwatersrand. As far as I remember the point was brought out in the Select Committee that under the Act of 1885 facilities are given to Indians in all centres where under that Act an area has been set aside for occupation by Asiatics to own fixed property. But subsequent to that the Gold Law was passed and the whole of the Witwatersrand being proclaimed land was taken out of that and it was definitely laid down that no Asiatic - or no non-European - can occupy proclaimed land, much less own fixed property. Now on the Witwatersrand we have got a large number of Indian traders who were there. The idea is that they occupy the land illegally and at some or other time they will be required to close their business, and what is to become of these people. We thought we should amend the Gold Law in so far in their favour to meet their special case and allow them on the Witwatersrand areas more or less on the lines of the Act of 1885 as far as the ownership of fixed property is concerned: that facilities must be given by municipalities and in certain parts of the Witwatersrand they not only have facilities for trading but for owning fixed property. It is really an amendment of the existing law in their favour.

SIR GEOFFREY CORBETT: To that extent your policy is entirely in accordance with our policy, but would it be an impertinence to ask in what kind of areas you propose to relax restrictions? Is it proposed to have a general eviction from the streets they now occupy? The Lange Commission went into this matter and suggested, for instance, in the case of Potchefstroom where the one end of the street was at present entirely European shops and the other end was entirely Indian shops, that the right should be given to Indians in

that/

that street where they were already in occupation. Would it be your intention to apply the law in that way to create exemptions in areas where Indians are now largely trading, or would it be your intention, to close down those areas and make them go somewhere else?

THE CHAIRMAN: That is a matter for further investigation. It is difficult for a Select Committee to go so far as to say it must be this or that part. That is a matter that must primarily be discussed with the local authority. On these lines we thought we would proceed if the Act is passed. I think you will see in the Bill that large powers are given to the Minister.

SIR GEOFFREY CORBETT: And with regard to facilities, will they be allowed to trade in an area in which they now predominantly trade?

THE CHAIRMAN: That will certainly be considered.

SIR DARCY LINDSAY: Take Market Street, Johannesburg, that is predominantly Indian.

THE CHAIRMAN: In our Bill Indians living in a particular quarter legally but cannot own fixed property can come into the position of owning fixed property there.

SIR GEOFFREY CORBETT: The measure has been misrepresented as a measure for segregation whereas the intention merely is to give trade facilities.

THE CHAIRMAN: That was a measure of relief.

SIR GEOFFREY CORBETT: That clears up that point.

THE CHAIRMAN: I think there was misunderstanding about that.

SIR GEOFFREY CORBETT: Arising out of that point, what is the intention of sub-section (5) of Clause 5 of the Bill? It says "No land may be included in an exempted area in terms of this section if the title deed of that land contains any servitude or condition prohibiting its transfer to or occupation by an Asiatic, unless the owner of every piece of land in whose favour such servitude or condition is intended to operate, signifies his consent in

writing/

writing to such inclusion". I am not quite clear what the precise implication of that sub-clause is. How would it apply to Market street if there were three or four stands held in freehold with anti-Asiatic clauses under the Townships Act, and the owners of these stands did not agree that these stands should be included in the exempted area? Would they become islands in an exempted area, or would it mean possibly that notifying Market Street as an exempted area would be destroyed by this objection?

MR. VENN: I think it is intended it would be destroyed. It is quite clear from this sub-section that no land may be included in exempted areas in terms of this section if the owner objects, or unless he gives his consent in writing to such inclusion. If he objects I do not see how you can include it.

SIR GEOFFREY CORBETT: It does not mean it cannot be an island in an exempted area. Does it mean that Market Street shall not be an exempted area merely because one owner objects?

THE HON. P. DUNCAN: There are a number of townships laid out by owners, and lots have been sold by these holders on conditions to title. Now where these conditions include a prohibition against Asiatics or natives every man who has bought land in this township under these conditions would have the right to object if that condition were violated.

THE HON. O. PIROW: In practice you would not have a street which has Indian occupation illegally and at the same time one or two stands. They are not isolated stands dotted over Johannesburg, they are all portions of townships.

SIR KURMA REDDI: We examined Market Street and Newtown. I think that the freeholders had this clause in their deeds, but there are houses there in possession of Europeans only as leasehold and not yet converted into freehold with the result that the anti-Asiatic clause does not attach to them. If you examine house by house you will find 2 or 3 with this clause and then 2 or 3 which are

leasehold/



leasehold. Mr. Baring will be able to give us some information in regard to this point.

THE HON. E. BARING: I got some figures from Mr. Stewart, the Registrar of Mining Titles in regard to Government and semi-Government stands. I drew up a list of these in Johannesburg, Jeppe, Turffontein, Roodepoort and Krugersdorp, and asked him which of these had been converted into freehold and which were still leasehold. The figures he gave me are these, which can be taken as very nearly correct :-

In Turffontein out of 22 stands none are converted into freehold.

In Roodepoort out of 20 stands in Indian occupation, 2 were converted into freehold.

In Krugersdorp out of 16 stands in Indian occupation, 12 were converted into freehold.

In Jeppe out of 51 stands in Indian occupation, 20 were converted into freehold.

In Johannesburg out of 63 stands in Indian occupation, 6 were converted into freehold.

THE HON. O. PIROW: That refers exclusively to Government or semi-Government townships?

THE HON. E. BARING: Yes.

THE HON. O. PIROW: In no single instance was it a private township?

THE HON. E. BARING: These Indian trading areas are actually in Government or semi-Government townships.

SIR GEOFFREY CORBETT: In this street at Turffontein, are the 22 stands of Indians all leasehold under the Townships Act? In the street in which these shops are, would there be other stands not occupied by Indians in which the leasehold had been converted?

THE HON. E. BARING: I imagine so.

SIR GEOFFREY CORBETT: Would not the effect of this clause, as Mr. Venn has interpreted it, be to prevent the inclusion of that street in Turffontein in an exempted area?

THE HON. O. PIROW: Legally it would not. It is quite possible

to/

to have islands of two or three stands in the Asiatic area, but whether any Government would do it is an entirely different matter.

SIR GEOFFREY CORBETT: Do you contemplate possible occupation of stands by Europeans in these exempted areas, or do you consider that these areas should be reserved entirely, that is that they should be segregation areas?

THE HON. O. PIROW: I was merely correcting what seemed to be an erroneous legal interpretation; the other question is one of Government policy which the Chairman is best able to dispose of.

SIR GEOFFREY CORBETT: These islands would be possible in law?

THE HON. O. PIROW: Yes.

SIR GEOFFREY CORBETT: This sub-clause does not prohibit in terms the inclusion of that street in an exempted area?

THE HON. O. PIROW: It would not exclude inclusion in respect of stands where there is no objection, but it would prevent inclusion in respect of stands where there is objection. The result might be a European Island in such area, but I am not prepared to express the opinion whether the Government would do anything like that.

SIR GEOFFREY CORBETT: That is our trouble, if this is going to mean that a street in which Indians now predominate cannot be exempted merely because one or two stands in that street come under the Asiatic clause.

THE CHAIRMAN: What are the possibilities of expropriation in that case; or the municipality could agree to facilitate matters.

THE HON. O. PIROW: The Government has no general right of expropriation simply because it wants certain ground. It can expropriate for irrigation and for specific purposes, but would have no right to expropriate merely to get round this particular exemption in favour of European stand holders. I do not think that that can be done by any general expropriation on the part of the Government, and if we had the power I do not think the Courts would/

would allow any such right.

SIR GEOFFREY CORBETT: Is it a concession to Indians to occupy property in certain streets? We are opposed to the idea that it is a condition precedent to this that all Europeans can be expropriated or turned out of that street or area because that is a certain kind of segregation.

THE HON. O. PIROW: You stress this : that the Indians there illegally should not be prejudiced by the Europeans there legally.

THE HON. P. DUNCAN: The condition does not operate in favour of the European unless it is in his title deed as a servitude.

MR. BAJPAI: The Clause as it stands is not limited to private townships, but includes Government and semi-Government townships as well.

SIR GEOFFREY CORBETT: There are a few other subsidiary points that we can go into at some other time. But this question of segregation, expressed or implied, is fundamental. Until that point is cleared up, it is not worth while discussing subsidiary points.

---

The Conference adjourned at 11.30 a.m. until  
tomorrow at 9.30 a.m.

EIGHTH DAY

SECRET

PROCEEDINGS OF CONFERENCE

between

Representatives of

THE GOVERNMENT OF INDIA

and

Representatives of

THE GOVERNMENT OF THE UNION OF SOUTH AFRICA.

CAPE TOWN, Wednesday, 27th January, 1932.

PROCEEDINGS OF CONFERENCE BETWEEN REPRESENTATIVES OF THE  
GOVERNMENT OF INDIA AND REPRESENTATIVES OF THE GOVERNMENT  
OF THE UNION OF SOUTH AFRICA.

---

Cape Town, Wednesday, 27th January, 1932.

PRESENT:

Representing the Government of India:

The Hon. Khan Bahadur Mian Sir Fazl-i-Husain, K.C., I.E.,  
K.F., Member of the Governor-General's Executive Committee  
(Leader of the Delegation).

The Rt. Hon. V. S. Srinivasa Sastri, P.C., C.H.

Sir Geoffrey Corbett, K.B.E., C.I.E., I.C.S.

Mrs Sarojini Naidu.

Sir Darcy Lindsay, Kt., C.B.E.

Sir Kurma Reddi, Kt. (Agent General for India in the  
Union of South Africa.)

Mr G. S. Bajpai, C.I.E., C.B.E., I.C.S., (Secretary to the  
Indian Delegation).

Representing the Government of the Union of South Africa.

Dr. the Hon. D. F. Malan, M.P., (Minister of the Interior,  
Education and Public Health) Chairman of the Conference.

The Hon. O. Pirow, K.C., M.P. (Minister of Justice).

The Hon. E. G. Jansen, M.P. (Minister of Native Affairs).

The Hon. P. Duncan, K.C., C.M.G., M.P.

Mr G. H. Nicholls, M.P.

Officials attending the Conference.

The Hon. E. Baring, I.C.S. (Secretary to the Agent General  
for India in the Union of South Africa) Assistant  
Secretary to the Indian Delegation.

Mr P. I. Hoogenhout, (Secretary for the Interior) Secretary  
to the Union Delegation

Mr H. N. Venn (Commissioner for Immigration and Indian  
affairs).

Mr F. C. Van Blerk (Clerk in the Department of the Interior).

The Conference met at 9.30 a.m.

THE CHAIRMAN: I think we can carry our discussions this morning a stage further. I may just say that we on our side have considered further, in the light of the discussions we have had, the proposal with regard to settlement of Indians from South Africa overseas outside India, and we have come to the conclusion that we as a Delegation can undertake to recommend a joint investigation by the Government of the Union and the Government of India in this connection. Now, what we feel is that the possible supplementing in this way of the assisted emigration scheme to India does not for the moment give us any very definite well defined advantage - it is still very much in the air; the advantages or results of that suggested investigation are problematic. Besides that it is quite clear to us from the discussions that there is a certain amount of uncertainty as to the attitude of the Indian community in South Africa in regard to the assisted emigration scheme to India. There will remain that uncertainty whatever we say or do and I take it there will be a large measure of uncertainty with regard to any scheme for overseas settlement of Indians, whether in India or outside India. For that reason it is very difficult for us to agree that the joint investigation which we hope may be undertaken by the Government of India and our Government can be included in a formal agreement between the two Governments, but what we certainly feel is this, that such an action may be a very suitable and very apt expression of our continued friendly relations and co-operation between the two Governments and certainly it may be considered as an important part of any statement that we jointly may make after the Conference is concluded both here and in India.

Now with regard to the other question discussed by the Conference, namely, the Transvaal Asiatic Tenure (Amendment) Bill, I may first of all say that it seems to be clear from the discussions that we have had and from the legislation - the Acts in the Statute Book - that whatever the defects may be of the law that exists,

one thing in any case is quite clear and that is that it was the intention since 1908 that on proclaimed land, more especially on the Witwatersrand area, coloured persons shall not reside and shall not trade unless it be under circumstances which are well defined and laid down in the Act. That I think it is quite clear was the intention of the Legislature. Now I think it is also quite clear, and I think we would generally accept that in the present state of public opinion, that no Government would venture to approach Parliament to alter that intention of the law. I do not think that we can undertake that or that any Government could undertake that. I think that was mentioned in reports previously too, to approach Parliament and ask that the law in this respect be altered. I think it is also clear and I think we might be allowed to accept that on all sides after our discussion that it would be wrong or that it would be impossible in any case in view of all the circumstances for any Government to lay down definitely a policy with regard to this matter of non-enforcement of the law. I need not go further into that question except to say that I think that has been clear from our discussions that no Government could openly adopt such a policy. Now I think it is further clear from our discussions that we have to do in connection with this position on the Witwatersrand not merely with contraventions of the law on a large scale, but also with the other problem how to prevent such contraventions in the future and how properly to enforce the law in such a way that we do not get a repetition of what we have had before. I think the country expects it from us, especially having gone so far as we have done by way of enquiry and by way of proposed legislation, and it would now be impossible for the Government to stop there and leave matters as they are. The problem, therefore, resolves itself into the closing of loopholes by which the intentions of the existing laws can be evaded and the creation further - and that is a very important point - of the necessary machinery by which the law can be enforced. That shows  
the/

the necessity in any case for the Government, on the recommendation of the Select Committee, to proceed with legislation in any case. Now our discussion, I think, has further clearly brought out that in what is proposed in the Bill which has been introduced into Parliament there is really no ground for the contention that we have here introduced a new departure as far as policy is concerned in the Transvaal. We do not lay down any new policy; we merely, in the Bill, confine ourselves to the laws as they existed before, to the intention of those laws and to the enforcement of those laws. No new departure is laid down as has been contended - or fear of that nature has been expressed in any case. It was intended by the Select Committee in their report and in the Bill which they submitted to Parliament to provide in a certain measure as far as they thought that they could do it for those Indians that might be dislocated because they occupied the stands illegally and instead of ejecting them from the Witwatersrand altogether to make it possible for them to remain on the Witwatersrand and to get facilities for residence and for trade. In other words to provide measures to legalise the position of those Indians - not on those stands which they occupy illegally now, but on other stands which may be provided for them. Of course, in that case it would be voluntary for the Indians concerned to avail themselves of those opportunities or not; it is quite voluntary. Now, a question in connection with that has arisen from your side and Sir Geoffrey Corbett has asked, well does that mean that all these Indians who are dislocated will be placed in what is generally called a location - in an Indian Asiatic reserve and that no Europeans will be allowed to live there and such Indians would not be allowed to live in any locality where there are still Europeans allowed to live. In other words, whether facilities must necessarily be given to these Indians in such a way that it involves the principle of segregation. I think that was your question/



question, Sir Geoffrey? Now with regard to that my reply would be this: Not necessarily. It certainly was the intention and is the intention in the Bill to make provision in that way, but under the existing laws I think that is not necessarily the only provision that could be made because under the existing law the Mining Commissioner on the Witwatersrand has some power in assigning areas, be it locations, be it compounds, be it, I take it, existing wards or streets in which Asiatics may reside, and in introducing this Bill it was not our intention, and that is certainly not the effect of the Bill that we close an opening. We do not take away any right that previous laws have given to the Mining Commissioner in this respect. In other words, the position is this, that as the Bill stands now, taken together with the law as it stands now, it seems to me clear that provision could be made for these Indians, residing now illegally on stands on the Witwatersrand, either to be provided for in an area especially set aside for them under the Bill which we propose to deal with in Parliament and which has been introduced or under the powers of the Mining Commissioner existing under the Gold Law to make provision for them, say, in streets like Market Street, or apart from Market Street in areas where there are now mostly Indians and the Europeans living there, I take it, not being many would not be necessarily displaced. That seems to me to be the legal position. Now, in effect this would mean that a number of Indians - I do not know what the percentage would be - occupying stands illegally might be provided for in such a way that they might continue to exercise their trading rights which they possessed on the stands which they now occupy if those stands are or come to be situated in such areas as may either be included in the area or areas set aside under the provisions of the Bill or if they are included in such streets or localities or wards which, under the powers of the Mining Commissioner, may be assigned to Asiatics for occupation. That seems to me

to/

to be the legal position. In addition to what I have said I think I may here emphasise again what I have said on a previous occasion, namely, that this Bill is not in the full sense of the word a Government measure. The whole position regarding Asiatics on the Witwatersrand was really referred to Parliament to deal with and Parliament appointed a Select Committee to go into the whole matter, and the Bill, as it came from the Select Committee, is a Select Committee Bill and therefore it belongs, I take it, as much to the one side of the House as to the other side of the House, and I have always laid down this principle which I think is a very sound one especially when we think of the necessity of keeping the Indian Question in South Africa out of the arena of party politics. I always emphasise the necessity of taking no step with regard to this matter in Parliament without the moral support of the Select Committee composed, as it was, by members from both sides of the House. Personally, as the Minister responsible and who has to pilot the Bill through Parliament I am in this position. An undertaking was given by me to the House that the Bill would be re-introduced in an unaltered form and any amendments that were to be made must be made in a Committee of the House. That undertaking lays upon me the responsibility of re-introducing the Bill and re-introducing it in the form in which it first appeared on the Table of the House, but in this connection what I personally feel is this, that if there are any suggestions that the Indian Delegation would like to make with regard to this Bill - any alterations that the Indian Delegation thinks might be considered anew - we would give you every possible opportunity to place your point of view before us, and personally I would undertake, both as Chairman of the Select Committee that dealt with the subject and as the Minister concerned who must pilot this measure through Parliament, to place these points of view that you put in connection with this Bill before the members who served on the Select Committee. I take it this would have to

be done in an informal way as we cannot re-constitute the Select Committee unless for a special reason. I would undertake to discuss the points you put forward in an informal way with the members who were on the Select Committee and if I get the moral support of the Select Committee or of the majority of the members of the Select Committee I would then take it upon myself to move in Parliament any amendments which may or may not go very far to meet your point of view. That is merely a suggestion which I make.

SIR GEOFFREY CORBETT: Mr Chairman, you this morning made the basis of our discussions the intention of the Gold Law of 1908, which you, quite rightly to my mind, suggested should be the governing factor and must be the governing factor in any action which is taken now. This makes it a matter of vital importance to get back to 1908 and ascertain precisely what the intention of the Gold Law was, or rather what the intention of the Legislature was when it passed the Gold Law in 1908. It is rather difficult to get back to that after 24 years of controversy, and then in cold blood ascertain what the meaning really was. Mr Duncan was perhaps a member of the Transvaal Legislature at the time the Gold Law was passed and he may be able to help us.

THE HON. P. DUNCAN: I was not a member.

SIR GEOFFREY CORBETT: Well, in point of fact, by a curious stroke of fortune we have on published record, in the Report of your Asiatic Enquiry Commission of 1920, a specific and precise statement by the Attorney-General of the Transvaal, Mr Jacob de Villiers, as to what the intention of the Gold Law really was. It is so important that I think, with your permission, Sir, I ought to read it. In paragraph 66 of the Lange Commission's Report you will find:-

"On the 13th May, 1908, before the Bill was passed, the Under Secretary for the Colonies was asked in the House of Commons whether 'the effect of the proposed new law will be to deprive coloured persons, including British Indians, of the right which they now possess to trade or reside in mining districts, and compel them to remove for both trade and residence into

compounds/

compounds, locations and bazaars'. The matter was referred to the Transvaal Government, and the Attorney General, Mr Jacob de Villiers, submitted a report dated the 3rd October, 1908, the Act having been assented to by the Governor of the Transvaal on the 22nd August and promulgated on the 2nd September, 1908. The Attorney-General concludes his Report as follows: ' Before concluding this report which, owing to the importance and difficulties of the subject, has exceeded the usual length, the position of coloured persons under the Act calls for some explanation, especially as the special disabilities and restrictions put upon these persons by the Act has necessitated its reservation for the special consideration of His Majesty. In every previous mineral law of the Transvaal, the right to acquire mining title or privileges incidental thereto has specially been withheld from persons who do not belong entirely to European races, and, certainly, public sentiment in this Colony would not tolerate a departure from the practice of withholding such a right from coloured persons. The Act, therefore, throughout specifically provides for the issue of prospecting permits, prospecting and diggers' licences, stand licences and other privileges to white persons only: but no right or privilege which a coloured person has at the present time is taken away by the new Act. Where, however, the existing law is not particularly clear on any matter regarding the disabilities of coloured persons under it, and the obvious intention was to impose such disabilities, the new Act endeavours to remove all possibility of controversy. The native owner and occupier of land can therefore dispose of his mineral rights, but will not be able to obtain a mining title while, under section 24, the native chief and tribe occupying a native reserve or location will retain all the rights which he has to-day under article 49 of Law 15 of 1898. These rights do not consist of a share in the minerals on his land but of compensation for the share he would obtain if he were a white person". Now we come to section 131. "Section 131, which, before the Bill was introduced into Parliament, formed the subject of questions in the English House of Commons, and of despatches from the Secretary of State to the Governor, has been amended in Committee so as to safeguard any rights which a coloured person may at the present time have of occupying land in mining areas. But, as a matter of sound police and sanitary legislation, the power to regulate the residence of coloured persons in the populous mining areas of the Witwatersrand is most essential. By the legislation passed under the Crown Colony Administration the residence of such persons inside municipalities is confined to the bazaars and locations set apart by the Town Councils; the coloured mine employes have always as a matter of convenience been housed in special quarters provided by their employers. But there are parts of the Witwatersrand which are not within municipalities, and it is important in the interests of public health, morality and good order, that unauthorised and unsupervised congregations of coloured persons - many of them idlers and loafers - should not be allowed to exist so as to be a danger and a nuisance to the community".

There, Mr. Chairman, you have it in very clear terms that the object of section 131 of the Gold Law was to give power to the Government to prevent congregations of idlers and loafers in  
places/

places outside municipalities. I do submit that there is nothing there which would suggest that the intention of the Gold Law was to prohibit Indians from trading anywhere on proclaimed land. And, as a matter of fact, the law did make specific provision for such cases. To go on with paragraph 67 of the Report

"The Colonial Secretary, in a telegram dated 11th December, 1908, noted the assurance that no right or privilege which a coloured person then had was taken away by the new Gold Law. But he was not satisfied that the new law might not 'deprive those coloured persons who have not actually acquired vested rights on gold fields of power to acquire rights which were open to them before' i.e., under the Gold Law of 1898; and he asked for a further explanation. On receiving a further assurance, in the Governor's telegram dated the 17th December, 1908, that section 130 of the new law 'carries out the spirit of Article 133 of the Gold Law of 1898' the Secretary of State replied on the 28th December, 1908, that His Majesty would not be advised to exercise his power of disallowance. In conveying this intimation, he expressly noted three points:- (1) That section 131 (3) safeguarded any rights which coloured persons might at that time have of occupying land in mining areas; (2) the assurance of the Attorney-General that no right or privilege which a coloured person had at that time, was taken away; (3) that by the use of the words 'other places' in section 131 (1), the powers vested in the Mining Commissioner enabled him in the future to exempt coloured persons, including Asiatics of superior class, from being required to live in bazaars, locations or compounds".

That is the position as it stood in 1908. Then we have to consider what the policy of the Government was in giving effect to this Act. We have been told, and it has been frequently stated, that the present position has grown up merely through the laxity of the Government or of its officials. It has always seemed to me to be putting it a little high to believe that for 24 years the Government and their officials should have been lax in such an important matter. What actually happened was this. In 1911 in Tamblin's case action was taken under section 130 of the Gold Law against a European for leasing his stand to an Asiatic, outside a township. The Government lost that case and then in the words of the Lange Commission's Report, paragraph 72:-

"It appears that in consequence of the great dissatisfaction caused by this legislation amongst the Indian community, and the litigation to which it led, no steps were taken by the Government to enforce its provisions; and the Revenue Officers continued to issue to Indians licences to trade on

premises/

premises on proclaimed land without discrimination".

Again, if you go to the evidence given by the Mining Commissioner of Boksburg before the Select Committee on Disabilities of British Indians in the Transvaal which was appointed in 1919, you will find that he said:-

"I think the policy in the past has been that the existence of townships on proclaimed ground took the traders in such townships out of the provisions of sections 130 and 131. I think that has been the reason why sections 130 and 131 have not been enforced". (Q. 15, on page 19 of Select Committee's evidence).

Then in reply to a question put by you, Mr. Duncan, the Mining Commissioner of Boksburg said:-

"As far as I am aware section 130 of the Gold Law has only occasionally been invoked in regard to traders on mining ground, Indians or others, but not in townships. There is no reason at all why it should have been treated almost as a dead letter, except as a matter of policy". (Q. 18, on page 21 of Select Committee's evidence).

I do think, if one goes back and examines the intention of the Gold Law as stated by the Attorney-General of the Transvaal at the time and the subsequent policy of the Government, one does feel that the Government during all that time did administer the Gold Law in the spirit in which it was passed. The Government carried out the intention of the Legislature when it passed that law. Where, if I may say so, the Government failed perhaps in carrying out the law was this. The Mining Commissioner permitted this occupation tacitly, but he did not positively give permission, and hence all the difficulty has arisen. And what I would suggest now is that the whole situation could be met if the Government continues now to administer the law in the spirit in which it was passed by the Transvaal Legislature in 1908, and actively instead of passively authorises the Mining Commissioner to take action under the powers conferred upon him by section 131 of the Gold Law, in the way you have now suggested.

MR. HOOGENHOUT: Did not Act No. 37 of 1919 lay down a different policy?

SIR/

SIR GEOFFREY CORBETT: Act No. 37 of 1919, as you know, arose from an entirely unexpected situation when the Municipality of Krugersdorp in an undefended suit against T. W. Beckett & Co., established a locus standi to move under the Gold Law which, we have it on record was never intended by the Government. In a subsequent defended case, I understand, the Courts have held that the municipalities have no such locus standi. The Indians, without testing the decision of the Court and on legal advice, petitioned Parliament for relief against action by the municipalities and the Act of 1919 was passed merely to say that the Gold Law of 1908 did not apply to existing businesses; that is, that municipalities were debarred from moving against established businesses. The policy of the Government continued as before.

THE HON. O. PIROW: May I suggest, Mr. Chairman, that as we have now heard the complete exposition by Sir Geoffrey Corbett of the Indian Delegation's point of view in connection with the Gold Law you offer to lay before the members who formed the Select Committee of 1930 the suggestions which the Indian Delegation may seem fit to make. We have so far only a statement which obviously is not intended to go before the members of that Select Committee. We have the oral explanation of one member. Would it not be fair for the Indian Delegation to consider <sup>putting</sup> /other points for submission to the members of the Select Committee in writing?

THE HON. SIR FAZL-I-HUSAIN: Is it, Mr. Chairman, intended that this Conference can come to no conclusions even in the matter of making recommendations for the Select Committee?

THE CHAIRMAN: I explained before it is made on the principle to which I adhered before. Nothing can be done by way of amending the legislation which has been proposed otherwise than with the moral support of the members who comprised the Select Committee, and of course if I or Mr. Duncan should, as members of the Conference, agree to certain amendments then we are committed as far

as/

as the Select Committee is concerned.

THE HON. P. DUNCAN: Would not that course be open to certain objections if we as a Conference put forward to the Select Committee or to Parliament suggested amendments to the Bill? Would not there in that event be complaints from other parties who appeared before the Select Committee and gave evidence just as the Indians have that they have not been heard by the Conference? Would these parties not complain that they should have been heard before this was done? If what the Chairman suggests is done, namely, that we hear what you suggest and put before us and then the Minister, the person responsible for the Bill, discuss, possibly informally, with the Select Committee members and see how far any amendments he is willing to make in the Bill to carry out the suggestions you may make will meet with their approval. I think if a formal recommendation regarding the Bill were made by the Conference you would have demands from other parties to be heard as well.

THE HON. O. PIROW: Is there not another objection? I may misunderstand the position entirely but I was of opinion that as far as this portion of the agenda - the Transvaal Asiatic Tenure Bill - was concerned it was not a question of discussing the details of the Bill and arriving at conclusions but merely a matter of giving the Indian Delegation an opportunity of giving their views on the matter and carrying that opportunity further by means of questions and answers to explain their point of view because as the Chairman has explained on various occasions his hands in connection with this Bill, as far as the introduction of it is concerned, are absolutely tied.

SIR GEOFFREY CORBETT: First of all on the point suggested by Mr. Pirow I feel that it is hardly the business of this Delegation to prepare memorandums for submission to a Select Committee of your House of Parliament. What I do feel is that there can be

no/



no possible objection from our side, and it is entirely a matter for you to consider whether you wish to ascertain the views of your Select Committee on any points we put before you before this Conference comes to any decision, but I do think that this Delegation which has come some distance at considerable inconvenience has not come merely to give evidence before a Select Committee either verbally or in writing. We have come here to confer with representatives of the Government.

THE CHAIRMAN: I do not think you should put it in this way that you prepare a memorandum or commit to writing your objections or your wishes with regard to this Bill. That would be evidence before the Select Committee. First of all, I take it, the Select Committee would not be re-constituted. The course I have suggested would be merely an informal consultation with the members who comprised the Select Committee. I as the Chairman of that Select Committee and as the Minister responsible in Parliament for the Bill would merely have an informal consultation with the members of the Committee. Further, it would certainly not go before the Select Committee in that form, namely, that this is the memorandum submitted by the Indian Delegation and it is submitted to the members of the Select Committee. I take it it would be a consultation on my part - and I associate Mr. Duncan of course because he was also a member of that Select Committee - a consultation on our part with you on this matter and when you have informed us what your wishes and points of view are we could discuss the whole question very thoroughly and then we could go to the Select Committee. You may convince us with regard to certain amendments that may be desirable and if you convince us we would go and have an informal discussion in regard to the matter with the members of the Select Committee and see how far we can carry them with us.

SIR GEOFFREY CORBETT: There can be no objection to that course being followed, it is a very proper step. We appreciate, Mr.

Chairman/

Chairman, the necessity of carrying your Parliament with you. Just as you permitted us to consult the Indian leaders in this country in regard to emigration questions so we must permit you to consult your Parliament. We can have no possible objections to that. We cannot object if you take any steps you think necessary to ascertain responsible opinion on that matter. That is my personal feeling.

THE CHAIRMAN: I am rather afraid if anything comes before Parliament and it is said "This is the resolution of the Conference" it will raise serious objections and criticisms in Parliament that will go far to destroy the spirit of friendship and co-operation.

SIR GEOFFREY CORBETT: I entirely agree with Dr. Malan.

THE CHAIRMAN: So it is better if you put your point of view in regard to this Bill to us and you can leave us to see how we can carry the members of the Select Committee with us, and if we carry the Select Committee we have ground to go to Parliament.

SIR GEOFFREY CORBETT: I feel that that is a right and fruitful way of dealing with the matter.

THE HON. E. G. JANSEN: I am not clear as to whether the position taken up by the Indian Delegation is that they object to the whole of the Bill or whether they have certain amendments to it to suggest?

SIR GEOFFREY CORBETT: Our suggestion is that you proceed in the spirit in which the Gold Law of 1908 was passed. Whether any amendment of the Bill is required is a matter for you to decide.

THE HON. E. G. JANSEN: Is it your suggestion that we should drop the Bill?

SIR GEOFFREY CORBETT: That is a matter for you to decide. If you do not think the Bill is necessary, you would not take the trouble to put it through Parliament. In other respects the Bill may be very necessary.

THE CHAIRMAN: If this Bill is not passed by Parliament the position will be that these Indians on the Witwatersrand will be left unprotected. This condition cannot go on that the issue of licences is held up - it is being held up and has been held up for 2 years. At present there are Indians on the Witwatersrand who are simply trading without licences. Under the existing law the municipality is compelled to give licences to Indians to trade on land which they are not legally entitled to occupy for the reason that the municipality cannot go into the question before it issues the licence whether the land in respect of which the licence is desired is legally or illegally occupied by the applicant for the licence. If one knows that these Indians are not entitled to get licences because of the fact that they are in illegal occupation of the land one can understand what an agitation there will be amongst the European population on the Witwatersrand. They will say that everybody else must conform to the law and get licences in a legal way whereas the Indians can get licences in an illegal way. As far as I can see all these Indian traders are exposed to the danger that at any time a person interested can go to the Court and have them ejected, and, therefore, for the benefit of these Indian traders themselves there should be some legislation to cover them from this danger. I do not see how in the interests of these Indian traders they can do without legislation of some kind.

SIR GEOFFREY CORBETT: This difficulty has arisen because the Mining Commissioner has hitherto tacitly permitted occupation by these Indians. The suggestion was that in future he should be instructed actively to permit occupation on such stands as he may think fit.

THE CHAIRMAN: That is a point we will consider. If the Mining Commissioner exercises his right under the Gold Law with regard to, say, 50 per cent of these Indian traders, then as

far/

far as they are concerned the protection which they acquire in future legislation would not be necessary because their position would be legalised by the action of the Mining Commissioner which he would take legally under the Gold Law, but that is a point, as I say, which must still be considered, and it is certainly a point which we must consider with the Select Committee members.

SIR GEOFFREY CORBETT: Is it your suggestion, Mr. Chairman, that I and somebody else perhaps should discuss with you and Mr. Duncan the subsidiary matters dealt with in the Bill, or would you suggest that we go on discussing those matters in this Conference?

THE CHAIRMAN: That is for the Conference to decide. If the Conference would allow, say, Mr. Duncan and myself and two members from the Indian Delegation to discuss the matter as a sub-committee of the Conference we could report generally to the Conference later on.

THE HON. O. PIROW: I think, Mr. Chairman, that is an excellent suggestion, but I am still labouring under the difficulty I had. I still want to know for my own guidance whether we as a Conference can come to any conclusions regarding this Asiatic Tenure Bill. I may probably be hopelessly wrong but I was under the impression that the part of the agenda which had to do with the Asiatic Tenure Bill was merely put forward to enable the Indian Delegation to discharge what it felt to be a duty towards the local Indians, namely, to put before us their point of view and that point of view to be elucidated by question and answer at the sittings of the Conference. I was never under the impression that it was for this Conference to come to a definite conclusion which we may have to give to the public and to the world in general as the conclusion come to by the Conference and which we should then be bound, as members of that Conference, to put before the Select Committee.

THE CHAIRMAN: Is your conclusion then that it will not be necessary after such a consultation as has been suggested for a

report/

report to be laid before the Conference but that the matter be left to the Indian Delegation and, say, two members of our side, Mr. Duncan and myself because we were members of the Select Committee?

THE HON. O. PIROW: That seems a preferable course to adopt because whatever conclusion you come to you will come to it as a member of the Select Committee and as the responsible Minister in charge of the Bill, but as regards other members of the Conference - speaking for myself - we are not placed in the position that we have to come to a definite conclusion on the subject.

THE HON. P. DUNCAN: I think that would be a better course to adopt - that we should have an informal talk. I think the more informally we deal with the matter the better it will be because otherwise it would possibly give opportunity for agitation and trouble being raised if it was thought that this Conference, as a conference, had formally considered this Bill and come to conclusions regarding it behind the backs of other people. For these reasons I think the course that has been suggested by the Chairman should be adhered to, namely, that we hear what you wish to put before him as the Minister in charge of the Bill and that he then in consultation with the Select Committee members, after he has come to a decision as to which of those points he is prepared to consult the Select Committee members on, decide which of those points to take before Parliament. It may be that he may come to the conclusion that some of the points submitted by you are such that he will not as Minister in charge of the Bill take the responsibility of putting them before the Select Committee members. On other points he may be prepared to put before the members of the Select Committee and if the majority of the Select Committee members go with him he may say "I am prepared to move the amendments". I think we can leave it at that.

SIR KURMA REDDI: May I know if that would come to something

like/

like this, that so far as this Conference is concerned it is not within its proper, shall I say, legal jurisdiction to enter into the questions involved in the Transvaal Asiatic Tenure Bill and come to any agreement on those questions, but that some members representing both the parties to this Conference discuss those questions in an informal way to enable us to place our views in regard to the Bill before you. Would the course thus suggested not be the same as my coming to you, Mr. Chairman, in my capacity as the Agent General of the Government of India in South Africa and placing those views before you so that you may place them before the Select Committee. Does the procedure suggested differ in any way to my making representations to you as the Agent of the Government of India. What I would like to know clearly is whether this Conference has not, as one of its functions, the duty of discussing the Bill and coming to an agreement on points so that if you are agreed to any suggestions we may make, whether on details or on principles, you might be in a position to ask the House or the Select Committee to adopt them if you so wished.

THE CHAIRMAN: I should rather put the position like this, that the Conference feels with regard to this Bill that it is a question where the Delegation from India should deal rather directly with the Government. In taking this Bill through Parliament I as the responsible Minister of course represent the Government and I would not move anything in the House to amend the Bill unless I knew that it was approved of by the Government, but at the same time I stand there in Parliament not only as the Minister representing the Government in this Bill but also as the Chairman of the Select Committee and in piloting this Bill through Parliament I also represent the members of the Select Committee representing both parties in the House. Now I must combine these two as far as possible; I must act in both these capacities. I must keep in touch with the Government on the one hand and I must keep in touch with the  
other/

other parties on the other hand. The position I take up is this that I can proceed in whatever capacity in the House in connection with this Bill only if I can take the Select Committee along with me. Now so far as you are concerned it does really not make much difference whether the Conference thrashes out this matter with you or whether you thrash out the matter with the Government. Now in approaching me, and I take Mr. Duncan, as representing the other party of the House and as a member of the Select Committee, along with me in any deliberations we have with regard to this matter, it is really you dealing not with the Conference but dealing with the Government through myself.

MR. G. S. BAJPAI: It is not a question of jurisdiction; it is a question of tactics - the best way to represent our objections.

THE CHAIRMAN: For the Conference does not feel itself competent to deal with this matter and it is merely to give you the opportunity of doing the other thing, and that is dealing with the Government direct in this matter.

THE HON. SIR FAZL-I-HUSAIN: We are in your hands. If you decide that the Transvaal Asiatic Tenure Bill is not a subject to be treated as being on the agenda of the Conference we must agree. If you decide that such representations as I and my colleagues of the Indian Delegation have to make in regard to the Bill should be made to you personally, or to you and to Mr. Duncan, we have to do that, but we were under the impression that the subject of the Bill was a matter for the consideration of the Conference and we were also under the impression that there would be no objection to the Conference, if it were so able to do, arriving at conclusions, subject always to the over-riding power of the Government. We did feel that any recommendations made by the Conference would certainly in no sense over-ride the powers of the Select Committee, but we feel no serious objection to recommendations going before it. However, if you feel that this is not the right procedure to adopt and that it is better  
that/

that we adopt the course that you have suggested we will agree.

THE CHAIRMAN: Shall we rather put it like this, that this question shall be dealt with by a sub-committee of the Conference and then it is for the sub-committee of the Conference after having gone into the question, to decide whether they shall bring up the matter to Conference again or whether they shall recommend that the matter be left there and the negotiations that we have had cease. We must keep the door of the Conference open to the sub-committee if they have to bring the matter before the Conference again.

SIR GEOFFREY CORBETT: We are entirely in your hands. We agree with whatever you think right.

SIR DARCY LINDSAY: I think that is very satisfactory.

THE CHAIRMAN: We do not close the door to the sub-committee of coming to the Conference, but in the meantime the matter is referred to them, and it is for them in consultation with both sides to decide as to whether the matter should be brought up again. Is that agreed to? Shall we adjourn now? The Conference stands adjourned until further notice.

---

The Conference, at 10.30 a.m. adjourned sine die.



NINTH DAY.

SECRET.

PROCEEDINGS OF CONFERENCE

between

Representatives of

THE GOVERNMENT OF INDIA

and

Representatives of

THE GOVERNMENT OF THE UNION OF SOUTH AFRICA.

---

CAPETOWN, Thursday, 4th February, 1932.

PROCEEDINGS OF CONFERENCE BETWEEN REPRESENTATIVES OF THE  
GOVERNMENT OF INDIA AND REPRESENTATIVES OF THE GOVERNMENT  
OF THE UNION OF SOUTH AFRICA.

---

Cape Town, Thursday, 4th February, 1932.

PRESENT:

Representing the Government of India:

The Hon. Khan Bahadur Mian Sir Fazl-i-Husain, K.C., I.E., K.F.,  
Member of the Governor-General's Executive Committee  
(Leader of the Delegation).

The Rt. Hon. V. S. Srinivasa Sastri, P.C., C.H.

Sir Geoffrey Corbett, K.B.E., C.I.E., I.C.S.

Mrs. Sarojini Naidu.

Sir Darcy Lindsay, Kt., C.B.E.

Sir Kurma Reddi, Kt., (Agent General for India in the Union of  
South Africa).

Mr. G. S. Bajpai, C.I.E., C.B.E., I.C.S., (Secretary to the  
Indian Delegation).

Representing the Government of the Union of South Africa:

Dr. the Hon. D. F. Malan, M.P., (Minister of the Interior,  
Education and Public Health) Chairman of the Conference.

The Hon. O. Pirow, K.C., M.P., (Minister of Justice).

The Hon. E. G. Jansen, M.P., (Minister of Native Affairs).

The Hon. P. Duncan, K.C., C.M.G., M.P.

Mr. G. H. Nicholls, M.P.

Officials attending the Conference:

The Hon. E. Baring, I.C.S., (Secretary to the Agent General for  
India in the Union of South Africa) Assistant Secretary to  
the Indian Delegation.

Mr. P. I. Hoogenhout (Secretary for the Interior), Secretary to  
the Union Delegation.

Mr. H. N. Venn (Commissioner for Immigration and Indian Affairs).

Mr. F. C. van Blerk, (Clerk in the Department of the Interior).

---

The Conference met at 12 noon.

THE CHAIRMAN: The Conference will remember at our last meeting a sub-committee was asked to go into the question of the Asiatic Land Tenure Bill. The sub-committee consisted of Mr. Duncan and myself on the one side and Sir Geoffrey Corbett and Mr. Bajpai on the other side. It was left to the sub-committee to report to the full Conference if they thought it would be necessary. I may just say that we held meetings and discussed the various points brought forward very carefully. We had a careful discussion and we thought it was unnecessary to report the matter in detail to the Conference. Personally I have undertaken to consider all the points brought forward very carefully and to discuss the matter before the Bill is brought before the House again with the members of the Select Committee which originated the Bill. I shall lay before the Conference this morning a draft which has been the subject of conversations between the two delegations informally - it is the draft of a joint statement to be issued after the Conference. I think all the members have been supplied with copies of it. I will read it out to the Conference paragraph by paragraph. It is as follows:

1. In accordance with paragraph 7 of the Cape Town Agreement delegates of the Government of the Union of South Africa and of the Government of India met at Cape Town from January 12th to February, 4th, 1932, to consider the working of the Agreement and to exchange views as to any modifications that experience might suggest. The delegates had a full and frank discussion in the Conference, which was throughout marked by a spirit of cordiality and mutual goodwill.
2. Both Governments consider that the Cape Town Agreement has been a powerful influence in fostering friendly relations between them and that they should continue to co-operate in the common object of harmonising their respective interests in regard to Indians resident in the Union.
3. It was recognized that the possibilities of the Union's scheme of assisted emigration to India are now practically exhausted owing to the economic and climatic conditions of India as well as to the fact that 80 per cent of the Indian population of the Union are now South African born. As a consequence the possibilities of land settlement outside India, as already contemplated in paragraph 3 of the Agreement, have been further considered. The Government of India will co-operate with the Government of the Union in exploring the possibilities of a colonisation scheme for settling

Indians/

Indians, both from India and from South Africa in other countries. In this investigation, which should take place during the course of the present year, a representative of the Indian community in South Africa will, if they so desire be associated. As soon as the investigation has been completed the two Governments will consider the results of the enquiry.

4. No other modification of the Agreement is for the present considered necessary.

As a Conference we now formally agree to adopt this document.

If there is no objection then it becomes the formal decision of the Conference.

(No objection was offered).

In connection with this I think there are one or two points. First of all is the question as to the manner in which this shall be communicated to the public. Five years ago when we entered into the Cape Town Agreement we followed this procedure - that no public statement was made until the delegation from India had arrived in their country, so that if any question should arise there, or any criticism be made against the Agreement, they should be on the spot to reply if they think fit and to give all necessary information. Further, of course, I think it will be understood by the Conference that this statement will be subject to the formal approval of both Governments. We do not anticipate any difficulty but I think that is the correct procedure to follow, because we commit the Governments in this statement, and it is only right that the two Governments shall formally give their approval to the statement if they are to undertake to carry out the obligations which it creates. I suggest that we follow the same procedure again, and that a date be fixed later on for the statement to be made simultaneously in India and in South Africa after the two Governments have consulted with each other about it. There is something further in connection with this which our happy experience in the past prompts me to lay before the Conference; that is the question as to the relations with the press as far as that statement is concerned. Great harm is often done if the press merely

pick/

pick up all sorts of rumours in lobbies or in the streets or wherever they can find it. The result is of course that all sorts of agitations start and resolutions are passed all before an official statement is issued and before the two sides of the Conference are in the position to give correct information. What I did on the previous occasion with the consent of the Conference was to take the representatives of the press in our confidence and tell them everything and say to them "Well, now that you know everything we may expect from you that you will play the game". Now, if the press does not know the secret, the press is dangerous, but when they do know the secret, when it is deliberately told them, then I think they are very harmless. Of course I can only do it with the consent of the Conference, but I propose that we should follow the same procedure again. There may be other views with regard to this matter?

THE HON. SIR FAZL-I-HUSAIN: There is no objection to the same thing being done on this occasion as was done on the last occasion. There is no objection to our taking them into our confidence.

THE HON. P. DUNCAN: I agree with that view otherwise there will be all sorts of rumours. I think it is better to take them into our confidence.

THE CHAIRMAN: Is it understood that they publish nothing in regard to the Conference until the official statement is made by both Governments.

THE HON. O. PIROW: It is only right that we ask them because a certain amount of publication is bound to take place.

THE HON. SIR FAZL-I-HUSAIN: I must say the press have been very good during the past three weeks.

THE CHAIRMAN: On the previous occasion they offered to circularise all the newspapers with regard to the matter. They gave me to understand that there would be no objection. The difficulty always comes in where one newspaper competes with the other in getting news

early/

early, but when they are all bound there is no objection.

THE HON. SIR FAZL-I-HUSAIN: I think they will respond to this.

THE CHAIRMAN: I will sound them before I give away the secret.

THE HON. SIR FAZL-I-HUSAIN: My idea is that they will respond to the confidence you place in them.

THE CHAIRMAN: Is there anything else to be brought before the Conference?

THE HON. SIR FAZL-I-HUSAIN: As there is nothing else to be brought before the Conference I should like, Mr. Chairman, with your permission, on behalf of my deputation, to thank you for the very great kindness they have received at the hands of the Conference, from the Union Government and from the public of South Africa. Your hospitality has been most munificent and generous, and has thrown the well-known hospitality of the East into the shade. All your officials have been most kind and helpful in giving such information as my delegation wanted. The official you placed on the special duty of looking after us has been most painstaking and has discharged his duties remarkably well, as was done by everyone of your officials, and we must record our appreciation of all that has been done for us. Personally I was ill in a nursing home for a long period and I feel that I could not have been looked after better in my own country than I was looked after here. The kindness I received from you and members of the Conference helped to take away a great deal of the weariness and anxiety of my trouble. Once more on behalf of my delegation I have also to express very strong appreciation and very great regard for you as Chairman of our Conference. Our discussions were conducted in a spirit of good will, and we feel we are taking away with us a spirit of good will which it will be our pleasant duty to engender in our country towards this country. Whatever form the agreement may be in, it should really be based on good will, as it is good will alone which assures its success. We are all agreed that as long as that good-will/

will continue to be forthcoming the future of our friendly relations is assured.

THE CHAIRMAN: I may add a few concluding remarks, as Chairman, to what has been said by Sir Fazli. I may also add that as far as the outward conduct of our Conference is concerned we have a great deal to be thankful for, and there is much to which we can always in the future look back to with pleasure. I think that this Conference is about as representative a gathering as we can possibly get. I certainly think it is more representative than was the gathering which produced the Cape Town Agreement five years ago. We have representatives here, not only on one side but on both sides of the Conference, of the divergent views which we have in our respective countries, and we are very glad on our side that we have been able to associate with representatives of the Government and also with representatives of the opposition in Parliament. I do not know whether I may look upon one or other among you as being in the opposition in India, but in any case I think you have also been successful in associating with each other holding divergent views with regard to current politics in India. That being so I think we may say that that shows in 'so much larger a measure how much we have succeeded in having our discussions here in a calm atmosphere. I think I am correct in saying that throughout our discussions there has not been a single jarring note. I think I may go further than that and say that we are impressed on both sides that there has been right from the beginning until the end a very genuine attempt on both sides to see and understand each others standpoint and difficulties and as far as possible to meet each other. What we tried to do on both sides was to maintain the spirit of friendship and goodwill between the two countries which had already been established and if possible to increase that in the future, and to create an atmosphere in which the difficulties/

culties of the future as in the past will be much easier of solution than otherwise would have been the case. I may say in this connection that one thing is quite clear to all of us and it is this that had we met merely as individuals it would have been the easiest thing in the world to have come to an agreement, and to have come to an agreement right at the beginning. Unfortunately we met here not merely as individuals. We are the representatives of various countries. We are the representatives of peoples and therefore we have not to look only to our own sentiment and to our own convictions but we have to look to the effect on the masses both here and in India to what we as a Conference here agree upon and any difficulty there may have been is entirely due to that fact. If we had acted merely as individuals our task would have been very much easier. I may further say that possibly the impression may have been created during our formal and informal discussions that there was a tendency not to enlarge but to attenuate, that instead of enlarging our contacts with each other there is a tendency rather to shrink. If that is the case then the only intention of that is that we wish to maintain the golden thread - the golden link between the two countries - of good will and friendship. That was the only intention underlying that tendency which may have appeared on the surface. We want links between the two governments, links between the two countries, there is no doubt and never was any doubt in regard to that. The links made may be of two kinds, they may be massive or they may be thin. If the links are massive they tend to be nothing else than iron chains, but when they are thin there is every possibility that they may be golden chains. I think that if we have a chain between these two countries we would prefer the golden chain, even though it may be thin, to the more massive chain which may be an iron chain. I wish to say that there are links which have already been established

and/



and which have now been multiplied, and those are the links established by personal contact, by personal acquaintance and friendship. In modern political history very much more value is attached to the spoken word than to the official despatch. I think by renewing friendships which existed before and by multiplying our friendship we have established that golden link between South Africa and India which will certainly benefit us. I think after we have met and seen each others difficulties and after we have agreed, that the spirit of goodwill and cordiality will remain and be to the good of the country whatever happens in the future we can never think of you as enemies, and you on your side can never think of us in South Africa as monsters. Now my last word will be this: That South Africa and India are in a certain sense both young countries, not in years but young in spirit. It is only recently that we have attained in South Africa full nationhood. India is on the way to the attainment of full nationhood. India is still in the midst of great suffering. India is still passing through the pain which seems to be inseparable from the birth of any great nation. There is one thing that these two countries looking back in their history have in common and it is this: that our nationhood has been attained or is being attained only through harmonising a diversity of interests and beliefs and sentiments. We have done that in South Africa; you are doing that or attempting to do that in India. Now if as far as our internal affairs are concerned we have learned or are learning the lesson of harmonising diversity of interests and sentiments, and in that way we may progress, surely will it not be possible for these two countries who have learned or are learning that lesson, to approach each other in the same spirit and apply that which our respective histories have taught us, and look upon what we have achieved as the foundation upon which we can build in the future.

if/

If the friendship and if the cordiality between the two nations in their relations to each other have been established we can only look forward to the time when possibly in other directions that friendship and cordiality will be extended. We have been very glad and happy to have had you in South Africa, and we hope, Sir Fazli, that when you reach your own country again you will be completely restored in health, and I extend to you on behalf of the Conference our best wishes in that respect; in that I would include also Mr. Sastri and Sir Geoffrey Corbett, I do not know of any others - it will certainly not include Mrs. Naidu. Well we wish you Godspeed and a happy return to your homes.

I would suggest that the draft agreement handed round this morning be handed back to the Chairman, or to the leader of the Delegation on each side.

---

The Conference having completed its labours  
rose at 12.45 p.m.



their undertakings under Agreement of which non-success was due to unforeseen difficulties beyond their control and to fact that possibilities of assisted emigration must in nature of the case be limited and become increasingly so. He stated it to be opinion of Union Delegation that Agreement should now lapse unless it could be proved to be capable of amendment which would make it satisfactory and effective. Our reply will be given on Friday the 15th.

-----

no.7,  
Copy of telegram dated 16th January, 1932 from G.S. Bajpai, Esquire, C.I.E., C.B.E., I.C.S., Cape Town.

-----

Our reply to Malan's statement was made yesterday, dealing with scheme of assisted emigration to India. We pointed out that permanent cause such as difference of climate between the two countries which particularly affects South African born Indians would progressively reduce volume of flow to India and concurred in conclusion that future possibilities of scheme must become increasingly limited. As regards organisation by Union Government scheme of emigration to other countries we said that should this be contemplated we would be prepared to recommend to Government of India that they should cooperate in exploring possibilities.

2. We next reviewed what had been done by Union Government under Clause 2 of Agreement to enable local Indians to conform to Western standard of life and expressed gratitude for what had been done but hinted that progress hitherto had not been so rapid as may have been wished.

3. In conclusion we urged that to harmonise interests of our respective countries in respect of Indians resident in South Africa continuous and effective cooperation between our two Governments was necessary and must be assured until Indian community is able effectively to represent its interests to

Union

nion Government as part of body politic. The Cape Town Agreement had been powerful instrument in fostering friendly relations between two Governments and should not be lightly discarded but continued with any desirable modifications that may be mutually agreed. Should this happy consummation eventuate we promised to recommend to Government of India that appointment of Agent should be continued. Conference adjourned till Monday.

-----

Copy of telegram no.10 dated 20th January, 1932, from S.Bajpai, Esquire, C.I.E., C.B.E., I.C.S., Cape Town.

-----

Discussions on Monday and Tuesday centred round possibilities exploring outlet for South African Indians in other countries. Majority of Union delegates have been bitten by idea. We emphasised that exploration could be usefully undertaken only if local Indian leaders would co-operate and that this in turn would depend on their being freed from impression that dominant idea of assisted emigration not so much to afford them larger field for development elsewhere as to get rid of them. Union delegates appreciate importance of existing support of Indian leaders in South Africa for proposals exploring other outlets and have therefore authorised us to consult a selected few confidentially. If these leaders agree to be associated in such exploration Union Delegation will be quite willing to recommend to their Government that local Indians should be represented on any mission of enquiry that may eventually be decided on. We are continuing consultations with selected Indian leaders today.

-----

Telegram to Mr. G. S. Bajpai, C.I.E., C.B.E., I.C.S., Member-Secretary of the Government of India Delegation to South Africa, No. 268, dated the 23rd January, 1932.

.....

Your telegram 10, January 20th. Please telegraph further progress.

---

Telegram from Mr. G. S. Bajpai, C.I.E., C.B.E., I.C.S., Member-Secretary of the Government of India Delegation to South Africa, No. 11, dated the 23rd January, 1932.

....

As Indian community wanted more time to consider question of exploring other outlets Conference did not meet on Thursday and will resume sitting on Monday 25th instant.

---

Telegram to Mr. G. S. Bajpai, C.I.E., C.B.E., I.C.S., Member-Secretary of the Government of India Delegation to South Africa, No. 298, dated the 27th January, 1932.

.....

Your telegram 11, January 23rd. Government of India have received no information as to what happened at Conference on Monday 25th instant. They will be glad to receive telegraphic report of daily progress, if possible.

---

Telegram from Mr. G. S. Bajpai, C.I.E., C.B.E., I.C.S.,  
Member-Secretary of the Government of India Delegation to  
South Africa, No.13, dated the 27th January, 1932.

.....

Your telegram of the 23rd instant. Owing to delay in getting final views of Congress leaders statement regarding their cooperation in exploring other outlets for South African Indians was made by us only on 26th instant. Congress leaders agree to cooperate provided that they are not taken as supporting or acquiescing in scheme of assisted emigration to India but are considered free to dissuade persons from taking advantage of it if Government here continue scheme on organised scale. This was communicated to Union Delegation who are now considering position.

---

Telegram from Mr. G. S. Bajpai, C.I.E., C.B.E., I.C.S.,  
Member-Secretary of the Government of India Delegation to  
South Africa, No.14, dated the 27th January, 1932.

.....

On 25th instant Delegation presented views on Transvaal Asiatic Tourist Bill. Union Delegation had asked us to treat report of Select Committee as representing their views in the matter. Our statement therefore drew attention to main suggestions of Committee and to discrepancy that has so far existed between law and administration and invited Conference to ascertain if Government policy was represented by administration which had on the whole been lenient or by law which was restrictive. On question of policy which we suggested should be fully and frankly discussed by Conference we stated it to be our opinion that Indians should be given facilities to reside and trade in Transvaal and to own property without segregation. We also pointed out that proper authority to take executive action in regard to law involving question of title was Government and for determining validity of title only the Judiciary. Local bodies which are

neither impartial nor judicially competent can scarcely be entrusted with power to decide even as Courts in first instance whether persons are entitled to occupy particular premises. We eschewed further details at this stage as it seemed desirable to draw out Union Delegation on fundamental question of policy:

2. Statement was followed by general discussion which did not carry us beyond the stage that Select Committee Report represented view of Union Delegation. This morning therefore we concentrated on eliciting information as to how far if at all Draft Bill is consistent with our principles that Indians shall have facilities to occupy and own property without segregation.

---



Telegram from Mr. G. S. Bajpai, C.I.E., C.B.E., I.C.S.,  
Member-Secretary of the Government of India Delegation  
to South Africa, No. 15, dated the 28th January, 1932.

...

On January 27th Malan announced that his Delegation would be prepared to recommend to Union Government that Governments of India and <sup>of</sup> Union should co-operate in exploring possibility of Indian Settlements outside India. No mention of associating local Indian representative enquiry was made nor of future scheme of assisted emigration to India; whether this was deliberate or mere omission will probably appear later.

2. As regards future of Cape Town Agreement desire of Union Delegation to have a joint declaration of policy and of mutual goodwill and co-operation was hinted at but no definite step was suggested for preparing draft of such declaration.

3. On question of Transvaal Bill Malan said that in view of its origin and history measure will have to be re-introduced in Parliament in form in which it emerged from Select Committee. Union Delegation would however hear views and suggestions of Indian Delegation and he would communicate them informally to Members of Select Committee with a view to securing their support for possible amendment. On question whether policy of Union Government was to segregate Indians he said that though Select Committee may have intended to set apart new area exclusively for Indian occupation and residence his own view was that area such as on Market Street in Johannesburg where majority of Indians now trade and which probably includes large population of those unprotected by Act XXVII of 1919 could be made available for Indian occupation either by using relevant provision in new Bill or by action under Section 131 (1) of Act XXIV of 1908 which empowers Mining Commissioner to permit Asiatics to reside outside

bazzars, locations etc. He maintained that no departure from policy of 1908 legislation was intended. This gave us opening to point out segregation would be departure from such intention as interpreted in the light of assurance given by Devilliers to Secretary of State for the Colonies in 1908 (cf. para. 66 of Lange Commission Report) and by action of Government presumably as matter of policy in not enforcing gold law (see para. 72 of Lange Report and Evidence Hamel pages 17-19 Select Committee's Report 1919).

4. Discussion then reverted to question of how matter of Bill should be proceeded with. Majority of Union Delegation appeared to think that Conference would merely have views of Indian Delegation. Pirow and Duncan thought that getting resolution on subject from Conference might only serve to antagonise European public opinion and Parliament. Mr Lan's suggestion that Bill should be referred to Sub-Committee of Conference which would be free to bring up matter again before Conference or refer its conclusions to Union Government through Minister responsible was adopted. Mr Lan and Duncan will be Union representatives and we shall be represented by Corbett and Bajpai. Sub-Committee will be free to consider proposition that <sup>there</sup> should be no legislation though at present it does not seem likely that Union representatives will accept this Sub-Committee meeting tomorrow.

-----

Telegram from Mr. G. S. Bajpai, C.I.E., C.B.E., I.C.S., Member-Secretary of the Government of India Delegation to South Africa, No.17, dated the 1st February, 1932.

....

Following are points made by Indian representatives yesterday in Sub-Committee on Transvaal Bill:

Part I-A Occupation of proclaimed land by Asiatics.

( ) Doctor Milen had stated problem was to validate as far as possible existing contraventions of Gold Law and to prevent contravention in future. The Indian representatives suggested that both objects could be achieved by use of powers of Mining Commissioner under Section 131(1) of Act 35 of 1908. A register of occupation validated as well as of occupation permitted in future by ~~Minister~~ Mining Commissioner should be prepared and maintained up to date. They accepted Doctor Milen's suggestion that a Commission composed of one Judge and two other persons might be set up to examine each individual case of occupation on a given date and make proposals both as to the principles on which existing illegal occupation should be validated and permission given in future by Mining Commissioner to occupy land outside bazars, locations and mining compounds.

On question whether local bodies should have power to refuse trading licenses because applicant was not entitled to occupy premises on which business was to be carried on, Indian representatives were emphatic that local bodies should not become Courts of first instance for determining questions of title as provided in clause 9 of Bill. They suggested that licensing authority might communicate to Mining Commissioner name of applicant if it was not already on register of lawful Asiatic occupants maintained by that Officer when Mining Commissioner would be able to proceed against applicant if he were not entitled to occupy premises in respect of which license was required. This could be done by executive order. The other possibility was to pass legislation empowering licensing bodies to refuse a license unless applicant produced a certificate from Mining

Commissioner

Commissioner permitting him to occupy premises on which the business was to be conducted.

(b) Ownership of fixed property. Indian representatives suggested that where Indians were permitted to occupy proclaimed land, they should also be permitted to own it if this could be done under Law 3 of 1885. But if this could not be done under that Law and required legislation Indian representatives were of opinion that such legislation might be misrepresented as an attempt at SEGREGATION.

Part II. The <sup>next</sup> principle which Indian representatives pressed was that no addition should be made to already heavy list of restrictions to which Indians in Transvaal were subject. From this standpoint they proposed (1) that restrictions of Gold Law should not be extended to areas such as Springs and to de-proclaimed land (compare clauses 2(2) and 4 of Bill); (2) that definition of fixed property in proposed Section 2 of Act 37 of 1919 to include lease of property for ten years or longer was a serious new restriction; (3) that provisions of new Sections 7(2) and 8 proposed to be inserted in Act 37 of 1919 should be limited to proclaimed land since it was an innovation in Transvaal Law to restrict occupation by Asiatics of unproclaimed land.

As regards Springs Doctor Melan thought that it would be desirable to meet the wishes of local European community to treat it on same footing as other townships which were subject to restrictions embodied in Sections 130 and 131 of Gold Law of 1908 but existing acquired rights of Indians and of their successors in title should be protected in terms of Section 1 of Act 37 of 1919 and question whether other townships on proclaimed land now not subject to these restrictions should be similarly dealt with might be left to future. As regards de-proclaimed land he undertook to ascertain from his legal advisers whether requisite protection against depreciation of property which was main ground urged by Europeans for retention of anti-Asiatic restrictions after deproclamation would not be secured by anti-Asiatic clause in title deeds of freehold land.

Part III. It was stated by Doctor Melan to be intention of Bill that property acquired by Asiatics or Asiatic Companies up to My 1st, 1930 which was not protected by Act ~~36~~ 37 of 1919 should be protected by new Law. Indian representatives suggested that this might be done in a simpler manner than relevant clauses of Bill appeared to do, for it was important to avoid litigation arising from complexities of new Law.

2. Throughout discussion Indian Delegates emphasised importance of confining new legislation to minimum necessary to secure object mentioned by Doctor Melan namely validation as far as possible of existing illegalities and contraventions of law in future. Imposition of fresh disabilities they urged might endanger good feelings between India and South Africa.

3. Doctor Melan's intention is that points made by us should be placed informally before members of Select Committee which framed Bill. He thought it undesirable that he should give members impression that he was in any way committed to our suggestions but evidently intends to press majority of them. He does not expect to meet Members before we leave South Africa but has promised to communicate result of his efforts by time Delegation lands in Bombay. As our continued presence here might give Members of Select Committee impression that we were sitting on their heads and thus make them recalcitrant, we propose to adhere to our plan to leave on February 8th.

4. Conference now does not meet until Monday when probable business will be discussion of text of statement to be made in both countries simultaneously on date mutually agreed. Sir Fazl-i-Husain made it clear to Doctor Melan that statement could be made only after return to India and that whether it would ever be made would depend on ultimate fate of our representation regarding Transvaal Bill.

...

Telegram from Mr. G.S. Bajpai, C.I.E., C.B.E., I.C.S., Member-Secretary of the Government of India Delegation to South Africa, No. 19, dated Cape Town the 2nd February, 1932.

---

Week-end has been spent in conversations regarding scope and form of announcement stating conclusions of Conference. Last Saturday Malan told us his colleagues would prefer brief statement that Conference had adjourned for year to enable two Governments to pursue proposed exploration into possibilities of settling South African Indians abroad and that meanwhile existing agreement will continue. After discussion among ourselves we unanimously decided that any such announcement would render co-operation in proposed exploration impossible since Indian opinion both in India and here would interpret this as one-sided arrangement for enabling South Africa to discover other countries to which South African Indians might be sent so as to reduce their numbers to irreducible minimum. We therefore pressed that announcement should be comprehensive and should reaffirm such of main provisions of last agreement as distinct from annexure as would reassure opinion in India that uplift policy of Union Government stands, that two Governments are determined to co-operate in harmonising interests of their two countries in respect of Indians in South Africa and that continued maintenance of Agent in South Africa is to be outward symbol of their mutual good-will and friendship. As regards scheme of assisted emigration to India we urged that fact that its possibilities were exhausted should be brought out. To provide concrete basis for discussion we presented draft on these lines to Malan. Both Malan and Hertzog to whom draft was shown last night seemed inclined to accept it but final view of Union Delegation in matter will not be known until Malan has consulted them. Meanwhile Conference stands adjourned. Announcement will, if agreed, be made simultaneously in South Africa and India as on last occasion after two Governments have approved it. Our idea is that this should be done after our return to India as last time, provided that Government of India are satisfied with result of our representations regarding Transvaal Tenure Bill which Malan has promised to communicate by end of the month.

Telegram from Mr. G.3. Bajpai, C.I.E., C.B.E., I.C.S.,  
Member - Secretary of the Government of India Delegation to  
South Africa, No.20, dated Cape Town, 2nd (received 3rd)  
February, 1932.

.....

Dear the line.

My telegram No.19, February 1st. Following is text of  
draft statement of conclusion of Conference which after  
discussion with Hertzog and Malan last Sunday we communicated  
to Malan for consideration by his delegation. Begins.

(1) In accordance with para. No.7 of Cape Town Agreement  
Delegates of Government of the Union of South Africa and of  
the Government of India met at Cape Town from January 12th to  
January 17th to consider the working of Agreement and to  
exchange views as to any modifications that experience might  
suggest. The Delegates had a full and frank discussion in  
the Conference which was throughout marked by a spirit of  
cordiality and mutual goodwill.

(2) Both Governments consider that the Cape Town Agreement  
has been a powerful influence in fostering friendly relations  
between them and they will continue to co-operate in common  
object of harmonising their respective interests in regard  
to Indians resident in the Union.

(3) Both Governments continue to recognise the right of  
South Africa to use all just and legitimate means for the  
maintenance of western standards of life.

(4) The Government of the Union of South Africa still  
adheres to the principle that it is their duty to devise ways  
and means and to take all possible steps

Telegram from Mr. G. S. Bajpai, C.I.E., C.B.E., I.C.S.,  
Member - Secretary of the Government of India Delegation to  
South Africa, No. 20, dated Cape Town, 2nd (received 3rd)  
February, 1932.

.....

Clear the line.

My telegram No. 19, February 1st. Following is text of draft statement of conclusion of Conference which after discussion with Hertzog and Malan last Sunday we communicated to Malan for consideration by his delegation. Begins.

(1) In accordance with para. No. 7 of Cape Town Agreement Delegates of Government of the Union of South Africa and of the Government of India met at Cape Town from January 12th to January 19th to consider the working of Agreement and to exchange views as to any modifications that experience might suggest. The Delegates had a full and frank discussion in the Conference which was throughout marked by a spirit of cordiality and mutual goodwill.

(2) Both Governments consider that the Cape Town Agreement has been a powerful influence in fostering friendly relations between them and they will continue to co-operate in common object of harmonising their respective interests in regard to Indians resident in the Union.

(3) Both Governments continue to recognise the right of South Africa to use all just and legitimate means for the maintenance of western standards of life.

(4) The Government of the Union of South Africa still adheres to the principle that it is their duty to devise ways and means and to take all possible steps



steps for the uplifting of every section of their permanent population to the full extent of their capacity and opportunities.

(5) In view of economic and climatic conditions of India and fact that 80 per cent of the Indian population of the Union are now South African born, it is recognised that possibilities of assisted emigration scheme to India are now practically exhausted. The existing arrangements will continue for any Indians in South Africa who may still wish to return to India. The Government of India will co-operate with the Government of the Union in exploring the possibilities of a Colonisation Scheme for settling Indians, both from India and from South Africa, in other countries. In this investigation representatives of the Indian community in South Africa will, if they so desire, be associated. The position will be reviewed by the two Governments when the investigation is completed.

(6) The Government of India, at the request of the Government of the Union, will continue to maintain an agent in the Union in order to secure continuous and effective co-operation between the two Governments. Ends.

Late last evening Malan informed us that his Delegation were unwilling to let paragraphs (3) and (4) stand as they feared that latter especially would be used by local Indians to accuse the Union Government of charge of breach of faith even if they proceeded with the Tenure Bill with modifications suggested by us in

sub -

Sub-Committee. They were prepared to accept the rest of the draft with addition in paragraph (5) that proposed investigation should be completed within one year.

2. After discussion amongst ourselves we informed Malan this morning that omission of paragraph (4) in particular, was unacceptable to us as it would be impossible to persuade public opinion in India to co-operate in the proposed ~~xxxx~~ exploring of possibilities of settling South African Indians abroad or acquiescing in the continuation of the scheme of assisted emigration to India if policy of upliftment enunciated by the Union Government at last Conference was dropped out of the Agreement. We added that if the Union Delegation insisted upon the omission of paragraphs (3) and (4), we on our part will have to insist on the omission of paragraph No.(5). Should the Union Delegation wish to consider announcement being made on the basis of paragraphs (2) and (6) only, we offered to consider suggestion

3. Union Delegation considered our suggestion this morning and we were informed two hours ago that (a) they adhered to the view that paragraphs (3) and (4) should be omitted; and (b) they were unwilling to agree either to the omission of paragraph (5) or to suggest announcement confined to paragraphs (1), (2) and (6). They asked us to reconsider their earlier suggestion that we should agree to the continuation of the present Cape Town Agreement for one year during which existing scheme of assisted emigration to India will continue and investigation of possibility of colonising will have to be completed, whole position being reviewed by the two Governments at the end of the year.

4. We have considered the 1st suggestion of the Union Delegation and are unanimously of opinion that it should be rejected for the following reasons :-

- (a) Union Government appear determined to abandon policy of upliftment which was only advantage secured for Indian community in South Africa by last Conference;
- (b) Period of one year for which extension of agreement is proposed will be utilised to dump in India South African Indians who are either now unemployed or may be thrown out of employment hereafter as result of Government's white labour policy as well as prevailing economic depression;
- (c) Continuance of assisted emigration to India under the present agreement for another year will be so strongly resented by the Indian community here and by public opinion in India that proposed exploring of colonisation scheme would never materialise.

We all feel strongly therefore that we should be no parties to extension of the present agreement for one year and that if agreement has to come to an end it should be terminated now on the grounds of Union Government's clear unwillingness to continue to adhere to the policy of upliftment rather than a year hence on the ground that result of proposed investigation into possibility of colonising has proved unsatisfactory to South Africa.

5. If we are to catch the boat of February 8th we should leave Cape Town not later than Sunday.

Our reply to the Union Delegation's proposal must therefore be communicated as soon as possible and we shall be glad to be informed urgently whether the Government of India approve of unanimous conclusion of Delegation.

6. After conversation which Sir Fazl-i-Husain had with Hertzog and Malen Sunday last which left clear impression that they accepted our draft in which they suggested certain verbal alterations which we adopted, today's developments have come as a painful surprise. Evidently the hostile influence of Pirov and other anti-Asiatics is at present ~~prevailing~~ proving too strong for them.

Telegram to Mr. G.S. Bajpai, C.I.E., C.B.E., I.C.S.,  
Member - Secretary of the Government of India Dele-  
gation to South Africa, No.376, dated the 3rd February  
1932.

CLEAR LINE.

Your telegram 20, dated 2nd February. Government of India regard it as most unfortunate that events have taken this turn. They consider that it would be extremely inadvisable for Delegation to leave South Africa on 8th February before further possibility of arriving at an agreed solution has been explored. Detailed communication will follow tomorrow. Government of India deeply regret inconvenience that may be caused by altering present arrangements and postponing departure.

-----

Telegram to Mr. G.S. Bajpai, C.I.E., C.B.E., I.C.S.,  
Member - Secretary of the Government of India Dele-  
gation to South Africa, No.388, dated the 4th February  
1932.

....

CLEAR THE LINE.

Continuation our telegram No.376, dated 3rd February. We notice that Hertzog and Malan are anxious to render every possible help but that other influences are proving too strong for them. We consider it most desirable that everything should be done to retain their goodwill and co-operation. We feel termination of past friendly relations is bound to have very serious repercussions and may affect utility of any representations that we may have to make in future to Union Government in interest of South African Indians. In particular all hope of securing amendment of Asiatic Tenure Bill may go by the board. The immediate effect moreover of rupture resulting from action proposed by delegation would be to leave the Indian population completely at the mercy of the South African Government,

result which would create liveliest apprehensions here and should only be faced in the very last resort. This is apart from consideration of inadvisability of adding to intensity of political feeling in India at this juncture which such a result would almost inevitably lead to. Hence if satisfactory and honourable solution can be found on the basis of the continuance of the Cape Town Agreement even for a year, we think it should be welcomed. It is possible, even though probability be remote, that something may turn up during the year to help in making more satisfactory arrangements.

2. For these reasons we would like our delegation to consider whether it would not be advisable to suggest that announcement while stating that it was agreed to continue Cape Town Agreement for another year should also include paragraph 5 of the original draft. This while meeting to some extent what we believe to be the objection of the Union Delegation would also remove at any rate partially the fear referred to in (b) and (c) of paragraph 4 of your telegram No.20 dated 2nd February 1932.

3. Argument advanced by Union Delegation in support of their objection to inclusion of paragraph 4 in draft announcement seems to us to be without any force whatever, as declaration regarding adherence to principle of upliftment is contained in existing agreement and if Union Delegation's alternative suggestion to continue agreement for another year is accepted, contents of agreement might still be made use of by local Indians, if they are so inclined, to accuse Union Government of breach of faith in connection with Asiatic Tenure Bill, should it be proceeded with during the period of currency of the agreement. Perhaps the real reason is that Union Government are anxious to avoid unnecessary embarrassment to themselves by giving renewed prominence to principles which have once been accepted by them but which

the electorate, on whose support they depend, is not now prepared to endorse. As policy of upliftment is inherent in Cape Town Agreement we feel that nothing is to be gained by insisting on separate reiteration of that principle so long as agreement is in force.

4. The principal objection of our Delegation to continuance of agreement for one year is that this period will be utilised for sending away South African Indians in large numbers under existing assisted emigration scheme which is strongly resented by local Indian community and by public opinion in India. We agree that we should be no party to an ~~agreement~~ arrangement which renders this possible. Hence suggestion in paragraph 2 above. There would appear to be no difficulty about the acceptance of this suggestion by Union Delegation as they themselves seem anxious to retain paragraph 5 of draft announcement which contains a statement that possibilities of assisted emigration scheme to India are now practically exhausted.

5. In making this suggestion our idea is that if the Union Government now admit that possibilities of assisted emigration scheme to India are practically exhausted and if after investigations during the course of the year they find that possibility of reducing the Indian population by colonisation in other countries is also non-existent, then they will be in a strong position vis-à-vis anti-Asiatic influences and will be able to say that exploration of all possible avenues for sending away Indians having proved fruitless, Indian community must remain a section of the permanent population of South Africa and that all possible steps should be taken for their upliftment as is the recognised duty of every civilised Government.

6. If Delegation thinks that the suggestion made by us may be put to Union Delegation, we shall be glad if this is done and result communicated to us. Otherwise, please telegraph to us Delegation's views on our suggestion.

Telegram to Mr. G.S. Bajpai, C.I.E.,C.B.E.,I.C.S.,  
Member - Secretary of the Government of India Delegation  
to South Africa, No. 399, dated 5th February, 1932.

-----

Following has appeared here today in Reuter's  
telegram from Capte Town. Begins. Indo-South African  
Union Conference has concluded. Malan and Sir Fazl-i-  
Husain exchanged felicitous speeches, both stressing  
continuance of goodwill between two countries. There is  
every reason to believe that settlement has been reached  
on revision of Cape Town agreement, and Land Tenure Bill.  
Terms of settlement will be simultaneously announced  
in India and Union, week or two after of arrival of  
delegation in India on 27th February. Ends. Please  
furnish Government of India with facts. Your telegram  
No. 20, dated 2nd February, which is the last communication  
from you about proceedings of Conference, showed that  
Conference had not yet concluded.

-----



Telegram from Mr. G. S. Bajpai, C.I.E., C.B.E., I.C.S.,  
Member-Secretary of the Government of India Delegation to South  
Africa, dated the 5th February, 1932.

---

Before your telegram of the 3rd instant, 376, was received, Sir Fazl-i-Husain and I communicated to Malan on Wednesday evening substance of unanimous recommendations we proposed making regarding suggestion of Union delegation that Cape Town Agreement should be continued for one year only during which existing scheme of assisted emigration to India will continue and investigation of possibilities of colonisation will have to be completed, whole position being reviewed by two Governments at the end of the year. Malan thereupon produced fresh draft which he said he had already discussed with Prime Minister and earnestly requested us to reconsider position. This we did and communicated to him yesterday morning certain amendments with expression of our willingness to recommend revised draft to our Government if his delegation were prepared to adopt it. Last evening Malan informed us that his delegation accepted revised draft which is set out below. Beings.

1. In accordance with paragraph 7 of Cape Town agreement, delegates of Government of Union of South Africa and of the Government of India met at Cape Town from January 12th to February 4th, 1932, to consider working of agreement and to exchange views as to any modifications that experience might suggest. The delegates had a full and frank discussion in conference, which was throughout marked by a spirit of cordiality and mutual goodwill.

2. Both Governments consider that Cape Town agreement has been a powerful influence in fostering friendly relations between them and that they should continue to co-operate in common object of harmonising their respective interests in regard

to

to Indians resident in Union.

3. It was recognised that possibilities of Union's scheme of assisted emigration to India are now practically exhausted owing to economic and climatic conditions of India as well as to fact that ~~xx~~ 80 per cent of Indian population of Union are now South African born. As a consequence possibilities of land settlement outside India, as already contemplated in paragraph No.3 of Agreement, have been further considered. The Government of India will co-operate with Government of Union in exploring possibilities of a colonisation scheme for settling Indians, both from India and from South Africa in other countries. In this investigation, which should take place during the present year, a representative of Indian community in South Africa will, if they so desire, be associated. As soon as investigation has been completed the two Governments will consider result of the Enquiry.

4. No other modification of Agreement is for present considered necessary. Ends.

2. We consider that this should be accepted by Government of India for following reasons:-

(1) Scheme of assisted emigration to India to which there has been so much opposition is omitted. This has been our objective from outset because of opposition to scheme of public opinion in India and of Indians in this country.

(2) Except to extent to which it has been modified by paragraph 3 of draft, Cape Town Agreement stands. This means that upliftment clauses to retention of which we attached so much importance, stand.

(3) No (gr. contd.) is set (for ?) Agreement as now renewed.

In present political situation in South Africa, it would be impossible to secure better terms from Union Government and we therefore unanimously recommend that proposed draft statement of conclusions of conference should be accepted.

3. Conference met to-day 12 noon when we informed Union delegation that we were prepared to recommend to our Government

that draft statement now agreed to by two delegations should be accepted by Government of India. Union delegation agreed to make similar recommendation to Union Government, after which conference terminated with usual speeches of goodwill, as there was no other business to transact. If both Governments accept draft, conclusions of conference will be announced in these terms simultaneously in two countries after our return to India. This delay is necessary because we have repeatedly told Malan that until Government of India are satisfied that Transvaal Bill be suitably modified announcement regarding future Cape Town Agreement would be premature.

4. As stated in paragraph 3 of my telegram of the 30th ultimo, Malan would prefer to sound his colleagues of Select Committee regarding Transvaal Bill after we leave South Africa. For this reason and also because draft announcement now agreed on by two delegations appears to be satisfactory we hope Government of India will not consider it necessary for us to prolong our stay here which would be inconvenient to all of us and embarrassing to Union Government both politically and financially. We therefore propose to adhere to our present plan of leaving Cape Town for Lourenco Marques by special train on Monday next and embarking on Karagola 10th instant.

Copy of telegram to Mr. G.S. Bajpai, C.I.E., C.B.E.,  
I.C.S., Member-Secretary of the Government of India  
Delegation to South Africa, No. 417, dated the 6th  
February, 1932.

-----

Your telegram dated 5th February. Government of  
India are very glad that matters have been settled so  
satisfactorily and would like their thanks communicated to  
members of Indian delegation for their strenuous efforts  
which have brought about this result. They accept proposed  
draft statement of conclusions of Conference, and agree  
that announcement should not be made until they have  
considered such modifications to Transvaal Tenure Bill as  
may be suggested in response to their delegation's  
representations. It is understood that result of Milen's  
consultation with his colleagues on Select Committee  
regarding this Bill <sup>will</sup> be telegraphed here about the time  
delegation is due to reach India. It is not necessary  
now for delegation to prolong their stay.

2. Please repeat argument 3 in paragraph 2 of your  
telegram as it has been corrupted in transmission.

-----.

Copy of a telegram from Mr. G. J. Bajpai, C.I.E., C.B.E.,  
I.C.S., Member - Secretary of the Government of India  
Delegation to South Africa, No. 22, dated Cape Town, the  
3rd (recd. 4th) February, 1932.

-----

Last saturday Sir Fazl-i-Hussain and I saw MALAN about  
the Transvaal Dealers ( Amendment) Ordinance which was  
reserved for consideration by the Governor-General last July.  
He impressed upon him that widening of the local authorities  
in manner provided in the Ordinance will prove ruinous to  
the Indian Community who according to testimony of the  
Supreme Court in several judgments have suffered from  
spirit of racialism in which even the existing Ordinance  
has been administered. MALAN's main point was that, if  
the amending Ordinance were vetoed, there would be a howl  
in Transvaal which would react adversely on the political  
fortune of the present Government. This he urged would not  
help the local Indians. He pointed out that while nothing  
was further from our intentions than recommending action  
which might create a political crisis, Union Government  
had special responsibility to the politically helpless  
class like Indians from which no considerations of  
political expediency could absolve them. Our objective was  
that, if Ordinance must be amended, recommendation of  
LANGE Commission regarding the license laws should be  
observed by the Provincial Councils. This could be done  
by Ministers using their influence with the Administrator  
and Members of the Provincial Council. MALAN promised to  
sound local opinion in the matter later on and is likely  
to do what he can to meet our wishes.

-----.

Telegram from Mr. G. S. Bajpai, C.I.E., C.B.E., I.C.S.,  
Member - Secretary of the Government of India Delegation  
to South Africa, No.24, dated 6th (received 7th) February  
1932.

...

Your telegram No.388 of February 4th. Considerations mentioned in paragraph 1 were fully present to our minds throughout the negotiations and argument used in paragraph 3 was actually put to Mahan to demonstrate weakness of objection of his delegation to our original proposal for reiteration of upliftment clause. Inclusion of paragraph 5 of our original draft in bald announcement that agreement would be extended by one year was not objectionable to Union delegation, but to us, because we knew that local Indians would, if such a statement were made, openly start opposing scheme of assisted emigration to India and there would be sympathetic repercussions on public opinion in India which would greatly embarrass Government of India. We therefore felt bound to suggest a break now on grounds which would appeal to Indian sentiment and place Government of India in strong position with Indian public rather than support a settlement which would gravely embarrass Government of India with Indian public both here and in India. Anyhow, our understandings now secured by us which were telegraphed in our official telegram of February 5th appear to be better than those which Government of India would apparently have been prepared, in the last resort, to accept, no further action on your telegram under reply seems called for.

2. As regards your telegram No.399 of February 5th please see my official telegram of same date.

---

Telegram from Mr. G.S. Bajpai, C.I.E.,C.B.E.,I.C.S.,  
Member - Secretary of the Government of India Delegation  
to South Africa, Johannesburg, No. 25, dated the 9th  
(Received 10th) February, 1932.

-----

Your telegram of the 6th instant, 417.

Argument (3) in paragraph No. 2 of my telegram of the 5th  
instant is as follows: Begins. (3) No term is set to life  
of Agreement as now renewed. Ends.

2. Delegation who land at Bombay, February 25th,  
require customs facilities.

-----

Telegram from Mr. G.S. Bajpai, C.I.E.,C.B.E.,I.C.S.,  
Member - Secretary of the Government of India Delegation  
to South Africa, No. 28, dated the 16th February, 1932.

-----

Sir Fazl-i-Husain has decided to bring Delegation  
Delhi where we arrive on 28th February, Frontier Mail.

-----

**CONFIDENTIAL.**

---

**Memorandum by the Delegates of India to the Second  
Round Table Conference with the Representatives  
of the Union of South Africa.**

*January 12th to February 4th, 1932.*

---



**CONFIDENTIAL.**

**Memorandum by the Delegates of India to the Second Round Table Conference with the Representatives of the Union of South Africa.**

*January 12th—February 4th, 1932.*

We were appointed to confer with the representatives of the Government of the Union of South Africa principally regarding (i) the working of the Cape Town Agreement, which the Governments of India and of the Union entered into in February 1927, and (ii) the Transvaal Asiatic Tenure (Amendment) Bill, which the Honourable Dr. D. F. Malan first introduced in the Union House of Assembly in May 1930, but consideration of which was postponed by the Union Government, at the request of the Government of India, until after the conference which the Union Government had all along contemplated convening after the Cape Town Agreement had had a five years' trial. Memoranda had been prepared in the Government of India Secretariat on the several points dealt with in the Annexure to the Cape Town Agreement, and copies of these were furnished to us for our guidance. We were also supplied with copies of notes which our colleague, Sir Kurma Reddi, Agent of the Government of India in South Africa, had drawn up in order to present a picture of the working of the Cape Town Agreement, and to make suggestions as to the subjects which the conference should discuss. These documents we found of great assistance in formulating our objective and shaping our course in the conference from time to time. But, in view of the necessity of defining that objective, with due regard to a variety of local factors, such as the prevailing political atmosphere in South Africa, the views and wishes of the Union Delegation and the feelings and opinions of the resident Indian community, which we could only ascertain after reaching South Africa, we decided to treat the memoranda supplied to us as material to be used at our discretion as circumstances might from time to time require, and not as instructions limiting in any way the freedom given to us by the general direction of our Government that we should make the best terms possible with the Union representatives, the instructions of the Government of India being obtained before any final conclusion was reached.

2. Our leader, Sir Fazl-i-Husain, and colleague and Secretary, Mr. G. S. Bajpai, travelled from India by S.S. "Khandala" and landed at Lourenco Marques on January 4th, 1932. Four of us, *viz.*, Sir Geoffrey Corbett, Mr. Sastri, Mrs. Naidu and Sir Darcy Lindsay, came out from England and landed on the same date at Cape Town. Sir Kurma Reddi, who was appointed an additional member of the Delegation, was already in South Africa. This dispersion of our members had made collective consultation amongst ourselves impossible until we could assemble at some convenient place in South Africa. It also emphasised the necessity of an early meeting amongst ourselves before the conference opened on January 12th. Sir Kurma Reddi joined Sir Fazl-i-Husain at Lourenco Marques on the 4th January, and arrangements had also been made for some of the delegates, who had come out from England, to meet the leader's party at Johannesburg. But, since for reasons of health, Sir Geoffrey Corbett and Mr. Sastri could not proceed to that city, it became clear that the full Delegation could only meet at Cape Town. To bring this about as soon as possible, and in order also to establish personal touch with some of the Union Ministers, especially General Hertzog and Dr. Malan, our leader, Sir Fazl-i-Husain, decided to cut short the stay in the Transvaal of his party which Mrs. Naidu and Sir Darcy Lindsay had joined at Johannesburg on

the 6th. Sir Fazl-i-Husain accompanied by Sir Darcy Lindsay, Sir Kurma Reddi and Mr. Bajpai arrived at Cape Town on Saturday, the 9th, and with the arrival of Mrs. Naidu from the north on the 11th morning the whole Delegation assembled at Cape Town on that date.

3. But although collective consultation among all the Delegation was not possible before the 11th, the work which each of the two parties from India and England had put in during their respective voyages facilitated informed discussion and rapid decision when the Delegation met as a whole. Individual study and discussion amongst such of us as had travelled together had helped to clear our own ideas regarding the two main subjects which the conference was likely to discuss, *viz.*, (1) the working of the Cape Town Agreement, and (2) the Transvaal Asiatic Tenure (Amendment) Bill. As regards the first, all of us anticipated that the Union representatives would probably lay great stress on the failure of the scheme of assisted emigration to India. From a study of the papers supplied to us, we had all come to the conclusion that the climate of India and the economic conditions prevailing there left little hope of the scheme meeting with success in the future, especially as the proportion of Indian-born emigrants, to whom alone the prospect of a return to India could make a sentimental appeal, must progressively diminish. We were also aware that the report of Swami Bhawani Dayal on the condition of returned emigrants in India, exaggerated though it was, had roused strong feeling against the scheme among the public in India. Consultations with Indian leaders in South Africa after landing made it amply clear that no section of them viewed the scheme with favour. On the contrary, their general feeling towards it was one of undisguised resentment, partly because of methods of stimulating the flow of emigrants which, it was stated, took the form of unfair economic pressure and unscrupulous propaganda, and partly because it was considered by some among them that emigration tended to weaken the community whose strength lay only in its numbers. As regards the Transvaal Bill, the almost unanimous Indian demand was, not only that the Bill should be dropped, but that the Delegation from India should demand the repeal of the restrictive laws of 1885 and 1908. For this we had been prepared by perusal of the relevant papers supplied to us, but the insistence with which, after landing in South Africa, we were urged by the Indian leaders to take this line, and the warning repeatedly given to us that mere validation of existing illegalities of occupation and ownership would not satisfy the Indian community made it abundantly clear that, if our efforts as regards the Bill were to give satisfaction even to the most moderate section of the people, the least we should have to press for would be substantial modification of the provisions of the Bill.

4. Our contact with Indian leaders in South Africa, before the conference started, helped to clarify our views. But for clear and practical definition of our objective it was at least equally important that we should get some idea of the views prevailing in Union official circles. From such information as we could pick up from Sir Kurma Reddi and his Secretaries, it appeared that the officials of the Department of the Interior were none too hopeful regarding the outcome of the conference. Their estimate of its duration as a week or ten days at the outset seemed to corroborate this, for only the prospect of failure to agree on any of the outstanding subjects tabled for discussion could justify such an estimate. On the journey from Johannesburg to Cape Town our leader and three other members of the Delegation, *viz.*, Sir Darcy Lindsay, Sir Kurma Reddi and Mr. Bajpai, had tea with the Prime Minister in his carriage, but beyond an impression of his personal friendliness and good-will they could glean nothing from him. Valuable though this was, it was not sufficient to dispel the apprehensions which the reported attitude of the Union officials in closest touch with the Minister of the Interior, who was leader of the Union Delegation, had roused in our minds. Our leader had hoped immediately after reaching Cape Town on the 9th, to meet Dr. Malan, preferably at the residence of the Prime

Minister, and thus endeavour to obtain, before the conference met, more definite light on the situation. Unfortunately, however, he developed fever the very day he arrived in Cape Town, and his illness took such a serious turn that on the morning that the conference was to open he had to be removed to a nursing home. Mr. Bajpai paid Dr. Malan a friendly call on Sunday, the 10th, and the impression which he gave of the probable attitude of the Union Delegation were not encouraging. According to him, the Union representatives were likely to ask for termination of the Cape Town Agreement, because the scheme of assisted emigration to India, on which the Union Government had based their hopes of finding a permanent solution of their Indian problem, had failed. To such extent, therefore, as we could check rumour by reliable firsthand information, the outlook was decidedly discouraging.

5. Considering all the circumstances, therefore, the task of marking out a prudent course to steer in the conference was by no means easy. On the one hand, there was a fear that the attitude of the Union representatives might compel the postponement to some more propitious future time or, at any rate, the relegation to a forum other than the conference, of certain matters pertaining to the upliftment of the permanent Indian population of the Union which the local Indian leaders pressed upon us, and some of which, such as the improvement of educational facilities in Natal and the liberalisation of the Trade Licensing Laws, were referred to in our briefs of instructions. For the same reason, it was evident that nothing but breakdown of the conference could result from any serious request by us for the repeal of the restrictive land laws in the Transvaal, or for the grant to Indians of the political and municipal franchise, which the South African Indian Congress, in its most recent resolutions, demanded. On the other hand, the temper of the Indian community in South Africa and the state of public opinion in India pointed to the danger of accepting any compromise which Indians in South Africa would oppose and the public sentiment in India repudiate. We were thus obliged to aim at a settlement which the Union Delegation could be persuaded to accept, and which Indian opinion, both in India and in South Africa, could be induced to support. The objective which, in our opinion, was most likely to satisfy these conditions was:—

- (1) To secure a renewal of the Cape Town Agreement, with the scheme of assisted emigration to India left out.
- (2) To ask that Indians in the Transvaal should be allowed to reside and trade and to own property without segregation.
- (3) To offer, in order to secure (1) and (2), to recommend that the Government of India should co-operate with the Union Government in exploring the possibilities of settling Indians from South Africa in other countries where climatic and economic conditions might be similar to those prevailing in South Africa.

As regards (2), we realised that, for the present, the most that could reasonably be expected was action (i) to validate existing illegal occupation on proclaimed land, (ii) to make suitable provision for expansion by making 'exceptions' in the future, and (iii) to protect properties which had been acquired since 1919 without contravening the letter of section 2 of Act 37 of that year.

6. United in our objective, but temporarily deprived of the active guidance of our leader, we entered the conference, which the Prime Minister of the Union of South Africa opened on the morning of the 12th. In his inaugural speech General Hertzog, after welcoming us, made the important admission that the Agreement of 1927 had been fruitful of the greatest blessing to South Africa, no less than to India, in having inaugurated, fostered and encouraged a spirit of mutual goodwill and esteem between the two countries. The object of the conference, he stated in general terms to

be to harmonise the interests of our respective countries in respect of the Indians resident in the Union, and more particularly to consider in how far the Agreement of 1927 had succeeded in achieving that end, or what other and further steps might be necessary and possible for the attainment of that object. Finally he expressed the hope that the decision of the conference would be such as to assure for the future a closer friendship and ever-increasing measure of friendly feeling and hearty co-operation between the Union of South Africa and India. Mr. Sastri who, in Sir Fazl-i-Husain's absence, acted as our spokesman, expressed gratitude for the Prime Minister's inspiring message and emphasised the need, in the midst of the disharmony and general lack of concord obtaining in the world today, for the conference to work for a regular understanding between our two peoples. He also expressed the hope that, as during the previous conference, his friendly guidance would be available to every one of us for smoothing away difficulties that might from time to time arise.

7. After General Hertzog had left, the conference proceeded, on Mr. Sastri's motion, to elect Dr. Malan as Chairman. Dr. Malan thanked all his colleagues for the honour and then outlined its agenda. He suggested that the main subject of the renewal of the Cape Town Agreement in the light of the experience gained should be considered first and, if this was agreed to, he offered to make a statement on behalf of the Union Delegation, setting out their views as to how far the Agreement had come up to expectation or otherwise. The second subject suggested by him for the consideration of the conference was the position which has arisen on the Witwatersrand as a result of the illegal occupation of stands on proclaimed ground by Indians. As the case of the Union on this topic was set out in the Report of the Select Committee which had prepared the Transvaal Asiatic Tenure (Amendment) Bill, he thought it would be right for the Delegation from India to make representations with regard to it. These suggestions were accepted, subject to the understanding that any point connected with the Cape Town Agreement could be taken up later on, if the conference so desired. Pending his promised statement regarding the working of the Cape Town Agreement, we considered it undesirable to elaborate the agenda further. For we felt that, should the statement prove to be unfavourable to the continuance of the Agreement, all our energies would have to be concentrated on persuading the Union Delegation to modify their attitude and matters other than the Transvaal Bill would probably have to take second place.

8. The wisdom of this decision was proved by the tenor of Dr. Malan's statement the following day. In this, while admitting that the Cape Town Agreement had been a powerful influence in fostering friendly relations between the Government of the Union and of India, and paying a tribute to the outstanding tact and ability of India's two Agents, he expressed it to be the definite opinion of his Delegation that the Agreement had not by any means fulfilled reasonable expectations, that it had failed as a settlement of the Indian problem in any true sense of the word, and that it should now lapse, unless it could be proved to be capable of such amendment as would make it satisfactory and effective. These conclusions were, in the main, based on the following two grounds:—

- (i) That the scheme of assisted emigration to India which formed the main basis of the previous conference and the only condition on which the Union Government could at the time agree to this particular form of negotiation, could not be described otherwise than as a collapse and a failure.
- (ii) That the Agreement had hardly fulfilled the reasonable expectation that it would be accepted by the Indian population in South Africa and thus be a means of improving inter-racial relations. A very large section of the Indian population, he said, had always looked upon the Agreement with suspicion

and even openly rejected it, while the failure of the assisted emigration scheme must, to a very large extent, be directly ascribed to their active opposition.

9. In the preliminary discussion which followed, we were able to elicit that the alleged opposition of the Indian community, in so far as the charge applied to its chief representative organisation, *viz.*, the South African Indian Congress dated only from November 1931 and was limited to the scheme of assisted emigration to India. We were also informed that, as regards the upliftment part of the Agreement, it was up to us to make any observations that we might consider desirable. Certain figures which Dr. Malan had used to argue why the Indian population in South Africa was still looked upon as a menace by the European community were also examined. But our considered reply to the statement was, by agreement, deferred until the 15th January.

10. The two days' adjournment which we obtained was necessary for framing a considered reply. There appeared to be a wide gulf between the Prime Minister's description of the Cape Town Agreement as a great blessing to South Africa and the Union Delegation's considered opinion that it should be terminated. The same divergence was apparent between General Hertzog's exhortation to the two Delegations to harmonise the interests of our respective countries in the interest of the Indians resident in the Union and Dr. Malan's plea made in the course of his statement that, with the rapid increase in the percentage of South African born Indians, the Indian problem in South Africa was fast becoming a matter of exclusively South African concern. It was true that Dr. Malan had also urged that, whatever the fate of the Cape Town Agreement itself might be, the Government of India would continue to be represented in South Africa, and that relations between South Africa and India would continue to be as friendly and happy as ever. But it was evident to us that, once the Agreement was formally terminated, events would probably so shape themselves as to make the maintenance of friendly relations between the two Governments and of an Indian Agent in South Africa impossible. For, it seemed to us to be inevitable that freed from the obligations of a formal understanding, the Union Government should be forced by the pressure of extreme anti-Asiatic opinion, which probably preponderates in Natal and the Transvaal, to embark upon a repressive Indian policy. Our immediate duty, therefore, was to impress it upon the Union Delegation that the continuance of friendly relations was dependent upon an explicit understanding between the two Governments, and, in order to persuade them to this view, to offer them some attractive inducement. In our reply, therefore, which was presented by Mr. Sastri on the 15th we made the following points:—

- (1) The Cape Town Agreement had been a powerful influence in fostering friendly relations between the Governments of India and of the Union of South Africa.
- (2) The promotion of closer friendship and an ever-increasing measure of good-will and hearty co-operation between India and South Africa must be the object with which the future of the Cape Town Agreement should be approached.
- (3) This same object, which the Prime Minister had described as harmonising the interests of our two countries in respect of Indians resident in the Union, could only be achieved by continuing the Agreement, modified in any way that might be considered desirable after our discussions.
- (4) Should the conference decide to recommend to the two Governments continuation of the Agreement subject to agreed modifications, we would be prepared to recommend to the Government of India that the appointment of Agent should be continued.

- (5) As Dr. Malan had himself stated, the possibilities of assisted emigration to India must in the nature of the case be limited and must in future become so increasingly. But the Cape Town Agreement also contemplated the possibility of the Union Government organising schemes of emigration to other countries. Should inquiry into the possibility of enabling Indians to settle in other parts of the world where economic conditions are similar to those in South Africa be contemplated, we would be prepared to recommend to the Government of India that they should co-operate with the Union Government in exploring such possibilities.

The alternatives which, in substance, we presented to the Union Delegation were:—

- (1) Renewal of the Cape Town Agreement, with agreed modifications, which would ensure the friendly co-operation of the Government of India in dealing with the Indian problem in South Africa generally and, in particular, in exploring the possibilities of settling Indians from South Africa in other countries.
- (2) Termination of the Agreement, with loss of India's co-operation, including, probably, withdrawal of the Agent.

11. The preliminary discussion, which followed our statement, was illuminating, for it brought out somewhat strikingly the various influences at work within the Union Delegation. Mr. Pirow, who represents extreme Nationalist sentiment in the Transvaal both as regards the position of the coloured peoples in South Africa and the Union's unfettered freedom to deal with its racial problem in its own way, was critical of our contention that, as the Government of India were parties to a system of immigration which created the Indian population in South Africa, they have a responsibility towards that population which they must continue to discharge until the Indian community is able to represent effectively its interests to the Union Government as part of the body politic—an argument which we had felt it necessary to put forward in reply to Dr. Malan's statement that, with the rapid increase in the percentage of South African born Indians, the Indian problem was fast becoming a matter of exclusively South African concern. He obviously stood for no agreement and a free hand—an attitude which he consistently maintained throughout the conference. Mr. Jansen, Minister of Native Affairs, who represents a Nationalist constituency in Natal, though he did not say much, appeared to share Mr. Pirow's views. Mr. Heaton Nicholls, who represented the British element in Natal on the conference, though somewhat frightened by the suggestion that the Indian community should some day be enabled to represent effectively its interests to the Union Government as part of the body politic as implying a claim for political equality with the Europeans, was obviously attracted by the proposal that other outlets of settling Indians from South Africa might be explored. Mr. Duncan, besides being impressed by this proposal, also recognised that the Indian Government had a special interest in the position of the Indian community in South Africa. Dr. Malan revealed what seemed to be the real objections to the Cape Town Agreement, *viz.*, (i) that it was understood to imply that whenever a question affecting the Indian population arose in South Africa, the Union Government must first of all always refer the matter to the Government of India, and (ii) that its existence led the Indians in South Africa to appeal to an outside Government on every question. On the question of the *locus standi* of the Government of India, he held the view that everything affecting Indians in South Africa should first be referred to the Government of India through their representative in the Union, and it should be left to the discretion of the Government of India to make any representations they liked to the Union Government through the

same channel. On the proposal for exploring the possibilities of Indian colonisation he did not express any definite opinion.

12 The next two days, *viz.*, the 18th and 19th, were devoted to further discussion of the points arising out of our statement of the 15th. Though Mr. Pirow remained sceptical of the value of the proposed inquiry into the possibilities of settling Indians abroad and convinced that we should not have "anything in the nature of" or "any form of" agreement, progress was made towards our objective in the following respects:—

- (1) Dr. Malan admitted that there was something in the Cape Town Agreement or connected with it, which both sides wished to preserve, though he wanted it to be recast so as to avoid any misunderstanding or offence, such as the idea that an outside Government could interfere in the affairs of South Africa.
- (2) The Union Delegation recognised that the Government of India were interested in the Indian community in South Africa, especially as they had originally been responsible for Indians coming to South Africa as indentured labourers, though Dr. Malan seemed to suggest that the impression that they maintained an Agent in South Africa, not as a channel of communication between the two Governments in all matters of common interests, but as a sort of leader of the local Indians should be removed.
- (3) The proposal that the possibilities of Indian colonisation abroad should be investigated was provisionally approved, provided that the co-operation of the Government of India and of the Indian community in South Africa in such investigation could be secured.

13. On the 18th Dr. Malan had made a suggestion that the conference might set up a sub-committee to go through the old Agreement clause by clause and suggest the draft of a new understanding or statement of policy. This was not adopted as some of his colleagues of the Delegation were not prepared for it. Nevertheless, the position described above represented a distinct advance on the statement made by Dr. Malan on the second day of the conference. As regards the future of the Cape Town Agreement, the probability now was that, under some revised name, such as an understanding or joint declaration of policy, it would be continued. With regard to the proposed exploration we were able, in accordance with our instructions, to offer the co-operation of the Government of India. The idea that the local Indian community should be associated in the inquiry we welcomed, but after consultation amongst ourselves we decided that, in fairness to the conference, it was necessary to ascertain how the leaders of the Indian community would receive it and to communicate the result to the Union Delegation. In his statement on the working of the Cape Town Agreement Dr. Malan had laid down clearly that "South Africa would not be justified in tying her hands in the solution of her own problem without an adequate counterbalancing advantage to herself". We therefore perceived the necessity of an inquiry into the possibilities of colonisation in countries other than India to be the only basis on which a new understanding would be acceptable to the Union Government, for the possibilities of assisted emigration to India were recognised by both sides to be practically exhausted. But if the Indian community were not prepared to co-operate in the investigation, any understanding reached on the mere assumption that they would, would be short-lived and, in negotiating it without verifying the assumption, we would also, we thought, be exposing ourselves to a subsequent charge that, in order to secure an apparent success for the conference, we had shirked realities. On the 19th, therefore, we asked the conference to authorise us to approach the Indian leaders in the matter, and this authority was given, after some discussion, on the understanding (a) that those whom we

consulted would be fully representative of Indian opinion and would respect our confidence, and (b) that the proposal would be considered on its merits, and not as an occasion for demanding concessions from the Union Government.

14. These consultations took nearly a week, and we were unable to report the result to the conference until the 26th of January. The Congress leaders present in Cape Town were extraordinarily suspicious, though we made it quite clear to them (a) that for the time being they were asked to commit themselves to nothing except to participate in the inquiry, (b) that if the investigation led to anything, it would be only as part of a comprehensive plan of emigration for Indians in the homeland and in South Africa, and (c) that, in seeking an outlet where Indians would not be subject to the numerous disabilities which pressed on them in South Africa, they would be working to secure a freer and more attractive field for their children. While individually unable to suggest valid objections to the proposal, and even willing collectively to admit that it might have advantages, they at first seemed determined to turn it down. After a good deal of persuasion, however, they agreed to co-operate in the proposed inquiry, provided (i) that they were not taken to accept the view that they are either an undesirable element of the population of South Africa or a menace to any section of it; and (ii) that such co-operation would not be taken to imply that they would either acquiesce in or support the scheme of assisted emigration to India, but that they would be regarded as free to dissuade persons from taking advantage of this scheme, if it should be continued hereafter on an organised scale. All attempts to persuade them not to insist on the last condition, as they would be free, after considering the whole settlement when it was published, to take any line they liked, proved fruitless.

15. A statement was accordingly made in the conference on the 26th by Mrs. Naidu who had taken a leading part in the negotiations with the Congress leaders. As we had feared, the last qualification about freedom to oppose the scheme of assisted emigration to India drew unfavourable comment from the Union Delegates. Apprehensions were expressed that this might involve the complete cessation of emigration to India with unfortunate results for the Indian community in South Africa, as European opinion, which had, on the whole, been kept under control by the operation of the scheme, might get out of hand. The general character of the qualification, it was argued, left the Union Delegation in a state of complete uncertainty as to what would constitute sufficient ground for the Congress leaders to oppose the scheme actively. We explained that only coercion and propaganda in favour of the scheme were likely to lead the Congress to take such an extreme step, and that those who for sentimental or economic reasons wanted to go back to India could scarcely be prevented by any one from taking advantage of the scheme. But it was evident that the prospect of the Congress opposing the scheme had given the Union Delegates a shock. However, we felt satisfied that, in communicating the full purport of the Congress reply to them, we had acted honestly, not only by the Indian community but also by the Union Government. Camouflage could only have brought disappointment quickly to all concerned. The Union Delegation wanted time to discuss the situation amongst themselves and further discussion of the matter was accordingly postponed.

16. With the provisional agreement of the two Delegations to recommend to their respective Governments exploration of possibilities of colonisation for Indians from South Africa in other countries, subject to a satisfactory response from the local Indian leaders, the first item of our agenda, *viz.*, the future of the Cape Town Agreement, had been practically exhausted. In our reply of the 15th to Dr. Malan's opening statement on the subject, we had referred to the action taken by the Union Government and the other authorities concerned to give effect to the various measures of upliftment mentioned in the Annexure to the 1927 Agreement. We had expressed



gratification at what had been accomplished, though we hinted that more might have been and should be done. But the trend of discussion, which we have endeavoured to summarise in the preceding paragraphs, gave little encouragement to our bringing up detailed suggestions in the conference for uplifting the Indian community. With the fate of the Agreement hanging perilously in the balance, any such attempt on our part could only have had the effect of turning the scale definitely and decisively against any settlement whatever. This would have meant the cessation of all friendly relations, withdrawal of the Agent whose presence has been so helpful to the Indian community as a whole, the loss of all hope of securing any concessions from the Union Government in the matter of the Transvaal Bill, and its certain enactment as it stands with grave consequence to Indians in the Transvaal. Regretfully, therefore, we had to content ourselves with alleviation of the provisions of the Bill as our other main objective. How we attempted to deal with this problem is described in the following paragraphs.

17. Dr. Malan had already informed us that the case of the Union in regard to the position on the Witwatersrand was contained in the Report of the Select Committee which had prepared the Bill. The Select Committee had professed, more than once in the report, that its recommendations were designed to give effect to the intentions of the legislature as expressed from time to time in the various laws, more particularly the Gold Law of 1908. Now if it could be shown that this intention and its application as inferred from the policy of Government in administering the law were in conformity with our objective, *viz.* : that Indians should be allowed facilities to trade on proclaimed land without segregation, we could legitimately ask that this policy should in no way be whittled down, and both future legislation and administration should be made to conform to this policy. As the Bill also dealt with the question of ownership of property in the Transvaal, we felt logically bound to suggest a similar policy in respect of ownership, but we knew that, for practical purposes, the more important right to strive for was the right to trade and that it would be sufficient, as regards ownership, to ensure that properties acquired by Indian companies since 1919 were protected. This might not go as far as the Indian leaders wanted. As already stated, they had repeatedly told us that only repeal of the restrictive provisions of Law 3 of 1885 and the Gold Law of 1908 would satisfy them and that, if we could not succeed in this, we should leave them to fight their own battle with the Union Government. But it was obvious that to strive for such repeal would be to wreck the conference, and to lose all chance of securing the measure of relief without which many Indian traders in the Transvaal would be ruined. So long as our formula did not rule out requests for repeal of these obnoxious laws in a more propitious future and helped to secure substantial relief for the present, we felt that it was our duty to adopt and work for it and to trust to the cooler judgment of our fellow countrymen in the Transvaal to accept it.

18. To work up to our objective, we decided to pursue the following plan :—

- (A) To suggest first what the policy should be and invite the Union Delegation to discuss it fully and frankly.
- (B) If the discussion revealed the possibility of substantial agreement on the general policy, to make general suggestions as to how the law and administration should be brought into conformity with policy.

19. At the sixth meeting of the conference, *i.e.*, on the 25th January, our leader, who was now happily sufficiently restored to health to be able to attend our sittings, made a general statement in which the main points were :—

- (1) In the past there has been discrepancy between the law and its administration. The conference would no doubt like to

ascertain whether the law or its administration had more correctly reflected from time to time the policy of the Government in the Transvaal.

- (2) The Union Government had affirmed at the last conference that they adhered to the principle that it is the duty of every civilised Government to devise ways and means and to take all possible steps for the uplifting of every section of their permanent population to the full extent of their capacity and opportunities on this basis. Indians in the Transvaal, who were mainly traders, should consistently with this principle be allowed facilities for residence and trade, and for owning property without segregation.
- (3) Local authorities should not be empowered to refuse certificates for licence to trade unless the applicant proves that he is lawfully entitled to occupy the premises on which business is to be conducted, as executive action to enforce the law in regard to occupation was primarily a matter for the Government, and the determination of title a matter for the judiciary.

20. In the general discussion which, according to the usual procedure, followed, questions were asked as to whether our proposal amounted to (i) a request for repeal of the restrictive clauses in the Gold Law, or (ii) a suggestion that Government should not intervene to prevent evasions of the law until such evasions became so numerous that there was a public outcry. It was pointed out that (ii) would draw the Indian question into the arena of party politics besides involving differentiation as between Indians themselves, since those Indians who were not assailed by a public outcry would be allowed to remain, while those so assailed would have to suffer. But beyond stating that repealing legislation was not desired at this stage, we thought it best not to commit ourselves in any way to these casual criticisms, but to await a considered reply from the Union Delegation on the suggestion we had put forward as to what the policy should be. This was forthcoming in a statement made by Dr. Malan on the 27th, from which the following points are extracted :—

- (1) No Government would venture to approach Parliament to alter the intention of the law.
- (2) No more could any Government lay down definitely a policy of non-enforcement of the law.
- (3) The Transvaal Asiatic Tenure (Amendment) Bill did not purport to lay down any new policy or close an existing opening.
- (4) The problem was not only to deal with contraventions of the law which had already occurred, but to close loopholes by which the intentions of the existing law could be evaded, and to create machinery by which the existing law could be enforced.
- (5) In accordance with the undertaking which he (Dr. Malan) had given, the Bill must be reintroduced in Parliament in the form in which it first appeared on the table of the House, but as Chairman of the Select Committee and also the Minister responsible for piloting the measure through the House, he would undertake to bring any suggestions that we might make before the members who served on the Select Committee and, if he got the moral support of even a majority of them, to move amendments.

21. Point (3) gave us an opportunity to argue that it was not the intention of the Gold Law to prohibit Indians from trading anywhere on proclaimed land, and that the subsequent administration of the law by Government was in the spirit in which the law was passed. This was done very ably by our colleague, Sir Geoffrey Corbett, with the aid of (i) the report submitted on the 3rd October 1908 by Mr. Jacob de Villiers, then Attorney General of the Transvaal, on the intention of the law, (ii) the

conditions upon which the law received the assent of the Crown, (iii) the decision in Tamblin's case in 1911, and (iv) the evidence given by the Mining Commissioner of Boksburg in 1919 before the Select Committee on disabilities of British Indians in the Transvaal. Sir Geoffrey contended that the whole situation could be met if the Government continued to administer the law in the spirit in which it was passed by the Transvaal Legislature in 1908, and actively authorised the Mining Commissioner to take action under the powers conferred upon him by section 131 of the Gold Law.

22. The rest of the discussion in conference on this subject was confined to the question of the procedure to be adopted for giving the most fruitful consideration to our views. Mr. Pirow thought that the conference could do no more than listen to our suggestions. Mr. Duncan was of the opinion that the adoption of resolutions by the conference on the subject of the Bill would probably give rise to an outcry from those European interests whom the Select Committee had heard that the conclusions of the Select Committee had been reversed without their being given an opportunity to place their views before the conference. There was force in this, and it was also clear to us that we were far more likely to benefit by a method of consultation which excluded Mr. Pirow than by one which included him. If discussion were carried further in the conference, he could scarcely be excluded, and we knew that his whole weight would be thrown against us. This could only have had the effect of neutralising impressions that we might otherwise make on Dr. Malan. We, therefore, readily fell in with the suggestion of Dr. Malan that two of us should meet him and Mr. Duncan as a sub-committee to discuss the Bill, the sub-committee being left to decide whether the matter should be brought up again before the conference. This course, as Dr. Malan explained, would have the effect of putting us in the position of making representations through him, as Minister in charge of the matter, to the Government, and also through him and Mr. Duncan to the Select Committee of which he was Chairman and Mr. Duncan an important member. As it was clear that no amendments to the Bill were likely to be moved without the moral support of the Select Committee and the approval of Government, we felt satisfied that the course suggested by the Chairman was, considering all the circumstances, likely to prove the most fruitful of results.

23. The sub-committee met on the following day, and the recommendations made to it on our behalf by Sir Geoffrey Corbett and Mr. Bajpai with our approval are set out in the proceedings which form Appendix III to this Memorandum.

The main suggestions put forward on our behalf were:—

*Occupation of property.*—(1) Validation of existing contraventions of the Gold Law and prevention of contravention in future should be secured by using the powers of the Mining Commissioner under section 131 (1) of Act 35 of 1908. In this connection, we accepted Dr. Malan's suggestion that a Commission composed of one judge and two other persons might be set up to examine each individual case of occupation on a given date, and to make proposals both as to the principles on which existing illegal occupation should be validated and permission given in future by the Mining Commissioner to occupy land outside bazaars, locations and mining compounds. The Mining Commissioner would then be required to maintain up to date a register of validated occupations as well as of occupations permitted in future.

(2) The restrictions of the Gold Law should not be extended to areas such as Springs and to deproclaimed land [*cf.* clauses 2 (2) and 4 of the Bill].

(3) The restrictions regarding the occupation by Asiatics of land belonging to foreign companies, proposed in new sections 7 (2) and 8 of Act 37 of 1919, should be limited to proclaimed land.

*Power of local bodies to refuse applications for licences.*—(4) Local bodies should not become courts of first instance for determining questions of title to occupy premises. These bodies should either be authorised to

communicate to the Mining Commissioner the name of each applicant for a licence to trade, if it was not already on the register of entitled applicants, when the Mining Commissioner would be able to proceed against the applicant if he was not entitled to occupy the premises in respect of which the licence was required, or they should be empowered by legislation to refuse a licence unless the applicant produced a certificate from the Mining Commissioner permitting him to occupy the premises on which business was to be conducted.

*Ownership of property.*—(5) Where Indians were permitted to occupy proclaimed land they should also be permitted to own it, if this could be done under Law 3 of 1885.

(6) The definition of fixed property should not be extended to include leases for 10 years or longer.

(7) Property acquired by Asiatics or Asiatic companies up to 1st May 1930, which was not protected by Act 37 of 1919, should be protected.

These suggestions aimed at giving effect to our objective in three ways:—

(a) By protecting existing interests, both as regards occupation and ownership.

(b) By permitting acquisition of fresh interests.

(c) By preventing extension of existing disabilities.

As regards the occupation of proclaimed land, we contended that (a) and (b) could be secured by an active application of the existing law, *viz.*, section 131 (1) of Act 35 of 1908, and possibly as regards ownership, by application of the relevant provision of Law 3 of 1885. We also emphasised that lawfully acquired interests in property should be protected. But we deliberately left the door open to legislation, should this be found necessary to secure these objects, as attainment of the objective appeared to us to be more important than avoidance of legislation on merely sentimental grounds.

24. Dr. Malan promised to consult his legal advisers on the points made by us in regard to the Bill, and then approach the members of the Select Committee informally. He was unable to do this before we left Cape Town as there was not enough time to call them together. He was also unwilling that we should stay on until he had consulted them, because he was afraid that this might have a bad impression upon the members of the Committee and make their consent to some or all of our proposals more difficult to secure. Mr. Duncan, who was sounded in the matter, held similar views. We, therefore, thought it best to wait for the result of our representations until our return to India.

25. But we made it clear both to the Prime Minister and to Dr. Malan that ratification by our Government of any general understanding that might be reached on other matters would depend entirely upon the extent to which the Union Government were able to give us satisfaction in regard to the Transvaal Asiatic Tenure (Amendment) Bill. Dr. Malan promised to communicate to our leader by the time we reached India the result of his consultations with members of the Select Committee. Our final recommendations in regard to this matter must necessarily wait until the promised communication has been considered by us.

26. The sub-committee on the Transvaal Bill completed its work on Thursday, the 28th January. With the disposal of this subject, all that was left was to crystallise the discussions on the working of the Cape Town Agreement and agree upon the text of a statement which the two Delegations could recommend to their respective Governments as embodying the results of the conference. On the 27th Dr. Malan had informed us that his Delegation could undertake to recommend a joint investigation by the Government of the Union and the Government of India with regard to the settlement of Indians from South Africa outside India. In order to avoid giving the impression that the Transvaal Bill had been the subject of bargaining, and also because of the unfinished stage at which the matter

had to be left, he was also aware that no reference could be made to it in the proposed statement. What we had to work for, therefore, was something which would reaffirm the essentials of the Cape Town Agreement. From our point of view its most important feature was the point relating to the upliftment of the Indian community. The Union Government, on the other hand, attached more importance to the scheme of assisted emigration, and we thought that, however much we might like to have reference to emigration to India dropped, we should probably have to reconcile ourselves to its retention in the new declaration in order to ensure inclusion of the upliftment clause which, for the sake of explicitness, we thought should be copied from the Annexure. For the rest, in order to allay the apprehensions of the Union Delegation that anything that was called an Agreement might be unpopular with the European population of South Africa, we were quite willing that the settlement might be given a new name such as an understanding or a joint declaration of policy.

27. To ascertain whether a formula on these lines would be acceptable to the Union Delegation, our leader and Mr. Bajpai saw Dr. Malan on the evening of the 28th January. Dr. Malan told them that he had a draft ready which he would place before his colleagues. Meanwhile, he asked us to draw up something ourselves with a view to the two drafts being harmonised later on, possibly by a sub-committee on which each wing of the conference would be represented. On the 29th we met twice amongst ourselves and agreed upon a draft, the text of which was communicated to Dr. Malan on the 31st. It will occur later on in this report. But we decided that, before it was put forward, we should know the results of Dr. Malan's efforts with his colleagues of the Union Delegation.

28. For this we had to wait until Saturday morning when Mr. Bajpai was informed by the Minister of the Interior that his colleagues on the Union Delegation would prefer a brief statement to the effect that the conference had adjourned for a year in order to enable the two Governments to make the proposed exploration into the possibilities of settling South African Indians abroad, and that meanwhile the existing Agreement would continue. After discussion amongst ourselves, we decided that any such announcement would render co-operation in the proposed investigation impossible, as Indian opinion, both in India and in South Africa, was sure to look upon this as an one-sided arrangement for enabling South Africa to discover other countries where Indians might be dumped, the year being also utilised to profit by the prevailing economic depression to send as many Indians as possible to India under the scheme of assisted emigration to India which would automatically continue. It appeared to us that unless equally prominent expression was given in any such statement to the policy of uplifting those Indians who would remain part of the permanent population of the Union, it would be impossible to show any *quid pro quo* for our acquiescence in the Union Government's policy of reducing their Indian population. Sir Fazl-i-Husain and Mr. Bajpai were deputed by us to communicate our conclusion to Dr. Malan and at the same time put forward the draft statement, which we had agreed upon, as a basis of discussion. The text of the draft, with slight verbal modifications which were subsequently made in it in consultation with Dr. Malan and General Hertzog, is reproduced below:—

- (1) In accordance with paragraph 7 of the Cape Town Agreement, delegates of the Government of the Union of South Africa and of the Government of India met at Cape Town from January 12th to February 4th to consider the working of the Agreement, and to exchange views as to any modification that experience might suggest. The delegates had a full and frank discussion in the conference which was throughout marked by a spirit of cordiality and mutual goodwill.
- (2) Both Governments consider that the Cape Town Agreement has been a powerful influence in fostering friendly relations between them, and they will continue to co-operate in the common

object of harmonising their respective interests in regard to Indians resident in the Union.

- (3) Both Governments continue to recognise the right of South Africa to use all just and legitimate means for the maintenance of western standards of life.
- (4) The Government of the Union of South Africa still adhere to the principle that it is their duty to devise ways and means and to take all possible steps for the uplifting of every section of their permanent population to the full extent of their capacity and opportunities.
- (5) In view of the economic and climatic conditions of India and the fact that 80 p. c. of the Indian population of the Union are now South African born, it is recognised that the possibilities of the assisted emigration scheme to India are now practically exhausted. The existing facilities, however, will continue for any Indians in South Africa who may still wish to return to India. The Government of India will co-operate with the Government of the Union in exploring the possibilities of a colonisation scheme for settling Indians, both from India and from South Africa, in other countries. In this investigation representatives of the Indian community in South Africa will, if they so desire, be associated. The position will be reviewed by the two Governments when the investigation is completed.
- (6) The Government of India, at the request of the Government of the Union, will continue to maintain an Agent in the Union in order to secure continuous and effective co-operation between the two Governments.

Dr. Malan to whom the draft was communicated on Sunday morning seemed to have no objection to it at all and General Hertzog, whom our leader and Mr. Bajpai saw by arrangement the same evening, also seemed to regard it as unexceptionable. A few verbal alterations which they suggested were innocuous and had been accepted by our leader. In the circumstances, we had reason to expect that the following day, when Dr. Malan proposed placing the draft before his Delegation, would see the negotiations satisfactorily ended. It was suspected by us that the hitch, which Dr. Malan had reported on Saturday, was probably due to the opposition of Mr. Pirow who, as already stated, had all along favoured the conference ending without an agreement. For this reason, in particular, we had arranged that our leader should meet General Hertzog with our draft so as to make sure that, if both he and Dr. Malan accepted it, the Prime Minister might intercede with Mr. Pirow to overcome the latter's opposition. This intercession, we felt confident, would be forthcoming, not only from the spirit of the speech with which the Prime Minister opened our proceedings, but from the renewed expression which he had given, only on the preceding Thursday, in a speech which he delivered at a banquet given by us, to his earnest desire that South Africa and India should continue to improve those friendly relations which had grown up since 1927. Great, therefore, was our surprise and disappointment when, on the evening of the 31st, Dr. Malan informed Mr. Bajpai that his Delegation were unwilling to accept paragraphs (3) and (4) of our draft as they felt that paragraph (4) especially would be used by the local Indians to accuse the Union Government of breach of faith, even if they proceeded with the Transvaal Bill with the modifications which we ourselves had suggested. They would, however, we were informed, be prepared to accept the rest of the draft with the insertion in paragraph (5) of a sentence to say that the proposed investigation would be completed within one year. This, from our point of view, was as objectionable as their earlier suggestions that the conference should adjourn with the announcement that the existing Agreement should be continued for another year during which the possibilities of settling Indians from South Africa in other countries would

be explored, and for similar reasons. Mr. Bajpai was accordingly commissioned by us to communicate this to Dr. Malan, with the addition that, if the Union Delegation persisted in pressing for the omission of paragraphs (3) and (4), we would have to insist on the omission of paragraph (5). Only paragraphs (1), (2) and (6) would thus remain, and we left it to the Union Delegation to consider whether they would wish us to consider as attenuated a statement which, by its very emptiness, would proclaim to the world that the conference had failed.

29. The Union Delegation considered the matter again on the afternoon of the 2nd February and found themselves unable to agree either to the retention of (3) and (4) of our draft or to the omission of (5). They also realised the uselessness of suggesting an announcement confined to paragraphs (1), (2) and (6). The only positive conclusion they could come to was that we should reconsider their earlier proposal to continue the Cape Town Agreement for another year during which assisted emigration to India would continue and the possibilities of colonisation in other countries would be explored.

30. The situation with which we were now faced was grave. On the one hand, we were anxious to preserve friendly relations with South Africa, because we realised that once the moral restraint of such a relationship was removed, there was real danger that, for some time, at any rate, the Union Government would be forced to try a frankly repressive Indian policy. This, we knew, would impose great hardships on Indians in South Africa, whether they meekly endured repression or tried to protest against it by some sort of civil disobedience. At the same time we could see no profit in recommending to the Government of India a compromise which the local Indians would repudiate or even oppose, which public opinion in India would denounce, and which could, therefore, at best, merely postpone by a few weeks the disappearance of all semblance of friendly relations between India and South Africa. For, a compromise, which could not be worked because of Indian opposition both in South Africa and in India, would remain a dead letter, and opposition to it by Indians in South Africa would provoke repression, possibly in a worse form than immediate recognition that the conference had failed. After the fullest consideration, we were satisfied that the Government of India would stand to lose nothing and to gain much in the estimation of their own people if they broke off negotiations because the Union Government wanted a settlement on conditions which India could not honourably accept. In our telegram No. 20, dated the 2nd February 1932, we accordingly recommended to the Government of India that our unanimous view to reject the last offer of the Union Delegation should be approved.

31. Though we had taken this extreme step, we were still not without hope that a way out of the impasse would be found. Our reasons for this were:—

- (i) We believed that the Union representatives were only bargaining with us.
- (ii) The Union Government are anxious to develop markets for their produce in the East.
- (iii) The Prime Minister and Dr. Malan did not want the conference to fail. The 1927 Agreement was South Africa's first success in the diplomatic field and therefore had a sentimental value. Moreover, if relations with India became unfriendly, the Indian problem in South Africa would become a sort of witlander problem with India substituted for Great Britain, and an acutely disappointed Indian population in the Union might become the means of spreading discontent among the natives by mere force of example.

There was always the possibility, therefore, that if we stood our ground, our opponents would eventually give in. This made it necessary, however, that our determination to yield no further should be conveyed to the proper

quarters. Our leader and Mr. Bajpai accordingly visited Dr. Malan on the evening of the 2nd and informed him confidentially of the recommendation which we proposed making to our Government in regard to the last offer from his Delegation. This had the desired effect for, after expressing his great regret that we should have decided upon such a step, he requested our representatives to consider another draft which he had meanwhile prepared and shown to the Prime Minister and which he thought his Delegation might be persuaded to accept. With the exception of paragraph (4), which was subsequently added at our instance, and the omission of paragraph (6) of our original draft, which, for reasons set out later, we had omitted, this draft is identical with the one which the conference finally adopted on February 4th and is reproduced below:—

(1) In accordance with paragraph 7 of the Cape Town Agreement, delegates of the Government of the Union of South Africa and of the Government of India met at Cape Town from January 12th to February 4th to consider the working of the Agreement and to exchange views as to any modifications that experience might suggest. The delegates had a full and frank discussion in the conference, which was throughout marked by a spirit of cordiality and mutual goodwill.

(2) Both Governments consider that the Cape Town Agreement has been a powerful influence in fostering friendly relations between them and that they should continue to co-operate in the common object of harmonising their respective interests in regard to Indians resident in the Union.

(3) It was recognised that the possibilities of the Union's scheme of assisted emigration to India are now practically exhausted owing to the economic and climatic conditions of India as well as to the fact that 80 p. c. of the Indian population of the Union are now South African born. As a consequence the possibilities of land-settlement outside India, as already contemplated in paragraph 3 of the Agreement, have been further considered. The Government of India will co-operate with the Government of the Union in exploring the possibilities of a colonisation scheme for settling Indians, both from India and from South Africa, in other countries. In this investigation, which should take place during the course of the present year, representatives of the Indian community in South Africa will, if they so desire, be associated. As soon as the investigation has been completed, the two Governments will consider the results of the inquiry.

(4) No other modification of the Agreement is for the present considered necessary.

32. The acceptance of this draft we could conscientiously recommend, because:—

(a) It modifies the Agreement in the only respect in which modification has been found necessary, *viz.*, exploration of other possibilities for settling Indians from South Africa abroad, because the possibilities of the Union's scheme of assisted emigration to India are recognised to be now practically exhausted.

(b) It affirms that no other modification of the Agreement is necessary, thus clearly indicating that the upliftment policy of the Union stands.

(c) No term is set to the renewed Agreement. This was important, because an explicit renewal of the Agreement in the context suggested by the Union Delegation could not but appear as a one-sided affair from which India gained nothing and the Union everything that it desired.

As specific reference to the maintenance by the Government of India of an Agent in the draft would have had the effect of giving special prominence to this part of the old Agreement and could, by implication, have been represented as assigning secondary importance to other parts, such as the upliftment clause, we thought it best to have such reference omitted. On



the morning of 4th February the Conference met for the last time formally to approve of the draft and, after the usual valedictory speeches in which the note of goodwill predominated, it was adjourned *sine die*.

33. The Government of India, to whom acceptance of the draft was recommended in our telegram No. 24 of 6th February, have agreed to the draft. We have already stated in this report that a final announcement of the result of the conference in these terms must depend upon the representations of Dr. Malan to his colleagues of the Select Committee which prepared the Transvaal Bill producing results satisfactory to the Government of India. If, as we hope, they are satisfactory, the statement of conclusions provisionally agreed upon by the conference should be made simultaneously in both countries on a date mutually agreed upon by the two Governments. If the result of these representations is unsatisfactory, the Government of India must ultimately decide how best to deal with the situation thus created. Our advice in the matter will, we hope, be formulated before we disperse, after we have considered Dr. Malan's promised communication to our leader on the subject of the Transvaal Bill.

34. From the preceding account of the progress of the conference and of the negotiations which occupied its final stages it would be understood that neither the atmosphere nor the time available favoured discussion inside the conference itself of certain points such as the admission into the union of the wives and children of condonees, the future of the Transvaal Licensing Ordinance, etc., which we might otherwise have raised. Our leader and Mr. Bajpai mentioned the more important of them to Dr. Malan. We trust that these representations will bear fruit in due season. The less important were discussed by Mr. Bajpai with the Secretary for the Interior and the Commissioner for Asiatic Affairs. Should events happily so shape themselves as to permit of the Cape Town Agreement being continued in the terms agreed upon by the conference, we consider that these and like other matters should be taken up by the new Agent of the Government of India as and when opportunity favours. We, for our part, would be quite content to have helped to renew the foundations of the friendly understanding which the conference of 1927 first helped to lay, but which, during the conference of 1932, seemed to be in grave peril of being completely lost.

35. Little remains for us to add by way of suggestion or commentary. As regards the proposal for exploring the possibilities of settling Indians from South Africa in countries other than India, definite proposals will no doubt be made by the Union Government later, both in respect of the strength and character of the personnel and the countries to be explored. Though Brazil, British Guiana, Mauritius, Tanganyika, Portuguese East Africa, and even the South Sea Islands were mentioned in the course of the discussion, these were merely illustrative, and not part of a considered or exhaustive list. But there are two points which we wish to emphasise, *viz.*:—

- (1) Without the suggested exploration, no agreement or understanding with the Union Government would have been possible. That the suggestion had to be made shows what a profound psychological importance South African statesmen still attach to the reduction in number of the Indian population. The investigation will, therefore, have to be conducted with all seriousness if time is to be secured for making South Africa solicitous of retaining India's friendship on grounds other than that of securing her aid in finding a solution for her Indian problem. As we feel that Indians in South Africa, especially the younger generation, will have a freer field for self-expression and progress in a country where economic conditions are as favourable as in South Africa, the climate as congenial and

political and social conditions more propitious, the investigation is also justified in the interests of the South African Indians.

- (2) South African Indians will take more kindly to any scheme of colonisation that may emerge from the investigation if they are made to feel that, in taking advantage of such a scheme, they will be acting as pioneers for settlers from India. The investigation should, therefore, definitely be related to the possibility of colonists from India taking advantage of the results.

36. In the statement of conclusions no reference is made to continuation of the scheme of assisted emigration to India. It is likely, however, that, in order to avoid criticism from their European supporters, the Union Government will decide to continue it. In any case, owing to unemployment in South Africa as well as for other reasons, a number of South African Indians are sure to avail themselves of the facilities offered by the scheme in order to return to India. For these people, we are of opinion that the existing facilities at Madras and elsewhere should continue, not as part of any obligation to the Government of the Union, but in discharge of a duty which India owes to her children abroad who return to her shores.

37. Passing reference has been made by us to the desire of South Africa to develop markets for her produce in the East. This subject was not discussed in the conference, but our colleagues, Sir Geoffrey Corbett and Sir Darcy Lindsay, had informal conversations on the subject with Mr. Fourie, the Union Minister of Industries, the Union Board of Trade and also with private individuals. We understand that Sir Geoffrey Corbett will submit a separate memorandum about this to Government. Our interest in the matter arises from what we consider to be the necessity of uniting South Africa to India by strong links if recurrent friction over Indians who have settled in South Africa, is not to wear away the thin bonds of mere sentiment. In a material world, economic links are more likely to serve this purpose than any other. We are, therefore, of opinion that South Africa's efforts to secure markets in the East should be encouraged as far as may be possible without detriment to India's own economic interest.

38. In conclusion, we must acknowledge our debt to all those from whom we received hospitality or assistance in our task. Throughout our stay in the Union we were the guests of the Government. A special officer, Mr. de Waal-Davies of the Prime Minister's Department, was attached to us to look after us. He joined our leader at Lourenco Marques and was with our party until we sailed from that port for India on February 10th. Through him all our requirements in the matter of hotel accommodation and transport were generously met. Before leaving the Union our leader suitably acknowledged the hospitality of the Union Government in a message to the Prime Minister. We would suggest that the Government of India may do likewise. Of the hospitality of private individuals, whether European or Indian, acknowledgment was made by us as occasion required. All we wish to record is that this was abundant, unflinching and delightfully friendly.

39. In our work we had much valuable help both from official and unofficial quarters. Among the latter, Mr. Andrews was conspicuous in characteristic fashion, and we also derived much information from the representatives of the South African Indian Congress and its affiliated bodies. Representatives of other Indian bodies we met, but beyond impressing upon them the need for co-operating with the Congress so as to ensure unity, we had no occasion to maintain touch with them. Among officials, the Secretary to the Agent of the Government of India in South Africa, the Hon'ble Evelyn Baring, was invaluable for his local knowledge, especially of the Transvaal problem, and felicitous knack of getting on with the local

Indians. His Assistant, Mr. Ricketts, was also of great help in various ways. To our own staff, who sometimes had to work very long hours, our debt is substantial.

(Sd.) FAZL-I-HUSAIN.

„ GEOFFREY CORBETT.\*  
 „ V. S. SRINIVASA SASTRI.  
 „ SAROJINI NAIDU.  
 „ DARCY LINDSAY.  
 „ G. S. BAJPAI.  
 „ K. V. REDDI.

S.S. "KARAGOLA,"

*25th February 1932.*

\* Before leaving Cape Town Sir Geoffrey Corbett had authorised Mr. Bajpai to append his signature to any report or memorandum which his colleagues might unanimously agree upon.

---

## APPENDIX I.

## CAPE TOWN AGREEMENT, 1927.

1. It was announced in April 1926 that the Government of India and the Government of the Union of South Africa had agreed to hold a Round Table Conference to explore all possible methods of settling the Indian question in the Union in a manner which would safeguard the maintenance of western standards of life in South Africa by just and legitimate means. The Conference assembled at Cape Town on December 17th and its session finished on January 12th. There was, in these meetings, a full and frank exchange of views which has resulted in a truer appreciation of mutual difficulties and a united understanding to co-operate in the solution of a common problem in a spirit of friendliness and good-will.

Both Governments re-affirm their recognition of the right of South Africa to use all just and legitimate means for the maintenance of western standards of life.

2. The Union Government recognises that Indians domiciled in the Union who are prepared to conform to western standards of life, should be enabled to do so.

3. For those Indians in the Union who may desire to avail themselves of it, the Union Government will organise a scheme of assisted emigration to India or other countries where western standards are not required. Union domicile will be lost after 3 years' continuous absence from the Union, in agreement with the proposed revision of the law relating to domicile which will be of general application. Emigrants under the assisted emigration scheme who desire to return to the Union within the 3 years will only be allowed to do so on refund to the Union Government of the cost of the assistance received by them.

4. The Government of India recognise their obligation to look after such emigrants on their arrival in India.

5. The admission into the Union of the wives and minor children of Indians permanently domiciled in the Union will be regulated by paragraph 3 of Resolution XXI of the Imperial Conference of 1918.

6. In the expectation that the difficulties with which the Union has been confronted will be materially lessened by the agreement now happily reached between the two Governments, and in order that the agreement may come into operation under the most favourable auspices and have a fair trial, the Government of the Union of South Africa have decided not to proceed further with the Areas Reservation and Immigration and Registration (Further Provision) Bill.

7. The two Governments have agreed to watch the working of the agreement now reached and to exchange views from time to time as to any changes that experience may suggest.

8. The Government of the Union of South Africa have requested the Government of India to appoint an agent in order to secure continuous and effective co-operation between the two Governments.

---

**Annexure containing summary of the conclusions reached by the Round Table Conference on the Indian question in South Africa, 1927.**

**I. Scheme of assisted emigration.**—(1) Any Indian of 16 years or over may avail himself of the scheme. In case of a family, the decision of the father will bind the wife and minor children under 16 years.

(2) Each person of 16 years of age or over will receive a bonus of £20 and each child under that age a sum of £10. No maximum shall be fixed for a family. A decrepit adult who is unable to earn his living by reason of a physical disability may, at the discretion of the Union authorities, receive a pension in lieu of or in addition to the bonus. The pension will be paid through some convenient official agency in India out of a fund provided by the Union Government to such amount as they may determine. It is expected that the amount required will not exceed £500 per annum in all.

In every case the bonus will be payable in India on arrival at destination or afterwards, through some banking institution of repute.

(3) Free passage, including railway fares to port of embarkation in South Africa and from port of landing in India to destination inland, will also be provided.

(4) Emigrants will travel to India *viâ* Bombay as well as *viâ* Madras. Emigrants landing at Bombay will be sent direct from the ship to their destination at the expense of the Union Government.

Survey and certification of ships shall be strictly supervised and conditions on the voyage, especially in respect of sanitary arrangements, feeding and medical attendance, improved.

(5) Before a batch of emigrants leaves the Union, information will be sent to some designated authority in India at least one month in advance giving (a) a list of intending emigrants and their families, (b) their occupation in South Africa and the occupation or employment which they would require in India, and (c) the amount of cash and other resources which each possesses. On arrival in India emigrants will be (i) advised, and so far as possible, protected against squandering their cash or losing it to adventurers, and (ii) helped, as far as possible, to settle in occupations for which they are best suited by their aptitude or their resources. Any emigrant wishing to participate in emigration schemes authorised by the Government of India will be given the same facilities in India as Indian nationals.

(6) An assisted emigrant wishing to return to the Union will be allowed to do so within three years from the date of departure from South Africa. As condition precedent to re-entry, an emigrant shall refund in full to some recognized authority in India the bonus and cost of passage including railway fares received on his own behalf and if he has a family, on behalf of his family. A *pro rata* reduction will, however, be made (i) in respect of a member of the family who dies in the *interim* or a daughter who marries in India and does not return, and (ii) in other cases of unforeseen hardship, at the discretion of the Minister.

(7) After expiry of three years Union domicile will be lost in agreement with the proposed revision of the law relating to domicile which will be of general application. The period of three years will run from the date of departure from a port in the Union and expire on the last day of the third year. But to prevent the abuse of the bonus and free passage by persons who wish to pay temporary visits to India or elsewhere no person availing himself of the benefits of the scheme will be allowed to come back to the Union within less than *one* year from the date of his departure. For purposes of re-entry within the time limit of three years, the unity of the family group shall be recognised though in cases of unforeseen hardship the Minister of the Interior may allow one or more members of the family to stay behind. A son who goes with the family as a minor, attains majority outside the Union, marries there and has issue will be allowed to return to South Africa, but only if he comes with the rest of his father's family. In such cases he will be allowed to bring his wife and child or children with him. But a daughter who marries outside the Union will acquire the domicile of her husband and will not be admitted into the Union unless her husband is himself domiciled in the Union.

**II. Entry of wives and minor children.**—To give effect to paragraph 3 of the Reciprocity Resolution of the Imperial Conference of 1918 which intended

that an Indian should be enabled to live a happy family life in the country in which he is domiciled, the entry of wives and children shall be governed by the following principles :—

- (a) The Government of India should certify that each individual for whom a right of entry is claimed, is the lawful wife or child, as the case may be, of the person who makes the claim.
- (b) Minor children should not be permitted to enter the Union unless accompanied by the mother, if alive, provided that
  - (i) the mother is not already resident in the Union, and
  - (ii) the Minister may, in special cases, permit the entry of such children unaccompanied by their mother.
- (c) In the event of divorce no other wife should be permitted to enter the Union unless proof of such divorce to the satisfaction of the Minister has been submitted.
- (d) The definition of wife and child as given in the Indians Relief Act (No. 22 of 1914) shall remain in force.

III. *Upliftment of Indian community.*—(1) The Union Government firmly believe in and adhere to the principle that it is the duty of every civilised Government to devise ways and means and to take all possible steps for the uplifting of every section of their permanent population to the full extent of their capacity and opportunities, and accept the view that in the provision of educational and other facilities the considerable number of Indians who remain part of the permanent population should not be allowed to lag behind other sections of the people.

(2) It is difficult for the Union Government to take action, which is considerably in advance of public opinion, or to ignore difficulties arising out of the constitutional system of the Union under which the functions of Government are distributed between the Central Executive and the Provincial and minor local authorities. But the Union Government are willing :—

- (a) in view of the admittedly grave situation in respect of Indian education in Natal, to advise the provincial administration to appoint a provincial commission of inquiry and to obtain the assistance of an educational expert from the Government of India for the purpose of such inquiry ;
- (b) to consider sympathetically the question of improving facilities for higher education by providing suitable hostel accommodation at the South African Native College at Fort Hare and otherwise improving the attractiveness of the institution for Indians ;
- (c) to take special steps under the Public Health Act for an investigation into sanitary and housing conditions in and around Durban which will include the question of
  - (i) the appointment of advisory committees of representative Indians ; and
  - (ii) the limitation of the sale of municipal land subject to restrictive conditions.

(3) The principle underlying the Industrial Conciliation Act (No. 11 of 1924) and the Wages Act (No. 27 of 1925) which enables all employees including Indians to take their places on the basis of equal pay for equal work will be adhered to.

(4) When the time for the revision of the existing trade licensing laws arrives, the Union Government will give all due consideration to the suggestions made by the Government of India Delegation that the discretionary powers of local authorities might reasonably be limited in the following ways :—

- (1) The grounds on which a licence may be refused should be laid down by statute.
- (2) The reasons for which a licence is refused should be recorded.
- (3) There should be a right of appeal in cases of first applications and transfers, as well as in cases of renewals, to the courts or to some other impartial tribunal.

IV. *Appointment of Agent.*—If the Government of the Union of South Africa make representations to the Government of India to appoint an agent in the Union in order to secure continuous and effective co-operation between the two Governments the Government of India will be willing to consider such a request.

## APPENDIX II.

## BILL

To amend in certain respects the law relating to occupation of certain land in the Province of the Transvaal by Asiatics and to provide for matters incidental thereto.

(Introduced by the MINISTER OF THE INTERIOR.)

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follow:—

1. *Amendment of section one hundred and thirty of Act No. 35 of 1908 (Transvaal).*—Section one hundred and thirty of the precious and Base Metals Act, 1908 (Transvaal) (hereinafter referred to as the Gold Law) is hereby amended by the addition of the following words at the end of sub-section (1) thereof “ and no coloured person other than such *bona fide* servant may reside on or occupy any such ground ”.

2. *Amendment of section one hundred and thirty-one of Act No. 35 of 1908 (Transvaal).*—Section one hundred and thirty-one of the Gold Law is hereby amended—

(a) by the deletion of the words “ be permitted to ” in sub-section (1);

(b) by the deletion of the words “ proclaimed land ” in sub-section (1) and the substitution therefore of the words “ or occupy any land, which has been or purports to have been proclaimed a public digging under any provision whatsoever of this Act or Law No. 15 of 1898 or of a prior law, and which has not been lawfully de-proclaimed, whatever its situation, the nature of its tenure, the nature and extent of any rights in regard thereto under this Act or any other law, or the condition of its surface may be, or may have been on the date of such proclamation.

3. *Retrospective effect of sections one and two.*—The provisions of sections one and two shall be construed as having come into operation on the first day of May, 1930: Provided that any coloured person who was lawfully residing on, or occupying any ground or land referred to in either of those sections immediately prior to the date when its provisions became or are, in terms of this section, deemed to have become applicable to such ground or land, shall be entitled to continue such residence or occupation, subject to compliance with the requirements of any other law.

4. *Prohibition of occupation of proclaimed land by coloured persons to continue after de-proclamation.*—(1) If any land which was at any time subject to the provisions of section one hundred and thirty or one hundred and thirty-one of the Gold Law, has before the first day of May, 1930, ceased to be a public digging it shall, nevertheless continue to be subject to those provisions of that section, or any amendment thereof, as if it were still a public digging, as long as it is situate within the area of jurisdiction of any municipal council or village council or health committee: Provided that any coloured person who was, on the first day of May, 1930, lawfully residing upon or occupying such land, shall be entitled to continue such residence or occupation subject to compliance with the requirements of any other law.

(2) Any land which was, at any time subject to any provisions of section one hundred and thirty or section one hundred and thirty-one of the Gold Law or any amendment thereof, shall, subject to any provision of Act No. 18 of 1913 or of this Act which may be applicable thereto, remain subject to the provisions of the said section one hundred and thirty or one hundred and thirty-one even if it ceases to be a public digging, as long as it is situate within the area of jurisdiction of any municipal council or village council or health committee.

5. *Exempted Areas.*—(1) Within one year after the commencement of this Act every municipal council or village board within whose area of jurisdiction Asiatics reside and within which area is included any ground or land referred to in section one hundred and thirty or one hundred and thirty-one of the Gold Law, or any amendment thereof, shall subject to any law relating to the laying out of township, define an area or areas within its area of jurisdiction for the accommodation of Asiatics and indicate in respect of any such area whether any Asiatic may reside but may not carry on business therein or whether he may carry on business but may not reside therein, or whether he may both reside and carry on business therein.

(2) If the area or areas so defined are, in the opinion of the Minister of the Interior, after consultation with the Minister of Mines and Industries, suitable and of sufficient extent for the purpose indicated as aforesaid, to meet the reasonable residential and business requirements of all Asiatics residing or carrying on business in the area of jurisdiction of such council or board, he shall, subject to any law relating to the laying out of townships, by notice in the *Gazette*, define such area or areas as an exempted area or areas and indicate in such notice in respect of every such area, in accordance with the indication of such council or board, whether an Asiatic may reside therein but may not carry on business therein, or whether he may carry on business therein but may not reside therein, or whether he may both reside and carry on business therein.

(3) Any Asiatic may thereupon, notwithstanding the provisions of any other law, acquire the ownership of or any other real right in or a lease or other right of occupation of any land in any such area and may reside or carry on business thereon or permit any other Asiatic to reside or carry on business thereon, in accordance with such indication, subject to compliance with any law relating to residence or to any such business.

(4) If any such council or board fails to define in accordance with the provisions of sub-section (1) an area which is or areas which are, in the opinion of the Minister of the Interior, suitable and of sufficient extent to meet all reasonable residential and business requirements of all Asiatics residing or carrying on business in the area of jurisdiction of such council or board, the Minister of the Interior shall, subject to any law relating to the laying out of townships, after consultation with the Minister of Mines and Industries, and with such council or board, as soon as may be, by notice in the *Gazette* define an area or areas within such area of jurisdiction as an exempted area or areas and indicate in such notice in respect of every such area whether an Asiatic may reside therein but may not carry on business therein, or whether he may carry on business but may not reside therein, or whether he may both reside and carry on business therein, and the provisions of sub-section (3) shall thereupon apply in respect of any such area.

(5) No land may be included in an exempted area in terms of this section if the title deed of that land contains any servitude or condition prohibiting its transfer to or occupation by an Asiatic, unless the owner of every piece of land in whose favour such servitude or condition is intended to operate, signifies his consent in writing to such inclusion.

6. *Amendment of section one of Act No. 37 of 1919.*—Section one of Asiatic (*Land and Trading*) Amendment (Transvaal) Act (Act No. 37 of 1919), is hereby amended—

(a) by the deletion of the expressions "British Indian" and "Indian" wherever they occur and the substitution therefor of the words "coloured person";

(b) by the addition of the following new sub-sections (2) and (3), the existing section, as hereby amended, becoming sub-section (1):

"(2) The provisions of sub-section (1) shall not exempt any coloured person from any provision of the said section *one hundred and thirty* or *one hundred and thirty-one*, or any amendment thereof, in respect of any number of pieces of land in any township in excess of the number of pieces of land on which he resided or which he occupied in such township on the first day of May, 1919, or in respect of any area in such township in excess of the area on which he resided or which he occupied in such township on the said date.

(3) If any coloured person was, on the first day of May, 1930, residing upon or occupying any land and such residence or occupation was by virtue of any provision of the said section *one hundred and thirty* or *one hundred and thirty-one* or of this section unlawful, such coloured person may, subject to compliance with the requirements of any other law, nevertheless continue such residence or occupation till the thirtieth day of April, 1935: Provided that he has, before the first day of September, 1930, furnished the Minister of the Interior with a written notice, specifying the land which he unlawfully resides upon or occupies, the nature of such residence or occupation and the period during which he resided on or occupied such land and such other particulars in regard to such land, residence or occupation as the Minister may require him to furnish."

7. *Substitution of section two of Act No. 37 of 1919.*—Section two of Act No. 37 of 1919 is hereby repealed and the following new sections *two, three, four, five, six, seven, eight, nine, ten* and *eleven* substituted therefor the existing section *three* becoming section *twelve*.

2. *Restrictions in connection with certain fixed property.*—(1) The expression "fixed property" in Law No. 3 of 1885 (Transvaal) and in this Act shall be construed as meaning any real right in immovable property in the Province of the Transvaal outside an area assigned for the occupation of Asiatics under paragraph (b) of article two of the said Law, as an exempted area in terms of the Transvaal Asiatic Tenure (Amendment) Act, 1930, other than a mortgage bond over immovable property securing a *bona fide* loan granted in the ordinary course of business, for an amount which either alone or together with any other mortgage bond having priority over the first mentioned mortgage bond, does not exceed one half of the value of such property as at the time of the registration of such mortgage and shall include any lease of immovable property for a period of ten years or longer or any lease which empowers the lessee to renew it for any period or periods which, together with the period of the original lease, equal or exceed a period of ten years.

(2) No Asiatic company shall hold any fixed property.

(3) The provisions of sub-sections (1) and (2) shall not apply in respect of any fixed property which, on the first day of May, 1930, stood lawfully registered in any deeds registry in favour of—

(a) any Asiatic, as long as that fixed property is held by him or by any other Asiatic who inherited it from an Asiatic; or,

(b) an Asiatic company while held by such company.

(4) No person shall hold any fixed property on behalf of or in the interest of an Asiatic or Asiatic company, and any person who purports or agrees to hold any fixed property on behalf of or in the interest of an Asiatic or Asiatic company shall be guilty of an offence: Provided that the provisions of this sub-section shall not apply in respect of any fixed property held immediately prior to the fifteenth day of May, 1930, by any person on behalf of or in the interest of an Asiatic or any Asiatic company, while so held by such person.



- (5) Any fixed property registered in any deeds registry in favour of any Asiatic or Asiatic company which such Asiatic or company is debarred from holding by virtue of the provisions of Law No. 3 of 1885 (Transvaal) or of this Act, shall become the property of the State and any person other than the registrar of deeds or registrar of mining titles or any of their subordinate officers, who is in any way instrumental in effecting any such registration, in favour of an Asiatic or in favour of a company which is, on the date of such registration, an Asiatic company, shall be guilty of an offence :
- Provided that if any such Asiatic or company purports to transfer such property to a person who may lawfully hold it, the rights of the State under this sub-section in respect of such property, shall terminate on the expiration of one year after the registration of such transfer in a deeds registry.
- (6) Any condition or provision inserted after the fifteenth day of May, 1930, in any document whatever purporting to empower any Asiatic or Asiatic company to exercise any influence upon the transfer of fixed property shall be void.
3. *Notification of registrar of companies.*—(1) Whenever any private company holds any fixed property, any share in or debenture of such company held by or pledged to—
- (i) an Asiatic ; or
  - (ii) an Asiatic company ; or
  - (iii) any person on behalf or in the interest of an Asiatic or an Asiatic company,
- shall be forfeited to the State.
- (2) It shall be the duty of the secretary and of every director of any company referred to in sub-section (1), which holds any fixed property, to notify the registrar of companies whenever any Asiatic or Asiatic company or any other person on behalf or in the interest of an Asiatic or Asiatic company holds any share in or debenture of such first-mentioned company.
- (3) Any secretary and director who fails to comply with the requirements of sub-section (2) shall be guilty of an offence unless he proves that he was ignorant of the fact which it was his duty, in terms of sub-section (2), to convey to the registrar of companies and that he could not reasonably have ascertained that fact.
4. *Safeguarding of existing rights.*—The provisions of section three shall not affect any share in or debenture of any company which was, on the first day of May, 1930, held by an Asiatic and not transferred by him since that date or by any other Asiatic who inherited it from an Asiatic : Provided that such company did not after the said date acquire any fixed property.
5. *Action to give effect to forfeiture of shares.*—(1) The secretary of any company a share wherein or a debenture whereof has been forfeited to the State in terms of section three shall make such entries in any register, book or document under the control of such company and issue such documents as the registrar of companies may direct for the purpose of giving effect to such forfeiture.
- (2) Whenever any such secretary fails to comply with any direction given to him by the registrar of companies in terms of sub-section (1), such secretary shall be guilty of an offence.
6. *Onus of proof.*—Whenever it has been proved in any proceeding under this Act, whether civil or criminal, that an Asiatic holds any share in or debenture of any company or that any other person holds any such share or debenture on behalf or in the interest of an Asiatic, such company shall be deemed to be an Asiatic company, unless the contrary is proved.
7. *Certain foreign companies not to hold fixed property.*—(1) No foreign company (as defined in section two hundred and twenty-nine of the Companies Act, 1926 (Act No. 46 of 1926), shall acquire any fixed property or shall be capable of holding any fixed property acquired after the first day of May, 1930, unless it has a place of business in the Union and has complied with the requirements of section two hundred and one of the said Act.
- (2) No Asiatic may occupy any land (other than land situate in an area wherein an Asiatic may hold immovable property) if such land is held by any foreign company or by any company in which a foreign company holds a controlling interest or if any such company holds any real right in respect of such land other than a mortgage bond referred to in sub-section (1) of section two or if any such company holds in respect of such land a lease referred to in that sub-section, provided that the provisions of this sub-section shall not apply to any Asiatic who is the *bona fide* servant of any person in lawful occupation of such land. Any Asiatic contravening this sub-section shall be guilty of an offence.
8. *Company with bearer shares or debentures may not permit Asiatics to occupy its fixed property.*—If any company which has issued any shares or share warrants or debentures entitling the bearer thereof to any rights in regard thereto, holds any land (other than land situate in an area wherein an Asiatic may hold immovable property) or a real right in respect of such land other than a mortgage bond referred to in sub-section (1) of section two or holds in respect of such land a lease referred to in that sub-section no Asiatic shall occupy such land (except as a *bona fide*

servant of any person in lawful occupation thereof) and if any Asiatic occupies any such land in contravention of this sub-section he shall be guilty of an offence and if such occupation was permitted or could have been prevented by such company, the secretary and every director thereof shall likewise be guilty of an offence.

9. *Proof of authority to trade before issue of certificate for licence.*—(1) Any authority entrusted by law with the issue of any certificate which any person desiring to take out a licence to carry on any business or trade in the province of the Transvaal is required to produce before such licence may lawfully be issued to him, shall, subject to the provisions of sub-section (3) of section one, not issue any such certificate to any person applying therefor unless such person proves that the proposed holder of such licence and the person who will be in actual control of the business or trade to be licensed, are not Asiatics, or if they are Asiatics, that they may lawfully carry on the business or trade for which a licence is desired on the premises whereon such business or trade is to be carried on.
- (2) Any person whatever may, within two months after the issue of any such certificates by any such authority, and any applicant for such a certificate whose application therefor has been refused, may, within two months after such refusal, appeal against the decision of such authority to the magistrate of the district wherein the business or trade in question is to be carried on and such magistrate may cancel such certificate and any licence issued on the strength thereof or may issue such certificate in lieu of such authority. The decision of the magistrate on any such appeal shall be subject to an appeal to the Transvaal Provincial Division of the Supreme Court, as if it were a civil judgment of a magistrate's court.
10. *Penalties.*—Any person who commits an offence under or contravenes any provision of this Act shall, on conviction, be liable to a fine not exceeding fifty pounds or in default of payment of such fine, to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment.

11. *Definitions.*—In this Act—

- “ Asiatic ” means any Turk and any member of a race or tribe whose national home is Asia, but shall not include any member of the Jewish or the Syrian race or a male person belonging to the race or class known as the Cape Malays ;
- “ Asiatic company ” means any company wherein a controlling interest is held by an Asiatic ;
- “ coloured person ” has the meaning assigned to that expression in section three of Act No. 35 of 1908 (Transvaal) ;
- “ controlling interest ” in relation to any company means a majority of the shares or shares representing more than half the share capital or shares of a value in excess of half the aggregate value of all the shares in such company or shares entitling the holders thereof to a majority or preponderance of votes, or debentures for an amount in excess of half the share capital of such company or the power to exercise any control whatsoever over the activities or assets of such company ;
- “ deeds registry ” includes the mining titles office ;
- “ licence ” includes any renewal thereof.

8. *Amendment of section one of Act No. 12 of 1924.*—Section one of Act No. 12 of 1924 is hereby amended by—

- (a) the insertion of the word “ male ” after the word “ Malay ” ;
- (b) the deletion of the words “ section two ” and the substitution therefor of the words “ any provision ”.

9. *Short title.*—This Act may be cited as the Transvaal Asiatic Tenure (Amendment) Act, 1930.

\* \* \*

---

*Extracts from the (Transvaal) Precious and base Metals Act, 1908.*

(Known as the Gold Law of 1908 Act, No. 35 of 1908.)

---

\* \* \*

130. *Prohibition against acquisition of rights under this Act by coloured persons.*—(1) Save as is provided in section twenty-four no right may be acquired under this Act by a coloured person ; and the holder of a right acquired under Law No. 15 of 1898 or a prior law or under this Act shall not transfer, or sub-let, or permit to be transferred or sub-let, any portion of such right to a coloured person, nor permit any coloured person (other than his *bona fide* servant) to reside on or occupy ground held under such right.

(2) Any person contravening this section shall be guilty of an offence, and liable on conviction to a fine not exceeding fifty pounds, and in the case of a continuing contravention to a fine not exceeding five pounds for every day during which such contravention is continued.

131. *Restriction on residence of coloured persons on proclaimed land in districts of Class A.*—  
(1) No coloured person shall be permitted to reside on proclaimed land in districts comprised in Class A, except in bazaars, locations, mining compounds and such other places as the Mining Commissioner may permit.

(2) Any coloured person contravening this section shall be liable on conviction to imprisonment for a period not exceeding one month, and upon such conviction the Mining Commissioner may cause any structures occupied by or erected for the use of such coloured person to be removed.

(3) Nothing in this section shall apply to coloured persons in the employ of a white person in so far as they live on the premises where they are so employed nor to coloured persons who at the commencement of this Act were lawfully in occupation of premises.

\* \* \* \* \*

*The (Union of South Africa) Asiatics (Land and Trading) Amendment (Transvaal) Act, 1919.*

*Act No. 37 of 1919. Date of commencement—3rd July, 1919.*

To make further provision with reference to the prohibition of ownership of land by Asiatics and with reference to the restrictions as to the occupation of land and trading by them.

(Assented to—21st June 1919.)

(Signed by the Governor-General in English.)

BE IT ENACTED by the King's Most Excellency Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

1. Those provisions of sections *one hundred and thirty and one hundred and thirty-one* of Act No. 35 of 1908 (Transvaal) which relate to the residence on or occupation of ground held under a stand licence on proclaimed land by coloured persons and any provisions similar thereto contained in the conditions of any deed of grant or freehold title in a Government Township (as defined in Act No. 34 of 1908, Transvaal) issued under the last-mentioned Act shall not apply—

(a) to any British Indian who on the first day of May 1919, was, under the authority of a trading licence lawfully issued, carrying on business on proclaimed ground or on any stand or lot in such township, or to the lawful successor in title of any such Indian in respect of such business; or

(b) to any person *bona fide* in the employment of such a British Indian or his successor in title,

so long as such British Indian or successor in title continues so to carry on business on the same ground or stand or lot on which or on any other ground or stand or lot in the same township in which it was being carried on on the first day of May, 1919:

Provided that nothing in this section shall be construed as abrogating any exceptions contained in the said sections *one hundred and thirty and one hundred and thirty-one* or in the conditions aforesaid.

2. Those provisions of Law No. 3 of 1885 (Transvaal), and any amendments thereof heretofore enacted which prohibit a person belonging to any of the native races of Asia from being an owner of fixed property in the Transvaal subject to certain exceptions specified in such amendments shall, subject to the same exceptions, be construed also as prohibiting any registration of a mortgage over fixed property in favour of a person belonging to any of the native races of Asia, otherwise than as security for a *bona fide* loan or investment in the ordinary course of business and also prohibiting the ownership of fixed property in the Transvaal by any company or other corporate body in which one or more persons belonging to any of those races have a controlling interest and the registration of such a mortgage in favour of such a company or corporate body otherwise than as security as aforesaid:

The provisions of this section shall apply as from the first day of May 1919, provided that in respect of any fixed property acquired by any such company or corporate body before the first day of May, 1919, the aforesaid provisions of Law No. 3 of 1885 (Transvaal) shall be construed as if this Act had not been passed. Any such company or other corporate body which may have acquired the ownership of fixed property since the first day of May, 1919, shall dispose thereof within a period of two years from the commencement of this Act, or within such further period as any superior court having jurisdiction where the property is situate on application may allow, and on the failure of such company or other corporate body so to dispose of such property then and in that case such property shall on the petition of any member of the public be sold by order of such a court.

3. This Act may be cited for all purposes as the Asiatics (Lands and Trading) Amendment Act (Transvaal), 1919.

Short title.

## APPENDIX III.

Sir Geoffrey Corbett and Mr. Bajpai met Dr. Malan and Mr. Duncan to discuss the provisions of the Transvaal Asiatic Tenure (Amendment) Bill. Messrs. Hoogonhout and Venn of the Department of Interior and the Hon. Evelyn Baring, Secretary to the Agent of the Government of India in the Union of South Africa, were also present.

The views of the Indian Delegation on questions of principle involved in the Bill were put forward, and are summarised below. No attempt was made to put forward suggestions as to drafting which the Indian representatives considered to be matters for the law officers of the Union Government.

2. *Part I.—(a) Occupation and (b) ownership of proclaimed land by Asiatics.*—(a) Dr. Malan had stated that the problem was to validate, as far as possible, existing contravention of the Gold Law and to prevent contravention in future. The Indian representatives suggested that both objects could be achieved by using the powers of the Mining Commissioner under section 131 (1) of Act 35 of 1908. A register of occupations validated as well as of occupations permitted in future by the Mining Commissioner should be prepared and maintained up-to-date. They accepted Dr. Malan's suggestion that a Commission composed of one Judge and two other persons might be set up to examine each individual case of occupation on a given date and make proposals both as to the principles on which existing illegal occupation should be validated and permission given in future by the Mining Commissioner to occupy land outside bazaars, locations and mining compounds. The considerations governing the action of the Mining Commissioner might be—

- (i) the character of the area, *i.e.*, whether it was already largely occupied by Asiatics ;
- (ii) the period during which illegal occupation had continued in areas which were predominantly European and the hardships which enforcement of the law would involve ;
- (iii) the character of the occupation ; and
- (iv) the wishes of the other occupants in that area.

On the question whether local bodies should have power to refuse trading licences because the applicant was not entitled to occupy the premises on which business was to be carried on, the Indian representatives were emphatic that local bodies should not become courts of first instance for determining questions of title as provided in clause 9 of the Bill. They suggested that the licensing authority might communicate to the Mining Commissioner the name of the applicant, if it was not already on the register of lawful Asiatic occupants maintained by that officer, when the Mining Commissioner would be able to proceed against the applicant if he was not entitled to occupy the premises in respect of which the licence was required. This could be done by executive order. The other possibility was to pass legislation empowering licensing bodies to refuse a licence unless the applicant produced a certificate from the Mining Commissioner permitting him to occupy the premises on which the business was to be conducted.

(b) *Ownership of fixed property.*—The Indian representatives suggested that where Indians were permitted to occupy proclaimed land, they should also be permitted to own it, if this could be done under the Law 3 of 1885. But if this could not be done under that law and required legislation, the Indian representatives were of opinion that such legislation might be misrepresented as an attempt at segregation.

3. *Part II.*—The next principle which the Indian representatives pressed was that no additions should be made to the already heavy list of restrictions to which Indians in the Transvaal were subject. From this standpoint, they proposed—

- (i) That the restrictions of the Gold Law should not be extended to areas such as Springs and to deproclaimed land (*cf.* clauses 2 (2) and 4 of the Bill).

- (ii) That the definition of fixed property in the proposed section 2 of Act 37 of 1919 to include losses of property for ten years or longer was a serious new restriction.
- (iii) That the provisions of new sections 7 (2) and 8 proposed to be inserted in Act 37 of 1919 should be limited to proclaimed land, since it was an innovation in the Transvaal Law to restrict occupation by Asiatics of unproclaimed land.

As regards Springs, Dr. Malan thought it would be desirable to meet the wishes of the local European community to treat it on the same footing as other townships which were subject to the restrictions embodied in sections 130 and 131 of the Gold Law of 1908, but the existing acquired rights of Indians and of their successors in interest should be protected in terms of section 1 of Act 37 of 1919, and the question whether other townships on proclaimed land now not subject to these restrictions should be similarly dealt with might be left to the future. As regards deproclaimed land, he undertook to ascertain from his legal advisers whether the requisite protection against depreciation of property which was the main ground urged by Europeans for the retention of anti-Asiatic restrictions after deproclamation would not be secured by the anti-Asiatic clause in the title deed of freehold land.

4. *Part III.*—It was stated by Dr. Malan to be the intention of the Bill that property acquired by Asiatics or Asiatic companies up to 1st May 1930, which was not protected by Act 37 of 1919, should be protected by the new law.

The Indian representatives suggested that this might be done in a simpler manner than the relevant clauses of the Bill appeared to do, for it was important to avoid litigation arising from the complexity of the new law.

5. Throughout the discussion the Indian delegates emphasise the importance of confining new legislation to the minimum necessary to secure the objects mentioned by Dr. Malan, *viz.*, validation, so far as possible, of existing illegalities and contravention of the law in future. Imposition of fresh disabilities, they urged, might endanger good feeling between India and South Africa.

**CONFIDENTIAL.**

---

**Supplementary Memorandum by Mr. G. S. Bajpai, C.I.E.,  
C.B.E., I.C.S., Member-Secretary of the Government  
of India Delegation to South Africa, 1932.**

---

## SUPPLEMENTARY MEMORANDUM.

In paragraph 34 of the Memorandum presented by the Delegation, reference is made to the representations made by the Hon'ble Sir Fazl-i-Husain, and Mr. Bajpai on certain points which could not be discussed in the conference. These points were:—

- (1) The Transvaal General Dealers Control (Amendment) Ordinance.
- (2) The admission into South Africa of merchants, students and tourists from India on conditions similar to those recently agreed upon by the Government of the Union of South Africa and the Japanese Government regarding the entry into the Union of Japanese nationals of these classes for temporary visits.
- (3) The admission into South Africa of the wives and minor children of Indian condonees.
- (4) Indian education in Natal.
- (5) Inter-provincial visits by Indians resident in the Union on urgent private affairs.
- (6) Extension for educational purposes of temporary sojourn in India of the children of Indians resident in the Union.

Representations in regard to (1) and (2) were made by Sir Fazl-i-Husain and Mr. Bajpai to Dr. Malan and also the Prime Minister. On the remaining subjects Mr. Bajpai spoke to Dr. Malan or some of the officers of the Department of the Interior. The purpose of these representations, and of the replies elicited from the Ministers is summarised seriatim in the following paragraphs:—

2. (1) *The Transvaal Licences (Control) Ordinance.*—This Ordinance was passed by the Transvaal Provincial Council on 6th May 1931, and has been reserved under section 90 of the Union of South Africa Act, 1909, for consideration by the Governor General. The reservation was made on the recommendation of the Government of India, and it was intended that the Ordinance should, if opportunity offered, be discussed in the conference. The trend of discussion there, however, soon made it clear that, if the Ordinance was discussed in the conference, Mr. Pirow, the Minister of Justice, who represents Transvaal opinion in the Cabinet, would throw his whole weight in favour of the Governor General assenting to it and that, as the measure relates to the Transvaal, and seeks to assimilate the powers of local bodies in that province to those enjoyed by such bodies in the Cape Province, Dr. Malan, himself a Cape man, would find it very difficult to go against him. For this reason it was decided to make representations in regard to the Ordinance to Dr. Malan outside the conference.

3. The objections to the Ordinance that were put forward were:—

- (i) That it dangerously widens the discretion of local bodies to refuse certificate of fitness.
- (ii) That, even in the Cape, where racial feeling did not run high, the Lange Commission had found that, at least in some places, the wide discretion given to local bodies was exercised to the prejudice of the Indian, merely because he was an Indian.
- (iii) That in the Transvaal, it had been repeatedly held by the courts that even comparatively limited discretion given to local bodies by the existing law was exercised in a spirit of racial prejudice; and
- (iv) That, in view of these considerations, the fear that the wider discretion which the Ordinance proposed to give to local

bodies would, in the special circumstances of the Transvaal, be used to the ruin of the Indian trading community was amply justified.

Dr. Malan admitted that these objections had considerable force, but urged—

- (a) That the matter was primarily one for the provincial authorities.
- (b) That to veto the Ordinance would be in conflict with the spirit of the constitution and would provoke a constitutional crisis.
- (c) That in any case the veto would have the effect of dragging the whole Indian question into the arena of party politics; and
- (d) That as clause 10 of the new Ordinance provides for the maintenance of a list of the names of all persons lawfully trading as general dealers within each municipal or rural area on a given date, and as persons included in this list would be exempt from the necessity of obtaining certificates, the wider discretion which clause 7 of the Ordinance seeks to confer upon local bodies would, at any rate, safeguard existing Indian traders who, judging from the number of licenses held by them, have a share in the trade of the Transvaal considerably in excess of their proportion of the population.

In reply, it was pointed out to Dr. Malan—

- (a) That far from being unconstitutional, action by the Union Government to interfere in a provincial matter of this nature in order to protect the interests of a vote-less community like the Indian would appear to be fully in conformity both with the letter and the spirit of the constitution.
- (b) That means other than the veto were open to the Ministers to prevent the Ordinance being placed on the statute book. For example, they could persuade the Provincial Committee to let the matter drop.
- (c) That the protection contemplated by clause 10 of the Ordinance would not apply to the successors of the existing licence holders and could not, therefore, be regarded as adequate, and
- (d) That the onus for regarding the existing law as inadequate lay upon those who sought to amend it, but no argument to establish such insufficiency had been put forward.

It was, therefore, urged that the Ministers might use their influence informally with leaders of the Transvaal either to secure abandonment of the Ordinance or to have it so modified as to bring the new law into conformity with the conditions suggested by the Lange Commission and repeated by the Delegation from India to the 1927 Conference [*vide* Part III (4) of the Annexure to the Cape Town Agreement].

Dr. Malan promised to sound Transvaal opinion in the matter, probably after the Government has moved to Pretoria. An inquiry on the subject might be made either by our Agent from the Minister or from the Governor General about May.

4. (2) *The Japanese Agreement*.—The temporary admission of Japanese students, tourists and merchants into South Africa is now regulated by conditions set out in notes, dated the 16th October 1930, exchanged between the Acting Consul for Japan and the Acting Secretary for External Affairs, Cape Town. It was represented both to Dr. Malan and the Prime Minister that, if the admission of Indians belonging to these classes for temporary visits to South Africa could be similarly regulated, not only would this be regarded as a friendly gesture by the public in India, but the arrangement would assist the promotion of trade between two countries which South Africa is understood particularly to desire. Dr. Malan said that personally he saw no reason why visitors from India belonging to these classes should



not be admitted on the same conditions as Japanese, but thought that, in view of the uproar which the agreement with the Japanese had created among the Parliamentary Opposition in the Union, it would be inadvisable to raise the matter publicly now. He agreed, however, that it might be considered when South Africa sends a trade mission to India, possibly next autumn. In this connection it was suggested both to him and to General Hertzog that it would help to create a good atmosphere in India for the trade mission if the Minister in Charge of it were to make an announcement either before arrival in India or immediately on arrival there that facilities similar to those now given to the Japanese merchants would be given to Indian merchants to visit South Africa. Meanwhile, if any distinguished visitor from India visits the Union, there is reason to anticipate that the Department of the Interior would give favourable consideration to a request by the Agent of the Government of India to secure his admission into the Union on the same conditions as now apply to the Japanese. In fact, both the Secretary for the Interior and the Commissioner for Asiatic Affairs seemed disposed to agree even now to the Japanese arrangement being made applicable by purely departmental action to visitors from India. If the new Agent makes judicious use of these allies, the conclusion of an understanding with the Union Government on this subject in the near future should, therefore, be easy.

5. (3) *The admission into South Africa of the wives and minor children of Indian condonees.*—In a note which Sir Kurma Reddi submitted to the Government of India on this subject for the guidance of our representatives, he suggested that condonees should be treated on the same footing as domiciled persons and allowed to bring in their wives and minor children. He urged this particularly in view of the fact that 3 years had now elapsed since protection certificates were granted to the condonees. The Indian leaders in South Africa also made much of this point and said that, if the Union Government made the concession, it would have an excellent effect upon the Indian community and enhance the prestige of the South African Indian Congress, on whose persuasion the great majority of condonees had applied for condonation. From the fact, however, that something like 2,012 wives and minor children are involved it was feared that Dr. Malan would not respond sympathetically to a request that the suggested concession might be made. The probability was that he would represent the possible admission of as many as 2,012 women, and children from India as being likely to cause alarm to Europeans, especially on the eve of an announcement that the possibilities of assisted emigration to India were practically exhausted. When Mr. Bajpai placed the matter before him this was the line he took and urged, with great force, that insistence upon a concession of this kind at the present juncture would only embarrass him. Questions would be asked in Parliament and he would be accused of having succumbed to the superior diplomacy of the Indian Delegation. He promised, however to consider special cases on their merits. The subject is one which the New Agent of the Government of India may re-open at the first favourable opportunity if the Cape Town Agreement is renewed.

6. (4) *Indian education in Natal.*—In view of the prevailing financial stringency, it was obvious that proposals for increasing the subsidy paid by the Union Government to the Provincial Administration would not be favourably received. Mr. Bajpai, therefore, confined himself to drawing attention to the fact that the Natal Administration was spending nothing upon Indian education from provincial revenues. This, he argued, amounted to differential treatment of the Indians, for expenditure from provincial revenues was being incurred upon the education of European and coloured children. He also requested the Minister to give some financial assistance to the Indian community in its efforts to provide agricultural and technical education for its members—a matter to which local Indian leaders attach great importance. As regards the expenditure on Indian education of

sums derived from provincial revenues, Dr. Malan said that the position was undoubtedly unsatisfactory, and offered to help the Agent of the Government of India and the Indian community in Natal to bring the matter up before any Commission which may be appointed to inquire into the future of provincial administration in South Africa. As regards the second point, he said that he would see whether something could be done immediately. The new Agent might take up both these points with the Minister or the Department of the Interior after his arrival in South Africa.

7. (5) *Inter-provincial visits by Indians resident in the Union.*—The Indian leaders who met the Delegation complained that unnecessary difficulties were made by the Commissioner for Asiatic Affairs in giving permission to Indians residing in one province of the Union to visit another in cases of emergency. Complaints had also been made personally against the present Commissioner for Asiatic Affairs, Mr. H. N. Venn, Mr. Bajpai naturally refrained from repeating to the Minister the complaints made against Mr. Venn, but he urged on general grounds that, if departmental officers were to exercise their powers with sympathy rather than with cold rectitude, the impression upon the Indian community would be most favourable and the Union Government's ideal of making South African Indians look to them rather than to an outside Government for redress of their grievances be more speedily realised. By way of example, he suggested that permits for inter-provincial visits to deal with urgent matters might be issued with greater liberality and promptness. The Minister readily agreed to speak on the subject to his officers. Mr. Bajpai also took the precaution of making a personal appeal to Mr. Venn to infuse into his administration an element of sympathy. In this connection, it might be added that, though Mr. Venn is probably at fault, the leaders of the Indian community in South Africa are also not without blame. They are, perhaps, unduly suspicious and apt to take slight where none is intended. This is intelligible, considering the disabilities under which they live. At the same time, they are unlikely to get more by overlooking the faults of the Union officials, and cultivating friendly relations with them, than by treating them with open hostility. The Agent of the Government of India can do a great deal in bringing Indian leaders into friendly social touch with the officers of the Department of the Interior, and it is suggested that in future he might make special efforts in this direction.

8. (6) *Extension for educational purposes of temporary sojourn in India of the children of Indians resident in the Union.*—Mr. Bajpai told both the Minister and the Commissioner for Asiatic Affairs that, since few facilities exist in South Africa for Indians to receive higher, general or technical education, it was only fair that, in *bona fide* cases, permission to stay away from the Union for educational purposes should be liberally given. The Minister assured him that this would be done, but added that it would make matters much easier for him and his officers if the Indian community on their part refrain from asking for such concession for people who are known to have abused them. The implied criticism is true and the new Agent might impress it upon the local Indian leaders that in this, as in other matters, honesty is likely to prove the best policy.

9. In the consultations that the representatives of the South African Congress had with the Delegation the following points were also brought up:—

- (i) Act 15 of 1931, which repealed sections 2 and 11 of the Transvaal Ordinance No. 36 of 1908.
- (ii) Educated entrants.
- (iii) White labour policy of the Union Government and certain municipalities.
- (iv) The Natal immigration laws.

Point (i) was not taken up, because neither the Congress leaders nor the representatives of the Transvaal British Indian Association were able to show that any practical hardship had resulted from the repeal of sections 2 and 11 of Ordinance No. 36 of 1908. The grievance was mainly sentimental, *viz.*, that the right which the Transvaal Indians acquired as a result of the Passive Resistance Movement had been taken away. This, it was felt, did not provide sufficient justification for suggesting repeal of Act 15 of 1931 which, in substance, was intended to put Indians in the Transvaal in exactly the same position as regards the right of entry into the Union as Indians in other parts of the Union. The Government of India have already informed the Union Government that they reserve the right to re-open the matter. If experience brings to light special hardships on account of the repeal of sections 2 and 11, the matter can be reopened.

As regards point (iii), in the prevailing economic situation, when every Government is retrenching staff, no useful purpose would have been served by putting in a special plea on behalf of the Indian community, especially to the present Minister of Labour, Col. Creswell, who firmly believes that the problem of the poor white in South Africa can only be solved by employing white men to do every kind of manual labour. Representations on the subject must await a more favourable opportunity.

The point made by the Congress in regard to educated entrants, (ii), was that they are at present admitted only on temporary permits. The matter is one of comparatively minor importance, and one in which there has been a good deal of abuse, since, instead of bringing in Indians of culture, as was originally intended, the community has only used the concession to introduce traders and book-keepers. Unless the Indian community shows a disposition to work the arrangement in the spirit in which it was conceived, it seems undesirable for the Government of India to intercede. There will be no objection to the new Agent consulting the Congress in the matter after he has had time to settle down and form some idea of the nature and relative importance of the community's needs, and then taking such action after consulting the Government of India as might be desirable.

On the fourth point, *viz.*, the Natal Immigration Laws, Mr. Christopher of Durban promised to submit a memorandum explaining fully what the South African Indian Congress requires. This memorandum may be awaited. The community are understood to desire repeal of some of the provisions of these laws, relating to the registration of marriages, etc., which were primarily intended for indentured labourers and which they now consider to be unnecessary.

G. S. BAJPAI.

SS. "KARAGOLA,"

25th February 1932.

**CONFIDENTIAL**

*Serial no. 50.*—TELEGRAM FROM DR. MALAN, DATED THE 1ST MARCH 1932.

Hope you have had pleasant voyage and are restored to complete health. Union Government have approved joint statement embodying conclusions arrived at by Conference. Select Committee have accepted suggestion that section five of Asiatic Tenure Bill be deleted and that Bill be so amended as to make possible that under powers of Mining Commissioner illegal occupants can *under certain circumstances* be left undisturbed. Other minor alterations suggested by the Indian Delegation are still under consideration.

LC86EHL

*Serial n<sup>o</sup>. 51.*—TELEGRAM R., TO THE AGENT OF THE GOVERNMENT OF INDIA IN SOUTH AFRICA, CAPE TOWN, NO. 710, DATED THE 4TH MARCH 1932.

Following for Dr. Malan from Sir Fazl-i-Husain. *Begins.* Many thanks for your telegram. Am much better now after rest on voyage.

2. Decision of Select Committee to delete clause 5 of Bill has gratified me and my colleagues of the Delegation, whom I have consulted, but in order to be able to appreciate its full implications, they would like to know at your earliest convenience, (1) whether power of Mining Commissioner will be exercised on recommendations of Commission presided over by judge, which contemplated appointing, (2) whether it will enable him to make exceptions in future, and (3) what will be circumstances in which his power of making exceptions will be exercised. They also desire to know decision on other points raised by Corbett and Bajpai in Sub-Committee, to which they attach great importance.

3. I shall be grateful if you could telegraph this information to me soon.  
*Ends.*

*Serial no. 53.*—TELEGRAM FROM THE HON'BLE DR. D. F. MALAN, DATED THE 11TH MARCH 1932.

Your telegram to Quyamans (Agent of Government of India in South Africa) in reply mine of first instant. Commission as stated will be appointed but powers proposed to be given Mining Commissioner will be vested in Minister Interior who will be empowered to make exceptions in future. Impossible to lay down general principles in regard exceptions as each will be dealt with on its merits having due regard to conditions stipulated by sub-committee. Bill being amended by following proviso to new clause 9(1) "Provided that a certificate issued under the hand of the officer in charge of the deeds registry to the effect that any land has been withdrawn from the operation of sections 130 & 131 of the gold law shall for the purposes of this section constitute sufficient proof that a coloured person may lawfully carry on business or trade on such land" ownership proclaimed land would require legislation and not agreed to. Regarding Springs clause 2 of Bill to remain but it will be seen that new powers of Minister under proposed amendment of Gold Law as above mentioned will go far to meet any special position. Definition fixed property in clause 7 (2) to stand. Clause 4 regarding deproclaimed land to stand but proposed give Minister same power of exemption as in case proclaimed land. Bill being suitably amended to protect Asiatic Companies as desired by Sub-committee, The Bill as amended is of course subject to ratification by Parliament.

*Serial no. 54.*—TELEGRAM TO THE HON'BLE DR. D. F. MALAN, MINISTER OF THE INTERIOR, CAPE TOWN, NO. 249-OS., DATED THE 15TH MARCH 1932.

Many thanks for your telegram of 11th. Suggestions put forward by Corbett and Bajpai on our behalf were put forward in hope that members of Select Committee will be persuaded to accept them in entirety, while acknowledging gratefully modifications you have been able to secure, I feel that Select Committee's view as regards definition of fixed property is likely to cause dissatisfaction in India, as it involves imposition of entirely new restriction, and same applies to their view regarding extension to areas like Springs and to deproclaimed land of prohibitions of Gold Law. I am most anxious to secure for our provisional agreement best possible reception in this country, and would, therefore, like you to consider whether your colleagues of Select Committee can be persuaded to review these points in order to meet us. I should also like to know what has been decided regarding prohibition in Bill of occupation by Asiatics of land belonging to foreign companies. Pending receipt of your reply regarding these points and subject to modification in light of it, I have thought of statement on these lines to be made in this country regarding Bill. Any suggestions that you care to make regarding statement will be gladly received and considered.

2. *Text of Statement.—Begins.* As regards Transvaal Asiatic Tenure (Amendment) Bill, Conference decided that it should be considered by sub-committee consisting of two representatives of each Delegation. After discussion in sub-committee, Dr. Malan, who was one of Union representatives, agreed to place before members of Select Committee, which had prepared Bill, suggestions of delegates from India. Results of this consultation are now available and may be summarised as follows :—

- (1) Clause 5 of Bill which embodied principle of segregation by providing for earmarking of areas for occupation or ownership of land by Asiatics has been (is to be) deleted. Instead, power is to be given to Minister by suitable amendment of Gold Law to permit occupation of proclaimed land by Asiatics, and to be exercised, after inquiry into individual cases by impartial commission presided over by judge, to validate present illegal occupations and to permit exceptions to be made in future from occupational restrictions of Gold Law. It is hoped that this power will be liberally exercised so as to prevent the substantial dislocation of Indian business which strict application of the present law would involve, and to provide Indians in future with reasonable facilities to trade in the mining areas without segregation. The Bill is also to be amended so as to protect fixed property acquired by Asiatics or Asiatic companies up to 1st March 1930 which are not protected by section 2 of Act 37 of 1919. This will have the effect of saving many Indian properties which, though not acquired in contravention of the letter of the Act of 1919, were acquired contrary to its spirit. Local bodies whom clause 10 of the Bill required to refuse certificates of fitness to an Asiatic to trade on the ground that the applicant may not lawfully carry on business on the premises for which licence is sought, shall have to treat a certificate issued by a competent Government officer to the effect that any land has been withdrawn from the restrictive provisions of sections 130 and 131 of the Gold Law as sufficient proof that a coloured person may lawfully trade on such land. As it is proposed to maintain hereafter a register of all lands in proclaimed areas where Asiatic occupation is permitted, such a provision should prove a valuable safeguard to the Indian community. As against these important concessions, it has to be recognised that the recommendations of the Indian Delegation that areas like Springs and deproclaimed land, to which the restrictions of clauses 130 and 131 do not at present apply, should not be made subject to them, and that leases for ten years or more should not be treated as fixed property have not been accepted. *Ends.*

3. As without simultaneous announcement of result of representations regarding Transvaal Bill, Indian opinion will reserve opinion on announcement of other conclusions of recent Conference, it is necessary that statements on both subjects should be made in this country at same time, and I hope that this will be agreeable to you. On receipt of your reply, I shall place draft statement regarding Bill before my former colleagues of Delegation who have not yet seen it and then submit our final recommendations to Government of India.

*Serial no. 55.*—TELEGRAM FROM THE HON'BLE DR. D. F. MALAN, MINISTER OF THE INTERIOR, DATED CAPE TOWN, THE 16TH MARCH 1932.

In reply your telegram no. 249-Os. of 15th instant I beg to state that Select Committee's proposed modifications do not include the points about which you specially enquire. I must however point out that power to be given to Minister to permit occupation of proclaimed land amounts to a relaxation of the existing law which can very appropriately be set off against any proposed limitations in other directions. I feel rather diffident to convene Select Committee again after completion of its labours for special purpose of considering further representations as psychological effect may complicate position. Further amendments should I think be moved by individual members in Committee of whole house and will undoubtedly receive every consideration if good case can be made out. I beg to suggest that a detailed statement on proposed modifications of Asiatic Tenure Bill will at this stage be premature and may be all but helpful. Select Committee is defunct and could therefore only consider proposals informally and besides final decision rests with Parliament. I suggest that it will be better to state generally that the provisions of the Asiatic Tenure Bill were thoroughly scrutinized by a Joint Committee of both Delegations and that while the final decision rests with Parliament there is every reason to believe that important modifications will be made which will commend themselves to all concerned. I hope an early announcement of Conference conclusions will be possible as Press which so far has been very helpful is becoming impatient.

LC86EHL



*Serial no. 57.*—TELEGRAM TO THE HON'BLE DR. D. F. MALAN, MINISTER OF THE INTERIOR, CAPE TOWN NO. 274-OS., DATED THE 18TH MARCH 1932.

Your telegram of 16th. I am summoning meeting of my former colleagues of Delegation to consider points raised by you and shall communicate our final views to you as soon as I have consulted them. Meanwhile, I would beg you to accept my assurance that without simultaneous comprehensive statement in this country regarding Transvaal Tenure Bill on lines indicated in my telegram of 15th March, announcement provisionally agreed upon regarding other results of Conference will create a bad impression. I would, therefore, like you to examine my provisional draft and telegraph any suggestions you may care to make. If you feel that anything more than sort of general statement suggested by you would be embarrassing to you, perhaps the best course would be to let the announcement about results of Conference stand over until you consider auspicious moment for declaration of your intentions regarding Transvaal Bill has arrived. But I apprehend that such delay may engender public misgiving on both sides, and thus spoil atmosphere of mutual goodwill which we are so anxious to maintain and develop.

*Serial no. 61.*—TELEGRAM TO THE HON'BLE DR. D. F. MALAN, MINISTER OF THE INTERIOR, CAPE TOWN, NO. 287-OS., DATED THE 23RD MARCH 1932.

As promised in my telegram no. 274-OS., dated 18th, I have consulted my colleagues of Delegation. Like me they feel disappointed that your former colleagues of Select Committee should have been unable to accept all points in report of Sub-Committee of Conference, in particular suggestion to exclude leases for 10 years or over from definition of fixed property, though they feel sure you and Duncan did everything possible to convince them of their justice. Animated, however, as they all are by strong desire to save you embarrassment, they do not wish press you on this occasion to reopen points to which Select Committee have not agreed, except as regards definition of fixed property from which they unanimously request leases of 20 years or less should be excluded. They trust you will be able to secure this very modest concession. For rest they are prepared to advise Indian opinion to be content with modifications which Select Committee have accepted, and importance of which they gratefully recognise.

2. On question of publication of agreement they wish to impress it most strongly on you that it would be impossible to ensure favourable popular reaction to any announcement in India which does not state broadly the principal modifications which, subject to approval of Parliament, you have already secured. They realise that of suitable time for making such announcement in South Africa you are best judge and that, if you consider detailed statement in India at this stage will be premature and all but helpful, the matter must be left at that. But they are unanimous that, in that case, it would be best, from standpoint of public and press in this country, to postpone publication of agreement till you have told Parliament what amendments to Transvaal Bill you propose moving. We fully share your reluctance to delay announcement any longer, but fail to see how postponement can be avoided unless we can agree upon course of action which will satisfy reasonable opinion in both countries.

3. If after consideration of views set out in paragraph 2 you feel inclined to accept my original proposal for simultaneous announcement in this country of provisional agreement and modifications in Transvaal Bill which, subject to approval of Parliament, you hope to be able to secure, I shall be grateful for suggestions regarding draft statement telegraphed by me on 15th March. I need hardly assure you that you are free to propose any modifications you like, and that I shall give them friendliest and most careful consideration.

*Serial no. 62.*—TELEGRAM FROM THE HON'BLE DR. D. F. MALAN, MINISTER OF THE INTERIOR, DATED CAPE TOWN, THE 24TH MARCH 1932.

Your telegram of 23rd. I most cordially appreciate friendly and understanding attitude of yourself and colleagues and wish to assure you that Mr. Duncan and myself have gone as far as we safely could to meet your point of view. We have decided that Bill as to be reintroduced shall embody modifications approved by Select Committee thus obviating necessity to move them as amendments in Committee of whole house. You will therefore be at liberty to state in your announcement of Conference results that Bill has been modified to the extent I intimated in previous telegram. Parliament reassembles on 5th April after short recess and I suggest simultaneous announcement be made on that date on which I also propose to reintroduce modified Bill. Regarding fixed property definition there is opposition to your proposal but I shall leave matter to discretion of House if longer period be moved by any Member.

*Serial no. 63.*—TELEGRAM TO THE HON<sup>'</sup>BLE DR. MALAN, MINISTER OF THE INTERIOR,  
CAPE TOWN, NO. 303-OS., DATED NEW DELHI, THE 26TH MARCH 1932.

Many thanks for your telegram of 24th. I am glad that you agree to our announcing at same time as results of Conference that Bill has been modified in important respects. For this purpose, will you kindly telegraph, if necessary confidentially through our agent and at our expense, text of modifications. General framework of our statement on subject has already been communicated to you in my telegram no. 249-OS. of 15th March.

2. You suggest 5th April as date of simultaneous announcement in two countries. This will probably be the last date of our Assembly's Winter Session, and will suit us.

3. Finally I note that though there is opposition to our proposal regarding definition of fixed property, you will leave matter to discretion of House if longer period is moved by any Member. You will appreciate that as Indians are unrepresented in House, no Member of Parliament is likely to move raising limit to 20 years of his own accord. I would, therefore, ask you kindly to arrange for this informally, and trust that amendment will have your support.

**Statement made in the Legislative Assembly and the Council of State, on  
Tuesday, the 5th April, 1932.**

1. In accordance with paragraph 7 of the Cape Town Agreement of 1927 delegates of the Government of the Union of South Africa and of the Government of India met at Cape Town from January 12th to February 4th, 1932 to consider the working of the Agreement and to exchange views as to any modifications that experience might suggest. The delegates had a full and frank discussion in the Conference, which was throughout marked by a spirit of cordiality and mutual good-will.

2. Both Governments consider that the Cape Town Agreement has been a powerful influence in fostering friendly relations between them and that they should continue to co-operate in the common object of harmonising their respective interests in regard to Indians resident in the Union.

3. It was recognised that the possibilities of the Union's scheme of assisted emigration to India are now practically exhausted owing to the economic and climatic conditions of India as well as to the fact that 80 per cent. of the Indian population of the Union are now South African-born. As a consequence the possibilities of land-settlement outside India, as already contemplated in paragraph 3 of the Agreement, have been further considered. The Government of India will co-operate with the Government of the Union in exploring the possibilities of a colonisation scheme for settling Indians, both from India and from South Africa, in other countries. In this investigation, which should take place during the course of the present year, a representative of the Indian community in South Africa will, if they so desire, be associated. As soon as the investigation has been completed the two Governments will consider the results of the inquiry.

4. No other modification of the Agreement is for the present considered necessary.

5. Before passing on to the Transvaal Asiatic Tenure (Amendment) Bill, Honourable Members would, perhaps, like me to comment on the more important points in the settlement which I have just announced.

(1) Recognition by the two Governments of the need of continued co-operation in the common object of harmonising their respective interests in regard to Indians resident in the Union justifies the hope that friendly relations between South Africa and India, which are of such vital importance to the Indian community in the Union, will continue.

(2) It had become increasingly evident for sometime before the Conference met at Cape Town that Indian opinion both in South Africa and in India had become unfavourable to the scheme of assisted emigration to India. This was due to no shortcoming on the part of either Government but primarily to climatic and economic causes, and the fact that 80 per cent. of the Indian population of South Africa were born in the Union. The recognition of the Union Government that the possibilities of this scheme are now practically exhausted should be received with considerable relief by Indian opinion on both sides of the ocean.

(3) The proposal that the possibilities of land-settlement outside India should be examined merely carries out an integral part of the 1927 Agreement. It may be welcomed on two grounds:—

(i) If it results in a satisfactory scheme of land settlement, it may provide an outlet, especially to the younger generation of Indians in South Africa, in a country where they may have greater opportunities both for economic development and for political self-expression.

(ii) The association of a representative of the South African Indian Congress in the investigation will not only be a valuable safeguard for the inquiry, but constitutes an experiment in

collaboration between the Union Government and the Indian community in South Africa which, it is hoped, will be extended to other fields.

- 4) The Agreement stands unmodified except as regards the scheme of assisted emigration to India, and the proposed exploration of the possibilities of land settlement elsewhere. This means, to mention only two points out of the last Agreement, that the Government of the Union continue to adhere to the policy of unlifting the permanent section of their Indian population, and that the Government of India will continue to maintain in South Africa an Agent whose presence has admittedly proved most helpful alike to the Indian community in South Africa and to the promotion of friendship between the two countries.

6. I shall now endeavour to deal with the Transvaal Asiatic Tenure (Amendment) Bill. The Conference decided that it should be considered by a sub-committee consisting of two representatives of each Delegation. After discussion in the sub-committee Dr. Malan, who was one of Union representatives, agreed to place informally before members of the Select Committee, which had prepared Bill, suggestions of the delegates from India. Results of this consultation may be summarised as follows:--

- (1) Clause 5 of the Bill which embodied the principle of segregation by providing for the earmarking of areas for the occupation or ownership of land by Asiatics has been deleted. Instead, the Gold Law is to be amended to empower the Minister of the Interior, after consultation with the Minister of Mines to withdraw any land from the operation of Sections 130 and 131 in so far as they prohibit residence upon or occupation of any land by coloured persons. This power will be exercised after inquiry into individual cases by an impartial commission presided over by a judge, to validate present illegal occupations and to permit exceptions to be made in future from occupational restrictions of Gold Law. It is hoped that liberal use will be made of this new provision of the law so as to prevent the substantial dislocation of Indian business which strict application of the existing restrictions would involve, and to provide Indians in future with reasonable facilities to trade in the mining areas without segregation.
- (2) The Bill has also been amended so as to protect fixed property acquired by Asiatic companies up to 1st March 1930, which are not protected by section 2 of Act 37 of 1919. This will have the effect of saving many Indian properties which, though not acquired in contravention of the letter of the Act of 1919, were acquired contrary to its spirit.
- (3) Local bodies, whom clause 10 of the Bill required to refuse certificates of fitness to an Asiatic to trade on the ground that the applicant may not lawfully carry on business on the premises for which the licence is sought, shall have to treat a certificate issued by a competent Government officer to the effect that any land has been withdrawn from the restrictive provisions of sections 130 and 131 of the Gold Law as sufficient proof that a coloured person may lawfully trade on such land. As it is proposed to maintain hereafter a register of all lands in proclaimed areas where Asiatic occupation is permitted, such a provision should prove a valuable safeguard to the Indian community.

7. As against these important concessions, it has to be recognised that the recommendations of the Indian Delegation that areas like Springs and de-proclaimed land, to which the restrictions of clauses 130 and 131 do not at present apply, should not be made subject to them, and that leases for ten years or more should not be treated as fixed property have not been accepted. On the balance, however, the amendments which, subject to ratification by the Union Parliament, have been made in the Bill represent a substantial advance on the original Bill.

8. I must apologise to the House for the length of the statement. I have endeavoured to make it as brief as is compatible with clarity. Government had hoped that it would be possible to make the announcement earlier, but this was found impossible as the results of the Conference have to be published in both countries simultaneously, and the Union Parliament re-assembles only to-day after the Easter recess. Government trust, however, that keeping in view the difficulties inherent in the problem, and after consideration of the statement which has been made to-day, Honourable Members will feel satisfied with the results achieved.